



# Federal Register

---

5-25-07

Vol. 72 No. 101

Friday

May 25, 2007

Pages 29237-29428



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

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

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

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

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

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

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

The annual subscription price for the **Federal Register** paper edition is \$749 plus postage, or \$808, plus postage, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see [bookstore.gpo.gov](http://bookstore.gpo.gov).

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

**How To Cite This Publication:** Use the volume number and the page number. Example: 72 FR 12345.

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

## SUBSCRIPTIONS AND COPIES

### PUBLIC

#### Subscriptions:

Paper or fiche 202-512-1800  
Assistance with public subscriptions 202-512-1806

**General online information** 202-512-1530; 1-888-293-6498

#### Single copies/back copies:

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

### FEDERAL AGENCIES

#### Subscriptions:

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

### FEDERAL REGISTER WORKSHOP

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

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

**WHEN:** Tuesday, June 12, 2007  
9:00 a.m.–Noon

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

**RESERVATIONS:** (202) 741-6008



# Contents

## Federal Register

Vol. 72, No. 101

Friday, May 25, 2007

### Agriculture Department

*See* Animal and Plant Health Inspection Service

### Air Force Department

#### NOTICES

Active military service and discharge determinations:  
U.S. and foreign civilian employees of CAT, Inc. (1950-1951, 1954, 1958-1962) and Air America, Inc. (1959-1962, 1964-1975) in various Asian countries, 29310-29311

Agency information collection activities; proposals, submissions, and approvals, 29311-29312

### Animal and Plant Health Inspection Service

#### NOTICES

Agency information collection activities; proposals, submissions, and approvals, 29293-29294  
Environmental statements; notice of intent:  
Solid wood packing material; importation, 29294

### Army Department

*See* Engineers Corps

### Arts and Humanities, National Foundation

*See* National Foundation on the Arts and the Humanities

### Blind or Severely Disabled, Committee for Purchase From People Who Are

*See* Committee for Purchase From People Who Are Blind or Severely Disabled

### Centers for Disease Control and Prevention

#### NOTICES

Meetings:  
Disease, Disability, and Injury Prevention and Control  
Special Emphasis Panels, 29322  
Correction, 29322

### Centers for Medicare & Medicaid Services

#### PROPOSED RULES

Medicare:  
Medicare Advantage and Part D prescription drug contract determinations, appeals, and intermediate sanctions processes; revisions, 29368-29402  
Prescription drug benefit; policy and technical changes, 29403-29423

#### NOTICES

Agency information collection activities; proposals, submissions, and approvals, 29322-29323

Medicaid and Medicare:

Designated organ procurement service area; hospital waiver request, 29323-29325

Medicare:

Deeming authority applications, approvals, denials, etc.—  
American Diabetes Association, 29325-29326  
Durable medical equipment, prosthetics, orthotics, and supplies suppliers, 29326-29328

Meetings:

Medicare—  
Ambulatory Payment Classification Groups Advisory Panel, 29328-29330  
New clinical laboratory tests payment determinations, 29330-29331

Medicare Coverage Advisory Committee, 29331-29332

### Civil Rights Commission

#### NOTICES

Meetings; Sunshine Act, 29296

### Coast Guard

#### RULES

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:  
Great Lakes Naval Training Center Harbor, North Chicago, IL, 29254-29256

### Commerce Department

*See* Industry and Security Bureau

*See* International Trade Administration

*See* National Institute of Standards and Technology

*See* National Oceanic and Atmospheric Administration

### Committee for Purchase From People Who Are Blind or Severely Disabled

#### NOTICES

Procurement list; additions and deletions, 29294-29296

### Commodity Futures Trading Commission

#### RULES

Official seal; permissible uses, 29246-29247

### Defense Department

*See* Air Force Department

*See* Engineers Corps

#### RULES

Conduct on Pentagon Reservation and Raven Rock Mountain Complex; administrative changes, 29250-29254

#### NOTICES

Environmental statements; record of decision:  
White Sands Missile Range, NM; Defense Threat Reduction Agency activities, 29306  
Privacy Act; system of records, 29307-29310

### Engineers Corps

#### NOTICES

Environmental statements; notice of intent:  
Martin County, FL; Martin County Beach Erosion Control Project, 29312-29313

### Engraving and Printing Bureau

#### NOTICES

Agency information collection activities; proposals, submissions, and approvals, 29363

### Environmental Protection Agency

#### RULES

Air quality implementation plans; approval and promulgation; various States:

Florida, 29273-29276

Ohio, 29269-29273

Superfund program:

National oil and hazardous substances contingency plan priorities list, 29276-29277

**PROPOSED RULES**

Air pollutants, hazardous; national emission standards:  
Risk and technology review (Phase II, Group 2), 29287–29289

Air quality implementation plans; approval and promulgation; various States:  
Florida, 29287

**NOTICES**

Environmental statements; availability, etc.:

Agency comment availability, 29313–29314

Agency weekly receipts, 29314–29315

Pesticide registration, cancellation, etc.:

Chloroneb, 29315–29317

Toxic and hazardous substances control:

Polychlorinated biphenyls (PCBs)—

Army chemical agent rocket incinerator PCBs disposal approval, 29317–29319

Test marketing exemptions—

Organic acid producing organism; approved, 29319–29320

Water programs:

Hazardous waste injection restrictions—

Occidental Chemical Corp. Class I injection well, Wichita, KS; disposal exemption, 29320

**Executive Office of the President**

*See* Presidential Documents

*See* Trade Representative, Office of United States

**Federal Accounting Standards Advisory Board****NOTICES**

Reports and guidance documents; availability, etc.:

Accounting for Federal oil and gas resources, 29320

**Federal Aviation Administration****RULES**

Airworthiness directives:

Airbus, 29241–29244

Bombardier, 29239–29241

Fokker, 29245–29246

McDonnell Douglas, 29237–29239

**PROPOSED RULES**

Airworthiness directives:

Boeing, 29280–29282

McDonnell Douglas, 29278–29280

**Federal Election Commission****NOTICES**

Meetings; Sunshine Act, 29321

**Federal Motor Carrier Safety Administration****NOTICES**

Meetings; Sunshine Act, 29360–29361

**Federal Railroad Administration****NOTICES**

Exemption petitions, etc.:

Red River Valley & Western Railroad, 29361

Traffic control systems; discontinuance or modification:

Union Pacific Railroad Co., 29361–29362

**Federal Reserve System****NOTICES**

Banks and bank holding companies:

Formations, acquisitions, and mergers, 29321

**Fish and Wildlife Service****NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 29348

**Food and Drug Administration****NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 29332–29333

Biological products:

Patent extension; regulatory review period determinations—

MYOZYME, 29333–29334

Human drugs:

Patent extension; regulatory review period determinations—

PREZISTA, 29335–29336

SPRYCEL, 29334–29335

Medical devices:

Patent extension; regulatory review period determinations—

KDR 401 and 403 PACEMAKERS, 29336–29337

Reports and guidance documents; availability, etc.:

Complementary and alternative medicine products and their regulation by FDA, 29337–29338

**Health and Human Services Department**

*See* Centers for Disease Control and Prevention

*See* Centers for Medicare & Medicaid Services

*See* Food and Drug Administration

*See* National Institutes of Health

*See* Substance Abuse and Mental Health Services Administration

**PROPOSED RULES**

Privacy Act regulations:

Systems of records exemptions, 29289–29292

**NOTICES**

Meetings:

Bioethics, President's Council, 29321–29322

**Homeland Security Department**

*See* Coast Guard

**NOTICES**

Meetings:

Homeland Security Advisory Council, 29341–29342

Privacy Act; systems of records, 29342

**Housing and Urban Development Department****NOTICES**

Grants and cooperative agreements; availability, etc.:

Homeless assistance; excess and surplus Federal properties, 29342–29347

**Industry and Security Bureau****NOTICES**

Export privileges, actions affecting:

Super Net Computers, L.L.C., 29296–29299

**Interior Department**

*See* Fish and Wildlife Service

*See* Land Management Bureau

*See* National Park Service

**International Trade Administration****NOTICES**

Antidumping:

Brake rotors from—

China, 29299–29300

Carbon and alloy steel wire rod from—  
Mexico, 29300–29301  
Countervailing duties:  
Low enriched uranium from—  
France, 29301–29302  
Practice and procedure:  
Antidumping proceedings involving China; market-economy treatment to individual respondents, 29302–29304

#### **International Trade Commission**

##### **NOTICES**

Import investigations:  
Glycine from—  
Various countries, 29352–29353

#### **Labor Department**

*See* Occupational Safety and Health Administration

#### **Land Management Bureau**

##### **NOTICES**

Meetings:  
California Desert Advisory Council, 29348–29349  
Resource Advisory Councils—  
John Day/Snake, 29349

#### **National Foundation on the Arts and the Humanities**

##### **NOTICES**

Meetings:  
Arts Advisory Panel, 29354–29355

#### **National Institute of Standards and Technology**

##### **NOTICES**

Grants and cooperative agreements; availability, etc.:  
Advanced Technology Program, 29304  
Meetings:  
Information Security and Privacy Advisory Board, 29304

#### **National Institutes of Health**

##### **NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 29338–29339  
Meetings:  
National Heart, Lung, and Blood Institute, 29339  
National Institute of Child Health and Human Development, 29340  
National Institute of General Medical Sciences, 29340  
National Institute of Nursing Research, 29339

#### **National Oceanic and Atmospheric Administration**

##### **NOTICES**

Environmental statements; notice of intent:  
Lower Duwamish River, WA; restoration planning to compensate for injuries to natural resources; scoping meetings, 29304–29305  
Meetings:  
Marine Fisheries Advisory Committee, 29305–29306

#### **National Park Service**

##### **NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 29349–29352  
Meetings:  
National Park of American Samoa Federal Advisory Commission, 29352

#### **Occupational Safety and Health Administration**

##### **NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 29353–29354

#### **Office of United States Trade Representative**

*See* Trade Representative, Office of United States

#### **Peace Corps**

##### **NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 29356–29357  
Privacy Act; system of records, 29357–29359

#### **Postal Regulatory Commission**

##### **PROPOSED RULES**

Practice and procedure:  
Market dominant and competitive postal products; rate regulation; comment request, 29284–29287

#### **Postal Service**

##### **RULES**

Domestic Mail Manual:  
Periodicals mailing services; new standards, 29256–29269

#### **Presidential Documents**

##### **ADMINISTRATIVE ORDERS**

Migration and Refugee Assistance Act of 1962; availability of funds (Presidential Determination)  
No. 2007-19 of May 10, 2007, 29425–29428

#### **State Department**

##### **NOTICES**

Culturally significant objects imported for exhibition:  
Arts of Latin America (1492-1820), 29359  
Geli Korzhev, Russia, 2nd Half of the 20th Century, 29359  
Meetings:  
Shipping Coordinating Committee, 29359  
Presidential permit applications:  
Enbridge Energy LP; crude oil and liquid hydrocarbon pipeline at U.S.-Canadian border; construction, connection, operation, and maintenance, 29360  
Enbridge Pipelines (Southern Lights) LLC; crude oil and liquid hydrocarbon pipeline at U.S.-Canadian border; construction, connection, operation, and maintenance, 29360

#### **Substance Abuse and Mental Health Services Administration**

##### **NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 29340–29341

#### **Surface Transportation Board**

##### **NOTICES**

Railroad operation, acquisition, construction, etc.:  
Lone Star Technologies, Inc., 29362  
Railroad services abandonment:  
CSX Transportation, Inc., 29362–29363

#### **Trade Representative, Office of United States**

##### **NOTICES**

U.S.-Chile Free Trade Agreement:  
Tariff elimination acceleration and rules of origin modification, 29355–29356

**Transportation Department**

*See* Federal Aviation Administration

*See* Federal Motor Carrier Safety Administration

*See* Federal Railroad Administration

*See* Surface Transportation Board

**Treasury Department**

*See* Engraving and Printing Bureau

**RULES**

Dominican Republic-Central America Free Trade Agreement:

Preferential tariff treatment; retroactive application,  
29247–29250

**U.S. Customs and Border Protection****RULES**

Dominican Republic-Central America Free Trade Agreement:

Preferential tariff treatment; retroactive application,  
29247–29250

**NOTICES**

PIMA Cotton Trust Fund; claims and affidavits deadlines,  
29363–29365

**Veterans Affairs Department****NOTICES**

Veterans Health Administration:

Physicians and dentists; annual pay ranges; correction,  
29366

---

**Separate Parts In This Issue****Part II**

Health and Human Services Department, Centers for  
Medicare & Medicaid Services, 29368–29423

**Part III**

Executive Office of the President, Presidential Documents,  
29425–29428

---

**Reader Aids**

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

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

---

**CFR PARTS AFFECTED IN THIS ISSUE**

---

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

**3 CFR****Administrative Orders:**

Presidential

Determinations:

No. 2007–19 of May

10, 2007 .....29427

**14 CFR**39 (4 documents) .....29237,  
29239, 29241, 29245**Proposed Rules:**39 (3 documents) .....29278,  
29280, 29282**17 CFR**

2 .....29246

**19 CFR**

10 .....29247

**32 CFR**

234 .....29250

**33 CFR**

165 .....29254

**39 CFR**

111 .....29256

**Proposed Rules:**

3001 .....29284

**40 CFR**52 (2 documents) .....29269,  
29273  
300 .....29276**Proposed Rules:**52 .....29287  
63 .....29287**42 CFR****Proposed Rules:**422 .....29368  
423 (2 documents) .....29368,  
29403**45 CFR****Proposed Rules:**

5b .....29289

# Rules and Regulations

Federal Register

Vol. 72, No. 101

Friday, May 25, 2007

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

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-27338; Directorate Identifier 2006-NM-148-AD; Amendment 39-15070; AD 2007-11-13]

RIN 2120-AA64

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

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD), which applies to all McDonnell Douglas Model 717-200 airplanes. That AD currently requires revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new removal limits for certain components of the flap system and to reduce the interval of inspections for fatigue cracking of certain principal structural elements (PSEs). This new AD requires revising the ALS of the Instructions for Continued Airworthiness to incorporate reduced initial inspection and repeat inspection intervals for certain PSEs. This AD results from a revised damage tolerance analysis. We are issuing this AD to detect and correct fatigue cracking of certain PSEs, which could adversely affect the structural integrity of the airplane.

**DATES:** This AD becomes effective June 29, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 29, 2007.

On September 23, 2003 (68 FR 49686, August 19, 2003), the Director of the Federal Register approved the

incorporation by reference of Boeing Report No. MDC-96K9063, Revision 3, dated August 2002.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024), for service information identified in this AD.

#### FOR FURTHER INFORMATION CONTACT:

David Rathfelder, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5229; fax (562) 627-5210.

#### SUPPLEMENTARY INFORMATION:

##### Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

##### Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2003-17-01, amendment 39-13274 (68 FR 49686, August 19, 2003). The existing AD applies to all McDonnell Douglas Model 717-200 airplanes. That NPRM was published in the **Federal Register** on February 26, 2007 (72 FR 8303). That NPRM proposed to continue to require revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new removal limits for certain components of the flap system and to reduce the interval of inspections for fatigue cracking of certain principal structural elements (PSEs). That NPRM also proposed to require revising the ALS of the Instructions for Continued Airworthiness to incorporate reduced

initial inspection and repeat inspection intervals for certain PSEs.

#### Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that has been received on the NPRM. The commenter, AirTran Airways, supports the NPRM.

#### Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

#### Conclusion

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

#### Costs of Compliance

The FAA estimates that 108 airplanes of U.S. registry are affected by AD 2003-17-01, that it takes approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is \$80 per work hour. Based on these figures, the cost impact on U.S. operators of the actions required by AD 2003-17-01 and retained in this AD is estimated to be \$8,640, or \$80 per airplane.

There are about 155 airplanes of the affected design in the worldwide fleet. This AD affects about 121 airplanes of U.S. registry. The new required maintenance and inspection program revision takes about 1 work hour per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the new AD to U.S. operators is \$9,680, 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, Incorporation by reference, Safety.

### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39-13274 (68 FR 49686, August 19, 2003) and by adding the following new airworthiness directive (AD):

**2007-11-13 McDonnell Douglas:**  
Amendment 39-15070. Docket No. FAA-2007-27338; Directorate Identifier 2006-NM-148-AD.

#### Effective Date

(a) This AD becomes effective June 29, 2007.

#### Affected ADs

(b) This AD supersedes AD 2003-17-01.

#### Applicability

(c) This AD applies to all McDonnell Douglas Model 717-200 airplanes, certificated in any category.

**Note 1:** This AD requires revisions to certain operator maintenance documents to incorporate new inspections for fatigue cracking of principal structural elements (PSEs). 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 incorporate the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25-1529-1.

#### Unsafe Condition

(d) This AD results from a revised damage tolerance analysis. We are issuing this AD to detect and correct fatigue cracking of certain PSEs, which could adversely affect the structural integrity of the airplane.

#### Compliance

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

#### Restatement of Requirements of AD 2003-17-01

#### Revising Airworthiness Limitations Section

(f) Within 180 days after September 23, 2003 (the effective date of AD 2003-17-01), revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness, Airworthiness Limitations Instructions (ALI), in accordance with Boeing Report No. MDC-96K9063, Revision 3, dated August 2002.

(g) Except as provided by paragraph (j) of this AD: After the actions specified in paragraph (f) of this AD have been done, no alternative inspection intervals or replacement times may be approved for the PSEs and safe-life limited parts specified in Boeing Report No. MDC-96K9063, Revision 3, dated August 2002.

#### New Requirements of This AD

#### Revising Airworthiness Limitations Section Using Revision 5

(h) Within 180 days after the effective date of this AD: Revise the Airworthiness

Limitations Section of the Instructions for Continued Airworthiness, ALI, in accordance with Boeing 717-200 ALI, Report MDC-96K9063, Revision 5, dated February 2006.

(i) Except as provided by paragraph (j) of this AD: After the actions specified in paragraph (h) of this AD have been done, no alternative inspection intervals or replacement times may be approved for the PSEs and safe-life limited parts specified in Boeing 717-200 ALI, Report MDC-96K9063, Revision 5, dated February 2006.

#### Alternative Methods of Compliance (AMOCs)

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

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

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

#### Material Incorporated by Reference

(k) You must use Boeing Report No. MDC-96K9063, Revision 3, dated August 2002; and Boeing 717-200 Airworthiness Limitations Instructions, Report MDC-96K9063, Revision 5, dated February 2006; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approves the incorporation by reference of Boeing 717-200 Airworthiness Limitations Instructions, Report MDC-96K9063, Revision 5, dated February 2006, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On September 23, 2003 (68 FR 49686, August 19, 2003), the Director of the Federal Register approved the incorporation by reference of Boeing Report No. MDC-96K9063, Revision 3, dated August 2002.

(3) Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024), for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on May 15, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. E7-10024 Filed 5-24-07; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-27016; Directorate Identifier 2006-NM-176-AD; Amendment 39-15066; AD 2007-11-09]

RIN 2120-AA64

#### Airworthiness Directives; Bombardier Model DHC-8-400 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD), which applies to certain Bombardier Model DHC-8-400 series airplanes. That AD currently requires inspecting the electrical connectors of the fire bottles for the forward and aft baggage compartments and for the auxiliary power unit (APU) and engine nacelles to determine if they are connected correctly, and doing related investigative and corrective actions if necessary. This new AD adds a requirement to install/modify lanyards, mounts, and clamps to the forward and aft baggage compartment, APU, and engine nacelle fire extinguishing systems. This new AD also requires revising the aircraft maintenance manual to incorporate installation and removal procedures for certain fire bottles and fire extinguisher cartridges. This new AD also adds two airplanes to the applicability. This AD results from reports of the electrical connectors for the fire bottles in the forward and aft baggage compartments, APU, and engine nacelle being cross-connected. We are issuing this AD to detect and correct cross-connection of the fire bottles and to prevent cross-connection, which could result in failure of the fire bottles to discharge and consequent inability to extinguish a fire in the affected areas.

**DATES:** This AD becomes effective June 29, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 29, 2007.

On July 5, 2005 (70 FR 35172, June 17, 2005), the Director of the Federal Register approved the incorporation by reference of Bombardier Alert Service Bulletin A84-26-06, dated May 12, 2005.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC.

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7320; fax (516) 794-5531.

#### SUPPLEMENTARY INFORMATION:

##### Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

##### Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2005-12-17, amendment 39-14133 (70 FR 35172, June 17, 2005). The existing AD applies to certain Bombardier Model DHC-8-400 series airplanes. That NPRM was published in the **Federal Register** on January 26, 2007 (72 FR 3756). That NPRM proposed to require inspecting the electrical connectors of the fire bottles for the forward and aft baggage compartments and for the auxiliary power unit (APU) and engine nacelles to determine if they are connected correctly; and doing related investigative and corrective actions, if necessary. That NPRM proposed to add a requirement to install/modify lanyards, mounts, and clamps to the forward and aft baggage compartment, APU, and engine nacelle fire extinguishing systems. That NPRM also proposed to require installation and removal procedures for certain fire bottles and fire extinguisher cartridges.

That NPRM also proposed to add two airplanes to the applicability.

#### Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the NPRM or on the determination of the cost to the public.

#### Change to Installation and Removal Requirement

We have revised the requirement specified in paragraph (h) of the NPRM. Paragraph (h) of the NPRM specifies to do certain installations and removals of the fire bottles and cartridges in accordance with a method approved by the FAA or Transport Canada Civil Aviation (or its delegated agent). Paragraph (h) of the NPRM also specifies that Bombardier Dash 8 Series 400 Aircraft Maintenance Manual, Product Support Manual (PSM) 1-84-2, Revision 22, dated June 5, 2006, is one approved method.

We have determined that operators need to only revise the FAA-approved maintenance program to incorporate the information for those installations and removals of the fire bottles and cartridges specified in Bombardier Dash 8 Series 400 Aircraft Maintenance Manual, Product Support Manual (PSM) 1-84-2, Revision 22, dated June 5, 2006. This will place less of a burden on operators because operators will not need to make a maintenance log entry to show compliance every time one of the installations or removals is done. We have revised paragraph (h) of this AD accordingly.

#### Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

#### Conclusion

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

#### Costs of Compliance

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

## ESTIMATED COSTS

| Action                                 | Work hours | Average labor rate per hour | Parts           | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost      |
|----------------------------------------|------------|-----------------------------|-----------------|-------------------|-------------------------------------|-----------------|
| Inspection (required by AD 2005–12–17) | 2          | \$80                        | \$0 .....       | \$160             | 19                                  | \$3,040.        |
| Modification (new action) .....        | 4          | 80                          | Up to \$200 ... | 520               | 21                                  | Up to \$10,920. |
| Revision .....                         | 1          | 80                          | 0 .....         | 80                | 19                                  | \$1,520.        |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14133 (70 FR 35172, June 17, 2005) and by adding the following new airworthiness directive (AD):

**2007–11–09 Bombardier, Inc. (Formerly de Havilland, Inc.):** Amendment 39–15066. Docket No. FAA–2007–27016; Directorate Identifier 2006–NM–176–AD.

**Effective Date**

(a) This AD becomes effective June 29, 2007.

**Affected ADs**

(b) This AD supersedes AD 2005–12–17.

**Applicability**

(c) This AD applies to Bombardier Model DHC–8–400 series airplanes, certificated in any category; serial numbers (S/Ns) 4001 through 4107 inclusive.

**Unsafe Condition**

(d) This AD results from reports of the electrical connectors for the fire bottles in the forward and aft baggage compartments, auxiliary power unit (APU), and engine nacelle being cross-connected. We are issuing this AD to detect and correct cross-connection of the fire bottles and to prevent cross-connection, which could result in failure of the fire bottles to discharge and consequent inability to extinguish a fire in the affected areas.

**Compliance**

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

**Restatement of Requirements of AD 2005–12–17****Inspection and Corrective Action**

(f) For airplanes having S/Ns 4001 through 4105 inclusive: Within 14 days after July 5,

2005 (the effective date of AD 2005–12–17), inspect the electrical connectors of the fire bottles for the forward and aft baggage compartments and for the APU and engine nacelles to determine if they are connected correctly; and, before further flight, do the related investigative and corrective actions, as applicable; by doing all of the applicable actions specified in the Accomplishment Instructions of Bombardier Alert Service Bulletin A84–26–06, dated May 12, 2005; or Revision 'A,' dated June 6, 2005. Although the service bulletins specify to submit certain information to the manufacturer, this AD does not include that requirement.

**New Requirements of This AD****Installation/Modification**

(g) For all airplanes: Within 5,000 flight hours after the effective date of this AD, install/modify lanyards, mounts, and clamps to the forward and aft baggage compartment, APU, and engine nacelle fire extinguishing systems by doing all the actions specified in the Accomplishment Instructions of Bombardier Service Bulletin 84–26–07, Revision 'B,' dated November 1, 2006.

**Revision of Aircraft Maintenance Manual**

(h) For airplanes having S/Ns 4001 through 4105 inclusive: Within 30 days after the effective date of this AD, incorporate the information in the page blocks of Bombardier Dash 8 Series 400 Aircraft Maintenance Manual (AMM), Product Support Manual (PSM) 1–84–2, Revision 22, dated June 5, 2006, specified in paragraphs (h)(1), (h)(2), (h)(3), (h)(4), (h)(5), (h)(6), and (h)(7) of this AD, into the FAA-approved maintenance program to specify an installation and removal of nacelle fire bottles, an installation of aft high-rate fire bottles, an installation of forward high-rate fire bottles, an installation and removal of low-rate fire bottles, an installation of APU fire bottles, an installation and removal of low-rate fire extinguisher cartridges, and an installation and removal of nacelle fire extinguisher cartridges, in accordance with a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (or its delegated agent). The page blocks of the Bombardier Dash 8 Series 400 AMM specified in paragraphs (h)(1), (h)(2), (h)(3), (h)(4), (h)(5), (h)(6), and (h)(7) of this AD, are one approved method for the actions required by this paragraph.

(1) Chapter 26–21–01, Page Block 401, dated December 5, 2005.

(2) Chapter 26–21–06, Page Block 401, dated December 5, 2005.

(3) Chapter 26–22–02, Page Block 401, dated December 5, 2005.

(4) Chapter 26–22–03, Page Block 401, dated December 5, 2005.

(5) Chapter 26–22–11, Page Block 401, dated December 5, 2005.

(6) Chapter 26–22–16, Page Block 401, dated December 5, 2005.

(7) Chapter 26–23–01, Page Block 401, dated December 5, 2005.

#### Actions Accomplished According to Previous Issue of Service Bulletin

(i) Actions accomplished before the effective date of this AD in accordance with Bombardier Service Bulletin 84–26–07, dated June 15, 2005; and Revision 'A,' dated February 21, 2006; are considered acceptable for compliance with the corresponding action specified in paragraph (g) of this AD, provided the intended restriction of the connectors was done as specified in Bombardier Service Bulletin 84–26–07, Revision 'B,' dated November 1, 2006.

#### Alternative Methods of Compliance (AMOCs)

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

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

#### Related Information

(k) Canadian airworthiness directive CF–2005–14R1, dated May 8, 2006, also addresses the subject of this AD.

#### Material Incorporated by Reference

(l) You must use the service information identified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1.—ALL MATERIAL INCORPORATED BY REFERENCE

| Bombardier Service Bulletin | Revision level | Date              |
|-----------------------------|----------------|-------------------|
| A84–26–06                   | Original ..    | May 12, 2005.     |
| A84–26–06                   | 'A' .....      | June 6, 2005.     |
| 84–26–07 ..                 | 'B' .....      | November 1, 2006. |

(1) The Director of the Federal Register approved the incorporation by reference of Bombardier Alert Service Bulletin A84–26–06, Revision 'A,' dated June 6, 2005; and Bombardier Service Bulletin 84–26–07, Revision 'B,' dated November 1, 2006; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On July 5, 2005 (70 FR 35172, June 17, 2005), the Director of the Federal Register approved the incorporation by reference of Bombardier Alert Service Bulletin A84–26–06, dated May 12, 2005.

(3) Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt

Boulevard, Downsview, Ontario M3K 1Y5, Canada, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on May 15, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–10035 Filed 5–24–07; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2006–24983; Directorate Identifier 2005–NM–196–AD; Amendment 39–15068; AD 2007–11–11]

RIN 2120–AA64

#### Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD), which applies to all Airbus Model A318, A319, A320, and A321 airplanes. That AD currently requires a one-time inspection to determine the serial number of both main landing gear (MLG) sliding tubes, repetitive detailed inspections for cracking of the affected MLG sliding tubes, and corrective actions if necessary. This new AD retains these inspections and adds new repetitive inspections for cracking of the MLG sliding tubes. This AD also requires eventual replacement of both MLG shock absorbers. Doing this replacement terminates the repetitive inspection requirements of this AD. This AD results from a determination that additional inspections and mandatory replacement of the MLG shock absorbers are necessary. We are issuing this AD to detect and correct cracking in an MLG sliding tube, which could result in failure of the sliding tube, loss of one axle, and consequent reduced controllability of the airplane. **DATES:** This AD becomes effective June 29, 2007.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in the AD as of June 29, 2007.

On June 23, 2004, (69 FR 31867, June 8, 2004), the Director of the Federal Register approved the incorporation by reference of Airbus All Operators Telex A320–32A1273, Revision 01, dated May 6, 2004.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

#### SUPPLEMENTARY INFORMATION:

##### Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

##### Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2004–11–13, amendment 39–13659 (69 FR 31867, June 8, 2004). The existing AD applies to all Airbus Model A318, A319, A320, and A321 airplanes. That NPRM was published in the **Federal Register** on June 12, 2006 (71 FR 33658). That NPRM proposed to retain the inspections required by the existing AD and add new repetitive inspections for cracking of the MLG sliding tubes. That NPRM also proposed to require eventual replacement of both MLG shock absorbers, which would terminate the repetitive inspection requirements proposed by that NPRM.

##### Comments

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

**Support for the NPRM**

Airbus concurs with the contents of the NPRM.

**Request To Retain Inspection in Existing AD**

The Air Transport Association (ATA) on behalf of its members United Airlines (UAL), Northwest Airlines (NWA), and U.S. Airways (USAir), requests that we retain the 10-day inspection required by AD 2004-11-13. The commenters state that they consider the current 10-day visual inspection to be the most effective and appropriate inspection method to check and recheck in-service parts for a crack, because that inspection emulates the process which identified the first and only crack found on the transition area of the main landing gear (MLG) sliding tube after an overweight/heavy landing.

We agree with the commenters that the visual inspection is currently the most effective method of detecting cracks in the high stress transition area. As the 10-day visual inspection required by AD 2004-11-13 is retained in this AD, it is not necessary to change the AD in this regard.

**Request To Change Magnetic Particle Inspection (MPI) Interval**

The same commenters request that we change the interval for repeating the MPI from intervals not to exceed 1200 flight cycles to intervals not to exceed 2500 flight cycles or the gear overhaul cycle. NWA asserts that an MPI is most effective when applied in a shop environment, as the MPI could yield false readings that require removing the protective coating from the MLG sliding tube and re-inspecting to prove that no crack exists. NWA asserts that the effort to locally remove the protective coating could lead to damage of the MLG sliding tube and introduce a further unsafe condition. NWA recommends that the MPI remain at an overhaul interval schedule instead of the in situ interval proposed by the NPRM. UAL asks that we change the MPI repetitive interval to 2,500 flight cycles or a less intrusive interval that corresponds with a heavy maintenance check, and that we change the MPI inspection area to the high stress area. NWA notes that, according to Airbus, the 1,200 flight cycle MPI interval is based on the highest stress areas, which are specifically excluded from the MPI inspection areas and are subject only to the detailed visual inspection. NWA further notes that, according to Airbus, the remaining axle stresses are not significant enough for a crack to reach critical size within one overhaul interval of 10 years or 20,000

flight cycles, and that utilizing a safety factor of 3 yields the required interval of 6,666 flight cycles.

We partially agree. We have determined that an MPI interval that corresponds with a gear overhaul interval of 10 years or 20,000 flight cycles would not provide an adequate level of safety. Further, the highest stress areas described by NWA have highly contoured geometries that cannot be reliably inspected with MPIs. However, we agree that the MPI and applicable corrective actions should be performed during scheduled heavy maintenance when these actions could be done properly. Therefore, we have revised the repetitive interval in paragraph (h) of the AD to read "not to exceed 2,500 flight cycles or 21 months, whichever occurs earlier."

**Request for Alternative Terminating Action**

The same commenters request that we consider other methods of terminating action. UAL asserts that the acoustic resonance inspection system (ARIS) and phased array eddy current methods of non-destructive testing are able to detect subsurface flaws in complex geometries and, therefore, offer much more precise test results than the MPI. UAL states that the ARIS, which uses an electromagnetic acoustic transducer (EMAT), exploits the unique physical properties of ultrasonic resonance to produce constant sound waves of controllable depth and length that change only if an anomaly is scanned in the material under test. UAL also asserts that the phased array eddy current method, developed by Iowa State University with FAA funding, has proved effective in inspections for cracking of MLG cylinders required by AD 2005-19-08, amendment 39-14273, which is applicable to DC-9 series airplanes.

We disagree. The commenters have not provided any data to demonstrate that these two methods will conclusively and positively identify subsurface flaws. Further, Airbus has investigated and determined that these two inspection methods would not reliably demonstrate the presence of any subsurface flaws. Therefore, we have not changed the AD in this regard. However, any operator may request an alternative method of compliance (AMOC) in accordance with the procedures in paragraph (m) of the AD, provided that sufficient data are submitted to substantiate that the proposed AMOC would provide an acceptable level of safety.

**Request To Withdraw MPI and Mandatory Shock Absorber Replacement**

The same commenters request that the mandatory terminating action be removed from the NPRM. UAL accepts the requirement for the initial and repetitive detailed inspections, but asserts that the risk of MLG failure is so small that the expense of the MPI inspection and the mandatory shock absorber replacement is not justified. The commenters note that, in 2003, Airbus determined that the frequency of occurrence of the subject failure was one event in 1.33 billion component hours; and that, since then, the fleet has continued to operate with no incidents of MLG failure. Further, UAL notes that the root cause of the event was determined to be a manufacturing process condition that could be random within the volume of the part and asserts, therefore, that volumetric analysis would be more appropriate. Finally, UAL notes that, although the MPI increases the chances of identifying the surface indication of a crack, the areas to be inspected are not in the transitional area of the MLG sliding tube where the initial crack occurred. NWA asserts that the MPI is unable to detect subsurface flaws or inspect complex geometrical contours and might not be able to detect the most critical flaws, which could give a false sense of security. The commenters request, therefore, that the requirements for the MPI and mandatory shock absorber replacement be removed.

We do not agree. As the probability of manufacturing flaws can not be precisely determined and an MLG collapse at high speed could be catastrophic, the absence of a completely reliable method of finding subsurface flaws requires that we use the best methods currently available to detect surface cracks until the affected MLG shock absorbers are replaced. As such, the MPI provides additional capability to detect surface cracks and, therefore, supplements the detailed inspections. We have not changed the AD in this regard.

**Request To Make Terminating Action Optional**

The same commenters request that, if not removed, the terminating action be made optional. UAL asserts that operators should have the choice to continue repeating the required inspections indefinitely or to replace the affected MLG sliding tubes. UAL contends that Airbus and Messier-Dowty have not justified that sufficient

need exists to require replacing the MLG sliding tubes by a certain date.

We do not agree. According to FAA policy, design changes should be implemented to remove the source of a problem, rather than relying on inspections to ensure the problem does not occur, especially when the results could be catastrophic and the inspection is difficult, as in this case. We have not changed the AD in this regard.

#### Clarification of AMM

To prevent confusion, we have revised paragraph (i) of the AD to clarify that the Airbus A318/A319/A320/A321 aircraft maintenance manual, chapter 32–11–13, page block 401, describes one

approved method of removing and replacing the MLG shock absorbers.

#### Conclusion

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

#### Costs of Compliance

This AD affects about 720 airplanes of U.S. registry. The following table

provides the estimated costs for U.S. operators to comply with this AD at an estimated labor rate of \$80 per work hour. Operators should note that, although all U.S.-registered airplanes are subject to the requirements of the existing AD, there are only 297 possible affected MLG sliding tubes in the worldwide fleet. We have no way of knowing how many affected MLG sliding tubes, if any, are installed in U.S.-registered airplanes. Therefore, the estimated costs to perform the new requirements of this AD apply only to individual sliding tubes; no fleet cost can be determined for these actions.

#### ESTIMATED COSTS TO PERFORM REQUIREMENTS OF EXISTING AD 2004–11–13

| Action                                                     | Work hours | Parts      | Cost per airplane | Fleet cost |
|------------------------------------------------------------|------------|------------|-------------------|------------|
| General visual inspection to determine serial number ..... | 1          | None ..... | \$80              | \$57,600   |

#### ESTIMATED COSTS TO PERFORM NEW REQUIREMENTS OF THIS AD

| Action                                                     | Work hours | Parts                      | Cost per sliding tube        |
|------------------------------------------------------------|------------|----------------------------|------------------------------|
| Detailed inspection .....                                  | 1          | None .....                 | \$80, per inspection cycle.  |
| Detailed inspection and magnetic particle inspection ..... | 9          | None .....                 | \$720, per inspection cycle. |
| Replacement of sliding tube .....                          | 8          | \$38,278 to \$45,310 ..... | \$39,918 to \$45,950.        |

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

- 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13659 (69 FR 31867, June 8, 2004) and adding the following new airworthiness directive (AD):

**2007–11–11 Airbus:** Amendment 39–15068. Docket No. FAA–2006–24983; Directorate Identifier 2005–NM–196–AD.

#### Effective Date

- (a) This AD becomes effective June 29, 2007.

#### Affected ADs

- (b) This AD supersedes AD 2004–11–13.

#### Applicability

- (c) This AD applies to all Airbus Model A318, A319, A320, and A321 airplanes, certificated in any category.

#### Unsafe Condition

- (d) This AD results from a determination that additional inspections and mandatory replacement of the main landing gear (MLG) shock absorbers are necessary. We are issuing this AD to detect and correct cracking in an MLG sliding tube, which could result in

failure of the sliding tube, loss of one axle, and consequent reduced controllability of the airplane.

#### Compliance

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

#### Service Information References

(f) The term "service information," as used in this AD, means Airbus All Operators Telex (AOT) A320–32A1273, Revision 01, dated May 6, 2004; or the Accomplishment Instructions of Airbus Service Bulletin A320–32A1273, Revision 02, including Appendix 01, dated May 26, 2005. After the effective date of this AD, only Airbus Service Bulletin A320–32A1273, Revision 02, may be used.

**Note 1:** Airbus AOT A320–32A1273, Revision 01, and Airbus Service Bulletin A320–32A1273, Revision 02, refer to Messier-Dowty Service Bulletin 201–32–43, Revision 1, dated May 1, 2005; and Messier-Dowty Service Bulletin 200–32–286, Revision 1, dated March 1, 2005, as additional sources of service information for accomplishing the detailed inspections and magnetic particle inspections (MPI).

#### Restatement of Certain Requirements of AD 2004–11–13

##### Serial Number (S/N) Identification

(g) For all airplanes: Within 30 days after June 23, 2004 (the effective date of AD 2004–11–13), do a one-time general visual inspection to determine the S/N of both MLG sliding tubes, in accordance with the service information. Instead of inspecting the MLG sliding tubes, reviewing the airplane maintenance records is acceptable if the S/N of the MLG sliding tubes can be positively determined from that review.

(1) If the S/N of the MLG sliding tube is not listed in the service information: No further action is required by this paragraph for that sliding tube.

(2) If the S/N of the MLG sliding tube is listed in the service information: Do the actions in paragraph (g)(2)(i) or (g)(2)(ii) of this AD, as applicable.

(i) For any MLG not inspected before June 23, 2004: Before further flight, do a detailed inspection of the MLG for cracking in accordance with the service information.

(A) If no cracking is found in any MLG sliding tube: Repeat the detailed inspection thereafter at intervals not to exceed 10 days, until the MLG replacement specified by paragraph (g)(2)(i)(B), (h), or (i) of this AD has been accomplished.

(B) If any cracking is found in any MLG sliding tube: Before further flight replace the part with a new or serviceable part in accordance with a method approved by either the FAA or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent). Chapter 32 of the Airbus A318/A319/A320/A321 Aircraft Maintenance Manual (AMM) is one approved method. Installing an MLG sliding tube having an S/N that is not listed in the service information terminates the repetitive inspections required by paragraph (h) of this AD for that MLG sliding tube only.

(ii) For any MLG that has been inspected before June 23, 2004: Within 10 days after that inspection, do the detailed inspection required by paragraph (g)(2)(i) of this AD.

#### New Requirements of This AD

##### Detailed Inspection and Magnetic Particle Inspection (MPI)

(h) For any airplane equipped with any MLG having a sliding tube installed that is identified with a S/N listed in the service information: Within 500 flight cycles after the effective date of this AD, perform a detailed inspection and an MPI of the MLG sliding tube for cracking in accordance with the service information. Repeat these inspections thereafter at intervals not to exceed 2,500 flight cycles or 21 months, whichever occurs earlier, until paragraph (i) of this AD has been accomplished. If any cracking is discovered during any inspection required by this paragraph, before further flight, replace the cracked sliding tube with a new or serviceable sliding tube in accordance with the service information. Replacing the MLG sliding tube with a sliding tube having a S/N not listed in the service information terminates the repetitive inspection requirements of this paragraph and paragraph (g)(2)(i)(A) of this AD for that sliding tube only.

##### Terminating Action

(i) Within 41 months after the effective date of this AD, replace all MLG shock absorbers equipped with sliding tubes having S/Ns listed in the service information with new or serviceable MLG shock absorbers equipped with sliding tubes having S/Ns not listed in the service information, using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the DGAC (or its delegated agent). Airbus A318/A319/A320/A321 AMM 32–11–13, page block 401, is one approved method. Replacing the MLG shock absorbers in accordance with this paragraph terminates all repetitive inspections required by this AD.

##### Submission of Cracked Parts Not Required

(j) The service information has instructions to send any cracked part to Messier-Dowty. This AD does not include such a requirement.

##### Reporting Requirement

(k) Prepare a report of any crack found during any inspection required by paragraph (g) or (h) of this AD. Submit the report to Airbus Customer Services, Engineering and Technical Support, Attention: M.Y. Quimiou, SEE33, fax +33+ (0) 5.6193.32.73, at the applicable time specified in paragraph (k)(1) or (k)(2) of this AD. The report must include the MLG sliding tube P/N and S/N, date of inspection, a description of any cracking found, the airplane serial number, and the number of flight cycles on the MLG at the time of inspection. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) For any inspection done after June 23, 2004, but before the effective date of this AD: Within 30 days after the inspection or 30 days after the effective date of this AD, whichever comes first.

(2) For any inspection done after the effective date of this AD: Within 30 days after the inspection.

##### Parts Installation

(l) As of the effective date of this AD, no person may install, on any airplane, any sliding tube, or MLG shock absorber having a sliding tube installed, if the sliding tube has a S/N identified in the service information, unless the sliding tube has been inspected, and any applicable corrective actions have been done, in accordance with paragraph (g)(2)(i), (h), or (i) of this AD.

##### Alternative Methods of Compliance (AMOCs)

(m)(1) 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.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

##### Related Information

(n) French airworthiness directive F–2005–115, dated July 6, 2005, also addresses the subject of this AD.

##### Material Incorporated by Reference

(o) You must use Airbus All Operators Telex A320–32A1273, Revision 01, dated May 6, 2004, and Airbus Service Bulletin A320–32A1273, Revision 02, including Appendix 01, dated May 26, 2005; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A320–32A1273, Revision 02, including Appendix 01, dated May 26, 2005, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On June 23, 2004 (69 FR 31867, June 8, 2004), the Director of the Federal Register approved the incorporation by reference of Airbus All Operators Telex A320–32A1273, Revision 01, dated May 6, 2004.

(3) Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on May 15, 2007.

**Ali Bahrami,**

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. E7–10025 Filed 5–24–07; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2007-27509; Directorate Identifier 2006-NM-201-AD; Amendment 39-15067; AD 2007-11-10]

RIN 2120-AA64

**Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Fokker Model F.28 Mark 0070 and 0100 airplanes. This AD requires a detailed inspection for wear of the attachment holes of the control levers of the braking system and applicable corrective actions. This AD results from a report that, after landing, the flightcrew of a Model F.28 Mark 0100 airplane noted that an extreme difference in pedal angle was required to achieve equal braking action. We are issuing this AD to prevent failure of one or more brake control levers, which could result in uncommanded braking and loss of control of the airplane during takeoff, landing, or taxiing.

**DATES:** This AD becomes effective June 29, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 29, 2007.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC.

Contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this AD.

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

**SUPPLEMENTARY INFORMATION:****Examining the Docket**

You may examine the airworthiness directive (AD) docket on the Internet at <http://dms.dot.gov> or in person at the

Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

**Discussion**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Fokker Model F.28 Mark 0070 and 0100 airplanes. That NPRM was published in the **Federal Register** on March 12, 2007 (72 FR 10951). That NPRM proposed to require a detailed inspection for wear of the attachment holes of the control levers of the braking system and applicable corrective actions.

**Comments**

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

**Clarification of Alternative Method of Compliance (AMOC) Paragraph**

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

**Conclusion**

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

**Costs of Compliance**

This AD affects about 9 airplanes of U.S. registry. The required inspection takes 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 \$720, or \$80 per airplane, per inspection cycle.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**2007-11-10 Fokker Services B.V.:**

Amendment 39-15067. Docket No.

FAA-2007-27509; Directorate Identifier 2006-NM-201-AD.

#### Effective Date

(a) This AD becomes effective June 29, 2007.

#### Affected ADs

(b) None.

#### Applicability

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

#### Unsafe Condition

(d) This AD results from a report that, after landing, the flightcrew of a Model F.28 Mark 0100 airplane noted that an extreme difference in pedal angle was required to achieve equal braking action. We are issuing this AD to prevent failure of one or more brake control levers, which could result in uncommanded braking and loss of control of the airplane during takeoff, landing, or taxiing.

#### 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 Replacement

(f) Within 1,500 flight cycles or 12 months after the effective date of this AD, whichever occurs first: Perform a detailed inspection for excessive wear of the brake control levers and do the applicable corrective actions in accordance with and at the times specified in Section 3, "Accomplishment Instructions," of Fokker Service Bulletin SBF100-32-142, dated August 12, 2005. Repeat the requirements of this paragraph thereafter for any replacement control lever at intervals not to exceed 12,000 flight hours after the installation of such a control lever. Operators should note that, where the service bulletin specifies immediate replacement of the control lever if the applicable remaining material (dimension X2) of the attachment hole is less than 2.0 millimeters (0.08 inch), this AD requires replacing the control lever if dimension X2 is less than or equal to 2.0 millimeters.

**Note 1:** For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

#### Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR

39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

#### Related Information

(h) Dutch airworthiness directive NL-2005-011, dated August 31, 2005, also addresses the subject of this AD.

#### Material Incorporated by Reference

(i) You must use Fokker Service Bulletin SBF100-32-142, dated August 12, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on May 15, 2007.

**Ali Bahrami,**

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

[FR Doc. E7-10023 Filed 5-24-07; 8:45 am]

**BILLING CODE 4910-13-P**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 2

**RIN 3038-AC42**

### Rules Relating to Permissible Uses of Official Seal

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission" or "CFTC") hereby revises 17 CFR part 2, by adding a new section, 17 CFR 2.4, to allow its employee recreation association, the Commodity Futures Trading Commission Employee Recreation Association ("Association") to use the Commission seal for permissible, "non-official purposes," e.g., fundraising, social, sports, and similar activities such as selling sports apparel and novelty items imprinted with the Commission's seal.

The Commission finds that since the amendment to part 2 has no impact upon a member of the public, this amendment will become effective

immediately upon publication in the **Federal Register**. In addition, the Commission has determined that this amendment to part 2 relates solely to the Association's objectives which promote the welfare of Commission employees and does not in any way impinge on the Commission's core mission. Therefore, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, which generally require notice of proposed rule making and provide other opportunities for public participation, are inapplicable. Similarly, the provisions of the Regulatory Flexibility Act, Public Law 96-354, 94 Stat. 1164, do not apply. See 5 U.S.C. 601(2). In addition, the amendment to 17 CFR part 2 does not impose a burden within the meaning and intent of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* Provisions related to cost-benefit analysis, in section 15(a) of the Commodity Exchange Act, 7 U.S.C. 19, are also inapplicable.

**EFFECTIVE DATE:** May 25, 2007.

#### FOR FURTHER INFORMATION CONTACT:

Thuy Dinh, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5120.

**SUPPLEMENTARY INFORMATION:** Currently, Commission regulations in 17 CFR part 2 preclude the use of the seal except for official purposes such as affixing the seal to official documents. The seal also may be used in agency-sponsored programs paid for with appropriated funds. For example, novelty items bearing the Commission seal may be distributed in employee incentive programs, award programs, and similar activities. The current rules, however, prohibit and preclude the use of the seal for non-official purposes.

The proposed rule will allow the Commission seal to be used for legitimate, non-official purposes, i.e., on T-shirts and other sport apparels (i.e., hats, sweatshirts and pants, running shorts, wristbands, among others) and sport equipments (tennis rackets, golf clubs, etc.); and novelty items (bags, pens, pencils, lanyards, badge holders, mugs, cup holders, etc.) that can be sold by the Commission's employee recreation association to meet its fundraising goals, or distributed in conjunction with its sport and/or social events such as a golf tournament and/or other seasonal sport events.

#### List of Subjects in 17 CFR Part 2

Official Seal; Permissible Uses of Official Seal by CFTC Employee Recreation Association.

■ In consideration of the following, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, section 2(a)(11) of the Commodity Exchange act, 7 U.S.C. 2a(11), the Commission hereby amends Chapter I of title 17 of the Code of Federal Regulations as follows:

## PART 2—OFFICIAL SEAL

■ 1. The authority citation for part 2 is revised to read as follows:

Authority: 7 U.S.C. 2a(11).

■ 2. Part 2 is amended by adding a new section 2.4 to read as follows:

\* \* \* \* \*

### § 2.4 Employee Recreation Association's Use of Commission Seal

(a) As a specific exception to the provisions of 17 CFR 2.2 and 2.3, the Commodity Futures Trading Commission Employee Recreation Association ("Association") is hereby authorized to use the Commission seal as an imprint upon sport apparel (e.g., hats, clothing, accessories, etc.) and novelty items (e.g., office mugs, lanyards, badge holders, stationary items, among other);

(b) The Association may sell or distribute above said items imprinted with the Commission seal to members of the Association or others to meet its fundraising goals and/or in conjunction with its sports, social or similar events.

Issued in Washington, DC, on the 22nd of May 2007, by the Commission.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 07-2605 Filed 5-24-07; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

## DEPARTMENT OF THE TREASURY

### 19 CFR Part 10

[CBP Dec. 07-26; USCBP-2006-0012]

RIN 1505-AB64

### Dominican Republic—Central America—United States Free Trade Agreement

**AGENCIES:** U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, with some changes, interim

amendments to title 19 of the Code of Federal Regulations ("CFR") which were published in the **Federal Register** on March 7, 2006, as CBP Dec. 06-06 to set forth the conditions and requirements that apply for purposes of submitting requests to U.S. Customs and Border Protection for refunds of any excess customs duties paid with respect to entries of textile or apparel goods entitled to retroactive application of preferential tariff treatment under the Dominican Republic—Central America—United States Free Trade Agreement.

**EFFECTIVE DATE:** Final rule effective May 25, 2007.

#### FOR FURTHER INFORMATION CONTACT:

Operational aspects: Robert Abels, Textile Operations, Office of International Trade, (202) 344-1959. Legal aspects: Cynthia Reese, Tariff Classification and Marking Branch, Office of International Trade, (202) 572-8812.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Dominican Republic—Central America—United States Free Trade Agreement ("CAFTA-DR" or "Agreement") was entered into by the governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States on August 5, 2004. The CAFTA-DR was approved by the U.S. Congress with the enactment on August 2, 2005, of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the "Act"), Public Law 109-53, 119 Stat. 462 (19 U.S.C. 4001 *et seq.*).

Section 205 of the Act (19 U.S.C. 4034), as recently amended by section 1634(d) of the Pension Protection Act of 2006 (Pub. L. 109-280), implements Article 3.20 of the CAFTA-DR by providing for the retroactive application of the preferential tariff provisions of the Agreement with respect to certain entries of qualifying textile or apparel goods of eligible CAFTA-DR countries. Specifically, section 205(a) provides that, notwithstanding 19 U.S.C. 1514 or any other provision of law, an entry of a textile or apparel good will be liquidated or reliquidated at the applicable rate of duty for that good set out in Annex 3.3 of the Agreement, and the Secretary of the Treasury will refund any excess customs duties paid with respect to that entry, if it meets four conditions: (1) The textile or apparel good must be of a CAFTA-DR country that the United States Trade Representative has designated as an eligible country for purposes of section

205; (2) The good would have qualified as an originating good under section 203 of the Act if the good had been entered after the date of entry into force of the Agreement for that country; (3) The entry was made on or after January 1, 2004, and before the date of the entry into force of the Agreement with respect to that country or any other CAFTA-DR country; and (4) Customs duties were paid in excess of the applicable rate of duty for that good set out in Annex 3.3 of the Agreement.

Section 205(b) of the Act provides that the United States Trade Representative will determine which CAFTA-DR countries are eligible countries for purposes of this section and will publish a list of those countries in the **Federal Register**.

Section 205(c) of the Act provides that liquidation or reliquidation may be made under section 205(a) with respect to an entry of a textile or apparel good only if a request for such liquidation or reliquidation is filed with CBP, within such period as CBP shall establish by regulation in consultation with the Secretary of the Treasury, that contains sufficient information to enable CBP: (1) To locate the entry or to reconstruct the entry if it cannot be located; and (2) to determine that the good satisfies the conditions set out in section 205(a).

Section 205(d) states that, as used in section 205, the term "entry" includes a withdrawal from warehouse for consumption.

On March 7, 2006, U.S. Customs and Border Protection ("CBP") published in the **Federal Register** (71 FR 11304) as CBP Dec. 06-06 an interim rule that amended the CBP regulations by adding a new subpart J to Part 10 and new section 10.699 to set forth the conditions and requirements that apply for purposes of requesting refunds pursuant to section 205 of the Act. Pursuant to section 205(c) of the Act, the interim amendments included a provision establishing the time period within which requests for refunds of any excess customs duties paid with respect to entries of textile or apparel goods of an eligible CAFTA-DR country must be submitted to CBP. The interim rule provided that requests for refunds must be filed with CBP by the later of December 31, 2006, or the date that is 90 days after the entry into force of the Agreement with respect to that country.

The interim rule also noted that section 10.699 provides that any refund of excess customs duties made pursuant to that section will be accompanied by interest from the date of the affected entry.

Although the interim regulatory amendments were promulgated without

prior public notice and comment procedures and took effect on March 7, 2006, CBP Dec. 06–06 provided for the submission of public comments which would be considered before adoption of the interim regulations as a final rule. The prescribed public comment period closed on May 8, 2006.

#### Discussion of Comments

Two commenters responded to the solicitation of comments on the interim regulations set forth in CBP Dec. 06–06. The comments are discussed below.

##### *Comment*

Both commenters urged that CBP modify the deadline for the submission of requests for refunds of any excess customs duties paid with respect to entries of textile or apparel goods of an eligible CAFTA–DR country. One commenter recommended that the deadline be changed to the later of December 31, 2006, or the date that is 180 days after the entry into force of the Agreement with respect to that country. According to this commenter, 180 days is more appropriate than the 90 days specified in the interim rule as the former period mirrors the deadline for filing a protest under 19 U.S.C. 1514(c)(3). In addition, the commenter stated that a 180-day period would be fairer to importers of goods from CAFTA–DR countries that may not accede to the Agreement until after December 31, 2006.

The second commenter stated that the deadline should be the later of December 31, 2006, or the date that is 90 days after the entry into force of the Agreement of the “last CAFTA–DR country.” This commenter advised that extending the deadline in this manner addresses a potential situation in which a good of a CAFTA–DR country for which the Agreement has entered into force is made from inputs (e.g., fabric) from a second CAFTA–DR country for which the Agreement has not entered into force at the time that the refund period for the good expires. According to the commenter, without the suggested modification in the deadline, the inputs from the second CAFTA–DR country would appear to be disregarded in determining whether the good qualifies as originating and thus eligible for a refund of any excess duties paid.

##### *CBP’s Response*

CBP agrees with the second commenter’s suggested modification. As indicated in the background portion of this final rule, section 1634(d) of the Pension Protection Act of 2006 recently amended the Act. That amendment added to section 205(a)(2) the words “or any other CAFTA–DR country” immediately following the words “with

respect to that country”. (See the third condition for goods to qualify for a refund of duty under section 205(a), as stated in the background section above.) CBP believes that the words “that country or any other CAFTA–DR country” as used in the Act are intended to mean “the last CAFTA–DR country.” In conformance with this amendment to the Act, CBP, in consultation with the Department of the Treasury, has determined that the period within which refund requests must be filed, as set forth in § 10.699(c), should be modified to permit such requests for goods of an eligible CAFTA–DR country to be filed within 90 days after the date of the entry into force of the Agreement for the last CAFTA–DR country. This modification has the effect of extending the period within which refund requests must be submitted to CBP for goods of all but the last CAFTA–DR country. Section 10.699(c) has been amended in this final rule document to reflect the above modification, which addresses the potential problem identified by the second commenter. Section 10.699(d) has also been amended to add a definition of “last CAFTA–DR country” to clarify that this term means, “of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, the last country for which the Agreement enters into force.”

CBP submits that the first commenter’s suggested modification (substituting 180 days for 90 days) is unnecessary in view of the modification of the deadline for the submission of refund requests effected by the amendment to 10.699(c) discussed above. CBP believes that the revised period within which requests for refunds must be submitted to CBP affords entities ample time to prepare and submit such requests. This is especially true considering that the importing public has had since March 7, 2006 (the date of publication of CBP Dec. 06–06 in the **Federal Register**) to ascertain which entries of textile or apparel goods from CAFTA–DR countries may be eligible for refunds of any excess customs duties paid, and to prepare requests for refunds with respect to those entries.

##### *Comment*

A commenter requested that CBP issue a clarification regarding when “\* \* \* companies are able to submit refund requests when the CAFTA–DR has not yet entered into force for a country that is the source of an input used in an originating good that is eligible for refunds.” The commenter’s understanding is that a refund request may be submitted in such a situation

only after the Agreement has entered into force with respect to the CAFTA–DR country that is the source of the input.

##### *CBP’s Response*

The answer to this commenter’s question depends on whether the good (of an eligible CAFTA–DR country for which the Agreement has entered into force) would in fact have qualified as an originating good if the good had been entered after the date of entry into force of the Agreement for that country. An input (used in the production of the good) sourced from a CAFTA–DR country for which the Agreement has not yet entered into force may affect the determination of whether the good would have qualified as originating under the applicable CAFTA–DR rules of origin. If the good would have qualified as originating without taking into account the input, then a request for a refund of any excess duties paid may be submitted to CBP after the date of entry into force of the Agreement for the country in which the good (not the input) was produced but not later than 90 days after the Agreement enters into force for the last CAFTA–DR country. However, if the good would qualify as originating only if that input qualifies as originating, then a refund request may be submitted to CBP only after the Agreement enters into force for the CAFTA–DR country that is the source of the input (but not later than 90 days after the date of the entry into force of the Agreement for the last CAFTA–DR country).

In regard to goods made from inputs sourced from countries for which the Agreement has not yet entered into force, importers (or other entities that may submit refund requests) are advised to prepare such requests in advance and to submit them to CBP after the Agreement enters into force for all the CAFTA–DR countries that contributed toward the production that qualifies the goods as originating.

##### *Comment*

A commenter urged CBP to provide examples of the type of information that would be considered satisfactory to enable CBP to locate the entry or to reconstruct the entry that is the subject of a refund request. The commenter stated the current language in § 10.699(c), requiring a refund request to include “sufficient information” to enable CBP to locate or reconstruct an entry, is overly broad and fails to provide the trade community with a reasonable indication of the type of information that must be submitted.

### CBP's Response

To enable CBP to locate or reconstruct an entry, the refund request should include a copy of the entry summary if at all possible. If a copy of the entry summary is unavailable, however, other information may be submitted for purposes of enabling CBP to reconstruct the entry from its automated commercial system. Such information would include the entry number, entry date, importer number, manufacturer identification code (MID), and the goods' country of origin. Refund requests should clearly specify the goods (by line item) covered by an entry for which refunds are being sought. If only a portion of a line item is encompassed by a refund request, the quantity in dozens should be indicated.

### Additional Changes to the Regulations

In addition to the regulatory changes identified and discussed above in connection with the discussion of public comments received in response to CBP Dec. 06–06, the final rulemaking text set forth below incorporates the following additional changes, which CBP believes are necessary either to conform § 10.699 to the recent amendment to section 205(a)(2) of the Act made by section 1634(d) of the Pension Protection Act of 2006 or as a result of further internal review of the interim regulatory text:

1. The § 10.699 heading has been revised to correct errors in capitalization and punctuation;
2. In § 10.699(a), the second sentence has been revised to add the words “, as amended by section 1634(d) of the Pension Protection Act of 2006 (Pub. L. 109–280)” to the end of the sentence;
3. In § 10.699(a), the third sentence has been revised to add the words “, as amended,” immediately following the words “the Act”; and
4. In § 10.699(b), the introductory text has been revised to remove the words “that country” and add, in their place, the words “the last CAFTA–DR country”.

### Conclusion

Accordingly, based on the analysis of the comments received and the recent legislative change, CBP has determined to adopt the interim regulations published as CBP Dec. 06–06 as a final rule with certain amendments as discussed above and as set forth below.

### Inapplicability of Delayed Effective Date Requirement

Under the Administrative Procedure Act (“APA”) (5 U.S.C. 553), agencies generally are required to publish final amendments at least 30 days prior to

their effective date. However, sections 553(d)(1) and (d)(3) of the APA exempt agencies from the requirement of publishing notice of final rules at least 30 days prior to their effective date when a substantive rule grants or recognizes an exemption or relieves a restriction and when the agency finds that good cause exists for not meeting the advance publication requirement. As discussed previously, the changes to the interim regulations made by this final rule document, which conform to a recent amendment to the Act, seek to ensure that retroactive preferential tariff treatment under the Agreement is accorded to qualifying textile or apparel goods made in an eligible CAFTA–DR country from inputs from one or more other eligible CAFTA–DR countries. For this reason, CBP has determined that these regulations relieve restrictions and that good cause exists for dispensing with a delayed effective date.

### Executive Order 12866

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements certain preferential tariff treatment provisions of an international agreement and, therefore, is specifically exempted by section 3(d)(2) of Executive Order 12866.

### Regulatory Flexibility Act

CBP Dec. 06–06 was issued as an interim rule rather than as a notice of proposed rulemaking because CBP had determined that: (1) The interim regulations involve a foreign affairs function of the United States pursuant to section 553(a)(1) of the Administrative Procedure Act (APA); and (2) prior public notice and comment procedures on these regulations were impracticable, unnecessary, and contrary to the public interest pursuant to section 553(b)(B) of the APA. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply. Accordingly, this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

### Paperwork Reduction Act

The collection of information contained in this final rule has previously been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork

Reduction Act (44 U.S.C. 3507) under control number 1651–0125. The collection of information in these regulations is in § 10.699. This information is required in connection with requests for refunds of any excess customs duties paid with respect to entries of textile or apparel goods entitled to retroactive application of preferential tariff treatment under the CAFTA–DR and the Act and will be used by CBP to determine eligibility for such refunds under the CAFTA–DR and the Act. The likely respondents are business organizations, including importers, exporters and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 96 minutes per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing that burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

### Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)), pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

### List of Subjects in 19 CFR Part 10

Customs duties and inspection, Entry, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

### Amendments to CBP Regulations

■ Accordingly, the interim rule amending part 10 of the CBP regulations (19 CFR part 10), which was published at 71 FR 11304 on March 7, 2006, is adopted as a final rule with certain changes as discussed above and set forth below.

### PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for part 10 and the specific authority for Subpart J continue to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the

United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

\* \* \* \* \*

Section 10.699 also issued under Pub. L. 109–53, 119 Stat. 462.

■ 2. In § 10.699:

■ a. The section heading is revised.

■ b. Paragraph (a) is amended by adding the words “, as amended by § 1634(d) of the Pension Protection Act of 2006 (Pub. L. 109–280)” to the end of the second sentence, and by adding the words “, as amended,” immediately following the words “the Act” in the third sentence;

■ c. Paragraph (b) introductory text is amended by removing the words “that country” and adding, in their place, the words “the last CAFTA–DR country”;

■ d. Paragraph (c) introductory text is amended by removing the words “by the later of December 31, 2006, or the date that is” and adding, in their place, the word “within”, and by removing the words “that country” and adding, in their place, the words “the last CAFTA–DR country”; and

■ e. Current paragraph (d)(2) is redesignated as paragraph (d)(3) and a new paragraph (d)(2) is added.

The revised section heading and new paragraph (d)(2) read as follows:

**§ 10.699 Refunds of excess customs duties.**

\* \* \* \* \*

(d) \* \* \*

(2) “Last CAFTA–DR country” means, of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, the last country for which the Agreement enters into force.

\* \* \* \* \*

**Deborah J. Spero,**

*Acting Commissioner, Customs and Border Protection.*

Approved: May 21, 2007.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 07–2587 Filed 5–24–07; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 234

[DoD–2006–OS–0031; 0790–AI09]

### Conduct on the Pentagon Reservation

**AGENCY:** Department of Defense, Washington Headquarters Services.

**ACTION:** Final rule.

**SUMMARY:** This rule administrative revises DoD policy concerning conduct

on the Pentagon Reservation and Raven Rock Mountain Complex. In 2003, Congress amended 10 U.S.C. 2674(g) so that the “Pentagon Reservation” also included the land and physical facilities at the Raven Rock Mountain Complex. Given this amendment, the Department has recognized the need to amend rules and regulations under 32 CFR Part 234 so that they are applicable to Raven Rock Mountain Complex. Therefore, minor and administrative changes to the rules and regulations were necessary.

**DATES:** *Effective Date:* May 25, 2007.

**FOR FURTHER INFORMATION CONTACT:** Bill Brazis, Office of General Counsel, Washington Headquarters Services, 1155 Defense Pentagon Room 1D197, Washington, DC 20301–1155.

#### SUPPLEMENTARY INFORMATION:

##### Justification for Final Rule

Because the amendments and revisions to this final rule are only administrative in nature, it is impracticable and contrary to the public interest to precede it with a notice of proposed rulemaking and an opportunity for public comment. The administrative corrections described in this rule are necessary to make the rules applicable to Raven Rock Mountain Complex, which is now part of the Pentagon Reservation. The additional changes are nonsubstantive in nature. Therefore, the Department finds that there is good cause under section 553(b)(3)(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) to make these corrections and changes without first issuing a notice of proposed rulemaking. For the same reasons, the Department finds that there is good cause under section 553(d)(3) of the Administrative Procedure Act to make this final rule effective immediately.

The Department has identified six sections requiring minor changes and has recognized the need to add one additional section.

The first change is in the definition of “Authorized person” in § 234.1. The definition of “Authorized person” now refers to an employee or agent of the Pentagon Force Protection Agency, formerly known as the Defense Protective Service.

The second change is in the definition of “Pentagon Reservation” under § 234.1. Because Raven Rock Mountain Complex is now considered part of the “Pentagon Reservation,” as specified in 10 U.S.C. 2674(g), the description of the area of land known as Raven Rock Mountain Complex was added to the definition of “Pentagon Reservation” under § 234.1.

The third change is the amendment of the language of § 234.3. In § 234.3(d), the Department added “Installation Commander” to the list of authorized personnel who can review applications for permits for certain activities on the Pentagon Reservation, including Raven Rock Mountain Complex. Raven Rock Mountain Complex is under the custody and control of an “Installation Commander.”

The fourth change is the amendment of the language of § 234.8. This section prohibited willfully destroying or damaging private and government property. The word “and” was changed to “or” to prohibit damaging private or government property on the Pentagon Reservation. Courts have misconstrued this section to only prohibit the destroying or damaging of both private and government property, but not such property individually.

The fifth change is the amendment to § 234.9. Previously, this section prohibited using or possessing fireworks or firecrackers, except with permission of the Pentagon Building Management Office. The amendment seeks to prohibit using or possessing such items entirely. Furthermore, the words “Installation Commander” were added to paragraphs 234.9 (a) and (c) as authorized personnel who can review applications for permits for certain activities on the Pentagon Reservation, including Raven Rock Mountain Complex.

The sixth change is an amendment to the language of § 234.10. “Defense Protective Service” was changed to “Pentagon Force Protection Agency or the Installation Commander” as the agency or person who can authorize carrying of a weapon at the Pentagon or Raven Rock Mountain Complex.

The seventh change is an amendment to the language of § 234.11. “Defense Protective Service” was changed to “Pentagon Force Protection Agency”. In addition, the word “Installation Commander” was added as a person who can authorize the use of alcoholic beverages for certain events at Raven Rock Mountain Complex.

The eighth change is a revision to § 234.15, governing the use of visual and recording devices. Previously, the use of cameras and visual recording devices was prohibited in restricted areas or in internal offices without the approval of the Office of the Assistant to the Secretary of Defense for Public Affairs. This section was revised to prohibit all photography on the Pentagon Reservation and Raven Rock Mountain Complex without approval of the Pentagon Force Protection Agency, the Installation Commander, or the Office of

the Assistant to the Secretary of Defense for Public Affairs. Furthermore, it shall be unlawful to make any photograph, sketch, picture, drawing, map or graphical representation of the Pentagon Reservation and Raven Rock Mountain Complex without first obtaining the necessary permission.

The ninth change is a revision to § 234.18. Previously, parking regulations were enforced in accordance with Administrative Instruction (AI) Number 88.<sup>1</sup> This document has been renamed "The Pentagon Parking Program." This section was revised to reflect that change. In addition, the word "Installation Commander" was added to the list of personnel that can authorize new parking regulations or restrictions at the Pentagon and at Raven Rock Mountain Complex.

It has been certified that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866. Further, it has been certified that this rule will not have a significant economic impact on a substantial number of small entities because it affects only those entities and persons who are on the Pentagon Reservation. Finally, it has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

■ Accordingly, chapter I of title 32 of the Code of Federal Regulations under the authority of 10 U.S.C. 301 is amended by revising part 234 to read as follows:

## PART 234—CONDUCT ON THE PENTAGON RESERVATION

- Sec.
- 234.1 Definitions.
  - 234.2 Applicability.
  - 234.3 Admission to property.
  - 234.4 Trespassing.
  - 234.5 Compliance with official signs.
  - 234.6 Interfering with agency functions.
  - 234.7 Disorderly conduct.
  - 234.8 Preservation of property.
  - 234.9 Explosives.
  - 234.10 Weapons.
  - 234.11 Alcoholic beverages and controlled substances.
  - 234.12 Restriction on animals.
  - 234.13 Soliciting, vending, and debt collection.
  - 234.14 Posting of materials.
  - 234.15 Use of visual recording devices.
  - 234.16 Gambling.
  - 234.17 Vehicles and traffic safety.
  - 234.18 Enforcement of parking regulations.
  - 234.19 Penalties and effect on other laws.

**Authority:** 10 U.S.C. 131 and 2674(c).

### § 234.1 Definitions.

As used in this part.

**Authorized person.** An employee or agent of the Pentagon Force Protection Agency, or any other Department of Defense employee or agent who has delegated authority to enforce the provisions of this part.

**Operator.** A person who operates, drives, controls, otherwise has charge of, or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment.

**Pentagon Reservation.** Area of land and improvements thereon, located in Arlington, Virginia, on which the Pentagon Office Building, Federal Building Number 2, the Pentagon heating and sewage treatment plants, and other related facilities are located. Pursuant to 10 U.S.C. 674, the Pentagon Reservation also includes the area of land known as Raven Rock Mountain Complex ("RRMC"), located in Adams County, Pennsylvania, and Site "C," which is located in Washington County, Maryland, and other related facilities. The Pentagon Reservation shall include all roadways, walkways, waterways, and all areas designated for the parking of vehicles.

**Permit.** A written authorization to engage in uses or activities that are otherwise prohibited, restricted, or regulated.

**Possession.** Exercising direct physical control or dominion, with or without ownership, over property.

**State law.** The applicable and nonconflicting laws, statutes, regulations, ordinances, and codes of the state(s) and other political subdivision(s) within whose exterior boundaries the Pentagon Reservation or a portion thereof is located.

**Traffic.** Pedestrians, ridden or herded animals, vehicles, and other conveyances, either singly or together, while using any road, path, street, or other thoroughfare for the purposes of travel.

**Vehicle.** Any vehicle that is self-propelled or designed for self-propulsion, any motorized vehicle, and any vehicle drawn by or designed to be drawn by a motor vehicle, including any device in, upon, or by which any person or property is or can be transported or drawn upon a highway, hallway, or pathway; to include any device moved by human or animal power, whether required to be licensed in any state or otherwise.

**Weapons.** Any loaded or unloaded pistol, rifle, shotgun, or other device which is designed to, or may be readily converted to, expel a projectile by the ignition of a propellant, by compressed gas, or by spring power; any bow and

arrow, crossbow, blowgun, spear gun, hand-thrown spear, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles; any other weapon, device, instrument, material, or substance, animate or inanimate that is used for or is readily capable of, causing death or serious bodily injury, including any weapon the possession of which is prohibited under the laws of the state in which the Pentagon Reservation or portion thereof is located; except that such term does not include a pocket knife with a blade of less than 2½ inches in length.

### § 234.2 Applicability.

The provisions of this part apply to all areas, lands, and waters on or adjoining the Pentagon Reservation and under the jurisdiction of the United States, and to all persons entering in or on the property. They supplement those penal provisions of Title 18, United States Code, relating to crimes and criminal procedure and those provisions of State law that are federal criminal offenses by virtue of the Assimilative Crimes Act, 18 U.S.C. 13.

### § 234.3 Admission to property.

(a) Access to the Pentagon Reservation or facilities thereon shall be restricted in accordance with AI Number 30<sup>2</sup> and other applicable Department of Defense rules and regulations in order to ensure the orderly and secure conduct of Department of Defense business. Admission to facilities or restricted areas shall be limited to employees and other persons with proper authorization. Forward written requests for copies of the document to Washington Headquarters Services, Executive Services Division, Freedom of Information Division, 1155 Defense Pentagon, Washington, DC 20301-1155.

(b) All persons entering or upon the Pentagon Reservation shall, when required and/or requested, display identification to authorized persons.

(c) All packages, briefcases, and other containers brought into, on, or being removed from facilities or restricted areas on the Pentagon Reservation are subject to inspection and search by authorized persons. Persons entering on facilities or restricted areas who refuse to permit an inspection and search will be denied entry.

(d) Any person or organization desiring to conduct activities anywhere on the Pentagon Reservation shall file an application for permit with the applicable Building Management Office

<sup>1</sup> Copies may be obtained at <http://www.dtic.mil/whs/directives/corres/ins2.html>.

<sup>2</sup> Copies may be obtained at <http://www.dtic.mil/whs/directives/corres/ins2.html>.

or Installation Commander. Such application shall be made on a form provided by the Department of Defense and shall be submitted in the manner specified by the Department of Defense. Violation of the conditions of a permit issued in accordance with this section is prohibited and may result in the loss of access to the Pentagon Reservation.

#### **§ 234.4 Trespassing.**

(a) Trespassing, entering, or remaining in or upon property not open to the public, except with the express invitation or consent of the person or persons having lawful control of the property, is prohibited. Failure to obey an order to leave under paragraph (b) of this section, or reentry upon property after being ordered to leave or not reenter under paragraph (b) of this section, is also prohibited.

(b) Any person who violates a Department of Defense rule or regulation may be ordered to leave the Pentagon Reservation by an authorized person. A violator's reentry may also be prohibited.

#### **§ 234.5 Compliance with official signs.**

Persons on the Pentagon Reservation shall at all times comply with official signs of a prohibitory, regulatory, or directory nature.

#### **§ 234.6 Interfering with agency functions.**

The following are prohibited:

(a) *Interference.* Threatening, resisting, intimidating, or intentionally interfering with a government employee or agent engaged in an official duty, or on account of the performance of an official duty.

(b) *Violation of a lawful order.* Violating the lawful order of a government employee or agent authorized to maintain order and control public access and movement during fire fighting operations, search and rescue operations, law enforcement actions, and emergency operations that involve a threat to public safety or government resources, or other activities where the control of public movement and activities is necessary to maintain order and public health or safety.

(c) *False information.* Knowingly giving a false or fictitious report or other false information:

(1) To an authorized person investigating an accident or violation of law or regulation, or

(2) On an application for a permit.

(d) *False report.* Knowingly giving a false report for the purpose of misleading a government employee or agent in the conduct of official duties, or making a false report that causes a response by the government to a fictitious event.

#### **§ 234.7 Disorderly conduct.**

A person commits disorderly conduct when, with intent to cause public alarm, nuisance, jeopardy, or violence, or knowingly or recklessly creating a risk thereof, such person commits any of the following prohibited acts:

(a) Engages in fighting or threatening, or in violent behavior.

(b) Uses language, an utterance, or gesture, or engages in a display or act that is obscene, physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace.

(c) Makes noise that is unreasonable, considering the nature and purpose of the actor's conduct, location, time of day or night, and other factors that would govern the conduct of a reasonably prudent person under the circumstances.

(d) Creates or maintains a hazardous or physically offensive condition.

(e) Impedes or threatens the security of persons or property, or disrupts the performance of official duties by Department of Defense employees, or obstructs the use of areas such as entrances, foyers, lobbies, corridors, concourses, offices, elevators, stairways, roadways, driveways, walkways, or parking lots.

#### **§ 234.8 Preservation of property.**

Willfully destroying or damaging private or government property is prohibited. The throwing of articles of any kind from or at buildings or persons, improper disposal of rubbish, and open fires are also prohibited.

#### **§ 234.9 Explosives.**

(a) Using, possessing, storing, or transporting explosives, blasting agents or explosive materials is prohibited, except pursuant to the terms and conditions of a permit issued by the applicable Building Management Office or Installation Commander. When permitted, the use, possession, storage and transportation shall be in accordance with applicable Federal and State law.

(b) Using or possessing fireworks or firecrackers is prohibited.

(c) Violation of the conditions established by the applicable Building Management Office or Installation Commander or of the terms and conditions of a permit issued in accordance with this section is prohibited and may result in the loss of access to the Pentagon Reservation.

#### **§ 234.10 Weapons.**

(a) Except as otherwise authorized under this section, the following are prohibited:

(1) Possessing a weapon.

(2) Carrying a weapon.

(3) Using a weapon.

(b) This section does not apply to any agency or Department of Defense component that has received prior written approval from the Pentagon Force Protection Agency or the Installation Commander to carry, transport, or use a weapon in support of a security, law enforcement, or other lawful purpose while on the Pentagon Reservation.

#### **§ 234.11 Alcoholic beverages and controlled substances.**

(a) *Alcoholic beverages.* The consumption of alcoholic beverages or the possession of an open container of an alcoholic beverage within the Pentagon Reservation is prohibited unless authorized by the Director, Washington Headquarters Services, or his designee, the Installation Commander, or the Heads of the Military Departments, or their designees. Written notice of such authorizations shall be provided to the Pentagon Force Protection Agency.

(b) Controlled substances. The following are prohibited:

(1) The delivery of a controlled substance, except when distribution is made by a licensed physician or pharmacist in accordance with applicable law. For the purposes of this paragraph, delivery means the actual, attempted, or constructive transfer of a controlled substance.

(2) The possession of a controlled substance, unless such substance was obtained by the possessor directly from, or pursuant to a valid prescription or order by, a licensed physician or pharmacist, or as otherwise allowed by Federal or State law.

(c) Presence on the Pentagon Reservation when under the influence of alcohol, a drug, a controlled substance, or any combination thereof, to a degree that may endanger oneself or another person, or damage property, is prohibited.

#### **§ 234.12 Restriction on animals.**

Animals, except guide dogs for persons with disabilities, shall not be brought upon the Pentagon Reservation for other than official purposes.

#### **§ 234.13 Soliciting, vending, and debt collection.**

Commercial or political soliciting, vending of all kinds, displaying or distributing commercial advertising, collecting private debts or soliciting alms upon the Pentagon Reservation is prohibited. This does not apply to:

(a) National or local drives for funds for welfare, health, or other purposes as

authorized by 5 CFR parts 110 and 950, Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations, issued by the U.S. Office of Personnel Management under Executive Order 12353, 3 CFR, 1982 Comp., p. 139, as amended.

(b) Personal notices posted on authorized bulletin boards, and in compliance with building rules governing the use of such authorized bulletin boards, advertising to sell or rent property of Pentagon Reservation employees or their immediate families.

(c) Solicitation of labor organization membership or dues authorized by the Department of Defense under the Civil Service Reform Act of 1978.

(d) Licensees, or their agents and employees, with respect to space licensed for their use.

(e) Solicitations conducted by organizations composed of civilian employees of the Department of Defense or members of the uniformed services among their own members for organizational support or for the benefit of welfare funds for their members, after compliance with the requirements of § 234.3(d).

#### § 234.14 Posting of materials.

Posting or affixing materials, such as pamphlets, handbills, or fliers on the Pentagon Reservation is prohibited except as provided by § 234.13(b) or when conducted as part of activities approved by the applicable Building Management Office or Installation Commander under § 234.3(d).

#### § 234.15 Use of visual recording devices.

(a) The use of cameras or other visual recording devices on the Pentagon Reservation is prohibited, unless the use of such items are approved by the Pentagon Force Protection Agency, the Installation Commander, or the Office of the Assistant to the Secretary of Defense for Public Affairs.

(b) It shall be unlawful to make any photograph, sketch, picture, drawing, map or graphical representation of the Pentagon Reservation without first obtaining permission of the Pentagon Force Protection Agency, Installation Commander, or the Office of the Assistant to the Secretary of Defense for Public Affairs.

#### § 234.16 Gambling.

Gambling in any form, or the operation of gambling devices, is prohibited. This prohibition shall not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by

the provisions of the Randolph-Sheppard Act (20 U.S.C. 107, *et seq.*).

#### § 234.17 Vehicles and traffic safety.

(a) *In general.* Unless specifically addressed by regulations in this part, traffic and the use of vehicles within the Pentagon Reservation are governed by State law. Violating a provision of State law is prohibited.

(b) *Open container of an alcoholic beverage.* (1) Each person within a vehicle is responsible for complying with the provisions of this section that pertain to carrying an open container. The operator of a vehicle is the person responsible for complying with the provisions of this section that pertain to the storage of an open container.

(2) Carrying or storing a bottle, can, or other receptacle containing an alcoholic beverage that is open or has been opened, or whose seal is broken, or the contents of which have been partially removed, within a vehicle on the Pentagon Reservation is prohibited.

(3) This section does not apply to:

(i) An open container stored in the trunk of a vehicle or, if a vehicle is not equipped with a trunk, an open container stored in some other portion of the vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers; or

(ii) An open container stored in the living quarters of a motor home or camper.

(4) For the purpose of paragraph (a)(3)(i) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a vehicle.

(c) *Operating under the influence of alcohol, drugs, or controlled substances.* (1) Operating or being in actual physical control of a vehicle is prohibited while:

(i) Under the influence of alcohol, a drug or drugs, a controlled substance or controlled substances, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(ii) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath. Provided, however, that if State law that applies to operating a vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this paragraph.

(2) The provisions of paragraph (c)(1) of this section shall also apply to an operator who is or has been legally entitled to use alcohol or another drug.

(3) Tests.

(i) At the request or direction of an authorized person who has probable cause to believe that an operator of a vehicle within the Pentagon Reservation has violated a provision of paragraph (c)(1) of this section, the operator shall submit to one or more tests of the blood, breath, saliva, or urine for the purpose of determining blood alcohol, drug, and controlled substance content.

(ii) Refusal by an operator to submit to a test is prohibited and may result in detention and citation by an authorized person. Proof of refusal may be admissible in any related judicial proceeding.

(iii) Any test or tests for the presence of alcohol, drugs, and controlled substances shall be determined by and administered at the direction of an authorized person.

(iv) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(4) Presumptive levels.

(i) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of this section. If the alcohol concentration in the operator's blood or breath at the time of the testing is less than the alcohol concentration specified in paragraph (c)(1)(ii) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(ii) The provisions of paragraphs (c)(3) and (c)(4)(i) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, a drug or drugs, or a controlled substance or controlled substances, or any combination thereof.

#### § 234.18 Enforcement of parking regulations.

Parking regulations for the Pentagon Reservation shall be enforced in accordance with the Pentagon Reservation Parking Program and State law; violating such provisions is prohibited. A vehicle parked in any location without authorization, or parked contrary to the directions of posted signs or markings, shall be subject to removal at the owner's risk and expense, in addition to any penalties imposed. The Department of Defense assumes no responsibility for the payment of any fees or costs related to such removal which may be charged

to the owner of the vehicle by the towing organization. This section may be supplemented from time to time with the approval of the Director, Washington Headquarters Services, or his designee, or the Installation Commander, by the issuance and posting of such parking directives as may be required, and when so issued and posted such directive shall have the same force and effect as if made a part hereof.

#### **§ 234.19 Penalties and effect on other laws.**

(a) Whoever shall be found guilty of willfully violating any rule or regulation enumerated in this part is subject to the penalties imposed by Federal law for the commission of a Class B misdemeanor offense.

(b) Whoever violates any rule or regulation enumerated in this part is liable to the United States for a civil penalty of not more than \$1,000.

(c) Nothing in this part shall be construed to abrogate any other Federal laws.

Dated: May 18, 2007.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. E7-10022 Filed 5-24-07; 8:45 am]

**BILLING CODE 5001-06-P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 165**

[CGD09-07-012]

**RIN 1625-AA00**

#### **Safety Zone; Great Lakes Naval Training Center Harbor, North Chicago, IL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone around Great Lakes Naval Training Center Harbor. This zone is intended to control the movement of vessels on portions of Lake Michigan and Great Lakes Naval Training Center Harbor during the Spill of National Significance (SONS) exercise on June 19 and 20, 2007. This zone is necessary to protect the public from the hazards associated with ships and boats deploying oil containment equipment.

**DATES:** This rule is effective from June 19, 2007 through June 20, 2007.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09-07-012] and are available for inspection or copying at Coast Guard Sector Lake Michigan (spw), 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

#### **FOR FURTHER INFORMATION CONTACT:**

CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747-7154.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

On April, 19, 2007, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone, Great Lake Naval Training Center Harbor, North Chicago, IL in the **Federal Register** (72 FR 19675). We received no letters commenting on the proposed rule. No public meeting was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This safety zone is necessary to protect the public from the hazards associated with ships and boats deploying oil containment equipment. Insufficient time existed to provide full notice, and delaying establishment of the zone would have increased risks to public safety and been contrary to the public interest.

##### **Background and Purpose**

This temporary safety zone is necessary to ensure the safety of vessels and people from hazards associated with numerous vessels deploying oil containment booms and conducting diving operations. Based on the experiences in other Captain of the Port zones, the Captain of the Port Lake Michigan has determined that numerous vessels engaged in the deployment of oil containment booms in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreation vessels and congested waterways could result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the SONS exercise will help ensure the safety of persons and property at these events and help minimize the associated risks.

##### **Discussion of Rule**

A temporary safety zone is necessary to ensure the safety of vessels during the

deployment and recovery of oil containment booms in conjunction with the SONS exercise. The safety zone will be enforced between 8 a.m. and 6 p.m., each day, on June 19 and 20, 2007.

The safety zone for the SONS exercise will encompass all waters of Lake Michigan and Great Lakes Naval Training Center Harbor from the shoreline to 2,200 yards east, 1,900 yards north, and 2,900 yards south of Great Lakes Light 2 (Lightlist number 20285) and bounded by a line with of point of origin at 42°20'12" N, 087°48' W; then west to 42°20'12" N, 087°50' W; then south to 42°17' N, 087°50' W; then east to 42°17' N, 087°48' W; then north to the point of origin (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

##### **Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The Coast Guard will only enforce this safety zone for 10 hours a day on the two days specified. This safety zone has been designed to allow vessels to transit unrestricted to portions of the harbor not affected by the zone. The Captain of the Port will allow vessels to enter and depart Great Lakes Naval Training Center Harbor. The Coast Guard expects insignificant adverse impact to mariners from the activation of this zone.

##### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and

governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners of vessels intending to transit or anchor in a portion of Great Lakes Naval Training Center Harbor between 8 a.m. and 6 p.m. (local) on June 19, 2007 and June 20, 2007. The safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only 20 hours. Vessel traffic can safely pass around the safety zone and enter and depart Great Lakes Naval Training Center Harbor upon request.

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–88–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### **Collection of Information**

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

#### **Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### **Unfunded Mandates Reform Act**

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

#### **Taking of Private Property**

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

#### **Civil Justice Reform**

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

#### **Protection of Children**

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

#### **Indian Tribal Governments**

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these special local regulations and fishing rights protection need not be incompatible. We have also determined that this Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this Proposed Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

#### **Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### **Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### **Environment**

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation.

A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” will be available in the docket where indicated under **ADDRESSES**.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165–T09–012 to read as follows:

### **§ 165–T09–012 Safety Zone, Great Lake Naval Training Center Harbor, North Chicago, IL.**

(a) *Location.* The following area is a temporary safety zone: All waters of Lake Michigan and Great Lakes Naval Training Center Harbor, from surface to bottom, from the shoreline to 2,200 yards east, 1,900 yards north, and 2,900 yards south of Great Lakes Light 2 (Lightlist number 20285), and bounded by a line with a of point origin at 42°20′12″ N, 087°48′ W; then west to 42°20′12″ N, 087°50′ W; then south to 42°17′ N, 087°50′ W; then east to 42°17′ N, 087°48′ W; then north to the point of origin (NAD 83).

(b) *Effective period.* This regulation is effective from 8 a.m. (local) on June 19, 2007 to 6 p.m. (local) on June 20, 2007. This regulation will be enforced from 8 a.m. (local) to 6 p.m. (local) on June 19, 2007 and from 8 a.m. (local) to 6 p.m. (local) on June 20, 2007.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or his designated on-scene representative.

(3) The “on-scene representative” of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Lake

Michigan or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or his on-scene representative.

Dated: May 16, 2007.

**Bruce C. Jones**

*Captain, U.S., Coast Guard Captain of the Port Lake Michigan.*

[FR Doc. E7–10146 Filed 5–24–07; 8:45 am]

**BILLING CODE 4910–15–P**

## **POSTAL SERVICE**

### **39 CFR Part 111**

#### **New Standards for Periodicals Mailing Services**

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule provides the revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) that we will adopt to support the new Periodicals prices effective on July 15, 2007.

The new prices enhance efficiency, offer more choices, and better ensure that all types of Periodicals mail cover their costs. Periodicals mailers have new incentives to use efficient containers and bundles, and copalletization becomes a permanent offering to encourage more publishers to combine mailings. We also add new prices for the nonadvertising portion of a mailing to give mailers of high-editorial-content publications access to lower destination entry rates.

**EFFECTIVE DATE:** 12:01 a.m. on July 15, 2007.

**FOR FURTHER INFORMATION CONTACT:** Joel Walker, 202–268–7261; Carrie Witt, 202–268–7279.

**SUPPLEMENTARY INFORMATION:** The Postal Service’s request in Docket No. R2006–1 included mail classification changes, new pricing structures, and price changes for most domestic mailing services. This final rule provides the revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) that we will adopt to implement the Periodicals portion of the R2006–1 pricing change. We summarize and respond to comments on our previous Periodicals proposal, summarize all major changes since our proposal, update our summary of Periodicals mail, and update our mailing standards.

You can find this final rule and all Periodicals rates, as well as our earlier

proposal and the final rule effective May 14 for all other classes of mail, at <http://www.usps.com/ratecase>. Our Web site also provides frequently asked questions, press releases, and *Mailers Companion* and *MailPro* articles related to the pricing change for all classes of mail.

#### **Background**

On May 14, 2007, the Postal Service implemented new prices and mailing standards to support the majority of the pricing change recommended by the Postal Regulatory Commission in Docket No. R2006–1 and accepted by the Governors of the United States Postal Service. The Postal Service Board of Governors delayed the implementation of new Periodicals prices and mailing standards until July 15, 2007, to give postal employees and mailers more time to prepare for the complex pricing structure recommended by the Commission.

In our request for a recommended decision filed with the Commission on May 3, 2006, we proposed Periodicals rates based on pieces, pounds, and a single container charge. The Commission recommended rates based on pieces and pounds but also on bundles and containers for Outside-County pieces. Piece rates vary based on machinability, barcoding, and presort level. Bundle and container rates vary based on presort level and point of entry. The recommended rate structure explicitly recognizes the cost differences between various bundles, containers, and entry points. Ideally, mailers will respond to these price signals, bring down costs, and improve the efficiency of all Periodicals mail.

For In-County Periodicals, the rate design is still based on pieces and pounds, as it is today. Since many publications use both Outside-County and In-County rates, the Board established July 15 as the implementation date for both subclasses, and for all Periodicals fees.

#### **Summary of Comments Received**

We received forty-six comments on our Periodicals proposal from thirty newspaper publishers, two associations, two software providers, two magazine publishers, one fulfillment and lettershop, one freelance writer, and one individual who did not identify a business concern. We appreciate all of the feedback, and we carefully considered the comments.

#### **Comments on the New Prices**

Forty-one commenters objected to the new prices or the new price structure for Outside-County Periodicals mail.

Most of these commenters stated that the new prices were too expensive, too complex, or both too expensive and too complex for small-circulation publications. Several commenters asked us to retain the piece/pound structure for Outside-County mail. One commenter objected to eliminating the discounts for pieces on pallets.

The postage rates were formulated by the independent Postal Regulatory Commission in separate, public proceedings and are outside the scope of our mailing standards proposal. We do not have the authority in this rulemaking to change the rates that were recommended by the Commission and subsequently accepted by the Postal Service Governors. However, in response to these commenters, we emphasize that under Federal law, each class of mail, including Periodicals mail, must cover its own costs. Our handling and delivery costs for Periodicals mail have been increasing while the number of pieces mailed is decreasing, and the new rate structure reflects these changing cost patterns. Periodicals rates historically have not covered costs or have barely covered costs, and many types of pieces do not cover their costs. This discrepancy means that other pieces must pay more than their share to make up the difference, because we do not receive any tax dollars or other subsidies to cover our costs for Periodicals mail.

Several commenters suggested that “larger” circulation publications should pay higher Periodicals rates to help cover the costs associated with the entire Periodicals class of mail. The Postal Regulatory Commission did not return rates that provide for one group of mailers to pay more postage and for another group to pay less postage than necessary to cover costs.

We agree with commenters that the educational, cultural, scientific, and informational value of Periodicals should be recognized in our prices. The new prices for Periodicals mail are as low as they can go, while still covering our costs. In addition, the new Periodicals prices, like our current prices, include low rates that do not vary by distance for the nonadvertising portion of a mailpiece, to promote the dissemination of information nationwide. The new rate structure further provides new discounts for the nonadvertising portion when the publication is entered at a destination facility.

Several commenters expressed concern that the new Outside-County Periodicals rate structure was designed by a large-circulation Periodicals mailer in closed-door proceedings. We reiterate

that rate setting is outside the scope of our mailing standards proposal, but we note that the new rates for Periodicals mail were recommended by the independent Postal Regulatory Commission as part of the Omnibus Rate Case in Docket No. R2006–1, and subsequently accepted by the Postal Service Board of Governors. During the rate case proceedings, the Commission held 34 days of public hearings, and Periodicals mailers of all circulation sizes were represented and provided substantial amounts of feedback. The proceedings were on the record, announced in both the print and online versions of the **Federal Register**, open to the public, and broadcast live on the Internet. The Commission used a rate design similar to one proposed by Time Warner both in 2004 and in Docket No. R2006–1, but substantially modified the rates to ensure fairness and equity for all mailers.

Twenty commenters objected to container charges for Outside-County Periodicals flat-size mail prepared in trays. These commenters said they would stop moving mail out of sacks and into trays as a result of the new charges, thereby undermining an initiative to prepare more Periodicals mail in trays. Our mail preparation standards provide only one option for preparing flat-size pieces in trays. This option is explained in DMM 707.22.7, and it applies only to automation-compatible pieces sorted to the ADC or mixed ADC levels. Because flats in these types of trays are not bundled, mailers can avoid the bundle charges, but there is no provision to avoid the container charges for this or any type of Periodicals mail (except for some mixed containers of In-County and Outside-County mail and for noncontainerized mail entered at a destination delivery unit, as explained below).

One commenter stated that the Commission did not recommend a container rate for trays, and questioned the costing data used to determine the tray rates. The Commission’s Opinion and Recommended Decision included Periodicals rate design information in Library Reference #14 (PRC–LR–14–Periodicals). When calculating Periodicals revenues, the Commission used a worksheet called “PieceVolume(3)” to determine the container counts (refer to the “Containers” tab of the worksheet). The source, as noted in the worksheet, is TW–LR–5, which originally comes from USPS witness Loetscher’s response to interrogatories from Time Warner (see TW/USPS–T28–7&8). Loetscher included “all other types of containers” (other than pallets) in “sacks” (see Table

13, “Periodicals Outside-County Flats Distribution of Containers by Strata, Type, Level, and Entry Facility Type”). The Commission’s calculation used container numbers that included pieces in trays with pieces in sacks, and our interpretation and application of the container rate is consistent with the Commission’s calculation.

One of our goals is to encourage efficient use of containers, including trays, and the Commission returned rates to support this goal. We note that for mail properly prepared loose in trays (according to the appropriate mailing standards), the bundle charges do not apply and mitigate the effect of the container charges.

One commenter asked how to determine the piece and bundle rates for automation-rate letter-size mail prepared in full letter trays. When prepared in full letter trays these pieces are not bundled, and mailers would use the tray level in place of a bundle level to calculate the piece charge. Unbundled pieces in full letter trays are not subject to bundle charges (but are subject to the container charges). Automation letters in less-than-full trays must be bundled and are subject to both bundle and container charges.

One commenter objected to eliminating the discounts for pieces on pallets. We emphasize that both the old and the new rate structures for Periodicals mail offer incentives for mailers to put more mail on pallets and enter those pallets at destination facilities. Rather than offer discounts, the overall rates are lower for mail on pallets, and send the appropriate pricing signals to mailers who can prepare mail on pallets either in single or in combined mailings.

One commenter agreed with our proposal not to assess bundle and container charges for mixed In-County and Outside-County pieces at the carrier route and 5-digit levels. This same commenter agreed that uncontainerized mail presented at a destination delivery unit should pay bundle charges but not container charges, and would like us to eliminate all bundling and container requirements and charges for this mail in the future. Because there is value in bundled mail to a carrier route entered at a DDU, we do not plan to change these mailing standards.

#### Comments on Mail Preparation

Two commenters asked us to clarify our standards for mailings entered at destination bulk mail centers (DBMCs). We clarified the standards in revised DMM 707.29.2.2. One of these commenters also asked us to clarify whether DBMC-entered offshore

containers are considered origin-or destination-entered. Offshore containers are considered origin-entered because the DBMC does not service the Line 1 ZIP Code on those containers.

One commenter asked us to raise the maximum weight for machinable flat-size mail. We provided machinable rates for 5-digit barcoded flats up to 4.4 pounds to align with our future flats sequencing equipment, which will be able to process heavier and thicker flats compared to the automated flat sorting machine (AFSM) 100. In addition, the previous 6-pound limit for UFSM 1000 pieces was too high for efficient handling, even on existing equipment, and often resulted in manual processing.

This commenter also asked us to increase the 20-ounce limit to 48 ounces for flat-size pieces prepared under DMM 301.3.0 when the pieces are part of a comailing. We cannot accommodate this request because we cannot process these types of heavier pieces efficiently on the AFSM 100. We do allow up to 5 percent of the pieces in a comailing to be over 20 ounces, but not more than 22 ounces.

This commenter additionally objected to our standards that designate UFSM 1000-compatible pieces as “nonmachinable” at the 3-digit, ADC, and mixed ADC levels. Our standards are intended to align automation flats preparation with the processing capabilities of the AFSM 100, currently the preferred machine for flats processing and the workhorse for the distribution of flats prepared in 3-digit, ADC, and mixed ADC bundles in our processing plants. The processing capabilities of the AFSM 100 are superior to those of the UFSM 1000. The throughput of the AFSM 100 (17,000 pieces per hour) is much higher than the throughput of the UFSM 1000 (5,000 pieces per hour). We have no plans to purchase new UFSM 1000s, and we are removing them from many plants. Therefore, the best rates are for AFSM 100-compatible mailpieces.

One commenter asked us to clarify that Outside-County firm bundles no longer count toward the minimum number of pieces required for a presort destination, but In-County firm bundles do count toward presort minimums. We revised our standards for firm bundles to clarify this distinction. In-County firm bundles will count toward presort minimums, as they do today. Outside-County firm bundles will not count toward presort minimums, because the Commission assigned a single piece rate and separate bundle rates for Outside-County firm bundles.

Two commenters asked us to clarify the new Periodicals terminology and

apply it consistently throughout DMM 705 and 707. One commenter remarked that our terminology is confusing. We revised the terminology in DMM 705 and 707 for clarity and consistency. We use the term “machinable” for all flat-size pieces prepared under DMM 301.3.0, and for 5-digit barcoded flat-size pieces prepared under DMM 707.26.0. We use the term “nonmachinable” for flat-size pieces prepared under DMM 707.26.0 at the 3-digit/SCF, ADC, and mixed ADC levels, and for nonbarcoded pieces at the 5-digit level. We also use the term “nonmachinable” to describe all Periodicals parcels.

#### Comments on Mailing Documentation

Seven commenters said that the Periodicals postage statement, Form 3541, was too complicated, and asked for an easy-to-use form. Two of these commenters objected to using presort software because of its cost, and asked for a simple manual form. We designed Form 3541 to be as straightforward as possible, but we recognize that a simple form cannot accommodate the complex new structure for Outside-County mail recommended by the Postal Regulatory Commission.

One commenter expressed concern over the width of the USPS Qualification Report and asked whether the “running total” column could serve as the column that indicates which bundles and containers are subject to the Outside-County bundle and container rates. To clarify, the running total column can serve this purpose.

This same commenter asked if PAVE will certify the new container and bundle reports. We do intend to certify products using the new documentation standards that are being developed.

One commenter asked if firm bundles will be represented on the USPS Qualification Report any differently than they are today. Outside-County firm bundles cannot count toward presort minimums and will be reported as separate bundles on the Qualification Report. We did not change the standards or documentation requirements for In-County firm bundles.

One commenter asked us to remove the requirement to include postage information on standardized documentation. We agree with this commenter and made this requirement an option in revised DMM 708.1.2.

One commenter objected to the approval requirements for “titles” prepared in combined mailings. As clarification, each publication must be authorized or pending authorization to mail at Periodicals rates, but only the

mailer must be authorized to combine mailings.

#### Comments on Service

Eight commenters expressed concerns about delivery delays, lost mail, and other service issues. One commenter detailed delivery problems prior to 2004 but explained that these problems were resolved successfully. We are committed to providing a high level of service for Periodicals and all types of mail. We formed a new Mailers Technical Advisory Committee (MTAC) workgroup, with both mailers and Postal Service employees, to establish service standards and recommend ways to measure performance for Periodicals mail. We will communicate and implement these service standards in the future. In the meantime, we will continue to work with mailers at the local and national levels when service problems arise to identify and resolve issues on an ongoing basis.

#### Other Comments

One commenter asked us to verify that FAST will update the mail direction data for Periodicals entered at DBMCs. FAST already shows the default BMC ZIP Code range, and does not distinguish among classes. FAST will allow pallet or speedline appointments for Periodicals at BMCs; bedloaded or “drop and pick” mailings will not be allowed. The Mail Direction file already accommodates BMC entry of Periodicals.

One commenter agreed with the Governors’ decision to delay the new Periodicals prices and mailing standards until July 15, to give mailers more time to prepare for the changes.

One commenter raised questions about the Postal Accountability and Enhancement Act as it applies to Periodicals mail. The Act is outside the scope of our mailing standards proposed and final rules, and will be addressed in a separate proceeding.

#### Overview of Changes Since the Proposed Rule

We made revisions throughout our mailing standards to consistently reflect the new Periodicals rate structure and terminology. We updated our standards to reflect that In-County firm bundles count toward presort minimums, but Outside-County firm bundles do not count toward presort minimums. We revised mailing standards in DMM 707.2.0 that described both In-County and Outside-County rates to better distinguish between the two and to clarify the new Outside-County piece rates. We revised DMM 707.2.1.8 to clarify that the container level is based

on the least-finely presorted bundle it contains (for example, a “5-digit metro pallet” may contain 3-digit and 5-digit bundles and would pay the 3-digit/SCF pallet rate). We also added information about mailer-supplied air freight containers in 707.2.1.8. We revised DMM 708.1.2 to make the inclusion of postage information and certain running totals optional on standardized documentation. We reformatted the Outside-County piece rate chart to separate the parcel rates from the flats rates. The new format better reflects that the piece rates for parcels do not vary based on the use of a barcode.

## **Overview of Outside-County Periodicals Mail**

### **New Container Rate Structure**

The new rate structure adds container rates for Periodicals mail. We define a “container” as a tray, sack, pallet, or other equivalent USPS-approved container. Most of our standards for mail preparation are not changing as a result of the new rate structure. Mailers will still follow the mail preparation requirements in DMM 705, 707, and 708, which specify when to prepare mail in bundles and when to place it in trays, sacks, and pallets. We note that mailers must follow the preparation and entry requirements in the DMM. Mailers cannot choose to use certain containers (or to not use containers) to circumvent the rates.

New Outside-County container rates are based on the type of container (tray, sack, or pallet), the level of sortation of the container, and where the container is entered. The container level is determined by the least-finely presorted bundle it contains, because that determines the point where the container must be opened for bundle sorting. We will apply the container rates to pallets, sacks, and trays containing Outside-County Periodicals mail (except for mixed containers of In-County and Outside-County pieces in carrier route, 5-digit carrier routes, and 5-digit/scheme containers). When trays and sacks are placed on pallets, we will charge for each tray and sack, but not for the pallets. This should encourage mailers to use pallets.

Container rates decrease with deeper entry because there are fewer handlings needed. The best rates are for mail that is finely sorted on pallets and entered close to its destination. For example, the price for a 5-digit pallet entered at a DDU is \$1.20, compared to \$15.50 if entered at a DADC.

On the other hand, when entered at the same facility level, prices are higher for more-finely presorted containers

than for those that are less-finely presorted. The difference reflects the additional handlings that the more-finely presorted container will get before it is opened. For instance, for origin entry, the price for a 5-digit pallet is \$26.95, or \$8.34 higher than the \$18.61 price for an ADC pallet.

Working in the opposite direction, a bundle in a less-finely presorted container requires more handlings prior to piece sortation than the same level bundle in a more-finely presorted container, and bundle prices reflect this. The price for a 5-digit bundle is \$0.095 on an ADC pallet, but only \$0.008 on a 5-digit pallet, a difference of \$0.087. The lower bundle postage will offset some, all, or more than all of the higher container postage.

Taken as a whole, the inter-relationships among the per-container, per-bundle and per-piece prices in this rate structure provide further incentives for mailers to comail and copalletize.

The rate structure also provides new rates for pallets and for trays or sacks on pallets entered at a destination bulk mail center (DBMC). These rates reflect the cost of cross-docking pallets and do not represent a new pallet sortation level. Mailers can enter Periodicals mail at the DBMCs or DASFs listed in DMM Exhibit 346.3.1, or at a USPS-designated facility. For DBMC entry, pieces must be prepared in bundles or in sacks on SCF, ADC, 3-digit, or 5-digit pallets, and addressed for delivery to one of the 3-digit ZIP Codes served by that BMC.

### **New Bundle Rate Structure**

We are adopting new rates for bundles of Periodicals mail, but we are not changing the definition of a bundle or the bundling requirements. A “bundle” is a group of addressed pieces secured together as a unit. Pieces are first sorted to destinations and then assembled into groups for bundling based on quantity and other factors. The term bundle does not apply to unsecured groups of pieces (for example, pieces prepared loose in letter or flat trays). “Firm bundles” are also groups of pieces that are secured together, but in a firm bundle all pieces are for delivery to the address shown on the top piece.

New Outside-County bundle rates are based on the level of sorting of both the bundle and the container (but not on the type of container). More finely presorted bundles within the same container level have higher rates to reflect more bundle handlings before they are opened. For example, for pieces sorted into a carrier route bundle, and then placed on an ADC pallet or sack, a mailer pays 10.4 cents per bundle. For pieces sorted into an ADC bundle and placed on an ADC

pallet or sack, a mailer pays 3.8 cents per bundle. A lower piece rate for pieces in more finely presorted bundles offsets the higher bundle charge.

We will apply the bundle rates to all bundles containing Outside-County mail, except for mixed bundles of In-County and Outside-County pieces in carrier route and 5-digit/scheme bundles. This exception will avoid imposing the Outside-County pricing structure on bundles that will likely contain mostly In-County pieces.

Firm bundles are subject to both a piece charge (16.9 cents) and a bundle charge (2.7 cents to 7.9 cents, depending on the container level). Because of this new rate structure, mailers may no longer use firm bundles to satisfy a six-piece bundle requirement to a presort level for Outside-County bundles.

We will charge bundle rates based on the actual number of bundles entered, so mailers must precisely document the number of bundles they produce. Unlike today, where there is no rate impact for a difference between the number of bundles implied by the presort requirements and the actual number of bundles created during production, under the new rates mailers must conscientiously modify software parameters and monitor physical breaks between bundles to ensure the number of bundles produced matches their documentation.

### **New Piece Rate Structure**

Periodicals Outside-County prices include new piece rates based on shape, machinability, barcoding, and presort level. The presort level of the piece is based primarily on the bundle level of the piece, with one exception: The presort level of pieces loose in trays is based on the tray level.

While the new structure eliminates the per-piece discounts for pieces on pallets, including the experimental copalletization discounts, the container and bundle charges are designed to encourage copalletization. The new structure also eliminates the per-piece discounts for destination area distribution center (DADC), destination sectional center facility (DSCF), and destination delivery unit (DDU) entry, but recognizes instead the associated cost savings in the new DADC, DSCF, and DDU rates for nonadvertising pounds, as well as in the container rates.

We divide the piece rates into “letter” rates, “machinable flats” rates, “nonmachinable flats” rates, and “parcel” rates; with the exception of carrier route rates, which we divide only according to saturation, high density, and basic rates.

## Letters

We provide letter rates for “barcoded” and “nonbarcoded” pieces. Periodicals letters must meet the standards for all letters in DMM 201. Letters mailed at the barcoded rates must include a barcode and must meet the additional standards for automation letters in DMM 201.3.0. Automation Periodicals letters meet these dimensions:

- Minimum height is 3½ inches.
- Maximum height is 6⅞ inches.
- Minimum length is 5 inches.
- Maximum length is 11½ inches.
- Maximum thickness is 0.25 inch.
- Minimum thickness is:
  - 0.007 inch if the piece is no more than 4¼ inches high and 6 inches long; or
  - 0.009 inch if the piece is more than 4¼ inches high or 6 inches long, or both.
- The maximum weight for each piece is 3.5 ounces.

Periodicals letters mailed at the nonbarcoded rates meet the standards for all letters in DMM 201 but do not include a barcode, or do not meet all of the automation standards in 201.3.0 (whether or not a barcode is used). We assigned the machinable—nonbarcoded flats rates to these pieces. Nonbarcoded Periodicals letters meet these dimensions:

- Minimum height is 3½ inches.
- Maximum height is 6⅞ inches.
- Minimum length is 5 inches.
- Maximum length is 11½ inches.
- Minimum thickness is 0.007 inch.
- Maximum thickness is 0.25 inch.
- The maximum weight for each piece is 3.5 ounces.

## Flats

We divide flats rates into categories for machinable and nonmachinable pieces, and then provide rates for barcoded and nonbarcoded pieces.

For flats prepared in 3-digit, ADC, and mixed ADC bundles and containers, we define “machinable—barcoded” flats as barcoded pieces that we can process on our primary flats-sorting equipment, the automated flat sorting machine (AFSM 100). These pieces must meet our standards for minimum flexibility, maximum deflection, and uniform thickness, and use automation-compatible polywrap (if polywrapped). Machinable—barcoded Periodicals flats meet these dimensions:

- Minimum height is 5 inches.
- Maximum height is 12 inches.
- Minimum length is 6 inches.
- Maximum length is 15 inches.
- For bound or folded pieces, the edge perpendicular to the bound or folded edge may not exceed 12 inches.

- Minimum thickness is 0.009 inch.
- Maximum thickness is 0.75 inch.
- The maximum weight for each piece is 20 ounces.

These pieces are defined in DMM 301.3.0 and match our standards for Standard Mail flat-size pieces mailed at automation rates, with a different weight limit.

“Machinable—nonbarcoded” flats prepared in 3-digit, ADC, and mixed ADC bundles and containers meet the same criteria noted above, but they do not include a barcode.

For flats prepared in 3-digit, ADC, and mixed ADC bundles and containers, we define “nonmachinable—barcoded” flats as barcoded pieces that we can process on the upgraded flat sorting machine (UFSM 1000) and in the future flats sequencing environment; therefore, the requirements are slightly more restrictive than current UFSM 1000 requirements. These pieces must meet our standards for uniform thickness and use automation-compatible polywrap (if polywrapped), but they are not currently subject to our standards for minimum flexibility and maximum deflection. Nonmachinable—barcoded Periodicals flats meet these dimensions:

- Minimum height is 5 inches.
- Maximum height is 12 inches.
- Minimum length is 6 inches.
- Maximum length is 15 inches.
- Minimum thickness is 0.009 inch.
- Maximum thickness is 1.25 inches.
- The maximum weight for each piece is 4.4 pounds.

These pieces are defined in DMM 707.26.0, and they are unique to Periodicals mail.

For pieces prepared in 5-digit bundles, we define “machinable—barcoded” flats as those pieces prepared under 301.3.0 that we can process on the AFSM 100, and those pieces prepared under 707.26 that we can process on the UFSM 1000 and on the future flats sequencing equipment. This definition will help us align Periodicals mail with the flats sequencing system, which will process a wider variety of flat-shaped mail than the AFSM 100. We are not changing the standards to allow mailers to combine pieces defined in 301.3.0 and pieces defined in 707.26.0 in the same bundle.

Machinable—nonbarcoded” flats prepared in 5-digit bundles meet the same dimensions noted above, but they do not include a barcode. The rate design includes a price for “nonmachinable—barcoded” flats prepared in 5-digit bundles, but mailers will not use this rate because we allow these UFSM 1000-compatible barcoded pieces to pay the lower, machinable—

barcoded rates for pieces sorted to the 5-digit level.

For all sort levels, we define “nonmachinable—nonbarcoded” flats as barcoded or nonbarcoded pieces that do not meet the standards in DMM 301.3.0 or in 707.26.0.

## Parcels

Periodicals parcels are pieces that cannot be processed on our primary flat-sorting equipment. This rate category includes rigid and parcel-like pieces, pieces in boxes, and tubes and rolls. Parcels exceed the weight or dimensions for flats in DMM 707.26, but cannot weigh more than 70 pounds or measure more than 108 inches in length and girth combined (for parcels, length is the longest dimension and girth is the distance around the thickest part).

Parcel rates do not distinguish between barcoded and nonbarcoded pieces.

## New Pound Rate Structure

For advertising pounds, the new price structure retains zoned rates and per-pound rate incentives for DADC, DSCF, and DDU entry. For nonadvertising pounds, postage from any entry point upstream from the DADC will continue to be unzoned, but there are new per-pound rate incentives for DADC, DSCF, and DDU entry. There are no pound-rate incentives for DBMC entry.

## Documentation

We provide new documentation requirements in DMM 708.1.0, including a new bundle report, a new container report, and a new column on the USPS qualification report indicating which bundles and containers are subject to the Outside-County bundle and container rates. As we stated above, we will charge bundle rates based on the actual number of bundles entered, and the new documentation will help us verify that mailers have correctly prepared and paid for their mailings. We are not changing the documentation requirements for In-County mail.

## Overview of In-County Periodicals Mail

Other than changes to In-County rates, we are not implementing any changes to the In-County rate design or mail preparation standards.

We provide the updated DMM standards, and how they are applied for Periodicals mail, below. These standards are effective on July 15, 2007.

We adopt the following amendments to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

**PART 111—[AMENDED]**

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

**200 Discount Letters and Cards****201 Physical Standards**

\* \* \* \* \*

**2.0 Physical Standards for Nonmachinable Letters**

\* \* \* \* \*

*[Insert new 2.4 as follows:]*

**2.4 Additional Criteria for Periodicals Nonmachinable Letters**

The nonbarcoded letter rates in 707.1.1.2 apply to Periodicals letter-size pieces that have one or more of the nonmachinable characteristics in 2.1.

\* \* \* \* \*

**3.0 Physical Standards for Automation Letters and Cards**

\* \* \* \* \*

**3.5 Weight Standards for Periodicals Automation Letters**

The maximum weight for Periodicals automation letters is 3.5 ounces (0.2188 pound). See 3.13.4 for pieces heavier than 3 ounces.

\* \* \* \* \*

**700 Special Standards**

\* \* \* \* \*

**705 Advanced Preparation and Special Postage Payment Systems**

\* \* \* \* \*

**8.0 Preparation for Pallets**

\* \* \* \* \*

**8.9 Bundles on Pallets**

\* \* \* \* \*

**8.9.3 Periodicals**

Bundle size: Six-piece minimum (lower-volume bundles permitted under 707.22.0, *Preparing Presorted Periodicals*, and 707.23.0, *Preparing Carrier Route Periodicals*), 20-pound maximum, except:

*[Revise item a to remove the option to count firm bundles as one piece for presort standards for Outside-County Periodicals as follows:]*

a. Firm bundles may contain as few as two copies of a publication. Mailers must not consolidate firm bundles with other bundles to the same 5-digit destination. Only In-County firm bundles may be counted as an addressed piece for presort standards (see 707.22.0 and 707.23.0).

\* \* \* \* \*

**9.0 Preparing Cotrayed and Cosacked Bundles of Automation and Presorted Flats**

\* \* \* \* \*

**9.2 Periodicals**

\* \* \* \* \*

**9.2.5 Sack Preparation and Labeling**

Nonbarcoded rate and barcoded rate bundles prepared under 9.2.2, 9.2.3, and 9.2.4 must be presorted together into sacks (cosacked) in the sequence listed below. Sacks must be labeled using the following information for Lines 1 and 2 and 707.21.0 for other sack label criteria. If, due to the physical size of the mailpieces, the barcoded rate pieces are considered flat-size under 301.3.0 and the nonbarcoded rate pieces are considered parcels under 401.1.6, the processing category shown on the sack label must show “FLTS.”

*[Revise item a to require scheme sorting as follows:]*

a. 5-digit/scheme, required; scheme sort required only for pieces meeting the criteria in 301.3.0; 24-piece minimum, fewer pieces not permitted; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces.

2. Line 2: “PER” or “NEWS” as applicable and, for 5-digit scheme sacks, “FLT 5D SCH BC/NBC;” for 5-digit sacks, “FLT 5D BC/NBC.”

\* \* \* \* \*

**10.0 Preparation for Merged Containerization of Bundles of Flats Using City State Product****10.1 Periodicals****10.1.1 Basic Standards**

Carrier route bundles in a carrier route rate mailing may be placed in the same sack or on the same pallet as 5-digit bundles from a barcoded rate mailing and 5-digit bundles from a nonbarcoded rate mailing (including pieces cobundled under 11.0) under the following conditions:

\* \* \* \* \*

*[Revise item j to remove the option to count firm bundles toward the six-piece minimum for rate eligibility for Outside-County Periodicals as follows:]*

j. For mailings prepared in sacks, mailers may not combine firm bundles and 5-digit scheme pieces in 5-digit scheme bundles or in 5-digit scheme sacks. Firm bundles must be placed in a separate individual 5-digit sack under 10.1.4g to maintain 5-digit rate eligibility. Mailers may combine firm bundles with 5-digit scheme, 3-digit scheme, and other presort destination bundles in carrier route, 5-digit, 3-digit, SCF, ADC, and mixed ADC sacks. Only an In-County firm bundle can contribute toward the six-piece minimum for rate eligibility.

\* \* \* \* \*

**11.0 Preparing Cobundled Barcoded Rate and Nonbarcoded Rate Flats**

\* \* \* \* \*

**11.2 Periodicals****11.2.1 Basic Standards**

*[Revise the introductory text in 11.2.1 to require 5-digit scheme and 3-digit scheme sort and eliminate distinctions between AFMS 100 and UFSM 1000 flats as follows:]*

Mailers may choose to cobundle (see 707.18.4ab) barcoded rate and nonbarcoded rate flat-size pieces as an option to the basic bundling requirements in 707.22.0 and 707.25.0. 5-digit scheme and 3-digit scheme bundles also must meet the additional standards in 707.18.4i and 707.18.4r. Mailing jobs (for flats meeting the criteria in 301.3.0) prepared using the 5-digit scheme and/or the 3-digit scheme bundle preparation must be sacked under 10.0 or palletized under 10.0, 12.0, or 13.0. All bundles are subject to the following conditions:

\* \* \* \* \*

*[Revise item g as follows:]*

g. Within a bundle, all pieces must meet the requirements in 301.3.0 or all pieces must meet the requirements in 707.26.0.

\* \* \* \* \*

**11.2.2 Bundle Preparation**

*[Revise the introductory text in 11.2.2 to specify that pieces meeting the criteria in 301.3.0 must be scheme-sorted as follows:]*

Pieces meeting the criteria in 301.3.0 must be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. Preparation sequence, bundle size, and labeling:

\* \* \* \* \*

[Revise item b to require 5-digit scheme bundles as follows:] b. 5-digit scheme, required; \* \* \*

[Revise item d to require 3-digit scheme bundles as follows:] d. 3-digit scheme, required; \* \* \*

## 15.0 Plant-Verified Drop Shipment

## 15.2 Program Participation

### 15.2.4 Periodicals

[Revise 15.2.4 to reflect the new rate structure for Periodicals mail as follows:]

Periodicals postage must be paid at the post office verifying the copies or as designated by the district. Postage is calculated from the destination USPS facility where the mail is deposited and accepted (or from the facility where the Express Mail or Priority Mail Open and Distribute destinates). The publisher must ensure that sufficient funds are on deposit to pay for all mailings before their release. A publisher authorized under an alternative postage payment system must pay postage under the corresponding standards.

## 16.0 Express Mail Open and Distribute and Priority Mail Open and Distribute

[Revise heading of 16.1 as follows:]

### 16.1 Description

#### 16.1.4 Basis of Rate

[Revise 16.1.4 to specify that container rates do not apply to Express Mail and Priority Mail Open and Distribute sacks as follows:]

Mailers must pay Express Mail and Priority Mail postage based on the weight of the entire contents of the Express Mail or Priority Mail shipment. Do not include the tare weight of the external container. Do not apply Priority Mail dimensional weight pricing or Periodicals container rates to the external container.

## 707 Periodicals

### 1.0 Rates and Fees

#### 1.1 Outside-County—Excluding Science-of-Agriculture

[Renumber 1.1.3 through 1.1.5 as new 1.1.5 through 1.1.7. Insert new 1.1.3 and 1.1.4 as follows:]

#### 1.1.3 Outside-County Bundle Rates

Rate for each bundle containing Outside-County Periodicals mail (see 2.1.8 for how to apply these rates):

[We provide all of the new rates for Periodicals mail at [pe.usps.com](http://pe.usps.com) (click on “Ratefold”).]

#### 1.1.4 Outside-County Container Rates

Rate for each pallet, sack, tray, or other USPS-approved container containing Outside-County Periodicals mail (see 2.1.9 for how to apply these rates):

[We provide all of the new rates for Periodicals mail at [pe.usps.com](http://pe.usps.com) (click on “Ratefold”).]

### 1.2 Outside-County—Science-of-Agriculture

[Renumber 1.2.3 as new 1.2.5. Insert new 1.2.3 and 1.2.4 as follows:]

#### 1.2.3 Outside-County Bundle Rates

Rate for each bundle containing Outside-County Periodicals mail (see 2.1.8 for how to apply these rates):

[We provide all of the new rates of Periodicals mail to [pe.usps.com](http://pe.usps.com) (click on “Ratefold”).]

#### 1.2.4 Outside-County Container Rates

Rate for each pallet, sack, tray, or other USPS-approved container containing Outside-County Periodicals mail (see 2.1.9 for how to apply these rates):

[We provide all of the new rates for Periodicals mail at [pe.usps.com](http://pe.usps.com) (click on “Ratefold”).]

### 2.0 Rate Application and Computation

#### 2.1 Rate Application

##### 2.1.1 Rate Elements

[Revise 2.1.1 to reflect the new Outside-County bundle and container rates and the new nonadvertising pound rate structure as follows:]

Postage for Periodicals mail includes a pound rate charge, a piece rate charge, bundle and container rate charges for Outside-County mail, and any discounts for which the mail qualifies under the corresponding standards.

[Renumber 2.1.2 through 2.1.5 as 2.1.4 through 2.1.7. Add new 2.1.2 and 2.1.3 to reflect the new piece rate structure for Outside-County mail and to separate the piece rate application for In-County and Outside-County mail as follows:]

##### 2.1.2 Applying Outside-County Piece Rates

An addressed piece can be a single individually addressed copy or a firm

bundle containing unaddressed or individually addressed copies for the same address. The per piece charge is based on the number of addressed pieces (not the number of copies). Outside-County piece rates are based on the shape of the mailpiece (letter, flat, or parcel); the characteristics of the mailpiece (machinable or nonmachinable, see 18.4ac and 18.4ad); the application of a barcode; and the bundle presort level. For pieces properly prepared loose in trays, the rate is based on the tray presort level. Apply piece rates for Outside-County mail as follows:

##### a. Letters.

1. Apply the “Letters—Barcoded” rates to pieces that meet all of the standards for automation letters in 201.3.0 and include a barcode.

2. Apply the “Letters—Nonbarcoded” rates to pieces that meet the standards for all letters in 201 but do not include a barcode. Apply these rates also to pieces that are barcoded but do not meet all of the automation letter standards in 201.3.0.

##### b. Machinable flats.

1. Apply the “Machinable Flats—Barcoded” rates to pieces that meet all of the standards for automation flats in 301.3.0 and include a barcode. Apply the 5-digit rate also to 5-digit barcoded pieces prepared under the alternative flats criteria in 26.0.

2. Apply the “Machinable Flats—Nonbarcoded” rates to pieces that meet all of the standards for automation flats in 301.3.0 but do not include a barcode.

##### c. Nonmachinable flats.

1. Apply the “Nonmachinable Flats—Barcoded” rates to pieces that meet all of the alternative standards for flats in 26.0 and include a barcode.

*Exception:* 5-digit barcoded pieces prepared under 26.0 pay the “Machinable Flats—Barcoded” 5-digit rate.

2. Apply the “Nonmachinable Flats—Nonbarcoded” rates to pieces that meet all of the alternative standards for flats in 26.0 but do not include a barcode. Apply these rates also to all nonmachinable flats, whether or not a barcode is used.

c. *Parcels.* Apply the “Parcels” rates to all parcels, whether or not a barcode is used.

#### 2.1.3 Applying In-County Piece Rates

An addressed piece can be a single individually addressed copy or a firm bundle containing unaddressed or individually addressed copies for the same address. The per piece charge is based on the number of addressed pieces (not the number of copies). For In-County mail, piece rates apply to

each addressed piece, based on the sorting done by the publisher. Piece rates for automation mailings are based on the bundle level (or tray level for unbundled pieces in trays); piece rates for nonautomation mailings are based on the tray or sack level.

#### 2.1.4 Applying Pound Rate

*[Revise renumbered 2.1.4 to reflect the new nonadvertising rate structure and to clarify item b as follows:]*

Apply pound rates to the weight of the pieces in the mailing as follows:

a. Outside-County and Science-of-Agriculture Outside-County pound rates are based on the weight of the advertising portion sent to each postal zone (as computed from the entry office) or destination entry zone, and the weight of the nonadvertising portion to a destination entry zone or a single rate to all other zones.

b. In-County pound rates consist of a DDU entry rate and an unzoned rate for eligible copies delivered to addresses within the county of publication.

*[Revise the heading of renumbered 2.1.4 as follows:]*

#### 2.1.5 Computing Weight of Advertising and Nonadvertising Portions

*[Revise renumbered 2.1.5 to reflect the new nonadvertising rate structure as follows:]*

The pound rate charge is the sum of the charges for the computed weight of the advertising portion of copies to each destination entry and zone, plus the sum of the charges for the computed weight of the nonadvertising portion of copies to each destination entry and all other zones. The following standards apply:

a. The minimum pound rate charge for any zone to which copies are mailed is the 1-pound rate. For example, three 2-ounce copies for a zone are subject to the minimum 1-pound charge.

b. Authorized Nonprofit and Classroom publications with an advertising percentage that is 10% or less are considered 100% nonadvertising. When computing the pound rates and the nonadvertising adjustment, use "0" as the advertising percentage. Authorized Nonprofit and Classroom publications claiming 0% advertising must pay the nonadvertising pound rate for the entire weight of all copies to all zones.

\* \* \* \* \*

*[Insert new 2.1.8 and 2.1.9 as follows:]*

#### 2.1.8 Applying Outside-County Bundle Rates

For Outside-County mail prepared in bundles, mailers pay the bundle rate

according to the presort level of the bundle and the presort level of the container that the bundle is placed in or on. Bundle rates do not apply to barcoded letter-size mail prepared in full letter trays or to flat-size mail prepared in flat trays under the optional tray preparation in 705 and 707. The bundle rates are in addition to the container rates in 2.1.8. The following standards apply:

a. Bundles of fewer than six pieces under 25.1.5 (including single-piece bundles) must each pay the applicable bundle charge.

b. For bundles containing both In-County and Outside-County pieces, mailers do not pay the bundle charge for carrier route and 5-digit/scheme bundles.

#### 2.1.9 Applying Outside-County Container Rates

For Outside-County mail prepared in trays, sacks, pallets, and other USPS-approved containers, mailers pay the container rate according to the type of container, the presort level of the container, and where the mail is entered. The container level is determined by the least-finely presorted bundle it contains (for example, a "5-digit metro pallet" may contain 3-digit and 5-digit bundles and would pay the 3-digit/SCF pallet rate). For mailer-supplied air freight containers, mailers pay the container charge based on the original presort of the mail before it is transferred to the airfreight container. The container rates are in addition to the bundle rates in 2.1.7. The following additional standards apply:

a. For mailings prepared in trays or sacks, mailers pay the container rate for each tray or sack based on container level and entry.

b. For mailings prepared on pallets under 705.8.0:

1. For bundles placed directly on pallets, mailers pay the container rate for each pallet.

2. For trays or sacks on pallets, mailers pay the container rate for each tray or sack, and not for the pallets. The container rate for each tray or sack is based on the tray or sack level and where the pallet is entered.

c. For containers with both In-County and Outside-County pieces, mailers do not pay the container rate for carrier route, 5-digit carrier routes, and 5-digit/scheme pallets, sacks, and trays.

#### 2.2 Computing Postage

\* \* \* \* \*

*[Revise 2.2.5 to reflect the new piece rate structure for Outside-County mail as follows:]*

#### 2.2.5 Piece Rate

Determine the piece rate postage as follows:

a. *Outside-County*. Multiply the number of copies by the appropriate rate, based on the criteria in 2.1.2a.

b. *In-County*. Multiply the number of addressed pieces (not copies) by the appropriate rate, based on the presort of the pieces as mailed.

\* \* \* \* \*

*[Renumber 2.2.7 as 2.2.8. Insert new 2.2.7 to compute the Outside-County bundle and container rates as follows:]*

#### 2.2.7 Outside-County Bundle and Container Charges

The Outside-County bundle charge is the sum of the number of bundles for each bundle level and container level in the mailing subject to the Outside-County bundle rates (see 1.1.3 and 1.2.3), multiplied by the applicable bundle rates. The Outside-County container charge is the sum of the number of containers for each container type, container level, and entry level in the mailing subject to the Outside-County container rates (see 1.1.4 and 1.2.4), multiplied by the applicable container rates. Mailers must document the number of bundles and containers required for the rates claimed. If the documentation shows more bundles and containers are required than are presented for mailing, the mailer must pay the charges according to the documentation. Mailers cannot reduce the bundle and container charges by preparing fewer bundles and containers than standards require. Mailers who prepare Periodicals publications as a combined mailing by merging copies or bundles of copies under 27.0 may pay the Outside-County bundle and container charges in one of the following ways:

a. On one publisher's Form 3541.  
b. On one consolidated Form 3541. Under this option, the consolidator must complete the appropriate sections of the form and pay the charges from the consolidator's own advance deposit account.

c. Apportioned on each publisher's Form 3541. The following standards apply:

1. The qualification report must be submitted electronically via Mail.dat. See 708.1.0 for additional documentation requirements.

2. The total charges on all Form 3541s in a combined mailing must equal the total charges for all bundles and containers subject to the Outside-County container rates presented for mailing.

3. Apportion the bundle charge for each title or edition by determining how

many of each type of bundle that title or edition is in. Next calculate the percentage of copies in each of those bundles and convert to four decimal places, rounding if necessary (for example, convert 20.221% to .2022). Add the decimal values for each type of bundle in the mailing and multiply the total by the applicable bundle rate in 1.1.3 and 1.2.3. Add the bundle charges to determine the total for each title or edition.

4. Apportion the container charge for each title or edition by determining how many of each type of container that title or edition is in. Next calculate the percentage of copies in each of those containers and convert to four decimal places, rounding if necessary (for example, convert 20.221% to .2022). Add the decimal values for each type of container in the mailing and multiply the total by the applicable container rate in 1.1.4 and 1.2.4. Add the container charges to determine the total for each title or edition.

## 2.2.8 Total Postage

*[Revise renumbered 2.2.8 to reflect the new Outside-County container rates as follows:]*

Total Outside-County postage is the sum of the per pound and per piece charges, the bundle charges, the container charges, and any Ride-Along and Repositionable Notes charges; minus all discounts; rounded off to the nearest whole cent. Total In-County postage is the sum of the per pound and per piece charges, and any Ride-Along and Repositionable Notes charges, less all discounts, rounded off to the nearest whole cent.

## 3.0 Physical Characteristics and Content Eligibility

\* \* \* \* \*

## 3.5 Mailpiece Construction

\* \* \* \* \*

### 3.5.2 Size and Weight

*[Revise 3.5.2 as follows:]*

Periodicals mail may not weigh more than 70 pounds or measure more than 108 inches in length and girth combined. Additional size and weight limits apply to letters and machinable and nonmachinable pieces. Requester publications must contain at least 24 pages per issue.

\* \* \* \* \*

## 11.0 Basic Rate Eligibility

\* \* \* \* \*

## 11.4 Discounts

The following discounts are available:

\* \* \* \* \*

*[Delete item c to eliminate the pallet discounts.]*

\* \* \* \* \*

## 12.0 Nonbarcoded/Presorted Rate Eligibility

\* \* \* \* \*

*[Renumber 12.2 through 12.4 as new 12.3 through 12.5 and add new 12.2 as follows:]*

### 12.2 Rates—Outside-County

Outside-County nonbarcoded/presorted rates are based on the following criteria (see 2.0 for rate application and computation):

a. Piece rates are based on shape, machinability, barcoding, and presort level. The presort level of the piece is based primarily on the bundle level of the piece, except the presort level of pieces loose in trays is based on the tray level.

b. Bundle rates are based on the bundle and container sortation level.

c. Container rates are based on the type of container (tray, sack, or pallet), the level of sortation of the container, and where the container is entered.

*[Revise the heading in renumbered 12.3 as follows:]*

### 12.3 Rates—In-County

\* \* \* \* \*

## 14.0 Barcoded/Automation Rate Eligibility

*[Renumber 14.2 and 14.3 as new 14.3 and 14.4 and add new 14.2 as follows:]*

### 14.2 Rates—Outside-County

Outside-County barcoded/automation rates are based on the following criteria (see 2.0 for rate application and computation):

a. Piece rates are based on mailpiece shape (letter, flat, or parcel), machinability, barcoding, and presort level. The presort level of the piece is based on the bundle level of the piece, except the presort level of pieces loose in trays is based on the tray level.

b. Bundle rates are based on the bundle and container sortation level.

c. Container rates are based on the type of container (tray, sack, pallet), the level of sortation of the container, and where the container is entered.

*[Revise the heading in renumbered 14.3 as follows:]*

### 14.3 Rates—Inside-County

\* \* \* \* \*

## 15.0 Ride-Along Rate Eligibility

\* \* \* \* \*

## 15.3 Physical Characteristics

The host Periodicals piece and the Ride-Along piece must meet the following physical characteristics:

\* \* \* \* \*

*[Revise item c as follows:]*

c. A Periodicals piece with a Ride-Along must maintain the same processing category as before the addition of the Ride-Along.

\* \* \* \* \*

## 16.0 Postage Payment

\* \* \* \* \*

## 16.4 Payment Method

*[Revise 16.4 to clarify payment options in a combined mailing as follows:]*

Mailers must pay Periodicals postage by advance deposit account at the original or additional entry post office, except under procedures in 16.5 for Centralized Postage Payment or in 705.15.2.4. Mailers may not pay postage for Periodicals using permit imprint, meter stamp, postage stamp, or precanceled stamps. Mailers must pay postage for First-Class Mail and Standard Mail enclosures under 703.9.8 through 703.9.12 and 705.16.1. Mailers who prepare Periodicals publications as a combined mailing by merging copies or bundles of copies under 27.0 may pay the Outside-County bundle and container charges on one mailer's Form 3541, on one consolidated Form 3541, or on each mailer's Form 3541 (see 2.2.7).

\* \* \* \* \*

## 17.0 Documentation

\* \* \* \* \*

## 17.7 Additional Standards

\* \* \* \* \*

*[Insert new 17.7.4 as follows:]*

### 17.7.4 Outside-County Bundle and Container Rate Documentation

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing, supported by standardized documentation meeting the basic standards in 708.1.0. The documentation must show how many bundles are used and how many trays, sacks, and pallets are required for the rates and discounts claimed.

## 18.0 General Information for Mail Preparation

\* \* \* \* \*

## 18.3 Presort Terms

Terms used for presort levels are defined as follows:

\* \* \* \* \*

*[Revise items e and p for scheme sorting as follows:]*

e. 5-digit scheme (bundles and sacks) for flats prepared according to 301.3.0: The ZIP Code in the delivery address on all pieces is one of the 5-digit ZIP Codes processed by the USPS as a single scheme, as shown in L007.

\* \* \* \* \*

p. 3-digit scheme bundles for flats prepared according to 301.3.0: The ZIP Code in the delivery address on all pieces is one of the 3-digit ZIP Codes processed by the USPS as a single scheme, as shown in L008.

\* \* \* \* \*

#### 18.4 Mail Preparation Terms

For purposes of preparing mail:

\* \* \* \* \*

*[Revise item b to require trays to be at least 85% full as follows:]*

b. A full letter tray is one in which faced, upright pieces fill the length of the tray between 85% and 100% full.

\* \* \* \* \*

*[Revise items i and r for scheme sorting as follows:]*

i. A 5-digit scheme sort yields 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007. Mailers must presort according to L007. Pieces prepared in scheme bundles must meet the automation flat criteria in 301.3.0. Mailpieces must be labeled using an optional endorsement line under 708.7.0. Periodicals firm bundles must not be combined within 5-digit scheme bundles.

\* \* \* \* \*

r. A 3-digit scheme sort yields 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. The 3-digit scheme sort is optional, except under 705.12.0 and 705.13.0. For 705.12.0 and 705.13.0, mailers must presort according to L008. Pieces prepared in scheme bundles must meet the automation flat criteria in 301.3.0. Mailers must label mailpieces using an OEL under 708.7.0. Periodicals firm bundles must not be combined within 3-digit scheme bundles.

\* \* \* \* \*

*[Insert new items ac and ad to define "machinability" as follows:]*

ac. Machinable flats are:

1. Flat-size pieces meeting the standards in 301.3.0 that are sorted into 5-digit, 3-digit, ADC, and mixed ADC bundles. These pieces are compatible with processing on the AFSM 100.

2. Barcoded flat-size pieces meeting the standards in 26.0 that are sorted into 5-digit bundles.

ad. Nonmachinable flats are flat-size pieces meeting the standards in 26.0, with the exception of barcoded 5-digit

pieces under 18.4ac (item 2) above. Nonmachinable flats are not compatible with processing on the AFSM 100.

\* \* \* \* \*

#### 22.0 Preparing Nonbarcoded Periodicals

\* \* \* \* \*

#### 22.2 Bundle Preparation

*[Revise the introductory text of 22.2 to specify that pieces must meet the criteria in 301.3.0 for scheme sorting as follows:]*

Mailings consisting entirely of nonbarcoded pieces meeting the criteria in 301.3.0 may be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. A bundle must be prepared when the quantity of addressed pieces for a required presort level reaches the minimum bundle size (except under 22.7). Smaller volumes are not permitted except in mixed ADC bundles and 5-digit/scheme and 3-digit/scheme bundles prepared under 22.4. Bundling is also subject to 19.0, *Bundles*. Preparation sequence, bundle size, and labeling:

\* \* \* \* \*

*[Renumber items b through f as new items c through g. Insert new item b as follows:]*

b. 5-digit scheme (optional); six-piece minimum; OEL.

\* \* \* \* \*

*[Renumber new items d through g as items e through h. Insert new item d as follows:]*

d. 3-digit scheme (optional); six-piece minimum; OEL.

\* \* \* \* \*

*[Revise 22.3 to remove the option to count firm bundles toward the six-piece bundle requirement for a presort destination for Outside-County Periodicals as follows:]*

#### 22.3 Firm Bundles

A "firm bundle" is defined as two or more copies for the same address placed in one bundle. If each copy has a delivery address, each may be claimed as a separate piece for presort and on the postage statement, or the firm bundle may be claimed as one addressed piece. A firm bundle claimed as one addressed piece must be physically separate from other bundles and may only be used to satisfy a six-piece bundle requirement to a presort destination for In-County rates.

\* \* \* \* \*

#### 22.6 Sack Preparation—Flat-Size Pieces and Parcels

For mailing jobs that also contain a barcoded rate mailing under 301.3.0, see 22.1.2 and 705.9.0 or 705.10.0. For mailing jobs that do not contain barcoded rate pieces, preparation sequence, sack size, and labeling:

*[Renumber items a through g as new items b through h. Insert new item a for scheme sorting as follows:]*

a. 5-digit scheme; optional; for pieces meeting the standards in 301.3.0; 24-piece minimum, fewer pieces not permitted.

1. Line 1: L007, Column B.

2. Line 2: "PER" or "NEWS" as applicable, followed by "FLTS 5D SCH NON BC."

\* \* \* \* \*

#### 22.7 Optional Tray Preparation—Flat-Size Nonbarcoded Pieces

*[Revise the introductory text in 22.7 to specify that pieces must meet the criteria in 301.3.0 and to add the container charge for trays as follows:]*

As an option, mailers may place in flat-size trays pieces meeting the criteria in 301.3.0 that would normally be placed in ADC, origin mixed ADC, or mixed ADC sacks. The trays are subject to the container charge in 1.1.4 or 1.2.4. Pieces must not be secured in bundles and are not subject to a bundle charge. Mailers must group pieces together for each 5-digit scheme, 5-digit, 3-digit scheme, 3-digit, and ADC destination as follows:

\* \* \* \* \*

#### 23.0 Preparing Carrier Route Periodicals

\* \* \* \* \*

#### 23.4 Preparation—Flat-Size Pieces and Irregular Parcels

\* \* \* \* \*

#### 23.4.2 Exception to Sacking

*[Revise the introductory text in 23.4.2 to specify when mailers do not pay the container charge as follows:]*

Sacking is not required for bundles prepared for and entered at a DDU when the mailer unloads bundles under 29.4.6. Mail presented under this exception is not subject to the container charge (but is still subject to the bundle charges). Mailers must prepare unsacked bundles as follows:

\* \* \* \* \*

## 25.0 Preparing Flat-Size Periodicals With Barcodes

### 25.1 Basic Standards

#### 25.1.1 General

*[Revise 25.1.1 to reference 301.3.0 as follows:]* Each piece must meet the physical standards in 301.3.0 or in 26.0. Bundle, sack, and tray preparation are subject to 18.0 through 21.0 and this section. Trays and sacks must bear the appropriate barcoded container labels under 708.6.0.

\* \* \* \* \*

#### 25.1.5 Bundle Preparation

*[Revise 25.1.5 for clarity as follows:]* All pieces must be prepared in bundles (except under 25.6) and meet the following requirements:

a. Pieces that meet the standards in 301.3.0 must be prepared in separate bundles from pieces that meet the standards in 26.0.

\* \* \* \* \*

c. Each bundle of pieces prepared under 301.3.0 and each bundle of pieces prepared under 26.0 must separately meet the bundle minimums in 25.4.

d. Bundles may contain fewer than six pieces when the mailpieces are too thick or too heavy to create a six-piece bundle. Piece rate eligibility is not affected if the total number of pieces bundled for a presort destination meets or exceeds the minimum for rate eligibility under 14.0.

#### 25.1.6 Scheme Bundle Preparation

*[Revise 25.1.6 as follows:]*

Pieces must be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. These bundles must meet the additional standards in 18.4i or 18.4r.

#### 25.1.7 Sack Preparation

*[Revise 25.1.7 as follows:]*

Mailers may combine bundles of pieces prepared under 301.3.0 and bundles of pieces prepared under 26.0 in the same sack, with the exception of 5-digit scheme sacks, which may contain only pieces prepared under 301.3.0.

#### 25.1.8 Exception—Barcoded and Nonbarcoded Flats on Pallets

*[Revise 25.1.8 as follows:]*

When the physical dimensions of the mailpieces in a Periodicals mailing meet the definition of both a letter-size piece and a machinable barcoded flat-size piece, the entire job may be prepared, merged, and palletized under 705.9.0 through 705.13.0. The following standards apply:

a. The nonbarcoded portion is paid at the nonbarcoded rates.

b. Mailing jobs prepared entirely in sacks and claiming this exception must be cobundled under 705.11.0.

c. As an alternative to 705.9.0 through 705.13.0, if a portion of the job is prepared as palletized barcoded flats, the nonbarcoded portion may be prepared as palletized flats and paid at nonbarcoded machinable and carrier route rates. The nonbarcoded rate pieces that cannot be placed on ADC or finer pallets may be prepared as flats in sacks and paid at the nonbarcoded rates.

\* \* \* \* \*

*[Renumber 25.2 through 25.4 as new 25.3 through 25.5. Insert new 25.2 as follows:]*

#### 25.2 Physical Standards

Each flat-size piece must be rectangular and must meet the standards in 301.3.0 or, for 5-digit barcoded pieces, in 26.0.

#### 25.3 Bundling and Labeling

Preparation sequence, bundle size, and labeling:

*[Revise items a and c to require scheme bundling as follows:]*

a. 5-digit scheme (required for pieces meeting the criteria in 301.3.0); six-piece minimum (fewer pieces permitted under 25.1.5); OEL required.

\* \* \* \* \*

c. 3-digit scheme (required for pieces meeting the criteria in 301.3.0); six-piece minimum (fewer pieces permitted under 25.1.5); OEL required.

\* \* \* \* \*

#### 25.4 Sacking and Labeling

For mailing jobs that also contain a nonbarcoded rate mailing, see 25.1.10 and 705.9.0. Other mailing jobs are prepared, sacked, and labeled as follows:

*[Revise item a as follows:]*

a. 5-digit scheme, required at 24 pieces, fewer pieces not permitted; may contain 5-digit scheme bundles only; labeling:

\* \* \* \* \*

#### 25.6 Optional Tray Preparation—Flat-Size Barcoded Pieces

*[Revise the introductory text in renumbered 25.6 to specify that pieces must meet the criteria in 301.3.0 and to add the container charge for trays as follows:]*

As an option, mailers may place in trays pieces prepared under 301.3.0 that would normally be placed in ADC, origin mixed ADC, or mixed ADC sacks. The trays are subject to the container charge in 1.1.4 or 1.2.4. Pieces must not

be secured in bundles. Mailers must group together pieces for each 5-digit scheme, 5-digit, 3-digit scheme, 3-digit, and ADC destination as follows:

\* \* \* \* \*

*[Renumber 26.0 through 29.0 as 27.0 through 30.0. Insert new 26.0 as follows:]*

## 26.0 Alternative Physical Criteria for Flat-Size Periodicals

### 26.1 General

Prepare barcoded flat-size pieces according to 25.0 above. Pieces may meet the physical criteria in 26.0 or in 301.3.0, but mailers cannot combine these two types of flat-size pieces in the same bundle.

### 26.2 Weight and Size

The maximum weight for each piece is 4.4 pounds. The following minimum and maximum dimensions apply (determine length and height according to 301.1.2):

a. Minimum height is 5 inches. Maximum height is 12 inches.

b. Minimum length is 6 inches. Maximum length is 15 inches.

c. Minimum thickness is 0.009 inch. Maximum thickness is 1.25 inches.

### 26.3 Address Placement on Folded Pieces

Mailers must design folded pieces so that the address is in view when the final folded edge is to the right and any intermediate bound or folded edge is at the bottom of the piece. Unbound flat-size pieces must be at least double-folded.

### 26.4 Flexibility and Deflection

Pieces prepared under 26.0 are not subject to the standards for flexibility in 301.1.4 or the standards for deflection in 301.3.2.4.

### 26.5 Additional Criteria

Pieces must meet the standards for polywrap coverings in 301.3.3; protrusions and staples in 301.3.4; tabs, wafer seals, tape, and glue in 301.3.5; and uniform thickness and exterior format in 301.3.6.

## 27.0 Combining Multiple Editions or Publications

*[Reorganize and revise renumbered 27.0 to add the definition and standards for copalletized mailings. The experimental copalletization drop-ship classifications in 709.3.0 and 709.4.0 expire, and all mailers may copalletize as follows:]*

### 27.1 Description

Mailers may prepare Periodicals publications as a combined mailing by

merging copies or bundles of copies to achieve the finest presort level possible or to reduce the total Outside-County postage. Each publication in a combined mailing must be authorized (or pending authorization) to mail at Periodicals rates. Mailers may use the following methods:

a. Mailers may comail individually addressed copies of different editions of a Periodicals publication (one title) or individually addressed copies of different Periodicals publications (more than one title) to obtain finer presort levels.

b. Mailers may place two or more copies of different Periodicals publications (more than one title), and/or multiple editions of the same publication in the same mailing wrapper or firm bundle and present it as one addressed piece to a single addressee to reduce the per piece charge.

c. Mailers may copalletize separately presorted bundles of different Periodicals titles and editions to achieve minimum pallet weights. Mailers do not have to achieve the finest pallet presort level possible.

## **27.2 Authorization**

### **27.2.1 Basic Standards**

Each mailer must be authorized to comail or copalletize mailings under 27.1a and 27.1c by Business Mailer Support (see 608.8.1 for address). Requests for authorization must show:

- a. The mailer's name and address.
- b. The mailing office.
- c. Procedures and quality control measures for the combined mailing.
- d. The expected date of the first mailing.
- e. A sample of the standardized documentation.

### **27.2.2 Denial**

If the application is denied, the mailer or consolidator may reapply at a later date, or submit additional information needed to support the request.

### **27.2.3 Termination**

An authorization may not exceed 2 years. Business Mailer Support may take action to terminate an authorization at any time, by written notice, if the mailer does not meet the standards.

## **27.3 Minimum Volume**

The following minimum volume standards apply:

a. For comailings prepared under 27.1a, multiple publications or editions are combined to meet the required minimum volume per bundle, sack, or tray for the rate claimed.

b. For combined mailings prepared under 27.1b, the minimum volume requirements in 22.0, 23.0, or 25.0 apply for the rate claimed.

c. For copalletized mailings prepared under 27.1c, the minimum volume requirements for pallets in 705.8.5.3 apply for the rate claimed.

## **27.4 Labeling**

Mailers must label all containers in a combined mailing as either "NEWS" (see 21.1.3) or "PER" as follows:

a. If at least 51% of the total number of copies in the combined mailing can qualify for "NEWS" treatment then all containers in the mailing are labeled "NEWS," unless the mailer chooses to use "PER."

b. If less than 51% of the total number of copies in a combined mailing can qualify for "NEWS" treatment then all containers in the mailing are labeled "PER."

## **27.5 Documentation**

Each mailing must be accompanied by documentation meeting the standards in 17.0, as well as any additional mailing information requested by the USPS to support the postage claimed (such as advertising percentage and weight per copy). The following additional standards apply:

a. Presort documentation required under 708.1.0 must show the total number of addressed pieces and total number of copies for each publication and each edition in the combined mailing claimed at the carrier route, 5-digit, 3-digit, ADC, and mixed ADC rates. The mailer also must provide a list, by 3-digit ZIP Code prefix, of the number of addressed pieces for each publication and each edition claimed at any destination entry discount.

b. Copalletized mailing documentation must consolidate and identify each title and version (or edition) in the mailing. Mailers may use codes in the summary heading to represent each title and version (or edition) presorted together on pallets. The documentation must include presort and pallet reports showing by title and version (or edition) how the bundles are presorted and where they will be entered.

## **27.6 Postage Statements**

Mailers must prepare postage statements for a combined mailing as follows:

a. Copy weight and advertising percentage determine whether separate postage statements are required for editions of the same publication:

1. If the copy weight and advertising percentage for all editions of a

publication are the same, mailers may report all the editions on the same postage statement or each edition on a separate postage statement.

2. If the copy weight or the advertising percentage is different for each edition of a publication, mailers must report each edition on a separate postage statement.

b. For a combined mailing prepared under 27.1a, mailers must prepare a separate postage statement that claims all applicable per piece, per pound charges, and bundle and container charges (if apportioned) for each publication or edition. The mailer must annotate on, or attach to, each postage statement, the title and issue date of each publication or edition and indicate that the pieces were prepared as part of a combined mailing under 27.1a.

c. For mailings under 27.1b, mailers must prepare a separate postage statement claiming the applicable per pound charges for each publication or edition in the combined mailing except as provided in 27.2.5a. The mailer must annotate on, or attach to, each postage statement, the title and issue date of each publication or edition and indicate that the copies were prepared as part of a combined mailing under 27.1b. The per piece charges must be claimed as follows:

1. If *all* copies in the combined mailing are eligible for the Classroom or Nonprofit discount, or if *all* copies are not eligible for the Classroom or Nonprofit discount, mailers may claim the per piece charges only on the postage statement for the publication that contains the highest amount of advertising.

2. If a portion of the copies in the combined mailing are eligible for the Classroom or Nonprofit discount and a portion are not eligible, mailers may claim the per piece charges only on the postage statement for the publication that contains the highest amount of advertising and is not eligible for the Classroom or Nonprofit discount. The Classroom or Nonprofit per piece discount must not be claimed.

d. For copalletized mailings under 27.1c, mailers must prepare a separate postage statement for each publication in the mailing. One consolidated postage statement and a register of mailings for each publication must accompany mailings consisting of different editions or versions of the same publication.

## **27.7 Postage Payment**

Each mailing must meet the postage payment standards in 16.0. For copalletized mailings under 27.1c, mailers must pay postage at the post

office serving the facility where consolidation takes place, except that postage for publications authorized under the Centralized Postage Payment (CPP) system may be paid to the Pricing and Classification Service Center (see 608.8.4.1 for address).

## 27.8 Deposit of Mail

Each publication in a combined mailing must be authorized (or pending authorization) for original entry or additional entry at the post office where the mailing is entered. For copalletized mailings under 27.1c, mailers must enter each mailing at the post office serving the facility where consolidation takes place.

\* \* \* \* \*

## 29.0 Destination Entry Rate Eligibility

### 29.1 Basic Standards

#### 29.1.1 Rate Application

*[Revise renumbered 29.1.1 to eliminate the pallet discounts and add the new container and bundle rates as follows:]*

Outside-County mail may qualify for destination area distribution center (DADC) rates or destination sectional center facility (DSCF) rates under 29.3 or 29.4. Carrier route rate pieces may qualify for destination delivery unit (DDU) rates under 29.5. Outside-County pieces are subject to the Outside-County bundle rates in 1.1.3 or 1.2.3 and the Outside-County container rates in 1.1.4 or 1.2.4.

For all destination entry rate pieces:

a. An individual bundle, tray, sack, or pallet may contain pieces claimed at different destination entry pound rates.

b. In-County carrier route rate addressed pieces may qualify for the DDU discount under 29.5.

c. The advertising and nonadvertising portions may be eligible for DADC, DSCF, or DDU pound rates based on the entry facility and the address on the piece.

\* \* \* \* \*

*[Further renumber 29.2 through 29.4 as 29.3 through 29.5. Insert new 29.2 as follows:]*

## 29.2 Destination Bulk Mail Center

### 29.2.1 Definition

For this standard, destination bulk mail center (DBMC) includes the facilities in Exhibit 346.3.1, or a USPS-designated facility.

### 29.2.2 Eligibility

DBMC container rates apply as follows:

a. Pieces must be prepared in bundles on ADC or more finely presorted pallets

or in sacks or trays on ADC or more finely presorted pallets under 705.8.0.

b. Mailers may claim a DBMC container rate if the facility ZIP Code (as shown on Line 1 of the corresponding container label) is within the service area of the BMC or ASF at which the container is deposited, as shown in Exhibit 346.3.1.

\* \* \* \* \*

## 29.3 Destination Area Distribution Center

\* \* \* \* \*

### 29.3.3 Rates

*[Revise renumbered 29.3.3 to reflect the new nonadvertising rate structure as follows:]*

DADC rates include a nonadvertising pound rate and, if applicable, an advertising pound rate.

## 29.4 Destination Sectional Center Facility

\* \* \* \* \*

### 29.4.3 Rates

*[Revise renumbered 29.4.3 to reflect the new nonadvertising rate structure as follows:]*

DSCF rates include a nonadvertising pound rate and, if applicable, an advertising pound rate.

## 29.5 Destination Delivery Unit

\* \* \* \* \*

### 29.5.3 Rates

*[Revise renumbered 29.5.3 to reflect the new nonadvertising rate structure as follows:]*

DDU rates for Outside-County include a nonadvertising pound rate and, if applicable, an advertising pound rate. DDU rates for In-County consist of a pound charge and a per piece discount off the addressed piece rate.

\* \* \* \* \*

## 30.0 Additional Entry

\* \* \* \* \*

## 30.2 Authorization

### 30.2.1 Filing

*[Add new last sentence to renumbered 30.2.1 as follows:]*

The publisher is responsible for timely filing of all forms and supporting documentation to establish, modify, or cancel an additional entry. Under the standards for combining mailings on pallets in 27.0, consolidators may apply for additional entry authorizations on behalf of publishers at the post office serving the consolidator's facility.

\* \* \* \* \*

## 708 Technical Specifications

### 1.0 Standardized Documentation for First-Class Mail, Periodicals, Standard Mail, and Flat-Size Bound Printed Matter

\* \* \* \* \*

### 1.2 Format and Content

For First-Class Mail, Periodicals, Standard Mail, and flat-size Bound Printed Matter, standardized documentation includes:

\* \* \* \* \*

c. For mail in trays or sacks, the body of the listing reporting these required elements:

\* \* \* \* \*

*[Delete item c8, renumber item c9 as new item c8, and add new item c9 as follows:]*

9. For Periodicals mailings that contain both In-County and Outside-County pieces, include a separate "Container Charge" and "Bundle Charge" column. The body of the listing must indicate which trays, sacks and bundles are subject to the container or bundle charges and a total or, optionally, a running total.

d. For bundles on pallets, the body of the listing reporting these required elements:

\* \* \* \* \*

*[Renumber item d7 as item d8. Add new item d7 as follows:]*

7. For Periodicals mailings that contain both In-County and Outside-County pieces, include a separate "Container Charge" and "Bundle Charge" column. The body of the listing must indicate which pallets and bundles are subject to the container or bundle charges and a total or, optionally, a running total.

*[Revise item e as follows:]*

e. At the end of the documentation, a summary report of the total number of pieces mailed at each postage rate for each mailing reported on the listing by postage payment method (and by entry point for drop shipment mailings) and the total number of pieces in each mailing. This information must correspond to the information reported on the postage statement(s) for the pieces reported. For Periodicals mailings, documentation also must provide:

1. A summary of the total number of each type of bundle in the mailing and, optionally, the total bundle charge paid. Report only bundles subject to the Outside-County bundle rate under 1.1.3 or 1.2.3.

2. A summary of the total number of each type of container in the mailing and, optionally, the total container

charge paid. Report only trays, sacks, and pallets subject to the Outside-County container rates under 1.1.4 or 1.2.4.

3. For combined mailings, a summary by individual mailer of the number of each type of bundle and container in the mailing and, optionally, the bundle and container rate paid. Report only bundles, trays, sacks, and pallets subject to the Outside-County bundle and container rates under 1.1.3 or 1.2.3 and 1.1.4 or 1.2.4.

4. A summary of the total number of copies for each zone, including In-County, DDU, SCF, and ADC rates. A separate summary report is not required if a PAVE-certified postage statement facsimile generated by the presort software used to prepare the standardized documentation is presented for each mailing.

5. Additional data if necessary to calculate the amount of postage for the mailing (or additional postage due, or postage to be refunded) if nonidentical-weight pieces that do not bear the correct postage at the rate for which they qualify are included in the mailing, or if different rates of postage are affixed to pieces in the mailing.

\* \* \* \* \*

[Insert new 1.8 as follows:]

### 1.8 Bundle and Container Reports for Periodicals Mail

A publisher must present documentation to support the actual number of bundles and containers of each edition of an issue as explained in 1.8.1 and 1.8.2 below.

#### 1.8.1 Bundle Report

The bundle report must contain, at a minimum, the following elements:

- Container identification number.
- Container type.
- Container presort level.
- Bundle ZIP Code.
- Bundle level.
- Rate category.
- Number of copies by version in the bundle.
- An indicator showing which bundles are subject to the bundle charge.

#### 1.8.2 Container Report

The container report must contain, at a minimum, the following elements:

- Container identification number.
- Container type.
- Container level.
- Container entry level (origin, DDU, DSCF, DADC, or DBMC).
- An indicator showing which containers are subject to the container charge.

\* \* \* \* \*

### 709 Experimental Classifications and Rates

[Delete 3.0, Outside-County Periodicals Copalletization Drop-Ship Classification; and 4.0, Outside-County Periodicals Copalletization Drop-Ship Discounts for High-Editorial, Heavy-Weight, Small-Circulation Publications. Renumber remaining sections 5.0 and 6.0 as new 3.0 and 4.0. The experimental copalletization discounts expire and are replaced by the new rate structure for Periodicals mail in 707.]

\* \* \* \* \*

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E7-10139 Filed 5-24-07; 8:45 am]

BILLING CODE 7710-12-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2006-0976; FRL-8318-3]

### Approval and Promulgation of Air Quality Implementation Plans; Ohio; Control of Gasoline Volatility

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Ohio on February 14, 2006, and October 6, 2006, establishing a lower Reid Vapor Pressure (RVP) fuel requirement for gasoline distributed in the Cincinnati and Dayton 8-hour ozone nonattainment areas. Ohio has developed this fuel requirement to reduce emissions of volatile organic compounds (VOC) in accordance with the requirements of the Clean Air Act (CAA). EPA is approving Ohio's fuel requirement into the Ohio SIP because EPA has found that the requirement is necessary for the Cincinnati and Dayton areas to achieve the 8-hour ozone national ambient air quality standard (NAAQS). This action is being taken under section 110 of the CAA. On March 29, 2007, the EPA published a Notice of Proposed Rulemaking (NPRM) proposing to approve the SIP revision. During the comment period EPA received a number of comments both supporting and opposing the approval of the fuel requirement.

This document summarizes the comments received, EPA's responses, and finalizes the approval of Ohio's SIP revision to establish a RVP limit of 7.8 pounds per square inch (psi) for

gasoline sold in the Cincinnati and Dayton 8-hour ozone nonattainment areas.

**DATES:** This final rule is effective on May 31, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2006-0976. 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, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Francisco J. Acevedo, Environmental Protection Specialist, at (312) 886-6061 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Francisco J. Acevedo, Environmental Protection Specialist, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6061, [acevedo.francisco@epa.gov](mailto:acevedo.francisco@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- What is the background for this action?
- What is our response to comments received on the notice of proposed rulemaking?
- What action is EPA taking?
- Statutory and Executive Order Review

#### I. What is the background for this action?

On April 15, 2004, the EPA designated 5 counties in the Cincinnati, Ohio area (Hamilton, Butler, Clinton, Warren and Clermont counties—Cincinnati-Hamilton, OH-KY-IN) and 4 counties in the Dayton, Ohio area (Clark, Greene, Miami, and Montgomery counties—Dayton-Springfield, OH) as nonattainment for the 8-hour ozone standard. Both areas have been designated Basic nonattainment with respect to the 8-hour ozone standard and they are required to attain the

standard as expeditiously as practicable, but no later than June 2009.

As part of the State of Ohio's (Ohio) efforts to bring these areas into attainment, the State is adopting and implementing a broad range of ozone control measures including control of emissions from auto refinishing operations, the reduction of VOC emission from portable fuel containers, the adoption of industrial solvent degreasing rules, and the implementation of a 7.8 pound per square inch (psi) RVP fuel program.

Ohio originally proposed to replace the State's vehicle inspection and maintenance (I/M) program in Cincinnati and Dayton, which was discontinued by the State on December 31, 2005, with the requirement to supply 7.8 psi RVP gasoline to these areas starting in 2006. However, the State modified its original request and asked that EPA act on the state's fuel waiver request to allow the use of 7.8 psi RVP gasoline in both areas. On February 14, 2006, Ohio submitted the fuel waiver request as a SIP revision. The submittal included adopted amended rules under Ohio Administrative Code Chapter 3745-72 "Low Reid Vapor Pressure Fuel Requirements" to require the use of 7.8 psi RVP gasoline in the Cincinnati and Dayton areas beginning on June 1, 2006.

Soon after the State's February 14, 2006 submittal, the American Petroleum Institute (API) appealed the State's 7.8 psi RVP rule on the basis that there was insufficient time to implement the rule and that EPA had not yet issued a waiver under section 211(c)(4)(C) of the CAA, as amended. EPA conducted an informal survey of gasoline suppliers and determined that there was not enough 7.8 psi RVP gasoline to supply the Cincinnati and Dayton nonattainment areas during the 2006 ozone season. As part of the State's settlement with API on its appeal, Ohio agreed to revise the rule to delay the effective date of the rule until twelve months following the approval of a fuel waiver by EPA in order to ensure that there is sufficient time for the regulated community to prepare for the change.

On July 10, 2006, the Ohio Environmental Protection Agency (OEPA) adopted amended rules under the Ohio Administrative Code Chapter 3745-72 "Low Reid Vapor Pressure Fuel Requirements" to modify the implementation date for the required use of 7.8 psi RVP gasoline in the Cincinnati and Dayton areas to be one year after the approval of a fuel waiver under CAA amendments section 211(c)(4)(C). Public hearings on the amended rules were held on June 2,

2006, in Columbus, Ohio and the rules became effective at the state level on July 17, 2006.

The OEPA submitted these amended low-RVP rules to EPA as a revision to the SIP on October 6, 2006. As part of the October 6, 2006 submittal, OEPA included additional technical support for the SIP revision, including documentation supporting the State's request to waive the CAA preemption of State fuel controls pursuant to section 211(c)(4) of the CAA.

On March 29, 2007, EPA proposed approval of the State's SIP revision to establish a 7.8 psi low-RVP fuel program in the Cincinnati and Dayton 8-hour ozone nonattainment areas. (See 72 FR 14729). As detailed in the proposed approval, EPA found the low-RVP fuel program necessary pursuant to Section 211(c)(4)(C) of the CAA. In addition, EPA also proposed approval of the State's SIP revision as consistent with the provisions of the Energy Policy Act (EPAAct).

## II. What is our response to comments received on the notice of proposed rulemaking?

During the comment period for the March 29, 2007, proposal we received several comments from 16 commenters including the API and the Regional Air Pollution Control Agency (RAPCA) of Dayton, Ohio. Six of the commenters, including RAPCA, were in favor of the proposed fuel and supported EPA approval. A number of commenters also submitted adverse comments that were outside the scope of the proposal (e.g., approval of reformulated gasoline, corn ethanol). A summary of the relevant portions of the adverse comments received on the proposed rule and EPA's response to these comments is presented below. EPA does not view the adverse comments we received as a basis to disapprove the SIP revision. We believe the SIP revision meets the applicable requirements of the CAA, and we are approving it.

*Comment:* API states "API supports Ohio's revision to the rule," providing for low RVP gasoline as of one year after EPA approval of the rule. API then states, "However, it would be unlawful for USEPA to approve this SIP revision." API thus implicitly recommends that EPA not approve Ohio's rule.

*Response:* EPA appreciates API's support for Ohio's rule change allowing one year lead time from EPA final approval. However, EPA disagrees with API's contention that approving Ohio's rule would be unlawful, and EPA disagrees with API's recommendation that EPA not approve Ohio's rule. The

discussion below addresses API's more specific comments.

*Comment:* API repeats some of the modeling uncertainties that EPA noted in its proposed rulemaking, and concludes that "EPA should require that States seeking approval under 211(c)(4)(C) submit accurate modeling and back-up analysis as part of the waiver request. Providing it later with an attainment demonstration is too late to be useful for EPA's fuel waiver analysis."

*Response:* EPA must make judgments as to whether it has the best available modeling information and whether the information is of adequate quality to support the conclusion being reached. "EPA has undoubted power to use predictive models so long as it explains the assumptions and methodology used in preparing the model and provides a complete analytic defense should the model be challenged." *Appalachian Power Company v. EPA*, 251 F.3d 1026, 1051 (D.C. Cir. 2001) (internal citations omitted). EPA also recognizes that any modeling analysis, and any projection of future conditions, inherently has uncertainties. "That a model is limited or imperfect is not, in itself a reason to remand agency decisions based upon it." *Id.* "It is only when the model bears no rational relationship to the characteristics of the data to which it is applied that [courts] will hold that the use of the model is arbitrary and capricious." *Appalachian Power Company v. EPA*, 135 F.3d 791, 802 (D.C. Cir. 1998) (internal citations omitted). Thus, in this instance EPA believes that it is using the best available modeling information, that the information is of adequate quality to find low RVP fuel necessary, and that the commenter has provided no rationale for EPA to believe otherwise. Further, regardless of what information the state provides, directly or indirectly, EPA's obligation is to use available information to judge whether a fuel program is necessary. EPA agrees that information that Ohio is preparing for submittal with its attainment demonstration will not be available for EPA's fuel waiver analysis, but notes that such information is not required for purposes of making a necessity finding under either section 211(c)(4)(C)(i) or EPA's August 1997 "Guidance on Use of Opt-in to RFG and Low RVP Requirements in Ozone SIPs." EPA believes that the modeling information already available is adequate for finding low RVP fuel necessary.

*Comment:* API states that the State of Ohio has not made its "necessity" showing because there are non-fuel measures (e.g., E-check) that are

reasonable and practicable. API points out that OEPA has already adopted and implemented E-check for Dayton-Cincinnati, thus, proving that this control measure is both reasonable and practicable. API also contends that EPA provides no independent analysis or review of the non-fuel measures and that "it appears that EPA did not review the reasons OEPA gives for why E-check is not reasonable or practicable, as they do not comment in their proposal on OEPA's rationale".

*Response:* EPA agrees with API's conclusion that E-check is a reasonable and practical control measure. However, EPA views the issue of whether E-check is reasonable or practicable as irrelevant in making a "necessity" determination because Cincinnati and Dayton's E-check program is currently part of the existing SIP and, thus, is still a required control measure in both areas regardless of whether the program is currently operating or not. In addition, the modeling analysis used in demonstrating "necessity" reflects the emission reductions associated with the E-check as if the program was still operating. EPA has concluded that even with the implementation of all non-fuel control measures determined to be reasonable and practicable, including E-check, additional VOC reductions are necessary to achieve the ozone NAAQS. Further, EPA concluded, based on the information available to us, that no other reasonable and practicable non-fuel measures were available to the State that would achieve these needed emission reductions in a timely manner. Thus the Agency concludes that the 7.8 psi RVP fuel program is necessary for attainment of the applicable ozone NAAQS.

EPA disagrees with API's assertion that EPA did not review and take into consideration the reasons OEPA outlined in the State's submittal regarding why the State considered E-check to be unreasonable or impracticable. As provided above, EPA reviewed OEPA's rationale but determined that it was irrelevant in making the necessity demonstration because E-check is a required program in Ohio's SIP. Regarding API's concern that EPA did not provide an independent analysis or review of the non-fuel measures, EPA provided the opportunity for the public to review and comment on all aspects of Ohio's submittal including the evaluation of the non-fuel measures considered by the State. EPA did not receive any specific comments questioning either the list of non-fuel measures considered or the results of the State's analysis. EPA believes that the State's assessment

adequately identifies and evaluates non-fuel measures.

*Comment:* An anonymous commenter urges that EPA not approve the 7.8 RVP gasoline requirement due to deficiencies in the showing that low RVP fuel is necessary. First, the commenter objects to the estimation of the emission reduction between 2008 and 2009 by calculating one seventh of the emission reduction between 2002 and 2009, since commenter believes that an "analysis of whether [pertinent emission reductions are] linear" would show that emission reductions occur disproportionately in early years of control programs and only minimally later. Second, the commenter observes that the Dayton and Cincinnati nonattainment areas are subject to a requirement "to submit an attainment demonstration that relies on photochemical grid modeling," and the commenter believes that "a completed attainment demonstration seems to be necessary" to "properly determine whether a low-RVP fuel is necessary." Third, the commenter believes that "a 'weight of evidence' analysis is needed with such modeling." The commenter concludes that "USEPA should fully evaluate the necessity of such lower RVP fuel in accordance with section 211(c)(4)(C) of the Clean Air Act."

*Response:* EPA used the best available information to evaluate whether Ohio's low RVP fuel program is necessary. First, the most significant VOC emission reductions between 2002 and 2009 are from mobile sources, which are yielding relatively linear emission reductions resulting from a steady rate of replacement of old dirtier vehicles with new cleaner vehicles. (Emissions for NO<sub>x</sub> declined more than the average 2002 to 2009 rate in the early days of the NO<sub>x</sub> SIP Call program and can be expected to decline at less than that rate in the future, but EPA's approximation of necessary emission reductions applied only to VOC emissions.) EPA considered this situation in deciding to apply an assumption of approximately linear reductions, and EPA continues to believe that the best available information is based on an assumption that VOC emissions are undergoing a basically linear decline.

Second, Dayton and Cincinnati are indeed subject to a requirement for attainment demonstrations, for which EPA recommends use of photochemical grid modeling, but, under section 211(c)(4)(C)(i), EPA may make a necessity finding "even if the plan for the area does not contain an approved demonstration of timely attainment." The attainment plans are not due until June 15, 2007, and even though this requirement applies in the relatively

near future, EPA has no obligation to delay action on Ohio's fuel request waiting for either that date or Ohio's actual submittal. EPA believes it has adequate information already to evaluate the necessity of the fuel restrictions requested by Ohio.

Third, EPA indeed recommends "weight of evidence" analyses as a supplement to attainment demonstrations in some cases. However, just as section 211(c)(4)(C) provides that an approved attainment demonstration is not a prerequisite for making necessity findings, EPA believes that complete "weight of evidence" analyses are not a prerequisite for making necessity findings. EPA expects that Ohio will submit weight of evidence analyses at the same time it submits its attainment demonstrations. In the meantime, in the absence of a complete submittal by Ohio addressing the potential for model under-prediction as well as over-prediction, EPA believes that the best assessment of the necessity of a low RVP fuel program in Southwest Ohio is based directly on the available modeling information. In summary, EPA concludes that an evaluation in accordance with section 211(c)(4)(C) using the best available information indicates that Ohio's requested low RVP fuel is necessary in Southwest Ohio.

*Comment:* A commenter questions whether the benefits of low RVP gasoline will be significant. The commenter observes that there are 130 billion tons of air above the Cincinnati/Dayton area, so that an emission reduction of 5.2 tons per day would only reduce concentrations by 0.000000004 percent. Finally, the commenter recommends use of a "Grease Gator", marketed by Solvent Systems, for cleaning parts without emitting VOC.

*Response:* Human health is impaired even at very low air pollutant concentrations. The ozone standard is 0.08 parts per million, or 0.000008 percent of the molecules in ambient air. EPA set the air quality standard at this "trace" level based on studies showing that even seemingly negligible concentrations of ozone can adversely affect human health. Typical VOC concentrations sufficient to cause violations of this standard are in the same fraction of a part per million range, attributable in the Cincinnati/Dayton area to emissions of about 300 tons per day. Given the low concentrations at which ozone impairs health, the implementation of low RVP gasoline will provide a significant fraction of the reduction of VOC emissions needed in this area. It should be noted, however, that in reviewing

this SIP revision EPA is limited to determining whether the legal criteria for approval are met. The issue before us here is whether the criteria for approval in 211(c)(4)(C) are met, and we have determined they have been met. EPA appreciates the recommendation of a parts cleaning system with zero VOC emissions.

*Comment:* Several commenters raised concerns with the concept of further expanding the use of boutique fuels. One commenter goes on to say that such expansion will further reduce refinery capacity/efficiency, is likely to cost consumers more, and has the potential to cause the Ohio areas to face a gasoline shortage in the event of a fuel disruption scenario. Another commenter is concerned that having special blends in different parts of the country will cause shortages.

*Response:* Due to the heightened concern over supply and price issues and the potential for boutique fuel programs to exacerbate these issues, Congress directly addressed the issue of boutique fuels in several ways in the Energy Policy Act of 2005 (EPAAct). EPAAct placed further restrictions on EPA's authority to approve a state fuel program in the SIP. Under EPAAct, EPA may approve a state fuel program for a SIP only if a fuel is already approved in a SIP for a state in that Petroleum Administration for Defense Districts (PADD), and the approval does not increase the total number of state fuels on EPA's list of fuels. Further, where there is room on the list, prior to approval of a new fuel, EPA, with Department of Energy consultation, must find no adverse impact on fuel supply and distribution in either the affected area or contiguous areas. The 7.8 psi RVP fuel that we are approving today is not a new fuel because it is already approved in at least one SIP (Indiana, (61 FR 4895, (February 9, 1996)) in the PADD where Ohio is located. EPA therefore, does not believe that it is required to make a finding of no adverse impact effects of a 7.8 psi RVP fuel on fuel supply and distribution in either Dayton and Cincinnati or the contiguous areas. EPA also believes that this rule fully complies with the applicable EPAAct requirements. Further, although we received comments from API on this action, none of the comments received from the industry side raise any concerns with the industry's ability to adequately and efficiently supply the 7.8 psi RVP fuel to the affected areas. Further, API's comments state that "API and OEPA reached an agreement on April 4, 2006, that 7.8 RVP fuel will not be required in Dayton-Cincinnati until

one year after final approval by U.S.EPA. API supports this revised rule as in the best interest of the State of Ohio and its citizens".

### III. What action is EPA taking?

EPA is approving a SIP revision submitted by the State of Ohio on February 14, 2006, and October 6, 2006, establishing a 7.8 psi RVP fuel requirement for gasoline distributed in the Cincinnati and Dayton 8-hour ozone nonattainment areas. This action is effective on May 31, 2007. EPA is approving Ohio's fuel requirement into the SIP because EPA has found that the requirement is necessary for Southwest Ohio to achieve the 8-hour NAAQS for ozone. EPA's approval is consistent with the boutique fuel provisions of section 211(c)(4)(C) enacted in EPAAct.

EPA finds that there is good cause for this action to become effective by May 31, 2007. The May 31, 2007 effective date for this action is authorized under 5 U.S.C. 553(d)(3) which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, approves Ohio's SIP revision requiring the use of 7.8 psi RVP gasoline in the Cincinnati and Dayton areas one year after EPA approval of the fuel waiver request under section 211(c)(4)(C) of the CAA. RVP control requirements are summer control programs that are generally implemented during the summer ozone season beginning on June 1. Making this rule effective before the beginning of the summer ozone season, will allow the regulated industry to avoid having to address multiple RVP requirements during the 2008 ozone season. In addition, as noted above, the regulated industry has had advance notice of this requirement, and the API has agreed to a settlement with provisions for the 7.8 psi RVP fuel in these areas twelve months following the approval of a fuel waiver by EPA. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on May 31, 2007.

### IV. Statutory and Executive Order Reviews

#### *Executive Order 12866: Regulatory Planning and Review*

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.

#### *Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant regulatory action," 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).

#### *Regulatory Flexibility Act*

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.*).

#### *Unfunded Mandates Reform Act*

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).

#### *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

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).

#### *Executive Order 13132: Federalism*

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.

*Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

*National Technology Transfer Advancement Act*

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.

*Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). 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 July 24, 2007. 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, Sulfur oxides, Volatile organic compounds.

Dated: May 18, 2007.

**Gary Gulezian,**

*Regional Administrator, Region 5.*

■ For the reasons stated in the preamble, part 52, chapter I, of 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 KK—Ohio**

■ 2. Section 52.1870 is amended by adding paragraph (c)(138) to read as follows:

**§ 52.1870 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(138) On February 14, 2006, and October 6, 2006, the State of Ohio submitted a revision to the Ohio State Implementation Plan. This revision is for the purpose of establishing a gasoline Reid vapor pressure (RVP) limit of 7.8 pounds per square inch (psi) for gasoline sold in the Cincinnati and Dayton 8-hour ozone nonattainment areas which includes Hamilton, Butler, Clinton, Warren, Clermont, Clark, Greene, Miami, and Montgomery counties.

(i) Incorporation by reference. The following sections of the Ohio Administrative Code (OAC) are incorporated by reference.

(A) OAC Rule 3745-72-01: "Applicability", effective July 17, 2006 except for 3745-72-01(E).

(B) OAC Rule 3745-72-02: "Definitions", effective July 17, 2006.

(C) OAC Rule 3745-72-03: "Gasoline volatility standards and general provisions", effective January 16, 2006.

(D) OAC Rule 3745-72-04: "Transfer documentation and recordkeeping", effective January 16, 2006.

(E) OAC Rule 3745-72-05: "Liability", effective January 16, 2006.

(F) OAC Rule 3745-72-06:

"Defenses", effective January 16, 2006.

(G) OAC Rule 3745-72-07: "Special provisions for alcohol blends", effective January 16, 2006.

(H) OAC Rule 3745-72-08: "Quality assurance and test methods", effective January 16, 2006.

(ii) Additional materials.

(A) Letter from Ohio EPA Director Joseph P. Koncelik to Regional Administrator Thomas Skinner, dated February 14, 2006.

(B) Letter from Ohio EPA Director Joseph P. Koncelik to Regional Administrator Mary Gade, dated October 6, 2006.

[FR Doc. E7-10054 Filed 5-24-07; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2006-0130-200714(a); FRL-8317-8]**

**Approval and Promulgation of Implementation Plans: State of Florida; Prevention of Significant Deterioration Requirements for Power Plants Subject to the Florida Power Plant Siting Act**

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

**ACTION:** Direct final rule.

**SUMMARY:** On February 3, 2006, the State of Florida, through a State Implementation Plan (SIP) submittal addressing New Source Review (NSR) Reform requirements, requested that EPA grant it full approval to implement the State's Clean Air Act (CAA or Act) Prevention of Significant Deterioration (PSD) program for electric power plants subject to the Florida Electrical Power Plant Siting Act. EPA is proposing to approve this specific request under section 110 of the Act. EPA intends to take action on all other portions of Florida's February 3, 2006, NSR Reform SIP submittal in a future rulemaking.

**DATES:** This direct final rule is effective July 24, 2007 without further notice, unless EPA receives adverse comment by June 25, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2006-0130, by one of the following methods:

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

2. *E-mail*: [Fortin.Kelly@EPA.gov](mailto:Fortin.Kelly@EPA.gov).

3. *Fax*: 404-562-9066.

4. *Mail*: "EPA-R04-OAR-2006-0130", Air Permits Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier*: Ms. Kelly Fortin, Air Permits Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

*Instructions*: Direct your comments to Docket ID No. "EPA-R04-OAR-2006-0130". EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> 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 <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket*: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT**: Ms. Kelly Fortin, Air Permits Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9117. Ms. Fortin can also be reached via electronic mail at [fortin.kelly@epa.gov](mailto:fortin.kelly@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Part C of the CAA establishes the PSD program, the preconstruction review program that applies to areas of the country that have attained the National Ambient Air Quality Standards (NAAQS). CAA sections 160-169, 42 U.S.C. 7470-7479. In such areas, a major stationary source may not begin construction or undertake certain modifications without first obtaining a PSD permit. In broad overview, the program (1) limits the impact of new or modified major stationary sources on ambient air quality and (2) requires the application of state-of-the-art pollution control technology, known as best available control technology. CAA section 165, 42 U.S.C. 7475.

EPA has promulgated two largely identical sets of regulations to implement the PSD program. One set, at 40 CFR 52.21, contains EPA's own federal PSD program under which EPA is the permitting authority in states operating without an EPA-approved state program. The other set of regulations contain minimum requirements that state PSD programs

must meet to be approved by EPA as part of a SIP. 40 CFR 51.166. Over time, most states have received EPA approval for their PSD programs.

In order to comply with the established minimum requirements of the CAA, the State of Florida adopted its own PSD regulations on June 10 and October 28, 1981. The Florida PSD program was initially approved by EPA into the Florida SIP on December 22, 1983. 48 FR 52713. The approval transferred to the Florida Department of Environmental Protection (FDEP) the legal authority to process and issue PSD permits to sources in Florida that are required to obtain PSD permits.

One category of sources not covered by EPA's 1983 approval of Florida's PSD program was electric power plants. This was because, at the time, a separate Florida law known as the Florida Electrical Power Plant Siting Act (PPSA) required permits for electric power plants to be issued solely by the PPSA's Site Certification Board, rather than by FDEP. Such a conflict between the PPSA and Florida's PSD program created impediments to implementation and enforcement of the State's PSD program by FDEP for such power plants and precluded EPA's SIP-approval of Florida's PSD program as to these sources. As a result, for electric power plants subject to the PPSA, FDEP has been operating under either a partial or full delegation of authority to implement the federal PSD program since 1983, while various attempts to amend the PPSA to correct the conflict were made. Currently, FDEP is operating under a full delegation of authority to implement the federal PSD program for electric power plants, following further amendments to the PPSA in 1993.

In light of the 1993 amendments to the PPSA, the State has requested, through its February 3, 2006, NSR Reform SIP submittal, that EPA grant Florida SIP-approval to implement the State's PSD program for electric power plants subject to the PPSA. EPA is approving this specific request under section 110 of the Act because there is no longer a conflict between the State's PSD regulations and the PPSA and because FDEP now has adequate and effective procedures for full implementation of the State's PSD program for sources in Florida, including electric power plants.

##### **II. Analysis of State's Request**

The statutory amendments to the PPSA made by the Florida legislature in 1993 form the basis of the State's request for SIP-approval of its PSD program for sources subject to the PPSA.

Those amendments, which took effect on April 22, 1993, expressly provide that the “[D]epartment’s action on a federally required new source review or prevention of significant deterioration permit shall differ from the actions taken by the siting board regarding the certification if the federally approved state implementation plan requires such a different action to be taken by the department. Nothing in this part [the PPSA] shall be construed to displace the department’s authority as the final permitting entity under the federally approved permit program.” The amendments make clear that FDEP is the final permitting authority for PSD and new source review permits and can act in a manner different from the PPSA Siting Board if Florida’s PSD or new source review regulations require such a different action.

In addition, subsequent to the State’s February 3, 2006, NSR Reform SIP submittal, the PPSA was again amended (on June 19, 2006), to among other things, wholly extricate the PSD permitting process from the PPSA process. See, Florida Public Health Code 403.0872. Specifically, language requiring that a PPSA application for certification include “documents necessary for the department to render a decision on any permit required pursuant to any federally delegated or approved permit program” was deleted from the PPSA; language requiring that FDEP’s action on a PSD permit be based on the recommended order of the PPSA certification hearing was removed; and requirements that administrative procedures used in the issuance of PSD and operating permits follow the administrative procedures of the PPSA were also removed.

EPA has reviewed the 1993 and June 19, 2006 amendments to the PPSA and concludes that they provide FDEP the authority to fully implement and enforce Florida’s PSD program for electric power plants located within the State.

### III. Final Action

EPA is approving the aforementioned change to the Florida SIP. This approval means that Florida’s SIP-approved PSD program includes coverage of electric power plants in the State. EPA is not, in this rulemaking, taking any other action on Florida’s February 3, 2006 NSR Reform SIP submittal. EPA intends to take action on the remaining portions of Florida’s February 3, 2006, NSR Reform SIP submittal in a future rulemaking. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse

comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective July 24, 2007 without further notice unless the Agency receives adverse comments by June 25, 2007.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 24, 2007 and no further action will be taken on the proposed rule.

#### *Statutory and Executive Order Reviews*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

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. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 24, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not

postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

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

Dated: May 16, 2007.

**Russell L. Wright, Jr.,**

*Acting Regional Administrator, Region 4.*

■ 40 CFR part 52 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 K—Florida

■ 2. Section 52.530 is amended by revising paragraphs (a) and (b) to read as follows:

##### § 52.530 Significant deterioration of air quality.

(a) EPA approves the Florida Prevention of Significant Deterioration program, as incorporated into this chapter, for power plants subject to the Florida Power Plant Siting Act.

(b) [Reserved]

\* \* \* \* \*

[FR Doc. E7-10061 Filed 5-24-07; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[EPA-HQ-SFUND-1989-0011; FRL-8317-5]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of partial deletion of the rocky flats plant from the national priorities list.

**SUMMARY:** The United States Environmental Protection Agency (EPA) Region 8 announces the deletion of the Peripheral Operable Unit (OU) of the Department of Energy (DOE) Rocky Flats Plant and Operable Unit 3 (OU 3), also referred to as the Offsite Areas, encompassing approximately 25,413 acres, from the National Priorities List

(NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Rocky Flats Plant means the property owned by the United States Government, also known as Rocky Flats, Rocky Flats Site, or Rocky Flats Environmental Technology Site (RFETS) as shown in figure 1. The Rocky Flats Plant is divided into the Central and Peripheral Operable Units (Figure 2) which contain 1,308 and 4,933 acres, respectively, and OU 3 (Figure 3) which contains approximately 20,480 acres. The 3 referenced figures are available in the <http://www.regulations.gov> index identified by Docket ID no. EPA-HQ-SFUND-1989-0011.

EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), have determined that the Peripheral OU of the Rocky Flats Plant and OU 3 (Offsite Areas) poses no significant threat to public health or the environment and, therefore, no further remedial measures pursuant to CERCLA are appropriate.

This partial deletion pertains to the surface media (soil, surface water, sediment) and subsurface media, including groundwater, within the Peripheral OU and OU 3 of the Rocky Flats Plant. The Central OU will remain on the NPL.

**DATES:** This partial deletion of the Peripheral OU and OU 3 is effective on May 25, 2007.

**FOR FURTHER INFORMATION CONTACT:** Rob Henneke, Community Involvement Coordinator (8OC), U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202-1129; *telephone number:* 1-800-227-8917 or 303-312-6734, *fax number:* 303-312-7150; *e-mail address:* [henneke.rob@epa.gov](mailto:henneke.rob@epa.gov).

**SUPPLEMENTARY INFORMATION:** The Rocky Flats Plant is a DOE facility owned by the United States. Rocky Flats is located in the Denver metropolitan area, approximately sixteen miles northwest of Denver, Colorado, and ten miles south of Boulder, Colorado. Nearby communities include the Cities of Arvada, Broomfield, and Westminster, Colorado. The majority of the Site is located in Jefferson County, with a small portion located in Boulder County, Colorado.

Two OUs are present within the boundaries of the Site (the Peripheral OU and the Central OU), while OU 3

(Offsite Areas) encompasses property north, south, and primarily east of the Peripheral and Central OUs. This partial deletion pertains to the surface media (soil, surface water, sediment) and subsurface media, including groundwater, within the Peripheral OU and OU 3. The Central OU is not included within this partial deletion action and will remain on the NPL.

On March 13, 2007, EPA published a Notice of Intent for Partial Deletion in the **Federal Register** (72 FR 11313) and local newspapers, announcing a thirty day public comment period, which proposed to delete the Peripheral OU and OU 3 from the NPL. Comments were received in the form of letters from CDPHE dated April 3, 2007 and from the City and County of Broomfield and City of Westminster, both April 12, 2007. The letters from the two cities were identical in terms of the comments each made. In all instances the state and the cities support the actions proposed in the notice of intent for partial deletion, however, the cities have other comments in their identical letters.

The following are comments from the City and County of Broomfield and City of Westminster regarding the points-of-compliance as summarized:

Broomfield/Westminster described that “this partial deletion pertains to the surface media (soil, surface water, sediment) and subsurface media, including groundwater, within the Peripheral OU and OU 3 of the Rocky Flats Plant. The point-of-compliance for the Central OU is located within the Peripheral OU. The partial deletion assumes all surface water leaving the Central OU flowing through the Peripheral OU will meet surface water quality standards at the site boundary. There is a potential for the drainages to become contaminated by contaminated surface water or contaminated sediment flowing through the drainages.”

Broomfield/Westminster also added that “language in the **Federal Register** states the Department of Energy (DOE) will be responsible for all future remedial actions required at the area deleted if future site conditions warrant such actions. We support the language in the **Federal Register**. Our concern is the Department of Energy will only be evaluating surface water quality for uranium, plutonium, and americium as it flows from the Central OU. Other potential analytes that could be considered contaminants will not be evaluated to determine potential impacts to surface water or the drainages within the Peripheral OU.”

In the Responsiveness Summary, EPA explained that DOE is required to evaluate uranium, plutonium and

americium at five locations: The terminus of the A-series ponds (GS11 at the outfall of terminal pond A-4); the terminus of the B-series ponds (GS08 at the outfall of terminal pond B-5); the outfall of terminal pond C-2 (GS31), all of which are in the Central OU (DOE retained land); where Woman Creek meets Indiana (GS01); and where Walnut Creek meets Indiana (GS03). Prior to any release from the terminal ponds DOE is required to take pre-discharge samples. These samples include the three radionuclides mentioned above as well as nitrates. Based on extensive sampling throughout the life of the cleanup project these are the only constituents requiring ongoing evaluation at these locations. We have not found other constituents in the surface water at levels that exceed cleanup standards. Moreover, the Comprehensive Risk Assessment for Human Health and Ecological risk determined that the Peripheral OU is suitable for all uses. Therefore, monitoring of additional constituents is not needed in the Peripheral OU in order to protect human health and the environment.

Broomfield/Westminster “are concerned that previous closure documents did not address how the points-of compliance would be secured and controlled if they are not in an area located within DOE’s jurisdiction. It is very important to us, as a downstream community, to ensure the integrity of the monitoring stations within the deleted area are maintained and secured.”

In the Responsiveness Summary, EPA explained that the CAD/ROD requires that DOE retain points-of-compliance in surface water at discharge points from the three terminal ponds (A-4, B-5 and C-2), as well as at the points-of-compliance near Indiana Street. DOE’s operation and maintenance responsibilities require that the monitors remain secure and in working order. A feature of the compliance

monitoring system is that automatic alerts are sent to DOE personnel who are responsible for operation and maintenance of the monitors anytime there is a malfunction with the equipment. Because of this feature, problems with the monitors are immediately identified and corrected. As a part of operation and maintenance activities, the Parties will determine if additional security measures to protect these monitoring locations are needed.

Broomfield/Westminster “believe the protection of the monitoring stations within the proposed deleted area is a significant and valid concern because there were no institutional controls identified to protect the only enforceable monitoring stations at the site. EPA should be responsive and proactive and identify how these stations will be controlled and protected to prevent access to the general public. It is not good management to develop a protocol to protect the monitoring stations after their integrity has been jeopardized.”

In the Responsiveness Summary, EPA agrees that protection of the monitoring stations at the site is important. Security of these monitoring stations has not been a problem in the past. The DOE, State, and EPA agree to review any future changes to the current uses and activities that could jeopardize the integrity of the monitors. Since DOE personnel receive automatic alerts whenever there are performance problems with the compliance monitors, implementation of other security measures is not necessary. The purpose of these monitors is to take samples during run-off events and the likelihood of tampering with the monitors during these events is less than the chances of failure occurring due to equipment break down. In either case, DOE personnel will be notified immediately and steps taken to correct the problems. Addition of security measures as suggested by Broomfield and Westminster will not add appreciably to

the reliability of the monitors to take samples when flow events dictate.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Any site deleted from the NPL remains eligible for Fund-financed actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

#### Lists of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 16, 2007.

**Robert E. Roberts,**  
*Regional Administrator, Region 8.*

■ For the reasons set forth in the preamble title 40 part 300 of the Code of Federal Regulations is amended as follows.

#### PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

#### Appendix B—[Amended]

■ 2. Table 2 of appendix B to part 300 is amended by revising the entry for “Rocky Flats Plant (USDOE)” by adding a note “P” so that it reads as follows:

#### Appendix B to Part 300—National Priorities List

TABLE 2.—FEDERAL FACILITIES SECTION

| State | Site name                 | City/county                    | Notes <sup>a</sup> |
|-------|---------------------------|--------------------------------|--------------------|
| CO    | Rocky Flats Plant (USDOE) | Jefferson and Boulder Counties | P                  |

<sup>a</sup> \* \* \*

P = Sites with partial deletion(s).

# Proposed Rules

Federal Register

Vol. 72, No. 101

Friday, May 25, 2007

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-28282; Directorate Identifier 2007-NM-068-AD]

RIN 2120-AA64

#### Airworthiness Directives; McDonnell Douglas Model 717-200 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 McDonnell Douglas Model 717-200 airplanes. This proposed AD would require installing in-line fuel float switch fuses and wire protection at the left, right, and center forward spars. This proposed AD results from a design review of the fuel tank systems. We are proposing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**DATES:** We must receive comments on this proposed AD by July 9, 2007.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.

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

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024), for the service information identified in this proposed AD.

#### FOR FURTHER INFORMATION CONTACT:

Samuel S. Lee, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5262; fax (562) 627-5210.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2007-28282; Directorate Identifier 2007-NM-068-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

##### Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management

Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

##### Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21-78, and subsequent Amendments 21-82 and 21-83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address

the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

#### Relevant Service Information

We have reviewed Boeing Service Bulletin 717–28–0014, dated March 20, 2007. The service bulletin describes procedures for installing in-line fuel level float switch fuses and wire protection at the left, right, and center forward spars. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

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

We have evaluated all pertinent information and identified an unsafe

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

#### Costs of Compliance

There are about 149 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

| Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|------------|-----------------------------|-------|-------------------|-------------------------------------|------------|
| 5 .....    | \$80                        | \$509 | \$909             | 117                                 | \$106,353  |

#### 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):

**McDonnell Douglas:** Docket No. FAA–2007–28282; Directorate Identifier 2007–NM–068–AD.

#### Comments Due Date

(a) The FAA must receive comments on this AD action by July 9, 2007.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to McDonnell Douglas Model 717–200 airplanes, certificated in any category, as identified in Boeing Service Bulletin 717–28–0014, dated March 20, 2007.

#### Unsafe Condition

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

#### Compliance

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

#### Fuse Installation

(f) Within 60 months after the effective date of this AD, install in-line fuel level float switch fuses and wire protection at the left, right, and center forward spars, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 717–28–0014, dated March 20, 2007.

#### Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on May 17, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. E7-10138 Filed 5-24-07; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-28283; Directorate  
Identifier 2006-NM-254-AD]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 737-600, -700, -700C, -800 and -900 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 737-600, -700, -700C, -800 and -900 series airplanes. This proposed AD would require a one-time general visual inspection of frames between body station (BS) 360 and BS 907 to determine if certain support brackets of the air conditioning (A/C) outlet extrusions are installed; medium- and high-frequency eddy current inspections for cracking of the frames around the attachment holes of the subject brackets; and repair if necessary. This proposed AD would also require installing new, improved fittings for all support brackets of the A/C outlet extrusions between BS 360 and BS 907. This proposed AD results from numerous reports of multiple cracks in the frames around the attachment holes of certain support brackets of the A/C outlet extrusions. We are proposing this AD to detect and correct frame cracking, which, if not corrected, could lead to a severed frame that, combined with cracking of the skin lap splice above stringer 10, could result in rapid decompression of the airplane.

**DATES:** We must receive comments on this proposed AD by July 9, 2007.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov>

and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.
- *Fax:* (202) 493-2251.
- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for the service information identified in this proposed AD.

#### FOR FURTHER INFORMATION CONTACT:

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

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2007-28283; Directorate Identifier 2006-NM-254-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

##### Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

##### Discussion

We have received numerous reports of multiple cracks in the frame around the attachment holes of certain support brackets of the air conditioning (A/C) outlet extrusions on Model 737-200, -300, -400, and -500 series airplanes. Investigation has revealed that the frame cracks occur due to fatigue caused by a combination of forward and aft loads from fuselage expansion, and down loads from fuselage deflection on the attached structure. The subject frame cracks radiate from one side of the attachment hole, nearest the frame flanges; further, frame cracks up to 0.6 inch long have also been found on the inboard flange of the body station (BS) 907 frame adjacent to the support bracket. With continued fatigue cycling, frame cracking, if not corrected, could lead to a severed frame that, combined with cracking of the skin lap splice above stringer 10, could result in rapid decompression of the airplane.

The subject area on Model 737-600, -700, -700C, -800 and -900 series airplanes is almost identical to that on the affected Model 737-200, -300, -400, and -500 series airplanes. Therefore, certain Model 737-600, -700, -700C, -800 and -900 series airplanes are subject to the unsafe condition revealed on the Model 737-200, -300, -400, and -500 series airplanes.

The inspection threshold specified for the Model 737-600, -700, -700C, -900, and -900 series airplanes is later than the total flight cycles accumulated by some Model 737-200, -300, -400, and -500 series airplanes with reported cracks. We have determined that this is acceptable based on growth rate and cracking pattern of the cracks.

##### Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737-25-1544, dated October 4, 2006. The service bulletin describes procedures for doing a general visual inspection (GVI) of the frames between BS 360 and BS 907 to identify support brackets of the A/C outlet extrusions that have a two-rivet attachment fitting. The service bulletin also describes procedures for doing medium- and high-frequency eddy current (MFEC and HFEC) inspections for cracking of the frames around the attachment holes of the identified

support brackets. The service bulletin also describes frame repair, if necessary, which includes installing reinforcing repair angles. The service bulletin also describes procedures for installing new, improved support fittings for all A/C outlet extrusions between BS 360 and BS 907. 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 of Purpose of GVI

Operators should note that, although the service bulletin indicates that the GVI is part of the procedure to detect cracking in the areas previously described, the primary intent of the GVI is to determine which support brackets between BS 360 and BS 907 are attached to the airframe with two rivets. Only those support brackets are subject to the inspections for cracking specified by the service bulletin. Therefore, this proposed AD would require a GVI to identify those support brackets between BS 360 and BS 907 that are attached to the airframe with two rivets.

#### Related Rulemaking

This unsafe condition may also exist in Boeing Model 737–200, –300, –400, and –500 series airplanes. Therefore, we have issued AD 2006–26–09, Amendment 39–14867 (72 FR 252,

January 4, 2007), which has similar requirements, to address the unsafe condition in those airplane models. That unsafe condition, if uncorrected, could result in a severed frame that, combined with existing multi-site damage at the stringer 10 lap splice, could result in rapid decompression of the airplane.

#### Costs of Compliance

There are about 1,679 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 626 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of \$80 per work hour. Operators should note that special cold working tools and sleeves will be needed if any repair is required, which may increase costs.

#### ESTIMATED COSTS

| Action                         | Work hours                | Parts                          | Cost per airplane               | Fleet cost          |
|--------------------------------|---------------------------|--------------------------------|---------------------------------|---------------------|
| General visual inspection ..   | 1 .....                   | No parts required .....        | \$80 .....                      | \$50,080.           |
| MFEC and HFEC inspections.     | Between 170 and 216 ..... | No parts required .....        | Between \$13,600 and \$17,280.  | Up to \$10,817,280. |
| Replace support fittings ..... | Between 258 and 346 ..... | Between \$56,095 and \$81,339. | Between \$76,735 and \$109,019. | Up to \$68,245,894. |

#### 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–2007–28283; Directorate Identifier 2006–NM–254–AD.

#### Comments Due Date

(a) The FAA must receive comments on this AD action by July 9, 2007.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes; certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–25–1544, dated October 4, 2006.

#### Unsafe Condition

(d) This AD results from numerous reports of multiple cracks in the frame around the attachment holes of the support bracket of the air conditioning (A/C) outlet extrusion. We are issuing this AD to detect and correct

frame cracking, which, if not corrected, could lead to a severed frame that, combined with cracking of the skin lap splice above stringer 10, could result in rapid decompression of the airplane.

#### Compliance

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

#### Service Bulletin Reference

(f) The term "service bulletin," as used in this AD, means Boeing Special Attention Service Bulletin 737-25-1544, dated October 4, 2006.

#### Inspections

(g) Before the accumulation of 36,000 total flight cycles, or within 72 months after the effective date of this AD, whichever occurs later: Do a general visual inspection to determine if the support bracket of any A/C outlet extrusion between body station (BS) 360 and BS 907 has a two-rivet attachment fitting, then do the actions described by paragraph (g)(1) and (g)(2) of this AD; in accordance with part 2 of the accomplishment instructions of the service bulletin.

(1) For any subject support bracket not attached with a two-rivet attachment fitting, no further action is required by paragraph (g) of this AD.

(2) For any subject support bracket having a two-rivet attachment fitting, do medium- and high-frequency eddy current inspections for cracking of the frame around the attachment holes of the support bracket. If any cracking is discovered, before further flight, repair the cracking in accordance with part 3 of the accomplishment instructions of the service bulletin.

#### Modification

(h) Before the accumulation of 36,000 total flight cycles, or within 72 months after the effective date of this AD, whichever occurs later, replace the support fittings of all A/C outlet extrusions between BS 360 and BS 907 with new, improved support fittings, in accordance with part 4 of the accomplishment instructions of the service bulletin.

#### Alternative Methods of Compliance (AMOCs)

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

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

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

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

Issued in Renton, Washington, on May 15, 2007.

**Ali Bahrani,**

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

[FR Doc. E7-10137 Filed 5-24-07; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. **FAA-2007-28281**; Directorate Identifier **2006-NM-238-AD**]

**RIN 2120-AA64**

#### Airworthiness Directives; Boeing Model 767 Airplanes

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

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

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 767 airplanes. This proposed AD would require repetitive replacement of the internal electrical feed-through connectors of the main fuel tank boost pumps. This proposed AD results from a report of cracking in the epoxy potting compound on the internal feed-through connector of the fuel boost pump in the area of the soldered wire connector lugs. We are proposing this AD to prevent a hazardous electrical path from the dry side to the wet side of the fuel boost pump through a cracked feed-through connector, which could create an ignition source on the wet side of the fuel boost pump and lead to subsequent explosion of the fuel tank.

**DATES:** We must receive comments on this proposed AD by July 9, 2007.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD.

- **DOT Docket Web site:** Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- **Government-wide rulemaking Web site:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- **Mail:** Docket Management Facility, U.S. Department of Transportation, 400

Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.

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

- **Hand Delivery:** Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for the service information identified in this proposed AD.

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

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA-2007-28281; Directorate Identifier 2006-NM-238-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

##### Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT

street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

### Discussion

We have received a report that, after close examination of the internal electrical circuit of the fuel boost pump, supplier tests revealed cracking in the epoxy potting compound on the feed-through connector in the area of the soldered wire connector lugs of several pumps. This condition, if not corrected, could allow a hazardous electrical path from the dry side to the wet side of the fuel boost pump through a cracked feed-through connector, which could create an ignition source on the wet side of the fuel boost pump and lead to subsequent explosion of the fuel tank.

### Relevant Service Information

We have reviewed Boeing Alert Service Bulletins 767-28A0095 (for Model 767-200, -300, and -300F airplanes) and 767-28A0096 (for Model 767-400ER airplanes), both dated September 15, 2005, which describe procedures for repetitively replacing the internal electrical feed-through connectors of the main fuel tank boost pumps with new feed-through connectors. This may be accomplished by replacing the fuel boost pump with a new fuel boost pump or with a modified and re-identified fuel boost pump having a new feed-through connector installed.

The alert service bulletins refer to Hamilton Sundstrand Alert Service Bulletin 5006003-28-A4, dated May 9, 2005, as an additional source of service information for replacing the feed-through connector of the fuel boost pump.

### 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 Boeing service information described previously.

### Interim Action

We consider this proposed AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

### Costs of Compliance

There are about 941 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 414 airplanes of U.S. registry, at an average labor rate of \$80 per work hour.

The proposed fuel boost pump replacement would take about 3 work hours per boost pump (4 boost pumps per airplane) or up to 12 work hours per airplane, per replacement cycle. The parts cost for replacement fuel boost pumps would be offset by returning the existing fuel boost pumps to the manufacturer for rework. Based on these figures, the estimated cost of the proposed AD for U.S. operators to replace the fuel boost pumps is up to \$397,440, or up to \$960 per airplane, per replacement cycle.

If done, the proposed feed-through connector replacement would take about 3 work hours per connector (4 connectors per airplane) or up to 12 work hours per airplane, per replacement cycle. Required parts would cost \$691 per connector (up to \$2,764 per airplane). Based on these figures, the estimated cost of the proposed AD for U.S. operators to replace the feed-through connectors is up to \$1,541,736, or up to \$3,724 per airplane, per replacement cycle.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Boeing:** FAA-2007-28281; Directorate Identifier 2006-NM-238-AD.

#### Comments Due Date

- (a) The FAA must receive comments on this AD action by July 9, 2007.

#### Affected ADs

- (b) None.

#### Applicability

- (c) This AD applies to all Boeing Model 767-200, -300, -300F, and -400ER series airplanes, certificated in any category.

#### Unsafe Condition

- (d) This AD results from a report of cracking in the epoxy potting compound on the internal feed-through connector of the fuel boost pump in the area of the soldered wire connector lugs. We are issuing this AD to prevent a hazardous electrical path from the dry side to the wet side of the fuel boost pump through a cracked feed-through connector, which could create an ignition source on the wet side of the fuel boost pump and lead to subsequent explosion of the fuel tank.

## 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.

## Compliance Times

(f) At the later of the times specified in paragraphs (f)(1) and (f)(2) of this AD, do the actions specified in paragraph (g) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767-28A0095 or 767-28A0096; both dated September 15, 2005; as applicable.

(1) Within 96 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or before the accumulation of 40,000 total flight hours, whichever comes first.

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

## Replacement of Fuel Boost Pump Feed-Through Connector

(g) At the compliance time specified in paragraph (f) of this AD: Replace the feed-through connector of each fuel boost pump as described in paragraph (g)(1) or (g)(2) of this AD. Repeat this replacement thereafter at intervals not to exceed 40,000 flight hours or 96 months, whichever comes first.

(1) Replace the fuel boost pump with a new fuel boost pump.

(2) Replace the fuel boost pump with a modified and re-identified fuel boost pump having a new feed-through connector installed.

**Note 1:** Boeing Alert Service Bulletins 767-28A0095 and 767-28A0096 refer to Hamilton Sundstrand Alert Service Bulletin 5006003-28-A4, dated May 9, 2005, as a source of service information for replacing the feed-through connector and re-identifying the fuel boost pump.

## Parts Installation

(h) As of the effective date of this AD, no person may install a fuel boost pump on any airplane, unless that pump meets the requirements of paragraph (g) of this AD.

## Alternative Methods of Compliance (AMOCs)

(i)(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) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on May 17, 2007.

**Ali Bahrami,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7-10105 Filed 5-24-07; 8:45 am]

**BILLING CODE 4910-13-P**

## POSTAL REGULATORY COMMISSION

[Docket No. RM2007-1; Order No. 15]

## 39 CFR Part 3001

## Administrative Practice and Procedure, Postal Service

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Commission has received general comments on the development of regulations implementing new statutory provisions pertaining to market dominant and competitive postal products. It now seeks more specific comments on the same topic. The Commission anticipates using these comments as guidance for drafting proposed regulations.

**DATES:** Initial comments due June 18, 2007; reply comments due July 3, 2007.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

## FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, 202-789-6820 and [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

## SUPPLEMENTARY INFORMATION:

## Regulatory History

72 FR 5230 (February 5, 2007).

## I. Introduction

Thirty sets of initial comments were filed in response to Order No. 2, which afforded interested persons an opportunity to comment on how the Commission can best fulfill its responsibilities under the Postal Accountability and Enhancement Act (PAEA), Public Law 109-435, 120 Stat. 3198 (December 20, 2006), regarding establishing rate regulation for market dominant products and competitive products.<sup>1</sup> Twenty-one sets of reply comments were also filed. The Commission appreciates those thoughtful and comprehensive comments and has found them very useful. For the most part, the comments are general in nature, taking a more global view of the type of regulations to be implemented, e.g., endorsing a light-handed approach, or advocating that competitive products make the maximum possible contribution to institutional costs,<sup>2</sup> rather than

suggesting specific proposals to implement the PAEA.<sup>3</sup>

In considering the regulations to be issued pursuant to sections 3622 and 3633 of the Postal Reorganization Act, as amended by the PAEA, the Commission concludes that the record would be enhanced by affording interested persons an opportunity to comment more specifically on potential ways to implement the statutory language prior to issuing proposed regulations. Therefore, the Commission is issuing this second advance notice of proposed rulemaking inviting interested persons to comment on specific issues central to implementing the necessary regulations. Interested persons are invited to comment on all (or any) of the following issues. Parties are encouraged to explain the basis for their position. The explanation need not be lengthy but should include whatever support the commenter believes to be relevant. Furthermore, although section III, below, addresses competitive products, persons primarily interested in market dominant products may wish to comment on common issues, e.g., section III, item 9, concerning the term "product." Comments are due June 18, 2007. Reply comments are due July 3, 2007.

Following this round of comments, the Commission intends to issue a formal notice of proposed rulemaking setting forth specific rules applicable to rate changes for market dominant and competitive products. Interested persons will have an opportunity to comment on those proposed rules. It is the Commission's current expectation that the final rules on these topics will be issued before the end of October, 2007.

## II. Regulations Concerning Market Dominant Products

1. In Appendix C of its reply comments, the Postal Service provides a series of examples to illustrate its proposal for calculations that would

Alliance of Nonprofit Mailers, National Association of Presort Mailers and National Postal Policy Council on Advance Notice of Proposed Rulemaking, April 6, 2007, at 4; Initial Comments of Time Warner Inc. in Response to Commission Order No. 2, April 6, 2007, at 9; Comments of United Parcel Service in Response to Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking, April 6, 2007, at 5.

<sup>3</sup> Some commenters did suggest that provisions of the PAEA be defined in certain ways. See, e.g., Reply Comments of the United States Postal Service, May 7, 2007, at 3-10, and Appendix C; Initial Comments of Pitney Bowes Inc. in Response to Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking, April 6, 2007, at 3-4, 17-20, 35-36; and Comments of the Parcel Shippers Association, April 6, 2007, at 24-26.

<sup>1</sup> PRC Order No. 2, Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking, Docket No. RM2007-1, January 30, 2007.

<sup>2</sup> See, e.g., Initial Comments of the United States Postal Service, April 6, 2007, at 4-5; Comments of

ensure compliance with the price cap defined in sections 3622(d)(1)(A) and (2)(A). In part C of the appendix, the Postal Service describes its proposed method of calculating the CPI cap limitation. The cap would be equal to the difference between the most recently available monthly CPI and the monthly CPI for the same month of the previous year, divided by the monthly CPI for the previous year. The same result is

reached by dividing the most recently available monthly CPI by the monthly CPI for the same month of the previous year and then subtracting one from the quotient.

This point-to-point approach may be contrasted with an alternative that would compare aggregated monthly CPI figures instead of those of a single month. For example, the most recently available monthly CPI could be

averaged with the previous 11 monthly CPI values. This 12-month average could then be compared to the average for the previous 12 months in the same way that the single-month figures are in the Postal Service's proposal. Figures 1 and 2 show the cap as it would be calculated under both methods for each month in 2005 and 2006, respectively.

Figure 1.

Comparison of 12-month Moving Average and Point to Point  
Percent Change in CPI-U (2005)

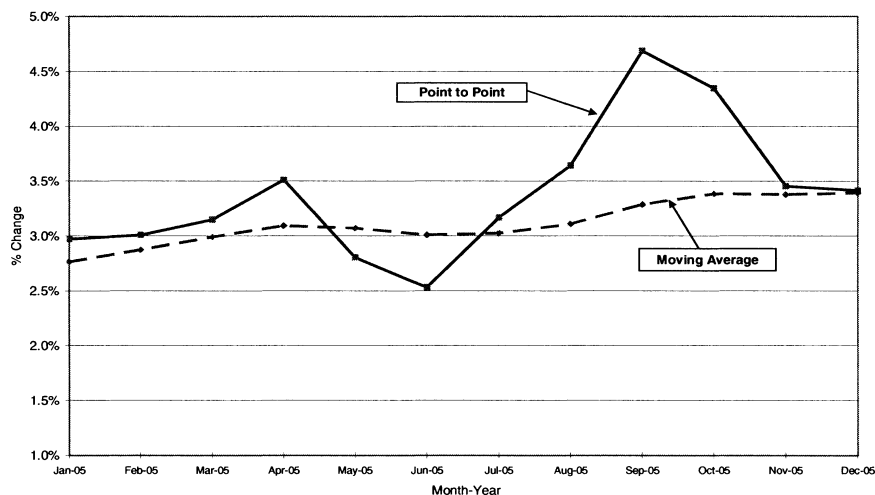
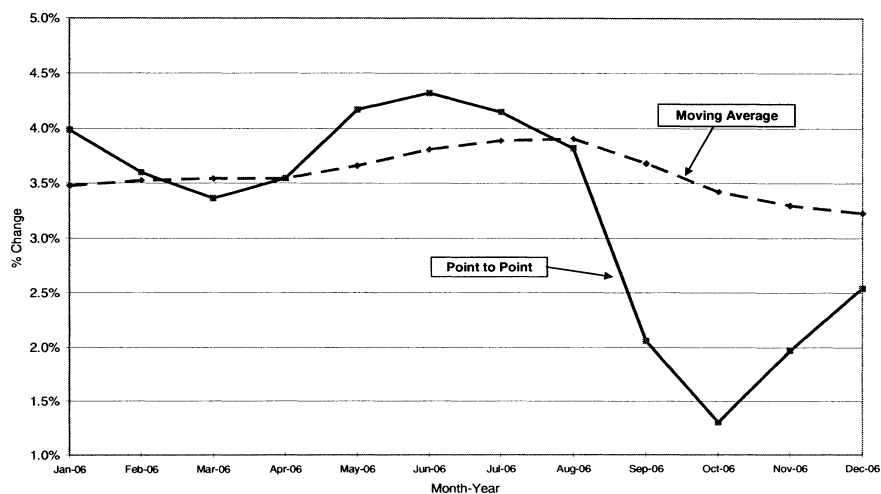


Figure 2.

Comparison of 12-month Moving Average and Point to Point  
Percent Change in CPI-U (2006)



As the graphs show, the results of the point-to-point method exhibit a greater variation based on the month that is selected. The parties are requested to comment on the merits of each method

and may offer additional alternatives. Please discuss how each method conforms to the language in section 3622(d), as well as how each method comports with the objectives in section

3622(b) and the factors in section 3622(c).

2. Appendix C of the Postal Service reply comments provides a series of examples to illustrate its proposal for

calculations that would ensure compliance with the price cap defined in sections 3622(d)(1)(A) and (2)(A). Part B of the appendix describes the Postal Service's proposed method of calculating the annual change in rates to which the CPI cap shall be applied.

The discussion begins by proposing principles ("Standards 1 and 2") that the measure of the change in rates should satisfy. It concludes that any fixed volume weighting system will satisfy those principles. After explaining the practical impediment to the use of the ideal weights, it describes the weaknesses of two potential methods of measuring the base rates.

The Postal Service proposes to use the most recent 12 months of available data to establish the volume weights and to recalculate average revenue per piece by applying those weights to the current rates. The result would be considered the average base rate. The average new rate would then be calculated by applying the same weights to the new set of rates. The percentage difference between the average base (current) rate and the average new rate would be compared to the percentage change in CPI.

Parties are requested to comment on the method of calculating the annual change in rates under section 3622(d). Please discuss the strengths and weaknesses of the methods described by the Postal Service in Appendix C of its reply comments (and alternative methods, if desired) and how each method comports with the objectives in section 3622(b) and the factors in section 3622(c). Please include a discussion of how to treat an altered rate design, for example, one for which billing determinants do not exist, such as the new rates to be applied to Periodicals.

3. Section 3622(e) directs the Commission to "ensure that workshare discounts do not exceed the cost that the Postal Service avoids as a result of the workshare activity," except in certain specified situations. In the context of a Notice of Rate Adjustment for a class of mail—

a. What information and/or data are needed to allow the Commission to evaluate whether new workshare discounts are consistent with this standard?

b. What information and/or data are needed to allow the Commission to evaluate whether unchanged workshare discounts remain consistent with this standard?

c. What information and/or data are needed to allow the Commission to evaluate whether changed workshare

discounts remain consistent with this standard?

### III. Regulations Concerning Competitive Products

4. Subchapter II of title 39, 39 U.S.C. 3631–3634, sets forth the provisions applicable to competitive products, which initially are to consist of priority mail, expedited mail, bulk parcel post, bulk international mail, and mailgrams. § 3631(a).<sup>4</sup> A procedure must be established to allow for amending this list of competitive products.

Regarding section 3631—

a. What current mail matter is "priority mail"?

b. What current mail matter is "expedited mail"?

c. What current mail matter is "bulk parcel post"?

d. What current mail matter is "bulk international mail"?

e. What, if any, current mail matter is "mailgrams"?

f. To what does "mail classification schedule," as used in section 3631(c), refer?

5. Section 3632 authorizes the Governors to establish rates and classes of mail for competitive products in accordance with subchapter II of chapter 36 and regulations promulgated by the Commission under section 3633. The rates and classes shall be established in writing, accompanied by a statement of explanation and justification and the effective date of each rate or class. § 3632(b)(1).

Regarding section 3632—

a. What information is needed to support new rates of general applicability?

b. What information is needed to support new rates not of general applicability?

c. Is the information needed to support a rate decrease different from that needed to support a rate increase? Please elaborate.

d. What information is needed to support new classes of general applicability?

e. What information is needed to support new classes not of general applicability?

f. What criteria should be used to determine whether a rate or class is of general applicability or is not of general applicability in the Nation as a whole?

g. How should "any substantial region of the Nation" be defined?

6. Pursuant to section 3633(a), the Commission is required to promulgate

<sup>4</sup> Pursuant to section 3642, the Commission may change the list of competitive products under section 3631 and market dominant products under section 3621 by adding new products to or removing products from the lists, or transferring products between the lists.

regulations applicable to rates for competitive products to:

"(1) prohibit the subsidization of competitive products by market-dominant products;

(2) ensure that each competitive product covers its costs attributable; and

(3) ensure that all competitive products collectively cover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service."

Regarding section 3633—

a. What data should be filed periodically with the Commission to enable it to assess the Postal Service's compliance with subsection:

- i. (a)(1),
- ii. (a)(2), and
- iii. (a)(3)?

b. How frequently, *e.g.*, quarterly, annually, should such data be filed with the Commission?

c. Are existing data systems adequate to enable the Commission to assess the Postal Service's compliance with section 3633(a)? If not, what modifications would be necessary?

d. What is the appropriate standard for determining whether competitive products are being subsidized by market dominant products?

e. What standard should be applied to determine the appropriate share of institutional costs to be recovered collectively from competitive products?

f. Over what period of time should the standard identified in (e) be deemed valid?

g. Should the standard identified in (e) raise a rebuttable presumption of validity?

h. If return on investment (or assets) is used, what capital structure (assumed or otherwise) should be used for the Postal Service?

7. Section 3634 provides for an annual, assumed Federal income tax on the competitive products income. The amount of the assumed tax is to be transferred from the Competitive Products Fund to the Postal Service Fund.<sup>5</sup>

Regarding section 3634—

a. Is the assumed Federal income tax amount appropriately classified as an attributable cost?

b. On what basis should the assumed Federal income tax amount be reasonably assigned among competitive products?

<sup>5</sup> Pursuant to section 2011(h) the Secretary of the Treasury is charged with developing recommendations regarding, *inter alia*, rules for determining the assumed Federal income tax on competitive products income for any year. Following receipt of those recommendations, which are due not earlier than June 20, 2007 or later than December 19, 2007, the Commission will provide interested persons an opportunity to comment on the recommendations.

8. Section 3633(a)(2) requires each competitive product to cover its "costs attributable," which are defined as "the direct and indirect postal costs attributable to such product through reliably identified causal relationships." § 3631(b). The Commission has historically used attributable costs to develop recommended rates under the Postal Reorganization Act. Enactment of the PAEA raises issues concerning the need, if any, to modify the Commission's historic approach as well as the classification of costs arising under the PAEA.

Regarding the term "costs attributable"—

a. Identify any costs currently classified as attributable that, in light of PAEA, should be classified as institutional. The rationale for the proposed change should be explained.

b. Identify any costs currently classified as institutional that, in light of PAEA, should be classified as attributable. The rationale for the proposed change should be explained.

c. How should Retiree Health Benefit costs be classified?

9. The PAEA establishes a rate floor for each competitive product, *i.e.*, each competitive product must cover its attributable costs. § 3633(a)(2). Product is defined as "a postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied[.]" § 102(6).

Regarding the term "product"—

a. Is each International Customized Agreement a competitive product?

b. Is each Negotiated Service Agreement a product?

c. Is each special classification a product?

d. Is each class not of general applicability a product?

#### IV. Ordering Paragraphs

It is ordered:

1. Interested persons may submit comments on the questions contained herein on or before June 18, 2007.

2. Reply comments are due on or before July 3, 2007.

3. The Secretary shall arrange for publication of this Advance Notice in the **Federal Register**.

By the Commission.

Issued May 17, 2007.

Signed May 21, 2007.

**Steven W. Williams,**  
Secretary.

[FR Doc. E7-10095 Filed 5-24-07; 8:45 am]

BILLING CODE 7710-FW-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2006-0130-200714(b); FRL-8317-7]

#### Approval and Promulgation of Implementation Plans: State of Florida; Prevention of Significant Deterioration Requirements for Power Plants Subject to the Florida Power Plant Siting Act

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

**ACTION:** Proposed rule.

**SUMMARY:** On February 3, 2006, the State of Florida, through a State Implementation Plan (SIP) submittal addressing New Source Review Reform (NSR) requirements, requested that EPA grant it full approval to implement the State's Clean Air Act (CAA or Act) Prevention of Significant Deterioration program for electric power plants subject to the Florida Electrical Power Plant Siting Act. EPA is proposing to approve this specific request under section 110 of the Act. EPA intends to take action on all other portions of Florida's February 3, 2006, NSR Reform SIP submittal in a future rulemaking. In the Final Rules section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before June 25, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2006-0130, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: [Fortin.Kelly@EPA.gov](mailto:Fortin.Kelly@EPA.gov).

3. *Fax*: 404-562-9066.

4. *Mail*: "EPA-R04-OAR-2006-0130", Air Permits Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier*: Ms. Kelly Fortin, Air Permits Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Kelly Fortin, Air Permits Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9117. Ms. Fortin can also be reached via electronic mail at [fortin.kelly@epa.gov](mailto:fortin.kelly@epa.gov).

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: May 16, 2007.

**Russell L. Wright, Jr.,**

*Acting Regional Administrator, Region 4.*

[FR Doc. E7-10063 Filed 5-24-07; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[EPA-HQ-OAR-2006-0859; FRL-8318-5]

RIN 2060-AN85

#### Risk and Technology Review, Phase II, Group 2

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

**ACTION:** Advanced Notice of Proposed Rulemaking (ANPRM); extension of public comment period.

**SUMMARY:** EPA is announcing that the comment period for the advanced notice for proposed rulemaking for the Risk and Technology Review, Phase II, Group 2 published on March 29, 2007, is being extended until June 29, 2007, for all source categories except Petroleum Refineries.

**DATES:** *Comments.* The comment period has been extended from May 29, 2007. Comments must now be received on or before June 29, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0859, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov), Attention Docket ID No. EPA-HQ-OAR-2006-0859.
- *Facsimile:* (202) 566-1741, Attention Docket ID No. EPA-HQ-OAR-2006-0859.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center (6102T), Attention E-Docket ID No. EPA-HQ-OAR-2006-0859, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center (6102T), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0859. As described further in section VII of the advanced notice of proposed rulemaking, specific data change suggestions need to be accompanied by supporting documentation that includes a description of any assumptions used and any technical information and/or data that you used. We strongly urge that all data revision comments be submitted in the form of updated Microsoft(r) Access files, which are provided on the <http://www.epa.gov/ttn/atw/risk/rtrpg.html> webpage. Data in the form of written descriptions or other electronic file formats will be difficult for EPA to translate into the necessary format in a timely manner. Additionally, placing the burden on EPA to interpret data submitted in other

formats increases the possibility of misinterpretation or errors. 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. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, U.S. EPA (C404-02), Attention Docket ID No. EPA-HQ-OAR-2006-0859, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [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 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 will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:**

Paula Hirtz, Office and Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143-01), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541-2618; fax number: (919) 541-0246; and e-mail address: [hirtz.paula@epa.gov](mailto:hirtz.paula@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* Entities potentially affected by this action include facilities containing any one or more of the 22 major source categories subject to the 12 national emission standards for hazardous air pollutants (NESHAP) (or commonly referred to maximum achievable control technology (MACT) standards) listed in Table 1. The Petroleum Refineries source category is affected by this action, but will not receive an extension of the comment period due to the court-ordered deadline of August 22, 2007, for proposal of the technology review. This action does not affect area sources, as these NESHAP do not apply to area sources. Industries regulated by these MACT are classified by the North American Industry Classification System (NAICS) codes shown in Table 1. In addition, a classification system of MACT codes has been developed and is used in the 2002 National Emissions Inventory to identify processes included in each MACT source category. The MACT codes for the 22 source categories addressed in this notice are also displayed in Table 1.

TABLE 1.—MACT STANDARDS, SOURCE CATEGORIES, AND CORRESPONDING NAICS AND MACT CODES ADDRESSED BY THIS ANPRM

| MACT standard/source category name                  | NAICS code | MACT code |
|-----------------------------------------------------|------------|-----------|
| Mineral Wool Production .....                       | 327993     | 0409      |
| Aerospace Manufacturing and Rework Facilities ..... | 336411     | 0701      |
| Marine Tank Vessel Loading Operations .....         | 4883       | 0603      |
| Natural Gas Transmission and Storage .....          | 486210     | 0504      |
| Oil and Natural Gas Production .....                | 211        | 0501      |
| Petroleum Refineries .....                          | 32411      | 0503      |
| Pharmaceuticals Production .....                    | 3254       | 1201      |

TABLE 1.—MACT STANDARDS, SOURCE CATEGORIES, AND CORRESPONDING NAICS AND MACT CODES ADDRESSED BY THIS ANPRM—Continued

| MACT standard/source category name                                   | NAICS code | MACT code |
|----------------------------------------------------------------------|------------|-----------|
| Group I Polymers and Resins:                                         |            |           |
| Epichlorohydrin Elastomers Production .....                          | 325212     | 1311      |
| Hypalon™ Production .....                                            | 325212     | 1315      |
| Nitrile Butadiene Rubber Production .....                            | 325212     | 1321      |
| Polybutadiene Rubber Production .....                                | 325212     | 1325      |
| Styrene-Butadiene Rubber and Latex Production .....                  | 325212     | 1339      |
| Group IV Polymers and Resins:                                        |            |           |
| Acrylic-Butadiene-Styrene Production .....                           | 325211     | 1302      |
| Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production ..... | 325211     | 1317      |
| Methyl Methacrylate-Butadiene-Styrene Production .....               | 325211     | 1318      |
| Nitrile Resins Production .....                                      | 325211     | 1342      |
| Polyethylene Terephthalate Production .....                          | 325211     | 1328      |
| Polystyrene Production .....                                         | 325211     | 1331      |
| Styrene-Acrylonitrile Production .....                               | 325211     | 1338      |
| Primary Aluminum Reduction Plants .....                              | 331312     | 0201      |
| Printing and Publishing Industry .....                               | 32311      | 0714      |
| Shipbuilding and Ship Repair Operations .....                        | 336611     | 0715      |

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's notice will be available on the WWW through the Technology Transfer Network (TTN). Following the Assistant Administrator's signature, a copy of this notice will be posted on TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. Additional information is available on the Risk and Technology Review Phase II webpage at <http://www.epa.gov/ttn/atw/risk/rtrpg.html>. This information includes source category descriptions and detailed emissions and other data that will be used as model inputs.

#### Comment Period

We received 15 requests to extend the public comment period on the advance notice of proposed rulemaking for the Risk and Technology Review, Phase II, Group 2 (72 FR 14734, March 29, 2007). We are extending the comment period to June 29, 2007, for all source categories except Petroleum Refineries. EPA is under a court-ordered deadline to propose action on the technology review for this source category by August 22, 2007. All comments for Petroleum Refineries must be received by May 29, 2007. Public comments must be received on or before June 29, 2007 for all other source categories.

#### How can I get copies of the proposed amendments and other related information?

EPA has established the official public docket for the proposed rulemaking under Docket ID No. EPA-

HQ-OAR-2006-0859. Information on how to access the docket is presented above in the **ADDRESSES** section. In addition, information may be obtained from the Web page for the proposed rulemaking at: <http://www.epa.gov/ttn/atw/risk/rtrpg.html>.

Dated: May 18, 2007.

**William L. Wehrum,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. E7-10128 Filed 5-24-07; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### 45 CFR Part 5b

[CMS-0029-P]

RIN 0938-A069

#### Exemption of Certain Systems of Records Under the Privacy Act

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would exempt the four system of records from subsections (c)(3), (d)(1) through (d)(4), (e)(4)(G) and (H), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2): The Automated Survey Processing Environment (ASPEN) Complaint/Incidents Tracking System ("ACTS"), HHS/CMS, System No. 09-70-0565; the Health Insurance Portability and Accountability Act (HIPAA) Information Tracking System ("HITS"), HHS/CMS, System No. 09-70-0544; the Organ

Procurement Organizations System ("OPOS"), HHS/CMS, System No. 09-70-0575; and the Fraud Investigation Database ("FID"), HHS/CMS, System No. 09-70-0527.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 24, 2007.

**ADDRESSES:** In commenting, please refer to file code CMS-0029-P. Because of staff and resource limitations, we cannot accept comments by facsimile (Fax) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address Only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-0029-P, P.O. Box 8017, Baltimore, MD 21244-8017.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address Only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-0029-P, Mail Stop C4-26-05,

7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members. Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

**FOR FURTHER INFORMATION CONTACT:** Katherine Brewer, (410) 786-7235.

**SUPPLEMENTARY INFORMATION:**

*Submitting Comments:* We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS-0029-P and the specific "issue identifier" that precedes the section on which you choose to comment.

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30

a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

**I. Background**

The four SORs that are the subject of this proposed rule are as follows:

*A. The Automated Survey Processing Environment Complaints/Incidents Tracking System ("ACTS"), HHS/CMS, System No. 09-70-0565.*

In the May 23, 2006 **Federal Register** (71 FR 29643), we published a notice of a modified or altered SOR titled Automated Survey Processing Environment (ASPEN) Complaint/Incidents Tracking System ("ACTS"), HHS/CMS, System No. 09-70-0565. ACTS is a Windows-based program whose primary purpose is to track and process complaints and incidents reported against health care facilities regulated by CMS and State agencies. These facilities include Clinical Laboratory Improvement Amendment (CLIA)-certified laboratories, skilled nursing facilities (SNFs), nursing facilities, hospitals, home health agencies, end stage renal disease (ESRD) facilities, hospices, rural health clinics, comprehensive outpatient rehabilitation facilities (CORFs), outpatient physical therapy services, community mental health centers, ambulatory surgical centers, suppliers of portable x-ray services, and intermediate care facilities for persons with mental retardation. ACTS is designed to manage all operations associated with complaint and incident tracking and processing, from initial intake and investigation through the final disposition.

*B. The Health Insurance Portability and Accountability Act (HIPAA) Information Tracking System ("HITS"), HHS/CMS, System No. 09-70-0544.*

In the July 6, 2005 issue of the **Federal Register** (70 FR 38944), we published a notice of a new SOR titled Health Insurance Portability and Accountability Act (HIPAA) Information Tracking System ("HITS"), HHS/CMS, System No. 09-70-0544. In general, HITS consists of an electronic repository of information, documents, and supplementary paper document files. HITS' purpose is to store the results of all of our investigations, to determine if there were violations as charged in the original complaint, to investigate complaints that appear to be in violation of the Transactions and Code Sets, Security, and Unique Identifier provisions of HIPAA, to refer violations to law enforcement entities as necessary, and to maintain and retrieve

records of the results of the complaint investigations.

Investigative files maintained in HITS are received either as electronic documents or as paper records that are compiled for law enforcement purposes.

*C. The Organ Procurement Organizations System ("OPOS"), HHS/CMS, System No. 09-70-0575.*

In the May 22, 2006 issue of the **Federal Register** (71 FR 29336), we published a notice of a new SOR titled Organ Procurement Organizations System ("OPOS"), HHS/CMS, System No. 09-70-0575. OPOS is a Windows-based program whose purpose is to track and process complaints and incidents reported against Organ Procurement Organizations. Section 701 of the Organ Procurement Organization System Certification Act of 2000 (Pub. L. 106-505) gave us the authority to collect and maintain individually identifiable information pertaining to complaint allegations filed by a complainant, beneficiary, or provider of services against Organ Procurement Organizations; this information includes information gathered during all aspects of an investigation, including initial complaints, findings, results, disposition, and relevant correspondence.

*D. The Fraud Investigation Database ("FID"), HHS/CMS, System No. 09-70-0527*

In the October 28, 2002 **Federal Register** (70 FR 65795), we published a notice of a modified or altered system of records (SOR) that changed the name of a SOR entitled "CMS Utilization Review Investigatory Files, System No. 09-70-0527" to be the "CMS Fraud Investigation Database (FID)." The FID system contains the name, work address, work phone number, social security number, Unique Provider Identification Number (UPIN), and other identifying demographics of individuals alleged to have violated provisions of the Social Security Act ("the Act") related to Medicare, Medicaid, HMO/Managed Care, and the Children's Health Insurance Program. The FID system also contains the contact information and other identifying demographics of individuals alleged to have violated other criminal or civil statutes connected with the Act and the Act's programs. Here, individuals are persons alleged to have abused the Act's programs. (For example, an individual could be a person alleged to have rendered unnecessary services to Medicare beneficiaries or Medicaid recipients, over-used services, or engaged in improper billing.) They are

persons whose activities have provided a substantial basis for criminal or civil prosecution, or who are identified as defendants in criminal prosecution cases.

## II. Provisions of the Proposed Rule

We propose to exempt the ACTS, HITS, OPOS, and FIS systems of records from subsection (c)(3), (d)(1) through (d)(4), (e)(4)(G) and (H), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(k)(2). The ACTS, HITS, OPOS, and FIS systems of records are exempted from the following subsections for the reasons set forth below:

- Subsection (c)(3). CMS investigative files are records that we compile for law enforcement purposes. In the course of investigations, we often have a need to obtain confidential information involving individuals other than the individual who is the subject of the file. In these cases, it is necessary for us to preserve the confidentiality of the information to avoid unwarranted invasions of personal privacy and to assure recipients of Federal financial assistance that this information will be kept confidential. This assurance is often central to resolving disputes concerning access by CMS to the recipient's records, and is necessary to facilitate prompt and effective completion of investigations. Disclosure of confidential information to the subject individual could impede ongoing investigations, invade the personal privacy of individuals, reveal the identities of confidential sources, or otherwise impair our ability to conduct investigations.

- Subsections (d)(1) through (d)(4). CMS investigative files are records that we compile for law enforcement purposes. In the course of investigations, we often have a need to obtain confidential information involving individuals other than the individual who is the subject of the file. In these cases, it is necessary for us to preserve the confidentiality of the information to avoid unwarranted invasions of personal privacy and to assure recipients of Federal financial assistance that this information will be kept confidential. This assurance is often central to resolving disputes concerning access by CMS to the recipient's records, and is necessary to facilitate prompt and effective completion of investigations. Unrestricted disclosure of confidential information in CMS files could impede ongoing investigations, invade the

personal privacy of individuals, reveal the identities of confidential sources, or otherwise impair our ability to conduct investigations.

- Subsection (e)(4)(G). CMS investigative files are records that we compile for law enforcement purposes. In the course of investigations, we often have a need to obtain confidential information involving individuals other than the individual who is the subject of the file. In these cases, it is necessary for us to preserve the confidentiality of the information to avoid unwarranted invasions of personal privacy and to assure recipients of Federal financial assistance that this information will be kept confidential. This assurance is often central to resolving disputes concerning access by CMS to the recipient's records, and is necessary to facilitate prompt and effective completion of investigations. Notification of existence of CMS investigative files could impede ongoing investigations, invade the personal privacy of individuals, reveal the identities of confidential sources, or otherwise impair our ability to conduct investigations.

- From subsection (e)(4)(H). CMS investigative files are records that we compile for law enforcement purposes. In the course of investigations, we often have a need to obtain confidential information involving individuals other than the individual who is the subject of the file. In these cases, it is necessary for us to preserve the confidentiality of the information to avoid unwarranted invasions of personal privacy and to assure recipients of Federal financial assistance that this information will be kept confidential. This assurance is often central to resolving disputes concerning access by CMS to the recipient's records, and is necessary to facilitate prompt and effective completion of investigations. Access and correction by subject individuals to CMS files could impede ongoing investigations, invade the personal privacy of individuals, reveal the identities of confidential sources, or otherwise impair our ability to conduct investigations.

- Subsection (f). CMS investigative files are records that we compile for law enforcement purposes. In the course of investigations, we often have a need to obtain confidential information involving individuals other than the individual who is the subject of the file. In these cases, it is necessary for us to preserve the confidentiality of the information to avoid unwarranted invasions of personal privacy and to assure recipients of Federal financial assistance that this information will be

kept confidential. This assurance is often central to resolving disputes concerning access by CMS to the recipient's records, and is necessary to facilitate prompt and effective completion of investigations. Unrestricted disclosure of confidential information in CMS files to subject individuals could impede ongoing investigations, invade the personal privacy of individuals, reveal the identities of confidential sources, or otherwise impair our ability to conduct investigations.

Accordingly, this proposed rule would amend 45 CFR 5b.11(b)(2)(ii) of the Privacy Act regulations by—

- Adding a new paragraph (H) that exempts investigative materials compiled for law enforcement purposes from ACTS;
- Adding a new paragraph (I) that exempts investigative materials compiled for law enforcement purposes from HITS;
- Adding a new paragraph (J) that exempts investigative materials compiled for law enforcement purposes from OPOS; and
- Adding a new paragraph (K) that exempts investigative materials compiled for law enforcement purposes from FID.

We request public comment on these proposed exemptions.

## III. Collection of Information Requirements

This proposed rule does not impose any information collection or recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

## IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

## V. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b)

of the Act because we have determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$120 million. This rule will have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

#### List of Subjects for 45 CFR Part 5b

Privacy.

For the reasons set forth in the preamble, the Department of Health and Human Services would amend 45 CFR part 5b as set forth below:

#### PART 5b—PRIVACY ACT REGULATIONS

1. The authority citation for part 5b continues to read as follows:

**Authority:** 5 U.S.C. 301, 5 U.S.C. 552a.

2. Section 5b.11 is revised by adding paragraphs (b)(2)(ii)(H), (I), (J), and (K) to read as follows:

#### § 5b.11 Exempt Systems

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(H) Investigative materials compiled for law enforcement purposes from the Automated Survey Processing Environment (ASPEN) Complaints/Incidents Tracking System ("ACTS"), HHS/CMS.

(I) Investigative materials compiled for law enforcement purposes from the Health Insurance Portability and Accountability Act (HIPAA) Information Tracking System ("HITS"), HHS/CMS.

(J) Investigative materials compiled for law enforcement purposes from the Organ Procurement Organizations System ("OPOS"), HHS/CMS.

(K) Investigative materials compiled for law enforcement purposes from the CMS Fraud Investigation Database ("FID"), HHS/CMS.

\* \* \* \* \*

**Authority:** 5 U.S.C. 552a.

Dated: September 29, 2006.

**Mark B. McClellan,**  
*Administrator, Centers for Medicare & Medicaid Services.*

Approved: January 26, 2007.

**Michael O. Leavitt,**  
*Secretary.*

**Editorial Note:** This document was received at the Office of the Federal Register on Tuesday, May 22, 2007.

[FR Doc. E7-10143 Filed 5-24-07; 8:45 am]

**BILLING CODE 4120-01-P**

# Notices

Federal Register

Vol. 72, No. 101

Friday, May 25, 2007

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0063]

#### Notice of Request for Extension of Approval of an Information Collection; Highly Pathogenic Avian Influenza Subtype H5N1

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

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

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations to prevent the introduction of the H5N1 subtype of highly pathogenic avian influenza through imported birds, poultry, and unprocessed bird and poultry products.

**DATES:** We will consider all comments that we receive on or before July 24, 2007.

**ADDRESSES:** You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS–2007–0063 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- Postal Mail/Commercial Delivery: Please send four copies of your

comment (an original and three copies) to Docket No. APHIS–2007–0063, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0063.

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

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** For information on an information collection associated with regulations for the importation of unprocessed bird and poultry products from regions that have reported the presence of the H5N1 subtype of highly pathogenic avian influenza or for the importation of U.S. origin pet birds and performing or theatrical birds and poultry returning to the United States, contact Dr. Peter Merrill, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737; (301) 734–0649. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

#### SUPPLEMENTARY INFORMATION:

**Title:** Highly Pathogenic Avian Influenza Subtype H5N1.

**OMB Number:** 0579–0245.

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

**Abstract:** The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation of animals, animal products, and other articles into the United States to prevent the introduction of animal diseases and pests. The regulations in 9 CFR parts 93, 94, and 95 govern, among other things, the importation of certain birds, poultry,

and unprocessed bird and poultry products and byproducts to prevent the introduction of the H5N1 subtype of highly pathogenic avian influenza (HPAI H5N1).

HPAI H5N1 is an extremely infectious and fatal form of the disease for poultry. HPAI can strike poultry quickly without any warning signs of infection and, once established, can spread rapidly from flock to flock. HPAI viruses can also be spread by manure, equipment, vehicles, egg flats, crates, and people whose clothing or shoes have come in contact with the virus. HPAI viruses can remain viable at moderate temperatures for long periods in the environment and can survive indefinitely in frozen material. One gram of contaminated manure can contain enough virus to infect 1 million poultry. The H5N1 subtype of HPAI has been of particular concern because it has crossed the species barrier and caused severe disease, with high mortality, in humans.

APHIS' regulations prohibit or restrict the importation of unprocessed bird and poultry products and byproducts from regions that have reported the presence of the H5N1 subtype of HPAI, and contain permit and quarantine requirements for U.S. origin pet birds and performing or theatrical birds and poultry returning to the United States after being in such regions. The provisions necessitate the use of several information collection activities, including an Application to Import Controlled Materials or Transport Organisms and Vectors (VS Form 16–3), an Application for Import or In-Transit Permit (VS Form 17–129), a notarized declaration or affirmation, and a Pet Bird Owner Agreement (VS Form 17–8).

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

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

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

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the

validity of the methodology and assumptions used;

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

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

**Estimate of burden:** The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

**Respondents:** U.S. importers of unprocessed bird and poultry products from regions where HPAI subtype H5N1 has been reported, and owners of U.S. origin pet birds and U.S. origin performing or theatrical birds or poultry returning to the United States.

**Estimated annual number of respondents :** 5,180.

**Estimated annual number of responses per respondent:** 4.540540541.

**Estimated annual number of responses:** 23,520.

**Estimated total annual burden on respondents:** 11,760 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 21st day of May 2007.

**Kevin Shea,**

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

[FR Doc. E7-10106 Filed 5-24-07; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. APHIS-2006-0152]

#### Supplemental Environmental Impact Statement for Importation of Solid Wood Packing Material

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

**ACTION:** Notice; reopening of comment period for supplemental environmental impact statement.

**SUMMARY:** We are reopening the comment period for the supplemental environmental impact statement prepared for the Importation of Solid Wood Packing Material Final

Environmental Impact Statement. This action will allow interested persons additional time to prepare and submit comments.

**DATES:** We will consider all comments that we receive on or before June 25, 2007.

**ADDRESSES:** You may submit comments by either of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>, select "Animal and Plant Health Inspection Service" from the agency drop-down menu, then click "Submit." In the Docket ID column, select APHIS-2006-0152 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. APHIS-2006-0152, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2006-0152.

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

**Other Information:** Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. David A. Bergsten, APHIS Interagency NEPA Contact, Environmental Services, PPD, APHIS, 4700 River Road, Unit 149, Riverdale, MD 20737-1238; (301) 734-6103.

#### SUPPLEMENTARY INFORMATION:

##### Background

On October 24, 2006, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (71 FR 62240, Docket No. APHIS-2006-0152) a notice of its intention to prepare a supplemental environmental impact statement (SEIS) for the Importation of Solid Wood Packing Material Final

Environmental Impact Statement, August 2003 (FEIS). The purpose of the SEIS is to reevaluate and refine the estimates of methyl bromide usage associated with the alternatives considered in the FEIS. On March 9, 2007, the Environmental Protection Agency published in the **Federal Register** (72 FR 10749) a notice of the availability of the SEIS.

Comments on the SEIS were required to be received on or before April 23, 2007. We are reopening the comment period on the SEIS for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between April 24, 2007 (the day after the close of the original comment period) and the date of this notice.

**Authority:** 7 U.S.C. 450 and 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 21st day of May 2007.

**Kevin Shea,**

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

[FR Doc. E7-10107 Filed 5-24-07; 8:45 am]

**BILLING CODE 3410-34-P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to Procurement List.

**SUMMARY:** This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Effective Date:* June 24, 2007.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

**FOR FURTHER INFORMATION CONTACT:** Kimberly M. Zeich, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail [CMTEFedReg@jwod.gov](mailto:CMTEFedReg@jwod.gov).

**SUPPLEMENTARY INFORMATION:** On March 30, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 15097-15098) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide

the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

### End of Certification

Accordingly, the following services are added to the Procurement

#### Services

*Service Type/Location:* Custodial Services, Akron Canton Regional Airport (Break and Training Room Only), 5400 Lauby Road NW., North Canton, OH.

*NPA:* The Workshops, Inc., Canton, OH.

*Contracting Activity:* General Services Administrations, Public Buildings Service, Region 5, Cleveland, OH.

*Service Type/Location:* Custodial Services, Edward Hines Jr. VA Hospital (Hines Campus), 5th Avenue & Roosevelt Road, Hines, IL.

*NPA:* Jewish Vocational Service and Employment Center, Chicago, IL.

*Contracting Activity:* Department of Veterans Affairs, Great Lakes Network-Contract Service Center, Milwaukee, WI.

*Service Type/Location:* Custodial Services, Mauna Loa Observatory (Hilo Office), 1437 Kilauaea Ave, Hilo, HI.

*NPA:* The ARC of Hilo, Hilo, HI.

*Contracting Activity:* Department of Commerce, NOAA-Mountain, Boulder Labs, Boulder, CO.

**Kimberly M. Zeich,**

*Director, Program Operations.*

[FR Doc. E7–10144 Filed 5–24–07; 8:45 am]

**BILLING CODE 6353–01–P**

### COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

#### Procurement List Proposed Additions And Deletions

**AGENCY:** Committee for Purchase from People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from procurement list.

**SUMMARY:** The Committee is proposing to add to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products and services previously furnished by such agencies.

*Comments Must Be Received On Or Before:* June 24, 2007.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail [CMTEFedReg@jwod.gov](mailto:CMTEFedReg@jwod.gov).

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

#### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

#### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-

O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

#### End of Certification

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

#### Product

Hood, Anti-Flash, Firemen's.  
NSN: 4210–01–493–4694—DAF–S–1 (20% KEVLAR/80% FR Rayon)—2 ply.

*NPA:* Dawn Enterprises, Inc., Blackfoot, ID.

*Contracting Activity:* Defense Supply Center Philadelphia, Philadelphia, PA.

#### Services

*Service Type/Location:* Custodial/ Grounds Maintenance, Joseph P. Kinneary Federal Courthouse, 85 Marconi Boulevard, Columbus, OH.  
*NPA:* Alpha Group of Delaware, Inc., Delaware, OH.

*Contracting Activity:* General Services Administration, Public Buildings Service, Region 5, Columbus, OH.

*Service Type/Location:* Custodial Services, Fort AP Hill, Camp Anderson, Bowling Green, VA.

*NPA:* Rappahannock Goodwill Industries, Inc., Fredericksburg, VA.

*Contracting Activity:* Army Contracting Agency, Aberdeen Proving Ground, MD.

*Service Type/Location:* Custodial Services, U.S. Department of Agriculture, Animal and Plant Health Inspection Service, 843 13th Court—Unit 7, Riviera Beach, FL.

*NPA:* Gulfstream Goodwill Industries, Inc., West Palm Beach, FL.

*Contracting Activity:* U.S. Department of Agriculture, Animal & Plant Health Inspection Service—MRP—BS ASD, Minneapolis, MN.

*Service Type/Location:* Custodial/ Grounds Maintenance, Syracuse Military Entrance Processing Station (MEPS), 6001 E. Mallory Road, Building 710, Syracuse, NY.

*NPA:* Oswego Industries, Inc., Fulton, NY.

*Contracting Activity:* AFRC—Niagara, Niagara Falls, NY.

*Service Type/Location:* Document Destruction, Internal Revenue Service, 550 W. Fort Street, Boise, ID.

*NPA:* Western Idaho Training Company, Inc., Caldwell, ID.

*Contracting Activity:* Department of Treasury, Internal Revenue Service—CA, San Francisco, CA.

*Service Type/Location:* Janitorial/Landscaping Services. U.S. Department of Agriculture, Agricultural Research Service, 430 West Health Sciences Drive, Davis, CA.

*NPA:* PRIDE Industries, Inc., Roseville, CA.

*Contracting Activity:* U.S. Department of Agriculture, Agricultural Research Service—Pacific West Area, Albany, CA.

*Service Type/Location:* Postwide Administrative Support Services, Fort Bragg, Fort Bragg, NC.

*NPA:* Employment Source, Inc., Fayetteville, NC.

*Contracting Activity:* Fort Bragg Directorate of Contracting, Fort Bragg, NC.

*Service Type/Location:* Supply/Warehouse/HAZMAT Services, Meridian Naval Air Station, 224 Allen Rd, Meridian, MS.

*NPA:* South Texas Lighthouse for the Blind, Corpus Christi, TX.

*Contracting Activity:* Fleet and Industrial Supply Center, Jacksonville, FL.

## Deletions

### *Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for deletion from the Procurement List.

### *End of Certification*

The following products and services are proposed for deletion from the Procurement List:

### Products

PCU, Level 7 Loft Jacket—Type 2  
*NSN:* 8415–00–NSH–1647—Size LL.  
*NSN:* 8415–00–NSH–1649—Size XLL.  
*NSN:* 8415–00–NSH–1652—Size XXLL.

*NSN:* 8415–00–NSH–1654—Size XXXLL.

*NPA:* Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY.

*Contracting Activity:* U.S. Army RDECOM Acquisition Center, Natick, MA.

### Services

*Service Type/Location:* Grounds Maintenance, Hill Air Force Base, Hill Air Force Base, UT.

*NPA:* Pioneer Adult Rehabilitation Center Davis County School District, Clearfield, UT.

*Contracting Activity:* Hill Air Force Base, UT.

*Service Type/Location:* Janitorial/Custodial, Navy Exchange Command Corporate Accounting (CAC), Norfolk, VA.

*NPA:* Didlake, Inc., Manassas, VA.

*Contracting Activity:* Navy Exchange Service Command (NEXCOM), Virginia Beach, VA.

*Service Type/Location:* Janitorial/Custodial, Navy Exchange Command Uniform Support Center, Bldg 1545, Chesapeake, VA.

*NPA:* Portco, Inc., Portsmouth, VA

*Contracting Activity:* Navy Exchange Service Command (NEXCOM), Virginia Beach, VA.

*Service Type/Location:* Laundry Service National Naval Medical Center, Bethesda, MD.

*NPA:* Rappahannock Goodwill Industries, Inc., Fredericksburg, VA.

*Contracting Activity:* North Atlantic Contracting Office, Washington, DC.

*Service Type/Location:* Microfilming, Department of Treasury, Financial Management Services, Hyattsville, MD.

*NPA:* Didlake, Inc., Manassas, VA.

*Contracting Activity:* Department of the Treasury, DC.

**Kimberly M. Zeich,**

*Director, Program Operations.*

[FR Doc. E7–10145 Filed 5–24–07; 8:45 am]

**BILLING CODE 6353–01–P**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Notice

**AGENCY:** United States Commission on Civil Rights.

**ACTION:** Notice of meeting.

**DATE AND TIME:** Friday, June 1, 2007; 9 a.m.

**PLACE:** U.S. Commission on Civil Rights, 624 Ninth Street, NW., Rm. 540, Washington, DC 20425.

## Meeting Agenda

- I. Approval of Agenda.
- II. Approval of Minutes of May 11, Meeting.
- III. Announcements.
- IV. Staff Director's Report.
- V. State Advisory Committee Issues;
  - Virginia SAC.
  - Michigan SAC.
- VI. Future Agenda Items.
- VII. Adjourn.

## Briefing Agenda

- School Choice, the Blaine Amendments and Anti-Catholicism;
- Introductory Remarks by Chairman.
  - Speakers' Presentation.
  - Questions by Commissioners and Staff Director.

## CONTACT PERSON FOR FURTHER

**INFORMATION:** Manuel Alba, Press and Communications (202) 376–8582.

Dated: May 22, 2007.

**David Blackwood,**

*General Counsel.*

[FR Doc. 07–2630 Filed 5–22–07; 4:02 pm]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

[06–BIS–16]

**In the Matter of: Super Net Computers, L.L.C., No 505, Dar Al Riffa Building, Khalid Bin Al Waleed Rd., P.O. Box 43557, Dubai, United Arab Emirates**

Respondent, Final Decision and Order

This matter is before me upon a Recommended Decision and Order of an Administrative Law Judge (“ALJ”), as further described below.

In a charging letter filed on August 28, 2006, the Bureau of Industry and Security (“BIS”) alleged that Respondent, Super Net Computers, L.L.C. (hereinafter “Super Net”), committed six violations of the Export Administration Regulations (currently codified at 15 CFR parts 730–774) (2007)) (“Regulations”),<sup>1</sup> issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the “Act”).<sup>2</sup> Specifically, the

<sup>1</sup> The charged violations occurred in 2001 through 2003. The Regulations governing the violations at issue are found in the 2001 through 2003 versions of the Code of Federal Regulations (15 CFR parts 730–774 (2001–2003)). The 2007 Regulations set forth the procedures that apply to this matter.

<sup>2</sup> Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 3,

charging letter alleged that, on six occasions from on or about September 25, 2001, through on or about March 25, 2003, Super Net caused, aided and abetted the doing of an act prohibited by the Regulations. Specifically, The Charging Letter alleged that Super Net ordered super servers (ECCN<sup>3</sup> 4A994), motherboards (ECCNs 4A003 and 4A994), and computer chassis (EAR99<sup>4</sup>), items subject to the Regulations and the Iranian Transactions Regulations,<sup>5</sup> from a U.S. company on behalf of Iranian end-users. The U.S. company then shipped those super servers and motherboards from the United States to Super Net in the United Arab Emirates. Super Net forwarded the items to end-users in Iran. Pursuant to Section 560.204 of the Iranian Transactions Regulations, an export to a third country intended for transshipment to Iran is a transaction subject to the Iranian Transaction Regulations. Pursuant to Section 746.7 of the Regulations, authorization was required from the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC") for the shipment of these super servers and motherboards from the United States to Iran. No such U.S. Government authorization was obtained. By causing, aiding and/or abetting these exports in this manner, BIS alleged that Super Net committed six violations of Section 764.2(b) of the Regulations.

In accordance with Section 766.3(b)(1) of the Regulations, on August 28, 2006, BIS mailed the notice of issuance of the charging letter by registered mail to Super Net at its last known address. The record contains evidence that the notice of issuance of a charging letter was received by Super Net on September 17, 2006. To date, however, Super Net has not filed an answer or otherwise responded to the charging letter with the ALJ, as required by the Regulations.

On March 16, 2007, BIS filed a Motion for Default Order in accord with Section 766.7 of the Regulations. The Motion for Default Order recommended that Super Net be denied export privileges under the Regulations for a period of five years. Under Section 766.7(a) of the Regulations, "[f]ailure of

the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear," and "on BIS's motion and without further notice to the respondent, [the ALJ] shall find the facts to be as alleged in the charging letter." Based upon the record before him the ALJ has found Super Net in default.

On May 1, 2007, based on the record before him, the ALJ issued a Recommended Decision and Order in which he found that Super Net committed six violations of Section 764.2(b) of the Regulations. The ALJ also recommended the penalty of denial of Super Net's export privileges for five years, as recommended by BIS.

The ALJ's Recommended Decision and Order, together with the entire record in this case, has been referred to me for final action under Section 766.22 of the Regulations. I find that the record supports the ALJ's findings of fact and conclusions of law. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations and the facts of this case, and the importance of preventing future unauthorized exports.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law recommended by the ALJ.

#### **Accordingly, it is Therefore Ordered,**

First, that for a period of five years from the date this Order is published in the **Federal Register**, Super Net Computers, L.L.C., No 505, Dar Al Riffa Building, Khalid Bin Al Waleed Rd., P.O. Box 43557, Dubai, United Arab Emirates, its successors and assigns, and when acting for or on behalf of Super Net, its representatives, agents and employees (hereinafter collectively referred to as the "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any

other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to now that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transactions to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, or position or responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

2006, (71 FR 44,551 (August 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-17706 (2000)).

<sup>3</sup> The term "ECCN" refers to an Export Control Classification Number. See Section 772.1 of the Regulations.

<sup>4</sup> Items subject to the Regulations, which are not listed on the Commerce Control List are designated as EAR99.

<sup>5</sup> 31 CFR Part 560.

Fifth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall be published in the **Federal Register**.

This Order, which constitutes the final agency in this matter, is effective upon publication in the **Federal Register**.

Dated: May 21, 2007.

**Mark Foulon,**

*Acting Under Secretary of Commerce for Industry and Security.*

#### REDACTED COPY

UNITED STATES DEPARTMENT OF COMMERCE, BUREAU OF INDUSTRY AND SECURITY, WASHINGTON, DC 20230

Docket No: 06-BIS-16

In the matter of: Super Net Computers, L.L.C., No 505, Dar Al Riffa Building, Khalid Bin Al Waleed Rd., P.O. Box 43557, Dubai, United Arab Emirates. Respondent.

#### *Recommended Decision and Order*

On August 28, 2006, the Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), issued a charging letter initiating this administrative enforcement proceeding against Super Net Computers, L.L.C. ("Super Net"). The charging letter alleged that Super Net committed six violations of the Export Administration Regulations (currently codified at 15 CFR parts 730-774 (2006)) (the "Regulations"),<sup>1</sup> issued under the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401-2420 (2000)) (the "Act").<sup>2</sup>

Specifically, the charging letter alleged that, on six occasions from on or about September 25, 2001, through on or about March 25, 2003, Super Net caused, aided and abetted the doing of an act prohibited by the Regulations. Specifically, BIS alleged that Super Net ordered super servers (EEN<sup>3</sup> 4A994), motherboards (ECCNs 4A003 and 4A994), and computer chassis (EAR99<sup>4</sup>), items subject to the Regulations and the Iranian Transactions Regulations,<sup>5</sup> from a U.S. company on behalf of Iranian

end-users. The U.S. company shipped those super servers and motherboards from the United States to Super Net in the United Arab Emirates. Super Net then forwarded the items to end-users in Iran. Pursuant to Section 560.204 of the Iranian Transactions Regulations, an export to a third country intended for transshipment to Iran is a transaction subject to the Iranian Transaction Regulations. Pursuant to Section 746.7 of the Regulations, a license was required for the shipment of these super servers and motherboards from the United States to Iran. No such license was obtained. BIS alleged that Super Net committed six violations of the Regulations. (Charges 1-6).

Section 766.3(b)(1) of the Regulations provides that notice of the issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at the respondent's last known address. In accordance with the Regulations, on August 28, 2006, BIS mailed the notice of issuance of the charging letter by registered mail to Super Net at its last known address: Super Net Computers, L.L.C., No 505, Dar Al Riffa Building, Khalid Bin Al Waleed Rd., P.O. Box 43557, Dubai, United Arab Emirates. BIS has submitted evidence that establishes that the charging letter was received by Super Net on or about September 17, 2006.<sup>6</sup>

Section 766.6(a) of the Regulations provides, in pertinent part, that "[t]he respondent must answer the charging letter within 30 days after being served with notice of issuance of the charging letter" initiating the administrative enforcement proceeding. Furthermore, BIS informed Super Net that a failure to follow this requirement would result in default. (Charging Letter, at 2). To date, Super Net has not filed an answer, or otherwise responded, to the charging letter.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, the undersigned finds the facts to be as alleged in the charging letter, and hereby determine that those facts establish that Super Net committed six violations of Section 764.2(b) of the Regulations.

Section 764.3 of the Regulations sets forth that sanctions BIS may seek for violations of the Regulations. The applicable sanctions are: (i) A monetary penalty, (ii) suspension from practice before the Bureau of Industry and Security, and (iii) a denial of export privileges under the Regulations. See 15 CFR 764.3 (2001-2003). BIS requests that the undersigned recommend to the Under Secretary of Commerce for Industry and Security<sup>7</sup> that Super Net's export privileges be denied for five years.

<sup>6</sup> BIS did not receive a delivery receipt for the charging letter and requested that the U.S. Postal Service inquire further about the delivery of the charging letter. The U.S. Postal Service was advised by the postal service of the United Arab Emirates that the charging letter was delivered on or about September 17, 2006.

<sup>7</sup> Pursuant to Section 13(c)(1) of the Export Administration Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases, the ALJ makes recommended findings of fact and conclusions of law that the Under Secretary must affirm, modify or vacate. The Under Secretary's action is the final decision for the U.S. Commerce Department.

BIS has suggested this sanction because Super Net's role in causing, aiding and abetting the export of super servers, motherboards and chassis from the United States to Iran without U.S. Government authorization evidences a serious disregard for U.S. export control laws. BIS notes that the items exported in this case involved super servers and motherboards controlled for anti-terrorism reasons. BIS asserts that Super Net's role in ordering and forwarding these items to Iran—a country that the United States Government has designated a state sponsor of international terrorism—represents a significant harm to national security and to the national interests protected by U.S. export controls.<sup>8</sup> Furthermore, BIS believes that the recommended denial order is particularly appropriate in this case, since Super Net failed to respond to the charging letter filed by BIS, despite evidence indicating that Super Net received actual service of the charging letter. Although the imposition of a monetary penalty is an option, BIS contends that such a penalty would not be effective, given the above reasons and the difficulty of collecting payment against a party outside the United States. Based on the foregoing, BIS believes that the denial of Super Net export privileges for five years is an appropriate sanction.

The undersigned concurs with BIS and recommends that the Under Secretary enter an Order denying Super Net's export privileges for a period of five years. Such a denial order is consistent with penalties imposed in similar cases involving shipments to countries designated as "Terrorist Supporting Countries"<sup>9</sup> in which a default judgment was issued on BIS's motion. See, e.g., *In the Matter of Teepad Electronic General Trading*, 71 FR 34,596 (June 15, 2006) (affirming the ALJ's recommendation to grant BIS's motion for a ten-year denial where a Canadian respondent knowingly caused the export of telecommunications devices to Iran, and where that respondent failed to respond to BIS's charging letter); *In the Matter of Swiss Telecom*, 71 FR 32,920 (June 7, 2006) (affirming the ALJ's recommendation to grant BIS's motion for a ten-year denial where a respondent in the United Arab Emirates knowingly forwarded telecommunications devices to Iran, and failed to respond to BIS's charging letter); *In the Matter of MUTCO International*, 71 FR 38,133 (July 5, 2006) (affirming the ALJ's recommendation to grant BIS's default motion for a six-year denial to resolve conspiracy and solicitations charges

<sup>8</sup> Cf. 15 CFR part 766, Supp. No. 1, III, A (discussing the factors that BIS considers in the context of settling an enforcement action and stating that "BIS is more likely to seek a greater monetary penalty and/or denial or export privileges \* \* \* in cases involving: (1) Exports or reexports to countries subject to anti-terrorism controls \* \* \*"). Iran has been designated as a Terrorist Supporting Country and is subject to such anti-terrorism controls. See 15 CFR part 740, Supp. No. 1 Country Group E:1 (2001-2003); 15 CFR 742.8 (2001-2003); 15 CFR 746.7 (2001-2003).

<sup>9</sup> The U.S. Government's List of Terrorist Supporting Countries is set forth in 15 CFR part 740, Supp. No. 1, Country Group E:1.

<sup>1</sup> The charged violations occurred in 2001 through 2003. The Regulations governing the violations at issue are found in the 2001 through 2003 versions of the Code of Federal Regulations (15 CFR parts 730-774 (2001-2003)). The 2006 Regulations establish the procedures that apply to this matter.

<sup>2</sup> Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 3, 2006 (71 FR 44,551 (Aug. 7, 2006)), has continued the regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (2000)).

<sup>3</sup> The term "ECCN" refers to an Export Control Classification Number. See Section 772.1 of the Regulations.

<sup>4</sup> Items subject to the Regulations, which are *not* listed on the Commerce Control List are designated as EAR99.

<sup>5</sup> 31 CFR part 560.

related to an attempted export to North Korea).

The terms of the denial of export privileges against Super Net should be consistent with the standard language used by BIS in such orders. The language is:

[REDACTED SECTION]

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**.

Accordingly, the undersigned refers this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the respondent, as provided in Section 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating the Recommended Decision and Order. *See* 15 CFR 766.22(c).

Dated: May 1, 2007.

The Honorable Joseph N. Ingolia,  
Chief Administrative Law Judge.

[FR Doc. 07-2604 Filed 5-24-07; 8:45 am]

BILLING CODE 3510-DT-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

A-570-846

#### Brake Rotors From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 25, 2007.

**SUMMARY:** The Department of Commerce ("Department") received a timely request to conduct a new shipper review of the antidumping duty order on brake rotors from the People's Republic of China ("PRC"). In accordance with 751(a)(2)(B) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.214(d)(1), we are initiating a new shipper review for Shanghai Tylon Company Ltd. ("Tylon").

**FOR FURTHER INFORMATION CONTACT:** Ann Fornaro or Blanche Ziv, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3927 and (202) 482-4207, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 18, 2007, during the anniversary month of the antidumping duty order on brake rotors from the PRC, the Department received a request from Tylon for a new shipper review of the order, pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(c). *See Notice of Antidumping Duty Order: Brake Rotors from the People's Republic of China*, 62 FR 18740 (April 17, 1997).

As required by 19 CFR 351.214(b)(2)(ii)(A) and 19 CFR 351.214(b)(2)(iii)(A), Tylon certified that it did not export the subject merchandise to the United States during the period of investigation ("POI"), and that since the initiation of the investigation, the company has never been affiliated with any exporter or producer who exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Tylon further certified that its export activities are not controlled by the central government of the PRC.

In accordance with 19 CFR 351.214(b)(2)(ii)(B), Yantai Hongda Auto Replacement Parts Co., Ltd. ("Yantai Hongda"), the producer of subject merchandise, certified that it did not export subject merchandise to the United States during the POI. In accordance with 19 CFR 351.214(b)(iii)(B), Yantai Hongda further certified that since the investigation was initiated, it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI and that its export activities are not controlled by the central government of the PRC.

In accordance with 19 CFR 351.214(b)(2)(iv), Tylon submitted documentation establishing the following: (1) the date on which it first shipped brake rotors for export to the United States; (2) the volume of its first shipment and any subsequent shipments; and (3) the date of its first sale to an unaffiliated customer in the United States.

### Initiation of New Shipper Review

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), and based on information on the record, we find that Tylon's request meets the threshold requirements for initiation of a new shipper review. *See* Memorandum to the File through Wendy J. Frankel, Director, AD/CVD Operations, Office 8, and Blanche Ziv, Program Manager, AD/CVD Operations, Office 8, from the Team, entitled "Initiation of AD New Shipper Review: Brake Rotors from the

People's Republic of China," dated, May 21, 2007. Therefore, we are initiating a new shipper review for shipments of brake rotors produced by Yantai Hongda and exported by Tylon. The Department will conduct this new shipper review according to the deadlines set forth in section 751(a)(2)(B)(iv) of the Act.

On April 26, 2007, the Department issued a supplemental questionnaire to Tylon, informing the company that the period of review ("POR") stated in its request did not meet the requirements articulated in 19 CFR 351.214(g)(1)(i)(A), and requested that Tylon correct and resubmit its new shipper review request with the appropriate POR within the time frame set forth in 19 CFR 351.214(d). On April 27, 2007, in response to the Department's request, Tylon resubmitted its new shipper review request with the appropriate POR. Pursuant to 19 CFR 351.214(g)(1)(i)(A), the POR for a new shipper review initiated in the month immediately following the anniversary month normally will cover the 12-month period immediately preceding the anniversary month. Therefore, the POR for this new shipper review will be April 1, 2006, through March 31, 2007.

In cases involving non-market economies, the Department requires that a company seeking to establish eligibility for an antidumping duty rate separate from the PRC-wide entity rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Tylon, including a separate-rate section. The review will proceed if the responses provide sufficient indication that Tylon is not subject to either *de jure* or *de facto* government control with respect to its exports of brake rotors. However, if Tylon does not demonstrate its eligibility for a separate rate, the company will be deemed not separate from other companies that exported during the POI, and the new shipper review for Tylon will be rescinded.

On August 17, 2006, the Pension Protection Act of 2006 (H.R. 4) was signed into law by Congress. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct U.S. Customs and Border Protection to collect a bond or other security in lieu of a cash deposit in new shipper reviews. Therefore, the posting of a bond or other security under section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of brake rotors exported by Tylon and produced by Yantai Hongda must continue to post a cash deposit of

estimated antidumping duties on each entry of subject merchandise (*i.e.*, brake rotors) at the PRC-wide entity rate of 43.32 percent.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are issued in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d) and 351.221(c)(1)(i).

Dated: May 21, 2007.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7-10134 Filed 5-24-03; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-201-830]

#### **Certain Carbon and Alloy Steel Wire Rod from Mexico: Notice of Partial Rescission of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

#### **Background:**

On October 31, 2006, petitioners, Mittal Steel USA Inc. - Georgetown, Gerdau USA Inc., Nucor Steel Connecticut Inc., Keystone Consolidated Industries, Inc., and Rocky Mountain Steel Mills (petitioners), requested that the Department of Commerce (the Department) conduct as administrative review of Siderurgica Lazaro Cardenas Las Truchas S.A. de C.V. (SICARTSA) and Hylsa Puebla S.A. de C.V. for the period of October 1, 2005, through September 30, 2006.

On November 7, 2006, the Department initiated the review. See Initiation of Antidumping and Countervailing Duty Administrative Review and Requests for Revocation, 71 FR 68535 (November 27, 2006). On December 28, 2006, petitioners withdrew their request for a review of SICARTSA pursuant to section 351.213(d)(1) of the Department's regulations.

**EFFECTIVE DATE:** May 25, 2007.

#### **FOR FURTHER INFORMATION CONTACT:**

Jolanta Lawska or John Conniff, Office 3, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW, Washington, DC 20230; telephone: (202) 482-8362 or (202) 482-1009, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Scope of Order**

The merchandise subject to this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) Stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions

greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04-114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as "tire cord quality" or "tire bead quality" indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances,

only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope. The products subject to this order are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3092, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, 7227.90.6010, and 7227.90.6080 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.<sup>1</sup>

#### Partial Rescission of Review

If a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review, the Secretary will rescind the review pursuant to 19 CFR 351.213(d)(1). In this case, the petitioners withdrew their request for an administrative review for SICARTSA within 90 days from the date of initiation. No other interested party requested a review of SICARTSA and we have received no comments regarding the petitioner's withdrawal of their request for a review. Therefore, we are rescinding this review of the antidumping duty order on certain carbon and alloy steel wire rod from Mexico in part with respect to SICARTSA.

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) 15 days after the publication of this notice. The Department will direct CBP to assess antidumping duties at the cash deposit rate in effect on the date of entry for entries during the period October 1, 2005, through September 30, 2006.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended and 19 CFR 251.213(d)(4).

Dated: May 18, 2007.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7-10091 Filed 5-24-07; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

(C-427-819)

#### Low Enriched Uranium from France: Notice of Amended Final Negative Determination Pursuant to Final Court Decision, Rescission of Administrative Review, and Revocation of the Countervailing Duty Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On May 18, 2006, the United States Court of International Trade ("the CIT") sustained the Department of Commerce's ("the Department's") March 2, 2006, Final Results of Redetermination on Remand pursuant to *Eurodif S.A., Compagnie Generale Des Matieres Nucleaires, and Cogema Inc., et. al. v. United States*, Slip. Op. 06-3 (CIT, January 5, 2006), which pertains to the Final Affirmative Countervailing Duty Determination on Low Enriched Uranium ("LEU") from France.

Because all litigation in this matter has concluded, the Department is issuing an amended final negative determination for LEU from France and revoking the countervailing duty ("CVD") order. The Department is also rescinding the ongoing administrative review covering the period January 1, 2006, through December 31, 2006, and will not initiate the deferred administrative review covering the period January 1, 2005, through December 31, 2005.

**EFFECTIVE DATE:** June 8, 2006.

#### FOR FURTHER INFORMATION CONTACT:

Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4793.

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 21, 2001, the Department published a notice of final determination in the CVD investigation on LEU from France. *See Notice of Final Affirmative Countervailing Duty Determination: Low Enriched Uranium from France*, 66 FR 65901 (December 21, 2001) ("LEU Final Determination") and accompanying Issues and Decision Memorandum. The LEU Final Determination was subsequently amended. *See Amended Final Determination and Notice of Countervailing Duty Order: Low*

*Enriched Uranium from France*, 67 FR 6689 (February 13, 2002).

Eurodif, S.A., Compagnie Generale Des Matieres Nucleaires ("COGEMA"), and COGEMA Inc., et. al.<sup>1</sup> (collectively, "Eurodif" or "respondents") challenged the Department's final determination before the CIT. The case was later appealed to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit"). The Federal Circuit ruled in favor of respondents in *Eurodif S.A., Compagnie Generale Des Matieres Nucleaires, and Cogema Inc., et. al. v. United States*, 411 F.3d 1355 (Fed. Cir. 2005) ("Eurodif I"). The court panel later clarified its ruling, issuing a decision in *Eurodif S.A., Compagnie Generale Des Matieres Nucleaires, and Cogema Inc., et. al. v. United States*, 423 F.3d 1275 (Fed. Cir. 2005) ("Eurodif II"), which affirmed *Eurodif I*.

On January 5, 2006, the CIT remanded the case to the Department for action consistent with the decisions of the Federal Circuit in *Eurodif I* and *Eurodif II*. *See Eurodif S.A., Compagnie Generale Des Matieres Nucleaires, and Cogema Inc., et. al. v. United States*, Slip. Op. 06-3 (CIT, January 5, 2006) ("Remand Instructions"). In accordance with the CIT's instructions, the Department issued its final results of redetermination eliminating from the analysis of and calculations for the program "Purchases at Prices that Constitute More Than Adequate Remuneration" all SWU transactions. *See the March 2, 2006, Final Results of Redetermination on Remand pursuant to Remand Instructions ("LEU Remand Redetermination")*. As a result, there is no benefit or program rate for the program "Purchases at Prices that Constitute More Than Adequate Remuneration." We, therefore, calculated a revised *ad valorem* subsidy rate for Eurodif for the period January 1, 1999, through December 31, 1999, based on the "Exoneration/Reimbursement of Corporate Income Taxes" program, which is the only other program determined to confer countervailable subsidies during the period of investigation. The revised net subsidy rate for Eurodif is 0.87 percent *ad valorem*, which is *de minimis*.

On May 18, 2006, the CIT sustained the Department's redetermination in all respects and, thus, affirmed the Department's revised analysis and calculations. On June 8, 2006, consistent with the decision of the Federal Circuit in *Timken vs. United States*, 893 F.2d 337 (Fed. Cir. 1990), the Department notified the public that the *Eurodif I* and

<sup>1</sup> Effective January 1, 2006, U.S. Customs and Border Protection (CBP) reclassified certain HTSUS numbers related to the subject merchandise. *See* [http://hotdocs.usitc.gov/tariff\\_chapters\\_current/toc.html](http://hotdocs.usitc.gov/tariff_chapters_current/toc.html).

<sup>1</sup> COGEMA and COGEMA Inc. are now known as AREVA NC and AREVA NC, Inc.

*Eurodif II* decisions were not in harmony with the Department's final CVD determination for LEU from France. See *Low Enriched Uranium from France: Notice of Court Decision and Suspension of Liquidation*, 71 FR 33280 (June 8, 2006) ("*LEU Timken Notice*"). The *LEU Timken Notice* continued the suspension of liquidation, and further informed that if the CIT's decision was not appealed, or if appealed, and upheld, the Department would publish an amended final CVD determination. On July 17, 2006, USEC<sup>2</sup> filed a notice of appeal challenging the CIT's affirmation of the Department's remand determination. On February 9, 2007, the Federal Circuit affirmed the CIT's decision without a written opinion, pursuant to Rule 36 of the Court's rules. The deadline for filing a petition for certiorari with the Supreme Court has elapsed.

#### **Amended Final Determination, Revocation of Order, and Rescission of Review**

Because there is now a final and conclusive decision in the court proceeding, we are amending the *LEU Final Determination* to reflect the results of the LEU Remand Redetermination, which is a revised countervailable subsidy rate of 0.87 percent *ad valorem* for Eurodif during the period of investigation, which is *de minimis*. Further, because Eurodif is the only known producer/exporter of the subject merchandise, we are revoking the CVD order for all entries effective May 14, 2001, the date on which the Department published the notice of preliminary affirmative CVD determination. See *Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination: Low Enriched Uranium from France*, 66 FR 24325 (May 14, 2001).

Accordingly, the Department will instruct U.S. Customs and Border Protection ("CBP") to terminate the suspension of liquidation, pursuant to section 705(c)(2)(A)(B) of the Tariff Act of 1930, as amended ("the Act"). Injunctions enjoining liquidation of entries subject to the CVD order remain in place for (1) entries on or after May 14, 2001, and on or before September 11, 2001, and on or after February 13, 2002, and on or before December 31, 2002,<sup>3</sup> and (2) entries on or after January 1, 2003, and on or before December 31, 2003.<sup>4</sup> Injunctions enjoining

liquidations of entries subject to the companion antidumping order remain in place for (1) entries on or after July 13, 2001, and on or before January 8, 2002, and on or after February 13, 2002, and (2) entries on or after February 1, 2003, and on or before January 31, 2004.<sup>5</sup> We will instruct CBP to liquidate all entries without regard to countervailing duties when the injunctions are lifted.

In accordance with 19 CFR 351.213(d)(4), the Department is rescinding the ongoing administrative review covering the period January 1, 2006, through December 31, 2006. The Department will also not initiate the administrative review covering the period January 1, 2005, through December 31, 2005, for which a deferral was published in the **Federal Register** on March 28, 2007. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 14516 (March 28, 2007).

This determination is published pursuant to sections 705(d), 751(a)(3)(C), and 777(i) of the Act.

Dated: May 21, 2007.

**David M. Spooner**,  
Assistant Secretary for Import  
Administration.

[FR Doc. E7-10136 Filed 5-24-07; 8:45 am]

**BILLING CODE 3510-DS-S**

## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

#### **Antidumping Methodologies in Proceedings Involving Certain Non-Market Economies: Market-Oriented Enterprise**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce ("the Department") requests public comment on whether it should consider granting market-economy treatment to individual respondents in antidumping proceedings involving China, the conditions under which individual firms should be granted market-economy treatment, and how such treatment might affect our antidumping calculation for such qualifying respondents.

**DATES:** Comments must be submitted by thirty days from the publication of this notice.

**ADDRESSES:** Written comments (original and ten copies) should be sent to David Spooner, Assistant Secretary for Import Administration, U.S. Department of

Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street NW, Washington, DC, 20230.

**FOR FURTHER INFORMATION CONTACT:** Carrie Blozy, Program Manager, AD/CVD Operations or Lawrence Norton, Economist, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC, 20230, (202) 482-5403 and (202) 482-1579, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In antidumping proceedings involving non-market economy ("NME") countries, it is the Department's usual practice to calculate the normal value for allegedly dumped merchandise being imported into the United States by valuing the NME producer's factors of production using, to the extent possible, prices from a market economy that is at a comparable level of economic development and that is also a significant producer of comparable merchandise. See section 771(c)(4) of the Tariff Act of 1930, as amended ("the Act"). Specifically, section 773(c)(1) of the Act provides for the use of factors of production to determine normal value if two conditions are met:

- (A) the subject merchandise is exported from a non-market economy country; and
- (B) the administering authority finds that available information does not permit the normal value of the subject merchandise to be determined as is done for respondents in market economy countries.

In all past NME proceedings involving China, the Department has found that both conditions of section 773(c)(1) are met and has calculated the normal value based on prices and costs from a surrogate country, in accordance with sections 773(c)(3) and (4) of the Act.

The Department currently employs an industry-wide test to determine whether, under section 773(c)(1)(B), available information in the NME permits the use of the market economy antidumping methodology for the NME industry producing the subject merchandise. This so-called market-oriented industry ("MOI") test affords NME-country respondents the possibility of market economy treatment, but only on a case-by-case, industry-specific basis. This test is performed only upon request of respondent (companies and government). The Department has outlined three conditions that must be met in order for an MOI to exist: (1) that

<sup>2</sup> United States Enrichment Corporation and USEC Inc. ("USEC") are the petitioners.

<sup>3</sup> Court number 04-00392.

<sup>4</sup> Court number 05-00456.

<sup>5</sup> Court numbers 02-00219 and 05-00564.

there be virtually no government involvement in production or prices for the industry; (2) that the industry be marked by private or collective ownership that behaves in a manner consistent with market considerations; and (3) that producers be found to pay market-determined prices for all major inputs, and for all but an insignificant proportion of minor inputs. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594, 20595 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 1.

The current MOI test was formulated 15 years ago. *See Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid From the People's Republic of China*, 57 FR 9409 (March 18, 1992). However, as discussed more fully in the Department's March 29, 2007 memorandum, *Countervailing Duty Investigation of Coated Free Sheet ("CFS") Paper from the People's Republic of China - Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy*, (March 29, 2007) ("Georgetown Steel Memorandum") (memorandum is on file in the Department's Central Records Unit in Room B-099 of the main Department building ("CRU") on the record of case number C-570-907), China's economy has evolved significantly over time and its present-day economy "features both a certain degree of private initiative as well as significant government intervention, combining market processes with continued state guidance." *Id.* at 7. Further, the Department found that while private industry now dominates many sectors of the Chinese economy and entrepreneurship is flourishing, China's economy is best characterized as one in which constrained market mechanisms operate alongside (and sometimes, in spite of) government plans. *Id.* at 9-10. Although the limits the PRC Government has placed on the role of market forces are not consistent with recognition of China as a market economy under the U.S. antidumping law, the evolution in China's economy nevertheless has led the Department to conclude that it is possible to determine whether the state has bestowed a benefit upon a Chinese producer (*i.e.*, a subsidy can be identified and measured) and whether any such benefit is specific. *Id.* at 9. *See also Coated Free Sheet Paper from the People's Republic of China:*

*Amended Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17484 (April 9, 2007). The Department also stated in the *Georgetown Steel* Memorandum that the evolution of China's economy together with the features and characteristics of China's present-day economy, including a growing private sector, suggest that modification of some aspects of the Department's current NME antidumping policy and practice with regard to China may be warranted, such as the conditions under which the Department might grant an individual respondent in China market-economy treatment in some or all respects.

#### Request for Comment

Given the Department's analysis in the March 29, 2007 *Georgetown Steel* Memorandum regarding China's present-day economy, the Department is requesting public comment on the conditions under which the Department might grant market-economy treatment to individual Chinese respondents, and, if so, how this might affect our antidumping duty calculations for such enterprises. The Department does not preclude the possibility that market-economy treatment for individual respondents in non-market economies other than China might be warranted. At this time however, the Department has only examined China's economy on a country-wide basis.

As noted above, the Department currently has a test to determine whether an industry is market-oriented. However, no industry in China has yet been granted MOI status. Given the high standard that must be met for an industry to obtain MOI status, the Department requests that parties focus their comments on the conditions and factors that would guide the Department's assessment of the market-orientation of individual respondents, as opposed to industries. In submitting comments, we ask parties to consider whether and how a market-oriented enterprise or limited market-oriented enterprise should be identified and to what extent the Department should rely on a market-oriented enterprise's prices and costs, particularly for those inputs that are inextricably linked to the broader operating economic environment, *i.e.*, labor, land and capital, factors of production that were discussed at length in the Department's recent assessment of China's status as an NME in the antidumping duty investigation of certain lined paper products from China. *See Memorandum for David M. Spooner, Assistant Secretary for Import Administration, Antidumping Duty Investigation of*

*Certain Lined Paper Products from the People's Republic of China ("China") China's Status as a Non-Market Economy ("NME")* (August 30, 2006) (memorandum is on file in the CRU on the record of case number A-570-901). In finding that China continues to be an NME for purposes of U.S. antidumping law, the Department determined that, despite considerable reforms, the PRC government "retains for itself considerable levers of control over the economy." *Id.* at 4. Accordingly, while an enterprise may be market-oriented, the cost of certain inputs obtained in the broader economy may necessarily be determined on a non-market basis. Given such a situation in China, we request parties to consider to what extent, if any, a finding of a market-oriented enterprise might be limited and how a respondent's prices and costs within China could be utilized together with certain surrogate prices and costs in our antidumping duty calculations.

#### Submission of Comments

Persons wishing to comment should file a signed original and ten copies of each set of comments by the date specified above. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period

will be considered if time permits. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of any changes to its practice. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to the webmaster below, or on CD-ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments will be made available to the public in Portable Document Format ("PDF") on the Internet at the Import Administration website at the following address: <http://www.trade.gov/ia/>.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202)

482-0866, email address: webmaster-support@ita.doc.gov.

Dated: May 18, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E7-10130 Filed 5-24-07; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

[Docket No. 070320063-7064-01]

#### Advanced Technology Program; Extension of Due Date for Proposals

**AGENCY:** National Institute of Standards and Technology, United States Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** Due to technical difficulties, NIST is extending the deadline for proposal submission for its Advanced Technology Program competition to 3 p.m. Eastern Time, Friday, May 25, 2007. NIST will accept only paper submissions during the extended time period.

**DATES:** Paper submissions must be received no later than 3 p.m. Eastern Time, Friday, May 25, 2007.

**ADDRESSES:** Paper submissions must be sent to National Institute of Standards and Technology, Advanced Technology Program, 100 Bureau Drive, Mail Stop 4701, Gaithersburg, MD 20899-4701.

**FOR FURTHER INFORMATION CONTACT:** Barbara Lambis at 301-975-4447 or by e-mail at [Barbara.lambis@nist.gov](mailto:Barbara.lambis@nist.gov).

**SUPPLEMENTARY INFORMATION:** On April 10, 2007, the National Institute of Standards and Technology (NIST) Advanced Technology Program (ATP) announced that it was soliciting proposals for a single fiscal year 2007 competition (72 FR 17838). The due date for submission of all proposals was 3 p.m. Eastern Time, Monday, May 21, 2007. Due to technical difficulties, NIST was unable to accept some proposals electronically during the day on Monday, May 21, 2007. Therefore, electronic proposals received between 3 p.m. and 11:59 p.m. Eastern Time on May 21, 2007 are deemed timely. Additionally, NIST is extending the deadline for any paper submissions. Paper submissions must be received by 3 p.m. Eastern Time, Friday, May 25, 2007. During the extended time period, NIST will accept only paper submissions. This paper submission deadline applies to any mode of paper proposal delivery, including hand-

delivery, courier, and express mailing. ATP will not make any allowances for late submissions. All ATP competition requirements and information announced in the April 10, 2007 **Federal Register** notice apply to proposals submitted during the extended time period.

Proposers who attempted to submit electronic applications but were unsuccessful must resubmit a paper application. Please remember paper submission requires an original and fifteen (15) copies.

Dated: May 23, 2007.

**James M. Turner,**

*Deputy Director.*

[FR Doc. 07-2641 Filed 5-23-07; 12:38 pm]

**BILLING CODE 3510-13-P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

#### Announcing a Meeting of the Information Security and Privacy Advisory Board

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Thursday, June 7, 2007, from 8:30 a.m. until 5 p.m., and Friday, June 8, 2007, from 8:30 a.m. until 5 p.m. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100-235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107-347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the Board's activities are available at <http://csrc.nist.gov/ispab/>.

**DATES:** The meeting will be held on June 7, 2007 from 8:30 a.m. until 5 p.m. and June 8, 2007, from 8:30 a.m. until 5 p.m.

**ADDRESSES:** The meeting will take place at the George Washington University Cafritz Conference Center, 800 21st Street, NW., Room 308/Parks Room, Washington, DC.

#### Agenda:

- Welcome and Overview
- NIST Briefing
- Options for better security through improved compliance and reporting
- OMB Privacy Update

- Software Configuration Panel
- Privacy Technology Project White Paper
- Distributed Identification and Protection of Citizen Data
- Real ID Discussion
- NRC Privacy Study Briefing
- Security for Distributed Computing
- ISPAB Work Plan Status Review
- Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

**Public Participation:** The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899-8930. It would be appreciated if 25 copies of written material were submitted for distribution to the Board and attendees no later than May 23, 2007. Approximately 15 seats will be available for the public and media.

**FOR FURTHER INFORMATION CONTACT:** Ms. Pauline Bowen, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899-8930, telephone: (301) 975-2938.

Dated: May 17, 2007.

**James M. Turner,**

*Deputy Director.*

[FR Doc. E7-10129 Filed 5-24-07; 8:45 am]

**BILLING CODE 3510-CN-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XA44

#### Intent to Prepare a Programmatic Environmental Impact Statement, and Conduct Restoration Planning to Compensate for Injuries to Natural Resources in the Lower Duwamish River

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

**ACTION:** Notice of intent to prepare a programmatic environmental impact statement and restoration plan; request for comments; notice of public scoping meetings.

**SUMMARY:** The NOAA, U.S. Fish and Wildlife Service, Washington State's Department of Ecology and the Department of Fish and Wildlife, Suquamish Tribe of Indians, Muckleshoot Tribe of Indians (all agencies and Indian Tribes are collectively referred to as the "Trustees") are providing notice of their efforts to plan restoration projects to compensate for injuries to natural resources in the Lower Duwamish River (River). The Trustees seek damages from potentially responsible parties (PRPs) to restore, rehabilitate, replace or acquire the equivalent of natural resources and services injured by the release of hazardous substances. The Trustees will prepare a programmatic environmental impact statement (PEIS) to identify and address the environmental impacts of the injuries, and they seek public involvement in development of a Draft Restoration Plan (RP). This notice explains the scoping process the Trustees will use to gather input from the public. Comments on what the Trustees should consider in the PEIS and RP may be submitted in written form or verbally at a public scoping meeting.

**DATES:** Preliminary public scoping meeting dates and times are scheduled as follows:

1. June 6, 2007, from 6:30 p.m. to 8:30 p.m. in Seattle, WA.
2. June 7, 2007, from 10 a.m. to 12 p.m. in Tukwila, WA.

Written comments must be received by August 1, 2007.

**ADDRESSES:** Written comments on suggested alternatives and potential impacts should be sent to John Kern, NOAA Restoration Center, 7600 Sand Point Way NE, Seattle, WA 98115.

The public scoping meetings will be held at the following locations:

1. June 6, 2007 -- South Park Community Center, 8319 8<sup>th</sup> Ave. S, Seattle, WA 98108.
2. June 7, 2007 -- Tukwila Center, 12424 42<sup>nd</sup> Ave. S, Tukwila, WA 98168.

**FOR FURTHER INFORMATION CONTACT:** John Kern at 206-526-6029 or e-mail at [john.kern@noaa.gov](mailto:john.kern@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.*, parties responsible for releasing hazardous substances into the environment are liable both for the costs

of responding to the release (by cleaning up, containing or otherwise remediating the release) and for damages arising from injuries to publicly owned or managed natural resources resulting from the release. Natural resource damage assessment (NRDA) is the process of assessing the nature and extent of the resulting injury, destruction or loss of natural resources and the services they provide. NRDA also includes the process of determining the compensation required to make the public whole for such injuries, destruction or loss. CERCLA authorizes certain federal and state agencies and Indian tribes to be designated as Trustees for affected natural resources. Under CERCLA these agencies and tribes are authorized to assess natural resource injuries and to seek compensation from responsible parties, including the costs of performing the damage assessment. The Trustees are required to use recovered damages only to restore, replace or acquire the equivalent of the injured or lost resources.

Scientific literature and studies conducted by the Trustees elsewhere in Puget Sound have documented injuries from contaminants found in the Duwamish Waterway. Contractors for PRPs as part of the EPA-led remediation process have documented large quantities of hazardous substances that have contaminated extensive areas of the Duwamish Waterway. The Trustees' studies have demonstrated how the contamination has harmed both the organisms that inhabit the estuarine sediments, as well as fish and wildlife that come into contact with the contaminated sediments or that eat contaminated prey items.

As restoration planning proceeds, the Trustees will take advantage of opportunities to settle natural resource damage claims with willing parties. By identifying criteria and guidance to be used in selecting feasible restoration projects, the plan will provide an ecological framework to maximize the benefits of specific restoration projects to the affected resources in the defined areas of the River.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and the Council on Environmental Quality regulations implementing NEPA under 40 CFR chapter V apply to restoration actions by federal trustees. The purpose of the scoping process is to identify the concerns of the affected public and federal agencies, states, and Indian tribes, involve the public early in the decision making process, facilitate an efficient EA/EIS preparation process, define the issues and alternatives that

will be examined in detail, and save time by ensuring that draft documents adequately address relevant issues. The scoping process reduces paperwork and delay by ensuring that important issues are addressed early.

In compliance with 15 CFR 990.45, Trustees will prepare an Administrative Record (Record). The Record will include documents that the Trustees relied upon during the development of the RP and PEIS. After preparation, the Record will be on file at the NOAA Damage Assessment Center in Seattle, WA, and duplicate copies will be maintained at the following website: <http://www.darp.noaa.gov/>.

A draft PEIS document will be released for public comment by Fall/Winter, 2007. Specific dates and times for future events will be publicized when scheduled.

Dated: May 21, 2007.

**Patricia A. Montanio**

*Director, Office of Habitat Conservation,  
National Marine Fisheries Service.*

[FR Doc. E7-10141 Filed 5-24-07; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XA56

### Marine Fisheries Advisory Committee; Public Meetings

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

**ACTION:** Notice of open public meetings.

**SUMMARY:** Notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC). This will be the first of two possible meetings to be held in fiscal year 2007 to review and advise NOAA on management policies for living marine resources. Agenda topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice. All full Committee sessions will be open to the public.

**DATES:** The meetings will be held June 4, 2007, from 9 a.m. to 5 p.m., June 5, 2007, from 9 a.m. to 12 p.m., and June 6, 2007, from 1 p.m. to 5 p.m.

**ADDRESSES:** The meetings will be held in the Springwood meeting room at the Washington Court Hotel, 525 New Jersey Avenue, Washington, D.C. 20001; (202) 628-2100.

**FOR FURTHER INFORMATION CONTACT:** Laurel Bryant, MAFAC Executive

Director; telephone: (301) 713-2379 x171.

**SUPPLEMENTARY INFORMATION:** As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given of meetings of MAFAC. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1971, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This committee advises and reviews the adequacy of living marine resource policies and programs to meet the needs of commercial and recreational fisheries, and environmental, state, consumer, academic, tribal, governmental and other national interests. The complete charter and summaries of former meetings are located online at [www.nmfs.noaa.gov/ocs/mafac/index.htm](http://www.nmfs.noaa.gov/ocs/mafac/index.htm).

#### Matters to be Considered

June 4, 2007

The meeting will begin with opening remarks and introductions from Dr. William T. Hogarth, Assistant Administrator for Fisheries. MAFAC subcommittee chairs will provide an overview of what their respective subcommittees will address during the meeting. A brief review and discussion of advisory committee administrative policies and procedures will also be provided, with the remainder of the day dedicated to reviews and discussions of the agency's FishWatch web page project and updates and details of the implementation of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

June 5, 2007

The full Committee will reconvene from 9 a.m. to 12 p.m. to continue discussions for a Vision 2020 project, outlining a roadmap of issues to be addressed in the next 20 years. At the conclusion of the discussion, and as determined by the members, the full Committee will break into Subcommittees and working groups to allow time for in depth discussions and work on the issues pending before the Committee, including Magnuson-Stevens reauthorization, aquaculture legislation, recreational fishing data improvement plans and Vision 2020. The work of the Subcommittees will be presented and discussed in-depth at the full Committee level the following afternoon.

June 6, 2007

The Subcommittees will meet from 9 a.m. to 1 p.m. The full Committee will reconvene from 1 p.m. to 5 p.m. to receive, discuss, and take any final actions and votes.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Laurel Bryant, MAFAC Executive Director; telephone: (301) 713-2379 x171 by 5pm, May 30, 2007.

Dated: May 21, 2007.

**John Oliver**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. E7-10149 Filed 5-24-07; 8:45 am]

**BILLING CODE 3510-22-S**

#### DEPARTMENT OF DEFENSE

##### Office of the Secretary

##### **Record of Decision for the Final Programmatic Environmental Impact Statement for Defense Threat Reduction Agency (DTRA) Activities on White Sands Missile Range, NM**

**AGENCY:** Department of Defense; Defense Threat Reduction Agency.

**ACTION:** Notice of Availability of Record of Decision for White Sands Missile Range Programmatic Environmental Impact Statement.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), the Defense Threat Reduction Agency (DTRA) has prepared and issued a Record of Decision for the proposed testing activities on White Sands Missile Range (WSMR) proposed in the WSMR Programmatic Environmental Impact Statement (PEIS). The PEIS addresses the potential environmental impacts associated with implementing the proposed action, alternative, and no action alternative over a 10-year period.

The purpose of the proposed action is to provide adequate test areas and facilities to evaluate the lethality effectiveness of weapon systems used against simulated enemy ground targets producing, storing, or controlling Weapons of Mass Destruction (WMD).

There is a need to improve the U.S. Military's weapon systems that are

designed to defeat enemy military assets, including hardened and reinforced structures. These enemy military assets can house WMD and pose a significant threat to international stability and peaceful coexistence within and among nations. The military structures and equipment of the United States and its allies must also be refined to better withstand attack by enemy weapons systems to reduce collateral damage.

The Record of Decision briefly summarizes the determination of the WSMR PEIS and announces DTRA's intended course of action with respect to the proposed alternatives and environmental mitigation measures presented in the WSMR PEIS.

**ADDRESSES:** The final PEIS and Record of Decision are available for public viewing on the DTRA Web site: [www.dtra.mil](http://www.dtra.mil) and at the following public libraries: Albuquerque Public Library, 501 Copper Ave., Northwest, Albuquerque, NM; Socorro Public Library, 401 Park Street, Socorro, NM; Alamogordo Public Library, 920 Oregon Ave., Alamogordo, NM; Branigan Memorial Library, 200 East Picacho Ave., Las Cruces, NM; Consolidated Library, Building 464, White Sands Missile Range, NM; Holloman Air Force Base Library, 596 4th Street, Holloman Air Force Base, NM; and El Paso Public Library, 501 North Oregon Street, El Paso, TX.

**FOR FURTHER INFORMATION CONTACT:** *The DTRA Public Affairs Office:* (800) 701-5096 or (703) 767-5870.

**SUPPLEMENTARY INFORMATION:** A draft PEIS was released on Jan. 27, 2006 (71 FR 4571) for a 60-day public review and comment period that ended March 28, 2006. Public hearings were held Feb. 28, 2006 in Alamogordo, March 1, 2006 in Las Cruces, and March 2, 2006 in Socorro, NM. All comments received were addressed and incorporated into the final PEIS, which was released for public review on March 15, 2007. An announcement of the PEIS's public availability was published in the **Federal Register** on March 15, 2007 (72 FR 12167).

Dated: May 18, 2007.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. 07-2595 Filed 5-24-07; 8:45 am]

**BILLING CODE 5001-06-M**

**DEPARTMENT OF DEFENSE****Office of Secretary****[DoD-2007-OS-0050]****Privacy Act of 1974; System of Records****AGENCY:** Defense Contract Management Agency, DoD.**ACTION:** Notice to amend system of records.

**SUMMARY:** The Defense Contract Management Agency is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on June 25, 2007 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Defense Contract Management Agency (DSE), PA/FOIA Office, 6350 Walker Lane, #300, Alexandria, VA 22310-3226.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cathy Alphin, (703) 428-1453.

**SUPPLEMENTARY INFORMATION:** The Defense Contract Management Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 21, 2007.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**S850.10 DCMC-Q****SYSTEM NAME:**

Contractor Flight Operations  
(November 16, 2004, 69 FR 67112).

**CHANGES:****SYSTEM IDENTIFIER:**

Delete and replace with "PDCMA 1 DoD".

**SYSTEM NAME:**

Delete entry and replace with "Contractor's Flight and Ground Operations."

**SYSTEM LOCATION:**

Delete and replace with "All Defense Contract Management Agency (DCMA) activities that approve contractor aircraft flight and ground operations procedures or utilize contractor personnel who operate aircraft for the government. Contact HQ DCMA-AO, 6350 Walker Lane, Alexandria, VA 22310-3241 for a list of current system locations."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with "Civilian personnel who are contractors that operates aircraft for the Defense Contract Management Agency for which the government assumes some risk of loss or damage. It covers both flight crewmember and non-crewmember personnel designated by a contractor to conduct flights, perform functions while the aircraft is in flight, or perform ground operations in support of such flights."

\* \* \* \* \*

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "10 U.S.C. 136, Assistant Secretaries of Defense; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; DCMA Instruction 8210.1, ARJI 10-220, AR 95-20, NAVAIRINST 3710.1E, Contractor's Flight and Ground Operations; and E.O. 9397 (SSN)."

\* \* \* \* \*

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF THE USES:**

Delete from entry "Information from this system may be disclosed."

Delete entry and replace with "The DoD 'Blanket Routine Uses' apply to this system of records."

**STORAGE:**

Delete entry and replace with "Paper records in file folders and electronic storage media."

**RETRIEVABILITY:**

Delete entry and replace with "Individual's name and Social Security Number (SSN)."

\* \* \* \* \*

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with "HQ, Defense Contract Management Agency, Policy and Training Director, DCMA-AO, 6350 Walker Lane, Alexandria, VA 22310-3241.

**NOTIFICATION PROCEDURE:**

Delete entry and replace with "Individuals seeking to determine

whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer, DCMA-AO, 6350 Walker Lane, Alexandria, VA 22310-3241."

Requests should contain "Individual's name and Social Security Number (SSN)."

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, DCMA-AO, 6350 Walker Lane, Alexandria, VA 22310-3241.

Requests should contain Individual's name and Social Security Number (SSN)."

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The Defense Contract Management Agency rules for accessing records, for contesting contents, and for appealing initial agency determination can be obtained from the Privacy Act Officer, DCMA-AO, 6350 Walker Lane, Alexandria, VA 22310-3241".

\* \* \* \* \*

**PDCMA 1 DoD****SYSTEM NAME:**

Contractor's Flight and Ground Operations.

**SYSTEM LOCATION:**

All Defense Contract Management Agency (DCMA) activities that approve contractor aircraft flight and ground operations procedures or utilize contractor personnel who operate aircraft for the government. Contact HQ DCMA-AO, 6350 Walker Lane, Alexandria, VA 22310-3241 for a list of current system locations.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Civilian personnel who are contractors that operates aircraft for the Defense Contract Management Agency for which the government assumes some risk of loss or damage. It covers both flight crewmember and non-crewmember personnel designated by a contractor to conduct flights, perform functions while the aircraft is in flight, or perform ground operations in support of such flights.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, Social Security Number (SSN), home address and telephone number, date of birth, security clearance data, education, military service data, flight qualification, proficiency, training, and

experience records, standardization and evaluation data, safety and mishap records, medical and physiological data, and similar data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 136, Assistant Secretaries of Defense; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; DCMA Instruction 8210.1, ARJI 10-220, AR 95-20, NAVAIRINST 3710.1E, Contractor's Flight and Ground Operations; and E.O. 9397 (SSN).

**PURPOSE(S):**

Used to monitor and manage individual contractor flight and ground personnel records.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF THE USES:**

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Federal Aviation Agency or the appropriate civil aviation authority or foreign military department in the course of certifying individuals, investigative flight mishaps, and conducting rescue operations.

The DoD "Blanket Routine Uses" apply to this system of records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders and electronic storage media.

**RETRIEVABILITY:**

Individual's name and/or Social Security Number (SSN).

**SAFEGUARDS:**

Records are accessed by custodian of the records or by persons responsible for servicing the record system in performance of their actual duties that are properly screened and cleared for need-to-know. Records are stored in locked cabinets and rooms are controlled by personnel screening and computer software.

**RETENTION AND DISPOSAL:**

Records are maintained in the system until contract termination, at which time they will be destroyed if no longer needed.

**SYSTEM MANAGER(S) AND ADDRESS:**

HQ, Defense Contract Management Agency, Policy and Training Director,

DCMA-AO, 6350 Walker Lane, Alexandria, VA 22310-3241.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer, DCMA-DSE, 6350 Walker Lane, Alexandria, VA 22310-3241.

Requests should contain individual's name and Social Security Number (SSN).

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, DCMA-AO, 6350 Walker Lane, Alexandria, VA 22310-3241.

Requests should contain individual's name and Social Security Number (SSN).

For personal visits, the individual may be asked to show a valid identification card, a drivers' license, or some similar proof of identity.

**CONTESTING RECORD PROCEDURES:**

The Defense Contract Management Agency rules for accessing records, for contesting contents, and for appealing initial agency determination can be obtained from the Privacy Act Officer, DCMA-AO, 6350 Walker Lane, Alexandria, VA 22310-3241.

**RECORD SOURCE CATEGORIES:**

Information is provided by the individual or from training, evaluation, and examination records.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E7-10112 Filed 5-24-07; 8:45 am]

BILLING CODE 5001-06-P

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

[DOD-2007-OS-0049]

**Privacy Act of 1974; Systems of Records**

**AGENCY:** Defense Logistics Agency, DoD.

**ACTION:** Notice to amend a system of records.

**SUMMARY:** The Defense Logistics Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This action will be effective without further notice on June 25, 2007

unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jody Sinkler at (703) 767-5045.

**SUPPLEMENTARY INFORMATION:** The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 21, 2007.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**S322.15 DMDC**

**SYSTEM NAME:**

Defense Incident-Based Reporting System (DIBRS) (November 16, 2004, 69 FR 67112).

**CHANGES:**

**SYSTEM LOCATION:**

Delete second paragraph.

\* \* \* \* \*

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with "5 U.S.C. 301, Departmental regulation; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; 18 U.S.C. 922 note, Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10607, Victims Rights and Restitution Act of 1990; 18 U.S.C. 922, The Lautenberg Amendment to the Gun Control Act; 42 U.S.C. 14071, The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program; 10 U.S.C. 1562, Database on Domestic Violence Incidents; Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107-188; DOD Directive 7730.47, Defense Incident-Based Reporting System (DIBRS); and E.O. 9397 (SSN)."

\* \* \* \* \*

**NOTIFICATION PROCEDURE:**

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221."

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual.

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221."

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual.

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with "The DLA rules for accessing records and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221."

The rules for contesting contents are contained in DOD Manual 7730.47-M, Manual for Defense Incident-Based Reporting System, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221.

Requests for amendment will be forwarded to the DOD Component which supplied the contested information for adjudication under the Privacy Act rules published by that Component."

\* \* \* \* \*

**S322.15 DMDC****SYSTEM NAME:**

Defense Incident-Based Reporting System (DIBRS).

**SYSTEM LOCATION:**

Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Active duty military (includes Coast Guard) or civilian personnel who have been apprehended or detained for criminal offenses which must be reported to the Department of Justice pursuant to the Uniform Crime Reporting Handbook as required by the Uniform Federal Crime Reporting Act.

Active duty military (includes Coast Guard) personnel accused of criminal offenses under the Uniform Code of Military Justice and investigated by a military law enforcement organization.

Active duty military (includes Coast Guard) personnel accused of fraternization, sexual harassment, a sex-related offense, a hate or bias crime, or a criminal offense against a victim who is a minor and investigated by a commander, military officer, or civilian in a supervisory position.

Active duty military (includes Coast Guard) personnel accused of a criminal incident, which is not investigated by a military law enforcement organization, but which results in referral to trial by court-martial, imposition of non-judicial punishment, or an administrative discharge.

Active duty military (includes Coast Guard) personnel convicted by civilian authorities of felony offenses as defined by State or local law.

Active duty military (includes Coast Guard) personnel who attempt or commit suicide. Individuals who are victims of those offenses which are either reportable to the Department of Justice or are reportable for having committed criminal incidents in violation of law or regulation.

Active duty military (includes Coast Guard) personnel who must be reported to the Department of Justice under the Brady Handgun Violence Prevention Act because such personnel have been referred to trial by a general courts-martial for an offense punishable by imprisonment for a term exceeding one year; have left the State with the intent of avoiding either pending charges or giving testimony in criminal proceedings; are either current users of a controlled substance which has not been prescribed by a licensed physician (NOTE: Includes both current and former members who recently have been convicted by a courts-martial, given non-judicial punishment, or administratively separated based on drug use or failing a drug rehabilitation program) or using a controlled substance and losing the power of self-control with respect to that substance; are adjudicated by lawful authority to be a danger to themselves or others or to lack the mental capacity to contract or

manage their own affairs or are formally committed by lawful authority to a mental hospital or like facility (NOTE: Includes those members found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to Articles 50a and 72b of the Uniform Code of Military Justice); have been discharged from the Armed Services pursuant to either a dishonorable discharge or a dismissal adjudged by a general courts-martial; or have been convicted in any court of a misdemeanor crime of domestic violence.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records compiled by law enforcement authorities (e.g., Pentagon Force Protective Agency, military and civilian police, military criminal investigation services or commands); DOD organizations and military commands; Legal and judicial authority (e.g., Staff Judge Advocates, courts-martial); and Correctional institutions and facilities (e.g., the United States Disciplinary Barracks) consisting of personal data on individuals, to include but not limited to, name; social security number; date of birth; place of birth; race; ethnicity; sex; identifying marks (tattoos, scars, etc.); height; weight; nature and details of the incident/offense to include whether alcohol, drugs and/or weapons were involved; driver's license information; actions taken by military commanders (e.g., administrative and/or non-judicial measures, to include sanctions imposed); court-martial results and punishments imposed; confinement information, to include location of correctional facility, gang/cult affiliation if applicable; and release/parole/clemency eligibility dates.

Records also consist of personal information on individuals who were victims. Such information does not include the name of the victim or other personal identifiers (e.g., Social Security Number, date of birth, etc.), but does include the individual's residential zip code; age; sex; race; ethnicity; and type of injury.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulation; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; 18 U.S.C. 922 note, Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10607, Victims Rights and Restitution Act of 1990; 18 U.S.C. 922, The Lautenberg Amendment to the Gun Control Act; 42 U.S.C. 14071, The Jacob Wetterling Crimes Against Children and

Sexually Violent Offender Registration Program; 10 U.S.C. 1562, Database on Domestic Violence Incidents; Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L. 107-188; DOD Directive 7730.47, Defense Incident-Based Reporting System (DIBRS); and E.O. 9397 (SSN).

**PURPOSE(S):**

To provide a single central facility within the Department of Defense (DOD) which can serve as a repository of criminal and specified other non-criminal incidents which will be used to satisfy statutory and regulatory reporting requirements, specifically to provide crime statistics required by the Department of Justice (DOJ) under the Uniform Federal Crime Reporting Act; to provide personal information required by the DOJ under the Brady Handgun Violence Prevention Act and the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; statistical information required by DOD under the Victim's Rights and Restitution Act; information required for the DOD database on domestic violence incidents; and to enhance DOD's capability to analyze trends and to respond to executive, legislative, and oversight requests for statistical crime data relating to criminal and other high-interest incidents.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may be disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) only as follows:

To the Department of Justice, or any of its components to which authority has been delegated: (1) To compile crime statistics so that such information can be both disseminated to the general public and used to develop statistical data for use by law enforcement agencies; (2) To compile information on those individuals for whom receipt or possession of a firearm would violate the law so that such information can be included in the National Instant Criminal Background Check System which may be used by firearm licensees (importers, manufacturers or dealers) to determine whether individuals are disqualified from receiving or possessing a firearm; and (3) To compile information on those individuals for whom access to a biological agent or toxin would violate the law so that such

information can be included in a database which may be used to determine whether individuals are disqualified from accessing such agents or toxins.

The DOD "Blanket Routine Uses" apply to this system of records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic storage media.

**RETRIEVABILITY:**

Records are retrieved by name, Social Security Number (SSN), incident number, or any other data element contained in system.

**SAFEGUARDS:**

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.

**RETENTION AND DISPOSAL:**

The master file is retained permanently. Input and source records are destroyed after data have been entered into the master file or when no longer needed for operational purposes, whichever is later. Output products (electronic or paper) are destroyed when no longer needed for operational purposes.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Director, Defense Manpower Data Center, DOD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221.

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Office,

Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221.

Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual.

**CONTESTING RECORD PROCEDURES:**

The DLA rules for accessing records and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221.

The rules for contesting contents are contained in DOD Manual 7730.47-M, Manual for Defense Incident-Based Reporting System, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060-6221.

Requests for amendment will be forwarded to the DOD Component which supplied the contested information for adjudication under the Privacy Act rules published by that Component.

**RECORD SOURCE CATEGORIES:**

The military services (includes the U.S. Coast Guard) and Defense agencies.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E7-10113 Filed 5-24-07; 8:45 am]

BILLING CODE 5001-06-P

---

**DEPARTMENT OF DEFENSE**

**Department of the Air Force**

**Active Duty Service Determinations for Civilian or Contractual Groups**

**AGENCY:** Department of the Air Force.

**ACTION:** Notice.

**SUMMARY:** On May 1, 2007, the Secretary of the Air Force, acting as Executive Agent of the Secretary of Defense, determined that the service of the groups known as:

a. The U.S. and Foreign Civilian Employees of CAT, Inc., Who Operated in Korea Under Operation Book Lift During 1950 and 1951 and Any Ground Support Personnel Necessary to Support That Mission;

b. The U.S. and Foreign Civilian Employees of CAT, Inc., Who Operated Air Force C-119 Aircraft to Drop Ammunition and Other Supplies to French Troops at Dien Bien Phu in 1954

and Any Ground Support Personnel Necessary to Support that Mission;

c. The U.S. and Foreign Civilian Employees of CAT, Inc., Who Operated B-26 Aircraft in Indonesia From 1958 Through 1962, and Any Ground Support Personnel Who Supported That Mission;

d. The U.S. and Foreign Civilian Employees of Air America, Inc., who Operated Fixed Wing or Helicopter Aircraft in Support of U.S. Army Special Forces in Laos as Part of Operation Hot Foot and Operation White Star From 1959 Through 1962, and in Support of Operation Mill Pond, the Airlift from Thailand to Tibet, and Any Ground Support Personnel Necessary to Support Those Missions;

e. The U.S. and Foreign Civilian Employees of Air America, Inc., Who Operated Fixed Wing or Helicopter Aircraft in Direct Support of the U.S. Air Force Operating in Laos in the Steve Canyon Program (Ravens), the Site 85 Operation, Photo Reconnaissance, the Harp (sic) Program, and Search and Rescue (SAR) Operations for U.S. Military Flight Crews from 1964 Through 1974, and Any In-Country Ground Support Personnel, Who Were Necessary to Support Those Missions and Held Supervisory Positions; and

f. The U.S. and Foreign Civilian Employees of Air America, Inc., Who Operated Fixed Wing or Helicopter Aircraft in Vietnam in Direct Support of the U.S. Army Special Forces from 1964 through 1975, and Any In-Country Ground Support Personnel, Who Were Necessary to Support those Missions and Held Supervisory Positions shall not be considered "active duty" for purposes of all laws administered by the Department of Veterans Affairs (VA).

**FOR FURTHER INFORMATION CONTACT:** Mr. James D. Johnston at the Secretary of the Air Force Personnel Council (SAFPC); 1535 Command Drive, EE Wing, 3d Fl.; Andrews AFB, MD 20762-7002.

**Bao-Anh Trinh,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. E7-10102 Filed 5-24-07; 8:45 am]

**BILLING CODE 5001-05-P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

[No. USAF-2006-0018]

#### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the

following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by June 25, 2007.

*Title, Form, and OMB Number:* Air Force Officer Training School Accession Forms; AFRS IMT 1413 and AF Form 215; OMB Control Number 0701-0080.

*Type of Request:* Extension.

*Number of Respondents:* 500.

*Responses per Respondent:* 2

*Annual Responses:* 1,000.

*Average Burden per Response:* 30 minutes.

*Annual Burden Hours:* 500.

*Needs and Uses:* These forms are used by field recruiters and education counselors in the processing of Officer Training School applications. These forms provide pertinent information to facilitate selection of candidates for commission.

*Affected Public:* Individuals or households.

*Frequency:* On Occasion.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*OMB Desk Officer:* Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions:* All submission received must include the agency name, docket number and title for this **Federal Register** docket. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change; including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209-2133.

Dated: May 18, 2007.

**Patricia L. Toppings,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 07-2592 Filed 5-24-07; 8:45 am]

**BILLING CODE 5001-06-M**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

[No. USAF-2006-017]

#### Submission for OMB review; comment request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by June 25, 2007.

*Title, Form, and OMB Number:* Personal Interview—USAF Health Professions Applicant; AFRS Form 1437; OMB Control Number 0701-0078.

*Type of Request:* Revision.

*Number of Respondents:* 3,600.

*Responses per Respondent:* 1.

*Annual Responses:* 3,600

*Average Burden per Response:* 30 minutes.

*Annual Burden Hours:* 1,800.

*Needs and Uses:* This form is used by field recruiters in the processing of health professions applicants applying for a commission in the United States Air Force.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*OMB Desk Officer:* Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

*DOD Clearance Officer:* Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should

be sent to Ms. Toppings at WHS/ESD/ Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209-2133.

Dated: May 18, 2007.

**Patricia L. Toppings,**  
Alternate OSD Federal Register Liaison  
Officer, Department of Defense.  
[FR Doc. 07-2593 Filed 5-24-07; 8:45 am]  
**BILLING CODE 5001-06-M**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

[No. USAF-2007-0006]

### Submission for OMB Review; Comment Request

#### ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by June 25, 2007.

**Title, Form, and OMB Number:** Air Force Academy Request for Secondary School Transcript, USAFA Form 148; OMB Control Number 0701-0066.

**Type of Request:** Extension.

**Number of Respondents:** 7,954.

**Responses Per Respondent:** 1.

**Annual Responses:** 7,954.

**Average Burden Per Response:** 30 minutes for candidate/15 minutes for counselor.

**Annual Burden Hours:** 5,966.

**Needs and Uses:** The collection of information is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

**Affected Public:** Individuals or households.

**Frequency:** On occasion.

**Respondent's Obligation:** Required to Obtain or Retain Benefits.

**OMB Desk Officer:** Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

**Instructions:** All submissions received must include the agency name, docket

number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**DOD Clearance Officer:** Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/ Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209-2133.

Dated: May 18, 2007.

**Patricia L. Toppings,**  
Alternate OSD Federal Register Liaison  
Officer, Department of Defense.  
[FR Doc. 07-2594 Filed 5-24-07; 8:45 am]  
**BILLING CODE 5001-06-M**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

#### Intent To Prepare a Draft Environmental Impact Statement for a New Borrow Area for the Martin County Beach Erosion Control Project Located in Martin County, FL

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Corps of Engineers, Jacksonville District, intends to prepare a Draft Environmental Impact Statement (DEIS) for a new borrow area for the Martin County Beach Erosion Control Project. In cooperation with Martin County, the study will evaluate alternative sand sources that will maximize shore protection while minimizing environmental impacts.

**ADDRESSES:** U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232-0019.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul M. DeMarco, by e-mail [Paul.M.DeMarco@saj02.usace.army.mil](mailto:Paul.M.DeMarco@saj02.usace.army.mil) or by telephone at (904) 232-1897.

#### SUPPLEMENTARY INFORMATION:

a. **Proposed Action.** The Martin County, FL, Beach Erosion Control project was authorized by the Water Resources Development Act of 1990 passed November 28, 1990 (Pub. L. 101-640) in accordance with the report of the Chief of Engineers dated November 20, 1989. The final Environmental Impact Statement was filed with the

Environmental Protection Agency in 1986. Prior to construction, General Design Memorandum (GDM) dated June 1994 was prepared. The project was authorized for 50 years from date of initial construction in 1996. The authorized plan consisted of restoration of 4 miles of shorefront southward from the St. Lucie County line to near the limit of Stuart Public Park (R1-R25). The previously approved borrow area has been depleted. The DEIS will evaluate various sources of beach quality sand, the impacts from removal of this sand on the environment and coastal processes, and the impacts from nourishing the beach with this sand. Subsequently a final EIS will be published.

b. **Alternatives.** Specific proposed alternatives at this time include hydraulic dredging of beach quality sand from offshore shoals, truck-haul beach fill from upland sources, and no-action.

c. **Scoping Process.** The scoping process as outlined by the Council on Environmental Quality will be utilized to involve Federal, State, and local agencies, affected Indian tribes, and other interested persons and organizations. A scoping letter will be sent to the appropriate parties requesting their comments and concerns. Any persons and organizations wishing to participate in the scoping process should contact the U.S. Army Corps of Engineers at (see **ADDRESSES**).

Significant issues to be analyzed to the DEIS would include effects on Federally listed threatened and endangered species, Essential Fish Habitat with particular concern for nearshore hardbottom habitat. Other issue would be health and safety, water quality, aesthetics and recreation, fish and wildlife resources, cultural resources, socio-economic resources, and any issues identified through scoping and public involvement.

The proposed action would be coordinated with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act, with the NMFS concerning Essential Fish Habitat, and with the State Historic Preservation Officer.

The proposed action would also involve evaluation for compliance with guidelines pursuant to Section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to Section 401 of the Clean Water Act; certification of state lands, easement, and rights of way; and determination of Coastal Zone Management Act consistency.

The U.S. Army Corps of Engineers and the non-Federal sponsor, Martin County, would provide extensive information and assistance on the resources to be impacted and alternatives.

d. *Scoping Meetings*: Public scoping meetings would be held. Exact dates, times, and locations would be published in local papers.

e. *Draft Environmental Impact Statement Availability*: The Draft Environmental Impact Statement would be available on or about October 2007.

Dated: May 19, 2007.

**Stuart J. Appelbaum,**

Chief, Planning Division.

[FR Doc. 07-2580 Filed 5-24-07; 8:45 am]

BILLING CODE 3710-AS-M

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6687-3]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202-564-7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

#### Draft EISs

EIS No. 20060507, ERP No. D-FHW-J40175-UT, South Logan to Providence Transportation Corridor Project, Improvements to 100 East Street between 300 South (Logan) to Providence Lane (100 North) in Providence, Funding and Right-of-Way Grant, Cities of Logan and Providence, Cache County, UT.

*Summary*: EPA expressed environmental concerns about impacts to wetlands, floodplains, and air impacts related to PM 2.5. EPA is also concerned about cumulative impacts. Rating EC2.

EIS No. 20070053, ERP No. D-AFS-L65533-ID, Sun Valley Resort (Bald Mountain) 2005 Master Plan—Phase I Project, Implementation, Special-Use Permits, Sawtooth National Forest, Blaine County, ID.

*Summary*: EPA raised environmental concerns with the impacts to water quality, erosion, and changes stream

flows. Also, the final EIS should address cumulative impacts associated with future development and expanded snowmaking operations.

Rating EC2.

EIS No. 20070071, ERP No. D-USA-D11041-VA, Fort Belvoir 2005 Base Realignment and Closure (BRAC) Recommendations and Related Army Actions, Implementation, Fairfax County, VA.

*Summary*: EPA expressed environmental concerns about natural resources impacts. EPA requested additional information on the locations of forest removal and habitat loss.

Rating EC2.

EIS No. 20070077, ERP No. D-AFS-J65376-SD, Mitchell Project Area, To Implement Multiple Resource Management Actions, Mystic Ranger District, Black Hills National Forest, Pennington County, SD.

*Summary*: EPA expressed environmental concerns about human health exposure to pollutants from smoke and impacts to air quality, and impacts from road construction to water quality.

Rating EC2.

EIS No. 20070105, ERP No. D-USA-D15001-MD, Fort George G. Meade Base Realignment and Closure 2005 and Enhanced Use Lease (EUL) Actions, Implementation, Anne Arundel, Howard, Montgomery, Prince George's Counties, MD.

*Summary*: EPA expressed environmental concerns about the natural resources impacts. EPA requested additional information on upland habitat, wetlands, surface water, and wildlife. EPA also recommends that the cumulative impact discussion be expanded to include water and wetland resources.

Rating EC2.

EIS No. 20070111, ERP No. D-HUD-L85028-WA, Westpark Redevelopment Master Plan, Redevelop of 82-acre Site to create a Mixed-Use, Mixed-Income Pedestrian Oriented Urban Community, Funding and US Army COE Section 10 Permit, City of Bremerton, Kitsap County, WA.

*Summary*: EPA utilized a screening tool to conduct a limited review of the EIS and, based on the screen, we do not foresee having any environmental objections to the proposed project.

Rating LO.

EIS No. 20070114, ERP No. D-USA-G15001-NM, Cannon Air Force Base (AFB), Proposal to Beddown, or Locate Air Force Special Operations

Command (AFSOC), Implementation, Base Realignment and Closure (BRAC), NM.

*Summary*: EPA had no objections to the proposed action. Rating LO.

EIS No. 20070124, ERP No. D-FHW-C40169-NY, NY-112 Reconstruction Project, From I-495 to NY-25 Improve Safety and Mobility, Town of Brookhaven, Suffolk County, NY.

*Summary*: EPA has no objections to the proposed project. Rating LO.

EIS No. 20070079, ERP No. DS-AFS-L65509-WA, School Fire Salvage Recovery Project, To Clarify Definitions of Live and Dead Trees, Implementation, Pomeroy Ranger District, Umatilla National Forest, Columbia and Garfield Counties, WA.

*Summary*: While EPA has no objections to the proposed action, EPA did recommend that the Forest Service monitor the survival of fire-damaged trees across the project area (both inside and outside of sale units) using the result to validate and calibrate the Scott Guidelines.

Rating LO.

EIS No. 20070113, ERP No. DS-TVA-E06008-TN, Watts Bar Nuclear Plant Unit 2, Completion and Operation, Updated Information on Extensive Environmental Record, Rhea County, TN.

*Summary*: EPA expressed concern about radioactive waste disposition after 2008 and the proposed Dry Cask storage plans. EPA requested the radiological monitoring of all plant effluents along with appropriate storage and disposition of radioactive waste.

Rating EC1.

#### Final EISs

EIS No. 20070101, ERP No. F-FHW-F40430-IN, US-31 Kokomo Corridor Project, Preferred Alternative is J, Transportation Improvement between IN-26 and U.S. 35 Northern Junction, City of Kokomo and Center Township, Howard and Tipton Counties, IN.

*Summary*: EPA continues to express concern that adequate mitigation is not being proposed. EIS No. 20070117, ERP No. F-AFS-D65036-PA, Allegheny National Forest, Proposed Revised Land and Resource Management Plan, Preferred Alternative is Cm, Implementation, Elk, Forest, McKean and Warren Counties, PA.

*Summary*: EPA still has concerns with the potential for adverse impacts from oil and gas development to water quality and wildlife resources. EPA encourages the Forest Service to work

closely with the permitting agencies and state environmental agencies to minimize impacts from these activities.

EIS No. 20070128, ERP No. F-AFS-L65511-ID, Myrtle Creek Healthy Forest Restoration Act Project, Proposes Aquatic and Vegetation Improvement Treatments, Panhandle National Forests, Bonners Ferry Ranger District, City of Bonners Ferry, Boundary County, ID.

*Summary:* No formal comment letter was sent to the preparing agency.

EIS No. 20070135, ERP No. F-AFS-L65507-ID, White/White Analysis Project, Preferred Alternative is 4, Vegetative Management and Watershed Improvement, Lolo Creek, Chamook Creek, White Creek, Mike White Creek, Nevada Creek, and Utah Creek, Lochsa Ranger District, Clearwater National Forest, Idaho and Clearwater County, ID.

*Summary:* While EPA supports the proposed watershed improvement activities, we have continued concerns related to 303(d) listed streams. EPA recommends implementing BMPs for other activities such as grazing and placer mining to improve aquatic habitat and water quality.

EIS No. 20070137, ERP No. F-AFS-L65482-ID, Aspen Range Timber Sale and Vegetation Treatment Project, Preferred Alternative is 5, Proposal to Treat Forested and Nonforested Vegetation, Caribou-Targhee National Forest, Soda Springs Ranger District, Caribou County, ID.

*Summary:* EPA has no objections to the proposed project.

EIS No. 20070095, ERP No. FS-AFS-L65383-ID, Hidden Cedar Project, Updated Information, Manage Vegetation Conditions and the Transportation System, Idaho Panhandle National Forests, St. Joe Ranger District, Benewah, Latah and Shoshone Counties, ID.

*Summary:* EPA previous water quality issues have been resolved; therefore, EPA has no objection to the proposed action.

Dated: May 22, 2007.

**Ken Mittelholtz,**

*Environmental Protection Specialist, Office of Federal Activities.*

[FR Doc. E7-10132 Filed 5-24-07; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6687-2]

### Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564-7167 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements

Filed 05/14/2007 through 05/18/2007 Pursuant to 40 CFR 1506.9.

EIS No. 20070194, *Final EIS*, AFS, ID, Payette National Forest Travel Management Plan, Designate a System of Roads, Trails and Areas Open to Motorized and Non-Motorized Use, Implementation, Adam, Washington, Idaho, Valley Counties, ID, *Wait Period Ends:* 06/25/2007, *Contact:* Bill Gamble 208-253-0100.

EIS No. 20070195, *Final EIS*, AFS, AK, Traitors Cove Timber Sale Project, Timber Harvest and Road Construction, Implementation, Revillagigedo Island, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, AK, *Wait Period Ends:* 06/25/2007, *Contact:* Rob Reeck 907-228-4114.

EIS No. 20070196, *Draft EIS*, AFS, AK, Angoon Hydroelectric Project, Construction and Operation, Special-Use-Authorization, Thayer Creek, Admiralty Island National Monument, Tongass National Forest, AK, *Comment Period Ends:* 07/09/2007, *Contact:* Kathy Rodriguez 907-790-7472.

EIS No. 20070197, *Revised Draft EIS*, AFS, CA, Phoenix Project, Proposes to Use a Combination of Contract and Forest Service Crew to Treat Poor Forest Health and High Fire Hazard Conditions, Develop a Network Defensible Fuel Profile Zones (DFPZs), Sierraville Ranger District, Tahoe National Forest, Sierra and Nevada Counties, CA, *Comment Period Ends:* 07/09/2007, *Contact:* Jeff Leach 530-994-3401 Ext 6680.

EIS No. 20070198, *Final EIS*, HUD, WA, Westpark Redevelopment Master Plan, Redevelop of 82-acre Site to create a Mixed-Use, Mixed-Income Pedestrian Oriented Urban Community, Funding and U.S. Army COE Section 10 Permit, City of Bremerton, Kitsap County, WA, *Wait Period Ends:* 06/25/2007, *Contact:* Andrea Spencer 360-473-5283.

EIS No. 20070199, *Final EIS*, FHW, NC, Wilmington Bypass Transportation Improvements, U.S. 17 to U.S. 421, Funding, COE Section 10 and 404

Permits and U.S. Coast Guard Bridge Permit Issuance, Brunswick and New Hanover Counties, NC, *Wait Period Ends:* 06/25/2007 *Contact:* John F. Sullivan 919-856-4346-Ext 122.

EIS No. 20070200, *Draft EIS*, AFS, WI, Fishel Vegetation and Transportation Management Project, To Implement Land Management Activities, Eagle River-Florence Ranger District, Chequamegon-Nicolet National Forest, Forest and Vilas Counties, WI, *Comment Period Ends:* 07/09/2007, *Contact:* Lois Pfeffer 559-359-7023.

EIS No. 20070201, *Final EIS*, FHW, 00, U.S. 59—Amelia Earhart Memorial Bridge over the Missouri River, Construction from Atchison, Kansas to U.S. 59/State Route 45 Intersection, U.S. Coast Guard Section 9 Permit and U.S. Army COE Section 10 and 404 Permits, Atchison, KS and Buchanan County, MO, *Wait Period Ends:* 06/25/2007, *Contact:* John Knowles 785-271-2448 Ext 211.

EIS No. 20070202, *Final EIS*, AFS, ID, South Fork Salmon River Subbasin Noxious and Invasive Weed Management Program, Implementation, Krassel and McCall Ranger Districts, Payette National Forest and Cascade Ranger District, Valley and Idaho Counties, ID, *Wait Period Ends:* 06/25/2007, *Contact:* Dan Anderson 208-634-0435.

EIS No. 20070203, *Final EIS*, AFS, CO, Robin Redbreast Unpatented Lode Claim Mining Plan of Operations, Implementation, U.S. Army COE Section 404 Permit, Located above the Middle Fork of the Cimarron River within the Uncompahgre Wilderness, Ouray Ranger District, Grand Mesa, Uncompahgre and Gunnison National Forests, Hinsdale County, CO, *Wait Period Ends:* 06/25/2007, *Contact:* Jeff Burch 970-874-6649.

EIS No. 20070204, *Final EIS*, FRC, CA, Oroville Facilities Project, Issuing an New Federal License to Continue Hydroelectric Power (FERC No. 2100), Feather River, Sierra Nevada, Butte County, CA, *Wait Period Ends:* 06/25/2007, *Contact:* James Fargo 202-502-6095.

### Amended Notices

EIS No. 20070158, *Final EIS*, FAA, AK, Juneau International Airport, Proposed Development Activities to Enhance Operations Safety, Facilitate Aircraft Alignment, U.S. Army COE Section 404 Permit, City and Borough of Juneau, AK, *Wait Period Ends:* 06/11/2007, *Contact:* Patti Sullivan 907-271-5454.

*Revision to FR Notice Published 04/27/2007: Correction to Wait Period from 05/29/2007 to 06/11/2007.*

*EIS No. 20070168, Draft EIS, FTA, CA, Alameda-Contra Transit (AC Transit) East Bay Bus Rapid Transit Project, Improve Transit Serve in cities of Berkeley, Oakland and San Leandro, San Francisco Bay Area, Alameda County, CA, Comment Period Ends: 07/03/2007, Contact: Lucinda Eagle 415-744-3133.*

*Revision of FR Notice Published 05/04/2007: Extending Comment Period from 6/18/2007 to 07/03/2007.*

Dated: 05/22/2007.

**Ken Mittelholtz,**

*Environmental Protection Specialist, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. E7-10131 Filed 5-24-07; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2004-0369; FRL-8121-6]

### Chloroneb; Notice of Receipt of Request to Voluntarily Terminate Certain Uses of Pesticide Registrations

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

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily terminate certain uses of its chloroneb products. The request would terminate chloroneb's use on all seed treatment. The request would not terminate the last chloroneb product registered in the United States. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws its request within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

**DATES:** Comments must be received on or before June 25, 2007.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2004-0369, by one of the following methods:

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

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

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

**Instructions:** Direct your comments to docket ID number EPA-HQ-OPP-2004-0369. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The Federal [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the docket index available in [www.regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [www.regulations.gov](http://www.regulations.gov) web site to view the docket index or access available documents. Although

listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Wilhelmina Livingston, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8025; fax number: (703) 308-8005; e-mail address: [livingston.wilhelmina@epa.gov](mailto:livingston.wilhelmina@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI

must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

### II. Background on the Receipt of Requests to Terminate Certain Uses of its Chloroneb Products

This notice announces receipt by EPA of a request from registrant Kincaid Inc. (See Table 2 of this unit.) to voluntarily terminate certain uses of four chloroneb product registrations. Chloroneb is a fungicide currently registered for use as a pre-plant seed treatment for cotton; sugarbeets, soy beans, and beans and as well as on commercial turf and ornamentals. In a letter dated February 7, 2007, Kincaid Inc. requested that EPA terminate certain uses of chloroneb. The pesticide product registrations covering these uses are identified in this notice in Table 1 of this unit. Kincaid Inc. requests voluntary termination of chloroneb's use on all seed treatments. Specifically, Kincaid requests termination of seed treatment use on beans (including cowpeas) cotton, lupine, soybeans, and sugar beets.

### III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from a registrant to terminate certain uses of chloroneb product registrations. The affected products and the registrants making the

request are identified in Tables 1 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or
2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The chloroneb registrant has requested that EPA waive the 180-day comment period. EPA will provide a 30-day comment period on the proposed request.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued terminating the affected registrations.

TABLE 1.—CHLORONEB PRODUCT REGISTRATIONS WITH PENDING REQUEST FOR TERMINATION OF CERTAIN USES

| Registration No. | Product name                               | Company      |
|------------------|--------------------------------------------|--------------|
| 73782-1          | Chloroneb Fungicide Technical              | Kincaid Inc. |
| 73782-2          | Demosan 85W                                | Kincaid Inc. |
| 73782-3          | Terraneb SP Turf Fungicide                 | Kincaid Inc. |
| 73782-4          | K.E. Chloroneb Systemic Flowable Fungicide | Kincaid Inc. |

Table 2 of this unit includes the name and address of record for the registrant of the products listed in Table 1 of this unit.

TABLE 2.—REGISTRANT REQUESTING VOLUNTARY TERMINATION OF CERTAIN USES

| EPA Company No. | Company name and address                         |
|-----------------|--------------------------------------------------|
| 73782           | Kincaid Inc.<br>P.O. Box 490<br>Athens, TN 37371 |

### IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

### V. Procedures for Withdrawal of Request and Considerations for Reregistration of Chloroneb

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before June 25, 2007. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

### VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment.

In any order issued in response to this request for termination of certain uses, the Agency proposes to include the following provisions for the treatment of any existing stocks of the products identified or referenced in Table 1:

If the request for voluntary termination of certain uses is granted as discussed above, the Agency intends to issue a cancellation order that will allow the registrant to sell and distribute such existing stocks for one year from the date of this use termination request and allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted,

provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the cancelled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

#### List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 21, 2007.

Michael Goodis,

*Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E7-10116 Filed 5-24-07; 8:45 am]

BILLING CODE 6560-50-S

#### ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2007-0279; FRL-8130-7]

##### **Army Chemical Agent Rocket Incinerator Approval to Dispose of Polychlorinated Biphenyls under the Toxic Substances Control Act; Notice of Application to Renew, Data Availability, and Modification of Existing Approval**

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

**ACTION:** Notice.

**SUMMARY:** The Department of the Army (Army) has applied to renew an approval to dispose of polychlorinated biphenyls (PCBs) under the Toxic Substances Control Act (TSCA). The renewal would allow the Army to continue to incinerate M55 chemical agent rockets containing PCBs using the Deactivation Furnace Systems (DFS). This action announces: EPA's consideration of the Army's application, the availability of trial burn data that will inform EPA's consideration, and the modification of the public participation condition of the Army's existing approval. EPA is requesting comments on the renewal application and trial burn data.

**DATES:** Comments must be received on or before June 11, 2007].

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2007-0279, by one of the following methods:

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

• **Mail:** Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• **Hand Delivery:** OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2007-0279. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to docket ID number EPA-HQ-OPPT-2007-0279. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. In this instance, because of the enormity of the volume of data, EPA has posted a summary (entitled "Executive Summary") of the trial burn report from each facility. If the interested party needs more information than is found in the Executive Summary, complete trial burn data is available on compact disc (CD). To obtain a CD, please contact the technical information contact listed under **FOR FURTHER INFORMATION CONTACT**. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

For technical information contact: Hiroshi Dodohara, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460-0001; telephone number: (202) 566-0507; e-mail address: [dodahara.hiroshi@epa.gov](mailto:dodahara.hiroshi@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

Potentially affected entities may include, but are not limited to:

- Department of the Army (NAICS code 928110).
- Residents or homeowners located near the affected incinerators.

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

###### B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

##### II. What Action is the Agency Taking?

###### A. Background

In 2002, EPA issued a PCB disposal approval under TSCA section 6(e) and 40 CFR 761.70(d) to the Army to allow for the incineration of M55 chemical agent rockets containing PCBs using Deactivation Furnace Systems (DFS). The existing approval is included in the docket for this notice. The approval allows for the disposal to occur at four separate facilities: Anniston Chemical Agent Disposal Facility, Anniston Army Depot, Anniston, Alabama (ANCDF); Pine Bluff Chemical Agent Disposal Facility, Pine Bluff Arsenal, Pine Bluff, Arkansas (PBCDF); Tooele Chemical Agent Disposal Facility, Deseret Chemical Depot, Tooele, Utah (TOCDF); and Umatilla Chemical Agent Disposal Facility, Umatilla Chemical Depot, near Hermiston, Oregon (UMCDF). The Army has now applied to renew that approval, which is currently set to expire July 6, 2007. The Army's renewal application only applies to PBCDF and UMCDF; the other two facilities have completed operations.

###### B. Application for Renewal

EPA is considering the Army's request for renewal. The renewal would allow the Army to continue to incinerate M55 chemical agent rockets containing PCBs using DFS at the remaining two sites. Based on the trial burn results, EPA believes the conditions in the current TSCA approval are necessary and adequate to ensure proper disposal of PCBs in compliance with TSCA. However, both PBCDF and UMCDF are currently operating under Resource Conservation and Recovery Act (RCRA) permits as well as the existing PCB approval. These RCRA permits impose several of the same operating conditions as are required by the current TSCA approval. Thus, in order to coordinate the requirements of the two programs, EPA does not plan to include the duplicative conditions in the renewed

TSCA approval. EPA intends for the renewal to only retain the operating conditions from the current TSCA approval that are more stringent than those provided in the RCRA permits. These more stringent conditions, combined with the condition that the facilities maintain valid RCRA permits, will ensure proper disposal of PCBs in compliance with TSCA. For example, EPA plans to retain a target value for the secondary combustor operating temperature based on conditions during the trial burn. In addition, the carbon monoxide concentration in the flue gas that triggers the automatic waste feed cutoff (AWFCO) would be 100 parts per million based on real time, with a 5-minute delay.

###### C. Availability of Trial Burn Data

This action also announces the availability of trial burn data from PBCDF and UMCDF. The current approval required certain sampling for PCBs at each DFS unit:

1. Stack sampling for PCBs.
2. Sampling of kiln/HDC (heated discharge conveyor) residue.
3. Cyclone residue.
4. Scrubber brine for PCB analysis.

The purpose of the trial burns was to demonstrate whether the DFS units meet the PCB incinerator performance standards. These results showed that the standards were met, and the data are now available.

###### D. Approval Modification

Condition 1.d.(3) of the existing approval, provides that: "EPA will hold a public meeting in each community after the trial burn data in each respective facility becomes available." (A copy of Condition 1.d.(3) is available in the docket for this document.) Effective at the time of publication of this notice, EPA is hereby modifying the existing approval to remove that condition for the remainder of the approval. Meetings were conducted before and after trial-burn data became available at ANCDF and TOCDF, but participation was very limited at the post-trial-burn meetings. No members of the public appeared at meetings previously held at PBCDF and UMCDF. Based on the lack of public participation, EPA is changing the public participation process to include a broader audience and a 15-day opportunity for comment. Trial burn data will be available to the public through the docket and in lieu of conducting additional public meetings at PBCDF and UMCDF, EPA is allowing for the submission of comments, in written or electronic format.

**List of Subjects**

Environmental protection, Hazardous substances, Polychlorinated biphenyls (PCBs), Reporting and recordkeeping requirements.

Dated: May 21, 2007.

Wendy C. Hamnett,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. E7-10117 Filed 5-24-07; 8:45 am]

BILLING CODE 6560-50-S

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OPPT-2007-1019; FRL-8119-9]

**Approval of Test Marketing Exemption for a Certain New Microorganism**

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR part 725, subpart F. EPA has designated this application as TME-06-09. The test marketing conditions are described in the TME application and in this notice.

**DATES:** Approval of this TME became effective December 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

For technical information contact: Audrey Binder, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-9033; e-mail address: [binder.audrey@epa.gov](mailto:binder.audrey@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information****A. Does this Action Apply to Me?**

This action is directed in particular to the microorganism manufacturer who submitted the TME to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions

regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

**B. How Can I get Copies of this Document and Other Related Information?**

1. *Docket.* EPA has established a docket for this action under docket ID number EPA-HQ-OPPT-2007-1019. All documents in the docket are listed in the docket's index at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr>.

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

Section 5(h)(1) of TSCA and 40 CFR part 725, subpart F authorizes EPA to exempt persons from Microbial Commercial Activity Notification (MCAN) requirements and permit them to manufacture or import new microorganisms for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the microorganisms for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test

marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

**III. What Action is the Agency Taking?**

EPA has approved the above-referenced TME. EPA has determined that test marketing the new microorganism, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

**IV. What Restrictions Apply to this TME?**

The test market time period, production volume, and use must not exceed specifications in the application and this notice. All other conditions and restrictions described in the application and in this notice must also be met. Impacts to the environment must also be managed as described in the TME as amended.

*TME-06-09.*

*Date of Receipt:* September 14, 2006.

*Notice of Receipt:* October 13, 2006 (71 FR 60517) (FRL-8099-3).

*Applicant:* Confidential.

*Microorganism:* Organic acid producing organism.

*Use:* Industrial manufacture of an organic acid.

*Production Volume:* Confidential.

*Number of Customers:* Confidential.

*Test Marketing Period:* Duration as specified in TME application, commencing on first day of commercial manufacture.

The following additional restrictions apply to this TME. A bill of lading accompanying each shipment must state that the use of the microorganism is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME microorganism produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME microorganism.

**V. What was EPA's Risk Assessment for this TME?**

Under the conditions required for this TME, EPA identified no significant health or environmental concerns for

the test market microorganism. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

#### **VI. Can EPA Change Its Decision on this TME in the Future?**

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

#### **List of Subjects**

Environmental protection, Test marketing exemptions.

Dated: March 15, 2007.

**Rebecca S. Cool,**

*Chief, New Chemicals Notice Management Branch, Office of Pollution Prevention and Toxics.*

[FR Doc. E7-10067 Filed 5-24-07; 8:45 am]

**BILLING CODE 6560-50-S**

#### **ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-8318-4]**

#### **Underground Injection Control Program Petition for Exemption From Hazardous Waste Disposal Restrictions to the Resource Conservation and Recovery Act Class I Hazardous Waste Injection Occidental Chemical Corporation, Wichita, KS**

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

**ACTION:** Notice of final decision on petition.

**SUMMARY:** Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Occidental Chemical Corporation (Occidental) for a Class I injection well, identified as Well Number 10, located at Wichita, Kansas. This injection well, is being added to an existing group of five hazardous waste injection wells which EPA had approved in 1990. As required by title 40 Code of Federal Regulations (CFR) part 148, Occidental has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous waste out of the designated injection zone for as long as the waste remains

hazardous. This time frame is defined by 40 CFR 148.20 as 10,000 years. This final decision allows the underground injection by Occidental of the specific restricted waste, identified in the petition, into injection well Number 10 at the Wichita, Kansas facility, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. For the purpose of the required demonstration of no-migration of hazardous waste out of the injection zone over a 10,000 year period, modeling and projections were based on an operational lifetime projection date of December 31, 2020. Therefore, on or by the closing date of the aforementioned operation period, the owner/operator will be required to obtain an exemption re-issuance from EPA. Included in this approval is the stipulation that Occidental acquires and continues to maintain an approved permit from the Kansas Department of Health and Environment. As required by 40 CFR 124.10, a public notice was issued on February 26, 2007. In addition to having solicited written comments regarding the Agency's proposed approval, EPA also announced that a formal public hearing would be held if there was a significant degree of public interest, but no interest was expressed, hence no formal public hearing was conducted; however, EPA held an informal Public Availability Session on March 13, 2007, at the Sedgwick County Extension Office in Wichita, Kansas, in order to provide the public with an opportunity to meet with Federal, State, and company officials and ask questions regarding the petition. The public comment period ended on April 11, 2007. All comments were addressed and considered in the final decision. This decision constitutes final Agency action and there is no administrative appeal process that can be applied to a final petition decision.

**DATES:** *Effective Date:* This action is effective as of *May 2, 2007*.

**ADDRESSES:** Copies of the petition and all pertinent information relating thereto, including the Agency's response to comments, are on file at the following location: Environmental Protection Agency, Region 7, Regional Records Center, 901 N. 5th St., Kansas City, KS 66101.

**FOR FURTHER INFORMATION CONTACT:** Mary T. Mindrup, Chief, Drinking Water Management Branch, Environmental Protection Agency, Region 7. Telephone (913) 551-7431, or e-mail to [mindrup.mary@epa.gov](mailto:mindrup.mary@epa.gov).

Dated: May 2, 2007.

**John B. Askew,**

*Regional Administrator, Region 7.*

[FR Doc. E7-10118 Filed 5-24-07; 8:45 am]

**BILLING CODE 6560-50-P**

#### **FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD**

#### **Notice of New Exposure Draft Accounting for Federal Oil and Gas Resources**

**AGENCY:** Federal Accounting Standard Advisory Board.

**ACTION:** Notice of new exposure draft Accounting for Federal Oil and Gas Resources.

*Board Action:* Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92-463), as amended, and the FASAB Rules Of Procedure, as amended in April 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued an exposure draft, *Accounting for Federal Oil and Gas Resources*.

The Exposure Draft proposes standards that would result in recognition of the estimated value of royalties from Federal oil and gas leases and changes in those values over time as well as the amount of royalties designated for distribution to other entities such as State governments.

The Exposure Draft is available on the FASAB home page <http://www.fasab.gov/exposure.html>. Copies can be obtained by contacting FASAB at (202) 512-7350. Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by September 21, 2007, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

**FOR FURTHER INFORMATION CONTACT:** Wendy Comes, Executive Director, 441 G Street, NW., Washington, DC 20548, or call (202) 512-7350.

**Authority:** Federal Advisory Committee Act, Pub. L. No. 92-463.

Dated: May 22, 2007.

**Charles Jackson,**

*Federal Register Liaison Officer.*

[FR Doc. 07-2606 Filed 5-24-07; 8:45 am]

**BILLING CODE 1610-01-M**

**FEDERAL ELECTION COMMISSION****Sunshine Act Notices; Special Executive Session, Wednesday, May 23, 2007, at 10:30 a.m. This Meeting was Closed to the Public Pursuant To 11 CFR 2.4(b)(1) and 2.4(b)(2)**

**DATE & TIME:** Wednesday, May 30, 2007 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:** Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

**DATE & TIME:** Thursday, May 31, 2007 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:** Correction and Approval of Minutes.

Advisory Opinion 2007–07: Craig for Congress by counsel, Neil P. Reiff.

Statement of Policy Regarding Treasurer's Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act.

Notice of Proposed Rulemaking for Federal Election Activity and Non-Federal Elections.

Gephardt for President Committee Final Audit Report.

Kerry/Edwards 2004 Final Audit Report. FY 2007 Re-allocation of Funds.

Final Draft of the Campaign Guide for Political Party Committees.

Management and Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:**

Mr. Robert Biersak, Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 07–2633 Filed 5–23–05; 10:29 am]

**BILLING CODE 6715–07–M**

**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 website 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 June 22, 2007.

**A. Federal Reserve Bank of Dallas**  
(W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *TrustTexas Mutual Holding Company, and TrustTexas Financial Group, Inc.*, both of Cureau, Texas; to become bank holding companies by acquiring 100 percent of TrustTexas Bank, S.S.B., Cureau, Texas.

Board of Governors of the Federal Reserve System, May 22, 2007.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E7–10119 Filed 5–24–07; 8:45 am]

**BILLING CODE 6210–01–S**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Public Meeting of the President's Council on Bioethics on June 28–29, 2007**

**AGENCY:** The President's Council on Bioethics, HHS.

**ACTION:** Notice.

**SUMMARY:** The President's Council on Bioethics (Edmund D. Pellegrino, MD, Chairman) will hold its twenty-ninth meeting, at which it will (1) take up the

topic of the professions and society with a focus on the healing professions; (2) hear and discuss presentations on the topic of “Health care—who is responsible? The individual, society or both?”; and (3) hear and discuss presentations on nanotechnology and the ethics of applications of nanotechnology in health care and medicine. Subjects discussed at past Council meetings (although not on the agenda for the June 2007 meeting) include: Therapeutic and reproductive cloning, assisted reproduction, reproductive genetics, neuroscience, aging retardation, organ transplantation, newborn screening, human dignity, personalized medicine, criteria for the determination of death, and lifespan-extension. Publications issued by the Council to date include: Human Cloning and Human Dignity: An Ethical Inquiry (July 2002); Beyond Therapy: Biotechnology and the Pursuit of Happiness (October 2003); Being Human: Readings from the President's Council on Bioethics (December 2003); Monitoring Stem Cell Research (January 2004), Reproduction and Responsibility: The Regulation of New Biotechnologies (March 2004), Alternative Sources of Human Pluripotent Stem Cells: A White Paper (May 2005), and Taking Care: Ethical Caregiving in Our Aging Society (September 2005).

**DATES:** The meeting will take place Thursday, June 28, 2007, from 9 a.m. to 5:15 p.m., ET; and Friday, June 29, 2007, from 8:30 a.m. to 12 noon, ET.

**ADDRESSES:** The Hay-Adams Hotel, Sixteenth and H Streets, NW., Washington, DC 20006. Phone 202–638–6600.

**Agenda:** The meeting agenda will be posted at <http://www.bioethics.gov>.

**Public Comments:** The Council encourages public input, either in person or in writing. At this meeting, interested members of the public may address the Council, beginning at 11:45 a.m., on Friday, June 29. Comments are limited to no more than five minutes per speaker or organization. As a courtesy, please inform Ms. Diane M. Gianelli, Director of Communications, in advance of your intention to make a public statement, and give your name and affiliation. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of the addresses given below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Diane M. Gianelli, Director of Communications, The President's Council on Bioethics, 1425 New York Avenue, Suite C100, Washington, DC 20005. Telephone: 202/296–4669.

E-mail: [info@bioethics.gov](mailto:info@bioethics.gov). Web site: <http://www.bioethics.gov>.

Dated: May 17, 2007.

**F. Daniel Davis,**

*Executive Director, The President's Council on Bioethics.*

[FR Doc. E7-10092 Filed 5-24-07; 8:45 am]

BILLING CODE 4154-07-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Centers for Disease Control and Prevention (CDC) Grants for Public Health Research Dissertation, Program Announcement (PA) PAR-07-231

*Correction:* This notice was published in the **Federal Register** on May 4, 2007, Volume 72, Number 86, page 25317. The Special Emphasis Panel was originally scheduled for June 14-15, 2007. The meeting dates have been changed.

*New Times and Dates:* 8 a.m.-5 p.m., July 25, 2007 (Closed). 8:30 a.m.-5 p.m., July 26, 2007 (Closed).

*Contact Person for More Information:* Juliana Cyril, Ph.D., M.P.H., Scientific Review Administrator, Office of the Chief Science Officer, CDC, 1600 Clifton Road, NE., Mailstop D74, Atlanta, GA 30333, Telephone 404-639-4639.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 18, 2007.

**Elaine L. Baker,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E7-10103 Filed 5-24-07; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: CDC Health Protection

Research Initiative: Evaluation of Workplace Health Promotion Research

Projects, Request for Applications (RFA) CD07-004.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces a meeting of the aforementioned Special Emphasis Panel.

*Time and Date:* 9 a.m.-5 p.m., July 17, 2007 (Closed).

*Place:* Doubletree Buckhead Hotel, 3342 Peachtree Road, NE., Atlanta, GA 30326.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of the scientific merit of research applications in response to RFA CD07-004, "CDC Health Protection Research Initiative: Evaluation of Workplace Health Promotion Research Projects."

*Contact Person For More Information:* Christine J. Morrison, Ph.D., Designated Federal Official, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, telephone (404) 639-3098.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 18, 2007.

**Elaine L. Baker,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E7-10104 Filed 5-24-07; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifier: CMS-R-131]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, Department of Health and Human Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden

estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#### 1. Type of Information Collection

*Request:* Revision of a currently approved collection; *Title of Information Collection:* Advance Beneficiary Notice of Noncoverage (ABN); *Use* Under section 1879 of the Social Security Act, a physician, provider, practitioner or supplier of items or services participating in the Medicare Program, or taking a claim on assignment, may bill a Medicare beneficiary for items or services usually covered under Medicare, but denied in an individual case under specific statutory exclusions, if they inform the beneficiary, prior to furnishing the service, that Medicare is likely to deny payment. 42 CFR 411.404(b) and (c), and 411.408(d)(2) and (f), require written notice be provided to inform beneficiaries in advance of potential liability for payment; *Form Number:* CMS-R-131 (OMB#: 0938-0566); *Frequency:* Reporting: Weekly, Monthly, Yearly, Biennially and Occasionally; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 1,270,614; *Total Annual Responses:* 40,302,506; *Total Annual Hours:* 4,701,959.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov), or call the Reports Clearance Office on (410) 786-1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395-6974.

Dated: May 16, 2007.

**Michelle Shortt,**

*Director, Regulations Development Group,  
Office of Strategic Operations and Regulatory  
Affairs.*

[FR Doc. 07-2578 Filed 5-24-07; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10207]

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Physician Self-Referral Exceptions for Electronic Prescribing and Electronic Health Records (CMS-1303-F); *Form Number:* CMS-10207 (OMB#: 0938-1009); *Use:* Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) directs the Secretary to create an exception to the physician self-referral prohibition in section 1877 of the Act for certain arrangements in which a physician receives compensation in the form of items or services (not including cash or cash equivalents) ("nonmonetary remuneration") that is necessary and used solely to receive and transmit electronic prescription information. In addition, using our separate legal authority under section 1877(b)(4) of the Act, the regulation

CMS-1303-F (71 FR 45140) created a separate regulatory exception for certain arrangements involving the provision of nonmonetary remuneration in the form of electronic health records software or information technology and training services necessary and used predominantly to create, maintain, transmit, or receive electronic health records. These exceptions are consistent with the President's goal of achieving widespread adoption of interoperable electronic health records to improve the quality and efficiency of health care while maintaining the levels of security and privacy that consumers expect.

The conditions for both exceptions require that arrangements for the items and services provided must be set forth in a written agreement, be signed by the parties involved, specify the items or services being provided and the cost of those items or services, and cover all of the electronic prescribing and/or electronic health records technology to be provided by the donating entity. We have suggested that, instead of one master agreement that is updated with each new donation, the parties may choose to create a specific new contract and then reference other agreements or cross-reference a master list of agreements.

The requirements associated with the exception for electronic prescribing items and services are limited to donations made by hospitals to members of their medical staffs; by group practices to their physician members; and by PDP sponsors and MA organizations to prescribing physicians. The requirements associated with the exception for electronic health records software or information technology and training services include donations by entities furnishing DHS to physicians. The paperwork burden is the creation and execution of the written agreements. The burden associated with the written agreement requirement is the time and effort necessary for documentation of the agreement between the parties, including the signatures of the parties. *Frequency:* Recordkeeping and Reporting—On occasion; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 27,440; *Total Annual Responses:* 54,730; *Total Annual Hours:* 17,545.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to

[Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov), or call the Reports Clearance Office on (410) 786-1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on July 24, 2007.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—B, Attention: William N. Parham, III, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: May 21, 2007.

**Michelle Shortt,**

*Director, Regulations Development Group,  
Office of Strategic Operations and Regulatory  
Affairs.*

[FR Doc. E7-10097 Filed 5-24-07; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-1274-NC]

#### Medicare and Medicaid Programs; Announcement of Applications From Two Hospitals Requesting Waivers for Organ Procurement Service Areas

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice with comment period.

**SUMMARY:** This notice announces two hospitals' requests for a waiver from entering into an agreement with its designated organ procurement organization (OPO), in accordance with section 1138(a)(2) of the Social Security Act (the Act). This notice requests comments from OPOs and the general public for our consideration in determining whether we should grant the requested waiver for each hospital.

**DATES:** *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 24, 2007.

**ADDRESSES:** In commenting, please refer to file code CMS-1274-NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Submit electronic comments on CMS regulations with an

open comment period.” (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address Only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1274-NC, P.O. Box 8017, Baltimore, MD 21244-8017.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address Only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1274-NC, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members: Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

**FOR FURTHER INFORMATION CONTACT:** Mark A. Horney, (410) 786-4554.

#### **SUPPLEMENTARY INFORMATION:**

*Submitting Comments:* We welcome comments from the public on all issues set forth in this proposed notice to assist us in fully considering the issues. You can assist us by referencing the file code CMS-1274-C and the specific “issue identifier” that precedes the section on which you choose to comment.

*Inspection of Public Comments:* All comments received before the close of the comment period are available for

viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all electronic comments received before the close of the comment period on the public Web site as soon as possible after they have been received: <http://www.cms.hhs.gov/eRulemaking>. Click on the link “Electronic Comments on CMS Regulations” on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

#### **I. Background**

[If you choose to comment on issues in this section, please include the caption “Background” at the beginning of your comments.]

Organ Procurement Organizations (OPOs) are not-for-profit organizations that are responsible for the procurement, preservation, and transport of transplantable organs to transplant centers throughout the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to recover or procure organs in CMS-defined exclusive geographic service areas, according to section 371(b)(1)(F) of the Public Health Service Act (42 U.S.C. 273(b)(1)(F)) and our regulations at 42 CFR 486.306. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and Medicaid are required to work with that OPO in providing organs for transplant, according to section 1138(a)(1)(C) of the Social Security Act (the Act), and our regulations at 42 CFR 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement to identify potential donors only with its designated OPO.

However, section 1138(a)(2)(A) of the Act provides that a hospital may obtain from the Secretary, a waiver of the above requirements under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO other than the one initially designated by CMS, if the hospital

meets certain conditions specified in section 1138(a)(2)(A) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the Act to evaluate the hospital’s request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver—(1) is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital’s designated OPO due to the changes made in definitions for metropolitan statistical areas; and (4) the length and continuity of a hospital’s relationship with an OPO other than the hospital’s designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application received from a hospital within 30 days of receiving the application, and to offer interested parties an opportunity to comment in writing during the 60-day period beginning on the publication date in the **Federal Register**.

The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under sections 1138(a)(2)(A) and (B) of the Act and have been incorporated into the regulations at 42 CFR 486.308(e) and (f).

#### **II. Waiver Request Procedures**

[If you choose to comment on issues in this section, please include the caption “Waiver Request Procedures” at the beginning of your comments.]

In October 1995, we issued a Program Memorandum (Transmittal No. A-95-11) detailing the waiver process and discussing the information that hospitals must provide in requesting a waiver. We indicated that upon receipt of a waiver request, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

According to these requirements, we will review the request and comments received. During the review process, we may consult on an as-needed basis with the Public Health Service’s Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying

hospitals. We will then make a final determination on the waiver request and notify the hospitals and the designated and requested OPOs.

### III. Hospital Waiver Request

[If you choose to comment on issues in this section, please include the caption "Hospital Waiver Request" at the beginning of your comments.]

As permitted by 42 CFR 486.308(e), the following two hospitals are requesting waivers in order to enter into an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located.

Institute for Orthopaedic Surgery is requesting a waiver to work with: LifeLine of Ohio, 770 Kinnear Road, Columbus, OH 43212.

Institute for Orthopaedic Surgery's Designated OPO is: LifeConnection of Ohio, 40 Wyoming Street, Dayton, OH 45409.

Trinity at Terrace Park Medical Center is requesting a waiver to work with: Iowa Donor Network, 550 Madison Avenue, North Liberty, IA 52317.

Trinity at Terrace Park Medical Center's designated OPO is: Gift of Hope Organ and Tissue Donor Network, 660 N. Industrial Drive, Elmhurst, IL 60126.

**Authority:** Section 1138 of the Social Security Act (42 U.S.C. 1320b-8). (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance, and Program No. 93.778, Medical Assistance Program)

Dated: May 11, 2007

**Leslie V. Norwalk,**  
*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 07-2441 Filed 5-18-07; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-3181-PN]

#### Medicare Program; Application by the American Diabetes Association (ADA) for Continued Recognition as a National Accreditation Program for Accrediting Entities To Furnish Outpatient Diabetes Self-Management Training

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed notice.

**SUMMARY:** This proposed notice announces the receipt of an application from the American Diabetes Association (ADA) for continued recognition as a national accreditation program for accrediting entities that wish to furnish outpatient diabetes self-management training to Medicare beneficiaries. Section 1865(b)(3) of the Social Security Act (the Act) requires that we publish a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period.

**DATES:** *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 25, 2007.

**ADDRESSES:** In commenting, please refer to file code CMS-3181-PN. Because of staff and resource limitations, we cannot accept comments by facsimile (Fax) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address Only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3181-PN, P.O. Box 8017, Baltimore, MD 21244-8017.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address Only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3181-PN, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members: Room 445-G, Hubert H. Humphrey

Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

**FOR FURTHER INFORMATION CONTACT:** Joan A. Brooks, (410) 786-5526.

#### SUPPLEMENTARY INFORMATION:

**Submitting Comments:** We welcome comments from the public on all issues set forth in this proposed notice to assist us in fully considering the issues. You can assist us by referencing the file code CMS-3181-PN and the specific "issue identifier" that precedes the section on which you choose to comment.

**Inspection of Public Comments:** All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all electronic comments received before the close of the comment period on its public Web site as soon as possible after they have been received: <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

#### I. Background

[If you choose to comment on issues in this section, please include the caption "Background" at the beginning of your comments.]

Under the Medicare program, eligible beneficiaries may receive outpatient diabetes self-management training when ordered by the physician or qualified non-physician practitioner treating the

beneficiary's diabetes, provided certain requirements are met. We sometimes use national accreditation organizations to assess whether provider entities meet Medicare requirements when providing services for which Medicare payment is made.

Under section 1865(b)(1) of the Act, a national accreditation organization must have an agreement in effect with the Secretary and meet the standards and requirements specified by the Secretary in 42 CFR part 410, subpart H to qualify for deeming authority. The regulations pertaining to application procedures for national accreditation organizations for diabetes self-management training services are specified at § 410.142 (CMS process for approving national accreditation organizations).

A national accreditation organization applying for deeming authority must provide us with reasonable assurance that the accrediting organization requires accredited entities to meet requirements that are at least as stringent as CMS's requirements. We may approve and recognize a nonprofit or not-for-profit organization with demonstrated experience in representing the interests of individuals with diabetes to accredit entities to furnish training. The accreditation organization, after being approved and recognized by CMS, may accredit an entity to meet one of the sets of quality standards in § 410.144 (Quality standards for deemed entities).

Section 1865 (b)(2) of the Act further requires that we review the applying accreditation organization's requirements for accreditation, as follows:

- Survey procedures,
- Ability to provide adequate resources for conducting required surveys,
- Ability to supply information for use in enforcement activities,
- Monitoring procedures for providers found out of compliance with the conditions or requirements, and
- Ability to provide us with necessary data for validation.

We then examine the national accreditation organization's accreditation requirements to determine if they meet or exceed the Medicare conditions as we would have applied them. Section 1865(b)(3)(A) of the Act requires that we publish a notice identifying the national accreditation body making the request within 30 days of receipt of a completed application. The notice must describe the nature of the request and provide at least a 30-day public comment period. We have 210 days from receipt of the request to publish a finding of approval or denial

of the application. If we recognize an accreditation organization in this manner, any entity accredited by the national accreditation body's CMS-approved program for that service will be "deemed" to meet the Medicare conditions for coverage.

## II. Purpose

The purpose of this notice is to notify the public of the American Diabetes Association's (ADA's) request for the Secretary's approval of its accreditation program for outpatient diabetes self-management training services. This notice also solicits public comments on the ability of the ADA to develop and apply its standards to entities furnishing outpatient diabetes self-management training services that meet or exceed the Medicare conditions for coverage.

## III. Outpatient Diabetes Self-Management Training Services Conditions for Coverage and Requirements

The regulations specifying the Medicare conditions for coverage for outpatient diabetes self-management training services are located in 42 CFR part 410, subpart H. These conditions implement section 1861(qq) of the Act, which provides for Medicare Part B coverage of outpatient diabetes self-management training services specified by the Secretary.

Under section 1865(b)(2) of the Act and our regulations § 410.142 (CMS process for approving national accreditation organizations) and § 410.143 (Requirements for approved accreditation organizations), we review and evaluate a national accreditation organization based on (but not necessarily limited to) the criteria set for in § 410.142(b).

We may conduct on-site inspections of a national accreditation organization's operations and office to verify information in the organization's application and assess the organization's compliance with its own policies and procedures. The onsite inspection may include, but is not limited to, reviewing documents, auditing documentation of meetings concerning the accreditation process, evaluating accreditation results or the accreditation status decision making process, and interviewing the organization's staff.

## IV. Notice Upon Completion of Our Evaluation

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a notice in the **Federal**

**Register** announcing the result of our evaluation.

## V. Responses to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this notice.

**Authority:** Section 1865 of the Social Security Act (42 U.S.C. 1395bb). (Catalog of Federal Domestic Assistance Program No. 93.773 Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: May 11, 2007.

**Leslie V. Norwalk,**  
*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 07-2454 Filed 5-24-07; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-6040-N2]

### Medicare Program; Approval of Deeming Authority for National Accreditation Organizations to Accredited Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Suppliers

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the 10 national accreditation organizations that have been approved by CMS to accredit durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) suppliers seeking to participate in the Medicare program.

**FOR FURTHER INFORMATION CONTACT:** Alisa Overgaard, (410) 786-2167.

### SUPPLEMENTARY INFORMATION:

#### I. Background

Section 302(a)(1) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) (Pub. L. 108-173) added section 1834(a)(20) of

the Social Security Act (the Act) and requires the Secretary to establish and implement quality standards for suppliers of certain items, including consumer service standards, to be applied by recognized independent accreditation organizations. Suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) must comply with the quality standards to furnish any item for which payment is made under Medicare Part B, and to receive and retain a provider or supplier billing number used to submit claims for reimbursement for any such item for which payment may be made under Medicare. Section 1834(a)(20)(D) of the Act requires us to apply these quality standards to suppliers of the following items for which we deem the standards to be appropriate:

- Covered items, as defined in section 1834(a)(13) of the Act, for which payment may be made under section 1834(a) of the Act.
- Prosthetic devices, orthotics, and prosthetics described in section 1834(h)(4) of the Act.
- Items described in section 1842(s)(2) of the Act, which include—(1) medical supplies; (2) home dialysis supplies and equipment; (3) therapeutic shoes; (4) parenteral and enteral nutrients; (5) equipment, and supplies; (6) electromyogram devices; (7) salivation devices; (8) blood products; and (9) transfusion medicine.

Section 1834(a)(20)(B) of the Act requires the Secretary, notwithstanding section 1865(b) of the Act, to designate and approve one or more independent accreditation organizations to apply the quality standards to suppliers of DMEPOS and other items. For most providers and suppliers, the Medicare program currently contracts with State Agencies to perform survey and review functions for such providers and suppliers to approve their participation in or coverage under the Medicare program. Additionally, section 1865(b) of the Act sets forth the general procedures for us to approve non-DMEPOS national accreditation organizations. We deem providers or suppliers to have met Medicare conditions of participation or coverage if they are accredited by a national accreditation organization that we have approved.

## II. Deeming Application Approval Process

We compared the standards contained in all the accrediting organization applications with that of the CMS quality standards as posted on the CMS Web site [www.cms.hhs.gov/competitiveAcqforDMEPOS](http://www.cms.hhs.gov/competitiveAcqforDMEPOS) and those

requirements set forth in the August 16, 2006 **Federal Register** notice (71 FR 47230).

An internal professional panel reviewed 11 applications, which were assessed on the basis of the criteria set out in the August 16, 2006 **Federal Register** notice. Those criteria included (but were not limited to) requirements in § 424.58(b). According to that notice, applicants had to furnish the following documentation and information to CMS:

- A description of all types and categories of accreditation offered by the organization for which approval of deeming authority is sought.
- A description of the duration of accreditation.
- A detailed comparison of the organization's accreditation requirements and standards with the applicable Medicare DMEPOS quality standard requirements such as a crosswalk.
- A detailed description of the organization's survey process, including:
  - Frequency of the surveys performed;
  - Procedures for performing unannounced surveys;
  - A description of the accreditation survey review process and the accreditation status decision-making process, including the process for addressing deficiencies identified with the accreditation requirements.
  - The procedures used to monitor the correction of deficiencies found during an accreditation survey;
  - Policies and procedures used when an organization has a dispute regarding survey findings or an adverse decision;
  - Procedures for coordinating surveys with another accrediting organization if the organization does not accredit all products the supplier provides.
  - Detailed information about the individuals who perform survey for the accreditation organization including:
    - The size and composition of accreditation teams for each type of provider and supplier accredited.
    - The education and experience requirements surveyors must meet.
    - The content and frequency of the in-service training provided to survey personnel.
    - The evaluation systems used to monitor the performance of individual surveyors and survey teams.
  - Policies and procedures regarding an individual's participation in the survey or accreditation decision process of any organization with which the individual is professionally or financially affiliated.

- A description of the organization's data management and analysis system for its surveys and accreditation decisions, including the kinds of reports, tables, and other displays generated by that system.

- The organization's procedures for responding to and for the investigation of complaints against accredited facilities, including policies and procedures regarding coordination of these activities with appropriate licensing bodies (that is, National Supplier Clearinghouse, CMS, and ombudsman programs.)
- The organization's policies and procedures for the withholding or removal of accreditation status for facilities that fail to meet the accreditation organization's standards or requirements, and other actions taken by the organization in response to noncompliance with its standards and requirements, including the procedures for notifying CMS of facilities that fail to meet the requirements of the accrediting organization.

See the August 16, 2006 **Federal Register** (71 FR 47230) for a full description of the documentation and information requirements.

The national accreditation organizations that have applied for approval of deeming authority provided us with assurance that the accreditation organizations met requirements that were at least as stringent as the Medicare quality standards.

The following organizations have been recognized as national accreditation organizations and have been given deeming authority to accredit DMEPOS suppliers seeking to participate in the Medicare program:

- Joint Commission on Accreditation of Healthcare Organizations
- Community Health Accreditation Program
- Healthcare Quality Association on Accreditation
- National Board of Accreditation for Orthotic Suppliers
- Board for Orthotist/Prosthetist Certification
- Accreditation Commission for Healthcare, Inc.
- National Association of Boards of Pharmacy
- Commission on Accreditation of Rehabilitation Facilities
- American Board for Certification in Orthotics and Prosthetics, Inc. and the Board of Certification in Pedorthics (We note that on January 1, 2007 these 2 organizations merged and we have updated our Web site to reflect this change. The organizations' new name is the American Board for Certification in

Orthotics, Prosthetics, and Pedorthics, Inc.).

- The Compliance Team, Inc.

**Authority:** Section 1834(a)(20) of the Social Security Act (42 U.S.C. 1395m(a)(20)). (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 17, 2007.

**Leslie V. Norwalk,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. E7-10156 Filed 5-24-07; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-1322-N]

#### Medicare Program; Second Semi-Annual Meeting of the Advisory Panel on Ambulatory Payment Classification Groups—September 5, 6, and 7, 2007

**AGENCY:** Centers for Medicare & Medicaid Services, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2), this notice announces the second semi-annual meeting of the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel) for 2007. The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of the Department of Health and Human Services (DHHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) concerning the clinical integrity of the APC groups and their associated weights. We will consider the Panel's advice as we prepare the final rule that updates the hospital Outpatient Prospective Payment System (OPPS) for CY 2008.

**DATES:** *Meeting Dates:* We are scheduling the second semi-annual meeting in 2007 for the following dates and times:

- Wednesday, September 5, 2007, 1 p.m. to 5 p.m. (e.s.t.)<sup>1</sup>
- Thursday, September 6, 2007, 8 a.m. to 5 p.m. (e.s.t.)<sup>1</sup>
- Friday, September 7, 2007, 8 a.m. to 12 noon (e.s.t.)<sup>2</sup>

<sup>1</sup> The times listed in this notice are approximate times; consequently, the

meetings may last longer than listed in this notice—but will not begin before the posted times.

<sup>2</sup> If the business of the Panel concludes on Thursday, September 6, there will be no Friday meeting.

**Deadlines:** Deadline for Hardcopy Comments/Suggested Agenda Topics—

5 p.m. (e.s.t.), Thursday, August 9, 2007

Deadline for Hardcopy Presentations—5 p.m. (e.s.t.), Thursday, August 9, 2007

Deadline for Attendance Registration—5 p.m. (e.s.t.), Wednesday, August 29, 2007

Deadline for Special Accommodations—5 p.m. (e.s.t.), Wednesday, August 29, 2007

#### Submission of Materials to the Designated Federal Officer (DFO)

Because of staffing and resource limitations, we cannot accept written comments and presentations by FAX, nor can we print written comments and presentations received electronically for dissemination at the meeting.

Only hardcopy comments and presentations can be reproduced for public dissemination. All hardcopy presentations *must be accompanied by Form CMS-20017 (revised 01/07)*. The form is now available through the CMS Forms Web site. The Uniform Resource Locator (URL) for linking to this form is as follows: <http://www.cms.hhs.gov/cmsforms/downloads/cms20017.pdf>.

Presenters must use the most recent copy of CMS-20017 (updated 01/07) at the above URL. Additionally, presenters must *clearly* explain the action(s) that they are requesting CMS to take in the appropriate section of the form. They must also clarify their relationship to the organization that they represent in the presentation.

**(Note:** Issues that are vague, or that are outside the scope of the APC Panel's purpose, will not be considered for presentations and comments. There will be no exceptions to this rule. We appreciate your cooperation on this matter.)

We are also requiring electronic versions of the written comments and presentations, in addition to the hardcopies, to send electronically to the Panel members for their review prior to the meeting.

In summary, presenters and/or commenters must do the following:

- Send *BOTH electronic and hardcopy versions of their presentations and written comments by the prescribed deadlines.*

- Send electronic transmissions to the e-mail address below.

- Mail (or send by courier) to the DFO all hardcopies, accompanied by Form CMS-20017 (revised 01/07), if they are presenting, as specified in the “**FURTHER INFORMATION CONTACT**” section of this notice.

- Commenters are not required to send Form CMS-20017 with their written comments.

**ADDRESSES:** The meeting will be held in the Auditorium, CMS Central Office, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

#### FOR FURTHER INFORMATION CONTACT:

- For further information, contact: Shirli Ackerman-Ross, DFO, CMS, CMM, HAPG, DOC, 7500 Security Boulevard, Mail Stop C4-05-17, Baltimore, MD 21244-1850. *Phone:* (410) 786-4474.

**(Note:** Please advise couriers of the following: When delivering hardcopies of presentations to CMS, if no one answers at the above phone number, please call (410) 786-4532.)

- E-mail address for comments, presentations, and registration requests is [CMSAPCPanel@cms.hhs.gov](mailto:CMSAPCPanel@cms.hhs.gov).

**(Note:** There is NO underscore in this e-mail address; there is a SPACE between CMS and APCPanel.)

- News media representatives must contact our Public Affairs Office at (202) 690-6145.

#### Advisory Committees' Information Lines

The phone numbers for the CMS Federal Advisory Committee Hotline are 1-877-449-5659 (toll free) and (410) 786-9379 (local).

#### Web Sites

Please search the CMS Web site at [http://www.cms.hhs.gov/FACA/05\\_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage](http://www.cms.hhs.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage) in order to obtain the following information:

**(Note:** There is an UNDERSCORE after FACA/05(like this.); there is no space.)

- Additional information on the APC meeting agenda topics,
- Updates to the Panel's activities,
- Copies of the current Charter, and
- Membership requirements.

You may also search information about the APC Panel and its membership in the FACA database at the following URL: <https://www.fido.gov/facadatabase/public.asp>.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Secretary is required by section 1833(t)(9)(A) of the Social Security Act (the Act), [as amended by section 201(h) of the Medicare, Medicaid, and SCHIP

Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), and re-designated by section 202(a)(2) of the BBRA] to establish and consult with an expert outside advisory panel regarding the clinical integrity of the APC groups and weights that are components of the hospital OPSS.

The APC Panel meets up to three times annually. The Charter requires that the Panel must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed. The Panel consists of up to 15 members who are representatives of providers and a Chair.

Each Panel member must be employed full-time by a hospital, hospital system, or other Medicare provider subject to payment under the OPSS. All Panel members must have technical expertise that enables them to participate fully in the work of the Panel. The expertise encompasses hospital payment systems, hospital medical-care delivery systems, provider billing systems, outpatient payment requirements, APC groups, Current Procedural Terminology codes, and the use and payment of drugs and medical devices in the outpatient setting, as well as other forms of relevant expertise. Details regarding membership requirements for the APC Panel are found on the CMS and FACA Web sites as listed above.

The Panel presently consists of the following members:

- E.L. Hambrick, M.D., J.D., Chair
- Marilyn Bedell, M.S., R.N., O.C.N.
- Gloryanne Bryant, B.S., R.H.I.A., R.H.I.T., C.C.S.
- Hazel Kimmel, R.N., C.C.S.
- Sandra J. Metzler, M.B.A., R.H.I.A., C.P.H.Q.
- Thomas M. Munger, M.D., F.A.C.C.
- James V. Rawson, M.D.
- Lou Ann Schraffenberger, M.B.A., R.H.I.A., C.C.S.-P.
- Judie S. Snipes, R.N., M.B.A., F.A.C.H.E.
- Timothy Gene Tyler, Pharm.D.
- Kim Allan Williams, M.D., F.A.C.C., F.A.B.C.
- Robert Matthew Zwolak, M.D., Ph.D., F.A.C.S.
- Patricia Spencer-Cisek, M.S., A.P.R.N.-B.C., A.O.C.N.
- Russ Ranallo, M.S.
- Michael A. Ross, M.D.
- Beverly Khnie Philip, M.D.

## II. Agenda

The agenda for the September 2007 meeting will provide for discussion and comment on the following topics as designated in the Panel's Charter:

- Reconfiguring APCs (for example, splitting of APCs, moving Healthcare

Common Procedure Coding System [HCPCS] codes from one APC to another and moving HCPCS codes from new technology APCs to clinical APCs).

- Evaluating APC weights.
- Packaging device and drug costs into APCs: methodology, effect on APCs, and need for reconfiguring APCs based upon device and drug packaging.
- Removing procedures from the inpatient list for payment under the OPSS.
- Using single and multiple procedure claims data.
- Addressing other APC structure technical issues.

(**Note:** The subject matter before the Panel will be limited to these and related topics. Issues related to calculation of the OPSS conversion factor, charge compression, pass-through payments, or wage adjustments are not within the scope of the Panel's purpose. Therefore, these issues will not be considered for presentations and/or comments. There will be no exceptions to this rule. We appreciate your cooperation on this matter.)

The Panel may use data collected or developed by entities and organizations, other than DHHS and CMS, in conducting its review. We urge organizations to submit data for the Panel's and CMS staff's review.

## III. Written Comments and Suggested Agenda Topics

Send hardcopy and electronic written comments and suggested agenda topics to the DFO at the address indicated above. The DFO must receive these items by 5 p.m. (e.s.t.), Thursday, August 9, 2007. There will be no exceptions. We appreciate your cooperation on this matter.

The written comments and suggested agenda topics submitted for the September 2007 APC Panel meeting must fall within the subject categories outlined in the Panel's Charter and as listed in the Agenda section of this notice.

## IV. Oral Presentations

Individuals or organizations wishing to make 5-minute oral presentations must submit hardcopy and electronic versions of their presentations to the DFO by 5 p.m. (e.s.t.), Thursday, August 9, 2007, for consideration.

The number of oral presentations may be limited by the time available. Oral presentations should not exceed 5 minutes in length for an individual or an organization.

The Chair may further limit time allowed for presentations due to the number of oral presentations, if necessary.

## V. Presenter and Presentation Information

All presenters must submit Form CMS–20017 (revised 01/07). Hardcopies are required for oral presentations; however, electronic submissions of Form CMS–20017 are optional. The DFO must receive the following information from those wishing to make oral presentations:

- Form CMS–20017 completed with all pertinent information identified on the first page of the presentation.
- One hardcopy of presentation.
- Electronic copy of presentation.
- Personal registration information as described in the Meeting Attendance section below.
- Those persons wishing to submit comments only must send hardcopy and electronic versions of their comments, but they are not required to submit Form CMS–20017.

## VI. Oral Comments

In addition to formal oral presentations, there will be opportunity during the meeting for public oral comments, which will be limited to 1 minute for each individual and a total of 3 minutes per organization.

## VII. Meeting Attendance

The meeting is open to the public; however, attendance is limited to space available. Attendance will be determined on a first-come, first-served basis.

Persons wishing to attend this meeting, which is located on Federal property, must e-mail the Panel DFO to register in advance no later than 5 p.m. (e.s.t.), Wednesday, August 29, 2007. A confirmation will be sent to the requester(s) via return e-mail.

The following personal information must be e-mailed to the DFO by the date and time above:

- Name(s) of attendee(s),
- Title(s),
- Organization,
- E-mail address(es), and
- Telephone number(s).

## VIII. Security, Building, and Parking Guidelines

The following are the security, building, and parking guidelines:

- Persons attending the meeting—including presenters—must be registered and on the attendance list by the prescribed date.
- *Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.*
- Attendees must present photographic identification to the

Federal Protective Service or Guard Service personnel before entering the building.

- Security measures include inspection of vehicles, inside and out, at the entrance to the grounds.
- In addition, all persons entering the building must pass through a metal detector.
- All items brought into CMS—including personal items such as desktops, cell phones, palm pilots, etc.—are subject to physical inspection.
- The public may enter the building 30–45 minutes before the meeting convenes each day.
- All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.
- The main-entrance guards will issue parking permits and instructions upon arrival at the building.

## IX. Special Accommodations

Individuals requiring sign-language interpretation or other special accommodations must send a request for these services to the DFO by 5 p.m. (e.s.t.), Wednesday, August 29, 2007.

**Authority:** Section 1833(t)(9) of the Act (42 U.S.C. 13951(t)). The Panel is governed by the provisions of Pub. L. 92–463, as amended (5 U.S.C. Appendix 2).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: May 1, 2007.

**Leslie V. Norwalk,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. E7–9521 Filed 5–24–07; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS–1546–N]

### Medicare Program; Public Meeting in Calendar Year 2007 for New Clinical Laboratory Tests Payment Determinations

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces a public meeting to discuss payment determinations for specific new Physicians' Current Procedural Terminology (CPT) codes for clinical laboratory tests. The meeting provides a forum for interested parties to make oral

presentations and submit written comments on the new codes that will be included in Medicare's Clinical Laboratory Fee Schedule for calendar year 2008, which will be effective on January 1, 2008. The meeting will address technical issues relating to payment determinations for a specified list of new clinical laboratory codes. The development of the codes for clinical laboratory tests is performed by the CPT Editorial Panel and will not be discussed at the CMS meeting.

**DATES:** The public meeting is scheduled for Monday, July 16, 2007 from 10 a.m. to 2 p.m.

**ADDRESSES:** The public meeting will be held in the main auditorium of the central building of the Centers for Medicare & Medicaid Services (CMS) located at 7500 Security Boulevard, Baltimore, Maryland 21244.

**FOR FURTHER INFORMATION CONTACT:** Anita Greenberg, (410) 786–4601.

## SUPPLEMENTARY INFORMATION:

### I. Background

Section 531(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), Pub. L. 106–554, mandated procedures that permit public consultation for payment determinations for new clinical laboratory tests under Part B of title XVIII of the Social Security Act (the Act) in a manner consistent with the procedures established for implementing coding modifications for International Classification of Diseases (ICD–9–CM). The procedures and public meeting announced in this notice for new clinical laboratory tests are in accordance with the procedures published on November 23, 2001 in the **Federal Register** (66 FR 58743) to implement section 531(b) of BIPA. Also, section 942(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), Pub. L. 108–173, added section 1833(h)(8)(B)(iii) of the Act, which required that we establish by regulation procedures for determining the basis for, and amount of, payment for new clinical laboratory tests. In the calendar year (CY) 2007 physician fee schedule final rule (71 FR 69701 through 69704), we adopted new 42 CFR subpart G regarding payment for new clinical diagnostic laboratory tests. Under 42 CFR 414.506, we annually convene a meeting that includes representatives of CMS officials involved in determining payment amounts to receive individual comments and recommendations (and data on which the recommendations are based).

A newly created CPT code can either represent a refinement or modification of existing test methods, or a substantially new test method. The newly created CPT codes for the calendar year 2007 will be listed at the web site <http://www.cms.hhs.gov/ClinicalLabFeeSched> on or after June 18, 2007.

The first method, called cross-walking, is used when a new test is determined to be similar to an existing test, multiple existing test codes, or a portion of an existing test code. The new test code is then assigned the related existing local fee schedule amounts and resulting national limitation amount. The second method, called gap-filling, is used when no comparable, existing test is available. When using this method, instructions are provided to each Medicare carrier to determine a payment amount for its geographic area(s) for use in the first year, and the carrier-specific amounts are used to establish a national limitation amount for following years. For each new clinical laboratory test code, a determination must be made to either cross-walk or to gap-fill, and, if cross-walking is appropriate, to know which tests to cross-walk.

### II. Meeting Format

This meeting is open to the public. The on-site check-in for visitors will be held from 9:30 to 10 a.m., followed by opening remarks. Registered individuals may discuss and recommend payment determinations for specific new CPT codes for the 2008 Clinical Laboratory Fee Schedule.

Oral presentations must be brief, and must be accompanied by three written copies. Presenters may also make copies available for approximately 50 meeting participants. Presenters should address the new test code(s) and descriptor, the test purpose and method, costs, charges, and make a recommendation with rationale for using one of two methods (cross-walking or gap-fill) for determining payment for new clinical laboratory codes. Presentations that do not address the six items may be considered incomplete and not considered by CMS when making a payment determination. We will request missing information following the meeting in order to prevent a recommendation from being considered incomplete.

A summary of the new codes and the payment recommendations that are presented during the public meeting will be posted on our Web site by September 7, 2007 and can be accessed at <http://www.cms.hhs.gov/ClinicalLabFeeSched>. In addition, the

summary will list other comments received on or before 15 days after the meeting, or August 1, 2007. The summary will also display CMS' tentative payment determinations, and interested individuals may submit written comments on the tentative payment determinations by September 21, 2007 to the address specified in the summary.

### III. Registration Instructions

We are coordinating the public meeting registration. Beginning June 18, 2007 registration may be completed on-line at <http://www.cms.hhs.gov/ClinicalLabFeeSched>. The following information must be submitted when registering: Name; company name; address; telephone number(s); and E-mail address(es).

When registering, individuals who want to make a presentation must also specify which new clinical laboratory test code(s) they will be presenting. A confirmation will be sent upon receipt of the registration.

**Registration Deadline:** Individuals must register by July 11, 2007.

### IV. Security, Building, and Parking Guidelines

The meeting will be held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. In order to gain access to the building and grounds, participants must bring a government-issued photo identification and a copy of your written meeting registration confirmation. Persons without proper identification may be denied access to the building.

Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 30 to 45 minutes prior to the convening of the meeting.

Security measures also include inspection of vehicles, inside and out at the entrance to the grounds. In addition, all persons entering the building must pass through a metal detector. All items brought to CMS, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection.

### V. Special Accommodations

Individuals attending a meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance, should provide the information upon registering for the meeting.

**Authority:** Section 1102, 1833(h), and 1871 of the Social Security Act (42 U.S.C. 1302, 42 U.S.C. 13951, and 42 U.S.C. 1395hh)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 22, 2007.

**Leslie V. Norwalk,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. E7-9525 Filed 5-24-07; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-3172-N]

### Medicare Program; Meeting of the Medicare Coverage Advisory Committee—July 18, 2007

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces a public meeting of the Medicare Evidence Development Coverage Advisory Committee (MedCAC or Committee), formerly the Medicare Coverage Advisory Committee (MCAC). The Committee generally provides advice and recommendations about whether scientific evidence is adequate to determine whether certain medical items and services are reasonable and necessary under the Medicare statute. This meeting concerns percutaneous transluminal angioplasty (PTA) and stenting of the renal arteries.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

**DATES:** *Meeting Date:* The public meeting will be held on Wednesday, July 18, 2007 from 7:30 a.m. until 4:30 p.m., eastern daylight time (e.d.t.).

*Deadlines for Registration and Request for Special Accommodations:* Registration must be completed no later than 5 p.m., e.d.t. on Monday, July 9, 2007. Request for special accommodations must be received by 5 p.m., e.d.t. Tuesday, July 10, 2007.

*Deadlines for Written Comments and Presentations:* Written comments and presentations must be received by June 18, 2007, 5 p.m., e.d.t. Presentations, once submitted, are final. No further changes to the presentation can be accepted after submission.

**ADDRESSES:** *Meeting Location:* The meeting will be held in the main auditorium of the Centers for Medicare

& Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

### *Presentation and Comment*

**Submission:** Interested persons may present data, information, or views orally or in writing on issues pending before the Committee. Presentation and written comments must be submitted by e-mail to

[Michelle.Atkinson@cms.hhs.gov](mailto:Michelle.Atkinson@cms.hhs.gov) or by regular mail to Michelle Atkinson, Executive Secretary for MedCAC, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Coverage and Analysis Group, C1-09-06, 7500 Security Boulevard, Baltimore, MD 21244.

### *Registration and Special*

**Accommodations:** Individuals wishing to participate or who need special accommodations, or both, may register by phone or e-mail by contacting Maria Ellis at 410-786-0309 or [Maria.Ellis@cms.hhs.gov](mailto:Maria.Ellis@cms.hhs.gov) no later than 5 p.m., e.d.t. on Monday, July 9, 2007. Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to contact Michelle Atkinson, Executive Secretary for MedCAC, no later than July 9, 2007.

**Web site:** You may access up-to-date information on this meeting at [http://www.cms.hhs.gov/FACA/02\\_MCAC.asp#TopOfPage](http://www.cms.hhs.gov/FACA/02_MCAC.asp#TopOfPage).

### **FOR FURTHER INFORMATION CONTACT:**

Michelle Atkinson, Executive Secretary for MedCAC, 410-786-2881; [Michelle.Atkinson@cms.hhs.gov](mailto:Michelle.Atkinson@cms.hhs.gov); Centers for Medicare & Medicaid Services, OCSQ—Coverage and Analysis Group, C1-09-06, 7500 Security Boulevard, Baltimore, MD 21244).

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) to describe the Medicare Coverage Advisory Committee (MCAC), which provides advice and recommendations to CMS about clinical issues.

This notice announces the July 18, 2007 public meeting of the Committee. During this meeting, the Committee will discuss evidence and hear presentations from the public concerning the use of PTA and stenting of the renal arteries for the treatment of atherosclerotic renal artery stenosis (ARAS). The clinical outcomes in the Medicare population will be discussed. MedCAC will review the following kinds of evidence:

- The most informative measures of clinical outcomes.
- Indications.

- Clinical outcomes for the different treatment options.
- Complications.
- Harms and adverse events.
- Persistence of benefits and harms over time.

- Generalizability to the Medicare population in routine practice.

In addition to evaluating the available data, the Committee will identify areas in which the current data are deficient and in which additional research is warranted. Background information about this topic, including panel materials, is available at <http://www.cms.hhs.gov/coverage>.

## II. Meeting Procedures

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. The Committee may limit the number and duration of oral presentations to the time available. If you wish to make formal presentations, you must notify the Executive Secretary for MCAC (see **FOR FURTHER INFORMATION CONTACT**) and submit the following to the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice: (1) A brief statement of the general nature of the evidence or arguments you wish to present; (2) the names and addresses of proposed participants; and (3) a written copy of your presentation. Your presentation should consider the questions we have posed to the Committee and focus on the issues specific to the topic.

The questions will be available on the following Web site: [http://www.cms.hhs.gov/FACA/02\\_MCAC.asp#TopOfPage](http://www.cms.hhs.gov/FACA/02_MCAC.asp#TopOfPage). We require that you declare at the meeting whether you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public and CMS presentations, the Committee will deliberate openly on the topic. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15 minute unscheduled open public session for any attendee to address issues specific to the topic. At the conclusion of the day, the members will vote and the Committee will make its recommendation.

## III. Registration Instructions

The Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals

must register to attend. Register by contacting Maria Ellis by phone or e-mail as specified in the **ADDRESSES** section. Please provide your full name (as it appears on your State-issued driver's license), address, organization, telephone, fax number(s), and e-mail address. You will receive a registration confirmation with instructions for your arrival at the CMS complex.

## IV. Security, Building, and Parking Guidelines

Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend this meeting must register by the dates specified in the **DATES** section. Individuals who have not registered in advance will not be allowed to enter the building to attend the meeting.

The on-site check-in for visitors will begin at 7 a.m. Please allow sufficient time to go through the security checkpoints at both the entrance to the grounds and the entrance to the building.

Security measures also include a full inspection of vehicles, inside and exterior areas (rear, trunk, and engine) at the entrance to the grounds. In addition, all individuals entering the building must pass through a metal detector. All items brought to CMS, whether personal or for the purpose of or support of a demonstration, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for a demonstration or to support a demonstration.

Parking permits and instructions will be issued upon arrival.

**Authority:** 5 U.S.C. App. 2, section 10(a).

Dated: May 8, 2007.

**Barry M. Straube,**

*Chief Medical Officer and Director, Office of Clinical Standards and Quality.*

[FR Doc. E7-9780 Filed 5-24-07; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2007N-0200]

### Agency Information Collection Activities; Proposed Collection; Comment Request; Health and Diet Survey

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's Health and Diet Survey.

**DATES:** Submit written or electronic comments on the collection of information by July 24, 2007.

**ADDRESSES:** Submit electronic comments on the collection of information to: <http://www.fda.gov/dockets/ecomments>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's

estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

#### Health and Diet Survey (OMB Control Number 0910-0545)—Extension

FDA is seeking extension of OMB approval for the Health and Diet Survey, which is a voluntary consumer survey intended to gauge and track consumer attitudes, awareness, knowledge, and behavior regarding various topics related to health, nutrition and physical activity. The authority for FDA to collect the information derives from the FDA Commissioner's authority provided in section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)).

The survey consists of two independent data collection activities. One collection, entitled "Health and Diet Survey—General Topics," tracks a broad range of consumer attitudes, awareness, knowledge and self-reported behaviors related to key diet and health issues. The other collection, entitled "Health and Diet Survey—*Dietary Guidelines* Supplement," will provide FDA with updated information about consumer attitudes, awareness, knowledge, and behavior regarding various elements of nutrition and physical activity based on the key recommendations of the *Dietary Guidelines for Americans*, which are jointly issued by the Department of Health and Human Services (HHS) and Department of Agriculture every 5 years.

The information to be collected with the Health and Diet Survey—General Topics will include: (1) Awareness of diet-disease relationships; (2) food and dietary supplement label use; (3) dietary practices including strategies to lose or maintain weight; and, (4) awareness and knowledge of dietary fats. The information to be collected with the

Health and Diet Survey—*Dietary Guidelines* Supplement will include: (1) Awareness and sources of information; (2) attitudes toward diet and physical activity; and, (3) practice and knowledge related to recommended behaviors. The survey will also ask about perceptions and use of Federal nutrition information, special diet, weight status, health status, and demographics.

FDA and other Federal agencies will use the information from the Health and Diet Survey to evaluate and develop strategies and programs to encourage and help consumers adopt healthy lifestyles. The information will also help the FDA and other Federal agencies evaluate and track consumer awareness and behavior as outcome measures of their achievement in improving public health.

*Description of Respondents:* The respondents are adults, age 18 and older, drawn from the 50 states and the District of Columbia. Participation will be voluntary.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

| Activity                                | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|-----------------------------------------|--------------------|-------------------------------|------------------------|--------------------|-------------|
| General Topics: Pretest                 | 27≤                | 1                             | 27                     | 0.25               | 6.75        |
| General Topics: Screener                | 10,000             | 1                             | 10,000                 | 0.02               | 200         |
| General Topics: Survey                  | 3,000              | 1                             | 3,000                  | 0.25               | 750         |
| Dietary Guidelines Supplement: Screener | 4,000              | 1                             | 4,000                  | 0.02               | 80          |
| Dietary Guidelines Supplement: Survey   | 1,200              | 1                             | 1,200                  | 0.22               | 264         |
| Total                                   |                    |                               |                        |                    | 1,300.75    |

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has based its estimate of the number of respondents and the burden hours per response on its experience with the Health and Diet Survey over the past 3 years. The agency will use a screener to select an eligible adult respondent in each household to participate in the survey. For the Health and Diet Survey—General Topics data collection activity a total of 3,000 adults in the 50 states and the District of Columbia will be interviewed by telephone. We estimate that it will take a respondent 1.2 minutes (0.02 hours) to complete the screening questions and 15 minutes (0.25 hours) to complete the entire survey. Prior to the administration of the survey, the agency plans to conduct a pretest to identify

and resolve potential problems. The pretest will be conducted with 27 participants; we estimate that it will take a respondent 15 minutes (0.25 hours) to complete the pretest. For the Health and Diet Survey—*Dietary Guidelines* Supplement data collection activity a total of 1,200 adults in the 50 states and the District of Columbia will be interviewed by telephone. We estimate that it will take a respondent 1.2 minutes (0.02 hours) to complete the screening questions and 13.2 minutes (0.22 hours) to complete the entire survey. Target sample size of the combined data collection is 4,200 respondents who complete the survey.

Dated: May 17, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. E7-10086 Filed 5-24-07; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2007E-0009]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; MYOZYME

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for MYOZYME and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

**ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy (HFD-007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval

phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product MYOZYME (recombinant human acid alpha glucosidase). MYOZYME is indicated for use in patients with Pompe disease (GAA deficiency). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for MYOZYME (U.S. Patent No. 6,118,045) from Genzyme Corp., Erasmus MC, Erasmus Universiteit, and The Universiteit Leiden, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 6, 2007, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of MYOZYME represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for MYOZYME is 1,225 days. Of this time, 950 days occurred during the testing phase of the regulatory review period, while 275 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* December 22, 2002. The applicant claims November 25, 2002, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 22, 2002, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* July 28, 2005. The applicant claims July 29, 2005, as the date the biologics license application (BLA) for MYOZYME (BLA 125141/0) was initially submitted. However, FDA records indicate that BLA 125141/0 was submitted on July 28, 2005.

3. *The date the application was approved:* April 28, 2006. FDA has verified the applicant's claim that BLA 125141/0 was approved on April 28, 2006.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several

statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,251 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by July 24, 2007. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 21, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 7, 2007.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E7-10087 Filed 5-25-07; 8:45 am]

**BILLING CODE 4160-01-S**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Food and Drug Administration**

[Docket No. 2006E-0516]

#### **Determination of Regulatory Review Periods for Purposes of Patent Extension; SPRYCEL—New Drug Applications 21-986 and 22-072**

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for SPRYCEL—new drug applications (NDAs) 21-986 and 22-072 and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the

extension of a patent which claims that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy (HFD-007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product SPRYCEL—NDAs 21-986 and 22-072 (dasatinib). SPRYCEL is indicated for the treatment of adults with chronic, accelerated, or myeloid or lymphoid blast phase chronic myeloid leukemia with resistance or intolerance to prior therapy including imatinib. It is also indicated for the treatment of adults with Philadelphia chromosome-positive acute lymphoblastic leukemia with

resistance or intolerance to prior therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for SPRYCEL—NDAs 21-986 and 22-072 (U.S. Patent No. 6,596,746) from Bristol-Myers Squibb Company, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 26, 2007, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of SPRYCEL—NDAs 21-986 and 22-072 represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SPRYCEL—NDAs 21-986 and 22-072 is 1,183 days. Of this time, 1,000 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* April 4, 2003. The applicant claims April 3, 2003, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was April 4, 2003, which was 30 days after FDA receipt of the IND.

2. *The date the applications were initially submitted with respect to the human drug product under section 505(b) of the act:* December 28, 2005. FDA has verified the applicant's claim that the new drug applications (NDAs) for SPRYCEL (NDAs 21-986 and 22-072) were initially submitted on December 28, 2005.

3. *The date the applications were approved:* June 28, 2006. FDA has verified the applicant's claim that NDAs 21-986 and 22-072 were approved on June 28, 2006.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 76 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets

Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by July 24, 2007. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 21, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 2, 2007.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E7-10089 Filed 5-24-07; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2006E-0502]

### Determination of Regulatory Review Period for Purposes of Patent Extension; PREZISTA

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for PREZISTA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory

Policy (HFD-007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product PREZISTA (darunavir ethanolate). PREZISTA, co-administered with 100 milligrams ritonavir and with other antiretroviral agents, is indicated for the treatment of human immunodeficiency virus (HIV) infection in antiretroviral treatment-experienced adult patients, such as those with HIV-1 strains resistant to more than one protease inhibitor. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for PREZISTA (U.S. Patent No. 6,248,775) from G.D. Searle & Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 6, 2007, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period

and that the approval of PREZISTA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PREZISTA is 1,253 days. Of this time, 1,070 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* January 19, 2003. The applicant claims January 20, 2003, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 19, 2003, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* December 23, 2005. FDA has verified the applicant's claim that the new drug application (NDA) for PREZISTA (NDA 21-976) was initially submitted on December 23, 2005.

3. *The date the application was approved:* June 23, 2006. FDA has verified the applicant's claim that NDA 21-976 was approved on June 23, 2006.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 717 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by July 24, 2007. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 21, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted,

except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 7, 2007.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E7-10147 Filed 5-24-07; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2006E-0495]

### Determination of Regulatory Review Period for Purposes of Patent Extension; KDR 401 and 403 PACEMAKERS

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for KDR 401 and 403 PACEMAKERS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims those medical devices.

**ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy (HFD-007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a

product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA approved for marketing the medical devices, KDR 401 and 403 PACEMAKERS. KDR 401 and 403 PACEMAKERS are indicated for the following: Rate adaptive pacing in patients who may benefit from increased pacing rates concurrent with increases in activity and/or minute ventilation; accepted patient conditions warranting chronic cardiac pacing which include: symptomatic paroxysmal or permanent second or third-degree atrioventricular (AV) block; Symptomatic bilateral bundle branch block; symptomatic paroxysmal or transient sinus node dysfunctions with or without associated AV conduction disorders; bradycardia-tachycardia syndrome to prevent symptomatic bradycardia or some forms of symptomatic tachyarrhythmias; and vasovagal syndromes or hypersensitive carotid sinus syndromes. KDR 401 and 403 PACEMAKERS are also indicated for dual chamber and atrial tracking modes in patients who may benefit from maintenance of AV synchrony. Dual chamber modes are specifically indicated for treatment of conduction disorders that require restoration of both rate and AV synchrony, which include: Various degrees of AV block to maintain the atrial contribution to cardiac output and vasovagal intolerance in the presence of persistent sinus rhythm. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for KDR 401 and 403 PACEMAKERS (U.S. Patent No. 4,958,632) from Medtronic, Inc., and the Patent and Trademark Office requested FDA's assistance in

determining this patent's eligibility for patent term restoration. In a letter dated February 22, 2007, FDA advised the Patent and Trademark Office that these medical devices had undergone a regulatory review period and that the approval of KDR 401 and 403 PACEMAKERS represented the first permitted commercial marketing or use of the products. Thereafter, the Patent and Trademark Office requested that FDA determine the products' regulatory review period.

FDA has determined that the applicable regulatory review period for KDR 401 and 403 PACEMAKERS is 716 days. Of this time, 358 days occurred during the testing phase of the regulatory review period, while 358 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) involving this device became effective:* February 16, 1996. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the act for human tests to begin became effective on May 21, 1997. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on February 16, 1996, which represents the IDE effective date.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e):* February 7, 1997. The applicant claims February 6, 1997, as the date the premarket approval application (PMA) for KDR 401 and 403 PACEMAKERS (PMA 970012) was initially submitted. However, FDA records indicate that PMA 970012 was submitted on February 7, 1997.

3. *The date the application was approved:* January 30, 1998. FDA has verified the applicant's claim that PMA 970012 was approved on January 30, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 358 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by July 24, 2007.

Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 21, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 7, 2007.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E7–10127 Filed 5–24–07; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 2006D–0480]

#### **Draft Guidance for Industry on Complementary and Alternative Medicine Products and Their Regulation by the Food and Drug Administration; Availability**

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, we) is announcing that it will consider comments submitted through May 29, 2007, for a draft guidance for industry entitled “Complementary and Alternative Medicine Products and Their Regulation by the Food and Drug Administration.” Although the comment period for the draft guidance ended on April 30, 2007, we will consider comments submitted through May 29, 2007, due to confusion as to the closing date for comments on the draft guidance.

**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, submit written or electronic comments on the draft guidance by May 29, 2007.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist that office in processing your requests. 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 <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Philip L. Chao, Office of Policy and Planning (HF-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-0587.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In the **Federal Register** of February 27, 2007, (72 FR 8756), FDA announced the availability of a draft guidance for industry entitled "Complementary and Alternative Medicine Products and Their Regulation by the Food and Drug Administration." The term "complementary and alternative medicine" (CAM) encompasses a wide array of health care practices, products, and therapies that are distinct from practices, products, and therapies used in "conventional" or "allopathic" medicine.

In recent years, the practice of complementary and alternative medicine CAM has increased in the United States, and we have seen increased confusion as to whether certain products used in CAM are subject to regulation under the Federal Food, Drug, and Cosmetic Act (the act) or Public Health Service Act (PHS Act). We have also seen an increase in the number of CAM products imported into the United States. Therefore, the draft guidance discusses when a CAM product is subject to the act or the PHS Act.

The notice announcing the availability of the draft guidance provided a 60-day comment period, so the comment period for the draft guidance was scheduled to end on April 30, 2007. Unfortunately, due to a typographical error in the draft guidance itself (which stated that the comment period would be 90 days from the date

of the notice's publication in the **Federal Register**), we became aware that some members of the public believed that the comment period would or should end on May 28 or May 29, 2007. This confusion was compounded by another error that appeared at one section of FDA's Web site; the error, which appeared at the "Dockets Open for Comment" portion of the Web site where electronic comments are submitted, stated that the comment period would end on May 29, 2007. (In contrast, other sections of FDA's Web site retained the April 30, 2007, date.)

Given the amount of confusion as to the comment period, we are announcing that we will consider all comments on this draft guidance that are submitted through May 29, 2007. Previously submitted comments do not need to be resubmitted.

Additionally, we are aware of considerable confusion about the content of the draft guidance, which has been widely misinterpreted. Therefore, we want consumers and CAM practitioners to understand that the draft guidance does *not* contain or propose any new regulatory requirements for any complementary and alternative medicine CAM product marketed in the United States and does *not* affect any state licensing requirements for any CAM practitioner or any consumer's ability to buy or receive a CAM product or be treated by any CAM practitioner.

Public concern based on misinterpretations of the draft guidance has generated a large volume of comments to the docket. The large volume of comments has impeded our ability to identify and respond to extension requests. Consequently, we are addressing those unanswered extension requests by considering comments submitted through May 29, 2007.

##### **II. Comments**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding 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.

##### **III. Electronic Access**

Persons with access to the Internet may obtain the draft guidance at <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: May 22, 2007.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 07-2610 Filed 5-22-07; 3:21 pm]

**BILLING CODE 4160-01-S**

#### **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

##### **National Institutes of Health**

##### **Proposed Collection; Comment Request; Application for the Pharmacology Research Associate Program**

*Summary:* In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of General Medical Sciences (NIGMS), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

*Proposed Collection: Title:* Application for the Pharmacology Research Associate Program. *Type of Information Collection Request:* Extension of a currently approved collection, OMB No. 0925-0378, expiration date August 31, 2007. *Form Numbers:* NIH 2721-1, NIH 2721-2. *Need and Use of Information Collection:* The Pharmacology Research Associate (PRAT) Program will use the applicant and referee information to award opportunities for training and experience in laboratory or clinical investigation to individuals with a Ph.D. degree in pharmacology or a related science, M.D., or other professional degree through appointments as PRAT Fellows at the National Institutes of Health or the Food and Drug Administration. The goal of the program is to develop leaders in pharmacological research for key positions in academic, industrial, and Federal research laboratories. *Frequency of Response:* Once a year. *Affected Public:* Individuals or households; Businesses or other for-profit. *Type of Respondents:* Applicants and Referees.

*The annual reporting burden is as follows:*

| Type and number of respondents | Estimated number of responses per respondent | Estimated total responses | Average burden hours per responses | Estimated total annual burden hours requested |
|--------------------------------|----------------------------------------------|---------------------------|------------------------------------|-----------------------------------------------|
| Applicants, 25 .....           | 1                                            | 25                        | 8.00                               | 200                                           |
| Referees, 75 .....             | 1                                            | 75                        | 1.75                               | 131.25                                        |

*Total Number of Respondents:* 100.

*Total Number of Responses:* 100.

*Total Hours:* 331.25.

*The annualized cost to respondents is estimated at:*

*Applicants:* \$10,250.00.

*Referees:* \$6,562.50.

There are no Capital Costs, Operating costs, and/or Maintenance Costs to report.

**Request For Comments:** Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**For Further Information Contact:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Sally Lee, NIGMS, NIH, Natcher Building, Room 2AN-18H, 45 Center Drive, MSC 6200, Bethesda, MD 20892-6200, or call non-toll-free number 301-594-2755 or e-mail your request, including your address to: < LeeS@nigms.nih.gov >.

**Comments Due Date:** Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: May 16, 2007.

**Sally Lee,**

*Acting Executive Officer, National Institute of General Medical Sciences, National Institutes of Health.*

[FR Doc. E7-10093 Filed 5-24-07; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

**Name of Committee:** National Heart, Lung, and Blood Institute Special Emphasis Panel, Short Term Research Training (T35).

**Date:** July 19, 2007.

**Time:** 1 p.m. to 4 p.m.

**Agenda:** To review and evaluate grant applications.

**Place:** National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

**Contact person:** Chang Sook Kim, PhD, Scientific Review Administrator, Review Branch, DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892-7924, 301-435-0287, carolko@mail.nih.gov.

**Name of Committee:** National Heart, Lung, and Blood Institute Special Emphasis Panel, Cardiovascular Research Program Project.

**Date:** July 25, 2007.

**Time:** 1 p.m. to 4 p.m.

**Agenda:** To review and evaluate grant applications.

**Place:** National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

**Contact Person:** Keary A. Cope, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892-7924, 301-435-2222, copeka@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases

and Resources Research, National Institutes of Health, HHS).

Dated: May 17, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-2588 Filed 5-24-07; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

**Name of Committee:** National Institute of Nursing Research Initial Review Group.

**Date:** June 14-15, 2007.

**Time:** 8:15 am. to 6 p.m.

**Agenda:** To review and evaluate grant applications.

**Place:** Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

**Contact Person:** Jeffrey M. Chernak, PhD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, 6701 Democracy Plaza, Suite 710, MSC 4870, Bethesda, MD 20892, (301) 402-6959, chernakj@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 17, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-2589 Filed 5-24-07; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee A.

*Date:* June 14, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* DoubleTree Hotel, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20818.

*Contact Person:* Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN-18, Bethesda, MD 20892, (301) 594-2848, [latker@nigms.nih.gov](mailto:latker@nigms.nih.gov).

*Name of Committee:* National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee B.

*Date:* June 15, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* DoubleTree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Arthur L. Zachary, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN-18, Bethesda, MD 20892, (301) 594-2886, [zacharya@nigms.nih.gov](mailto:zacharya@nigms.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 17, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-2590 Filed 5-24-07; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institute of Health

#### National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Child Health and Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NICHD.

*Date:* June 1, 2007.

*Time:* 8 a.m. to 11:30 a.m.

*Agenda:* A report by the Scientific Director, NICHD, on the status of the NICHD Division of Intramural Research.

*Place:* National Institutes of Health, Building 31, 9000 Rockville Pike, Room 2A48, Bethesda, MD 20892.

*Closed:* 11:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 31, 9000 Rockville Pike, Room 2A48, Bethesda, MD 20892.

*Contact Person:* Owen M. Rennert, MD, Scientific Director, National Institute of Child Health and Human Development, 9000 Rockville Pike, Building 31, Room 2A50, Bethesda, MD 20892, (301) 496-2133, [rennerto@mail.nih.gov](mailto:rennerto@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to timing

limitations imposed by administrative matters.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page <http://www.nichd.nih.gov/about/bsd/htm>, when an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research of Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 17, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07-2591 Filed 5-24-07; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

*Comments are invited on:* (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the

quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project:** Voluntary Customer Satisfaction Surveys to Implement Executive Order 12862 in the Substance Abuse and Mental Health Services Administration (SAMHSA)—(OMB No. 0930-0197)—Revision

Executive Order 12862 directs agencies that “provide significant services directly to the public” to “survey customers to determine the

kind and quality of services they want and their level of satisfaction with existing services.” SAMHSA provides significant services directly to the public, including treatment providers and State substance abuse and mental health agencies, through a range of mechanisms, including publications, training, meetings, technical assistance and Web sites. Many of these services are focused on information dissemination activities. The purpose of this submission is to extend the existing generic approval for such surveys.

The primary use for information gathered is to identify strengths and weaknesses in current service provisions by SAMHSA and to make

improvements that are practical and feasible. Several of the customer satisfaction surveys expected to be implemented under this approval will provide data for measurement of program effectiveness under the Government Performance and Results Act (GPRA). Information from these customer surveys will be used to plan and redirect resources and efforts to improve or maintain a high quality of service to health care providers and members of the public. Focus groups may be used to develop the survey questionnaire in some instances.

The estimated annual hour burden is as follows:

| Type of data collection                                     | Number of respondents | Responses/ respondent | Hours/ response | Total hours   |
|-------------------------------------------------------------|-----------------------|-----------------------|-----------------|---------------|
| Focus groups .....                                          | 250                   | 1                     | 2.50            | 625           |
| Self-administered, mail, telephone and e-mail surveys ..... | 89,750                | 1                     | .250            | 22,438        |
| <b>Total .....</b>                                          | <b>90,000</b>         | <b>.....</b>          | <b>.....</b>    | <b>23,063</b> |

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7-1044, One Choke Cherry Road, Rockville, MD 20857 AND e-mail her a copy at [summer.king@samhsa.hhs.gov](mailto:summer.king@samhsa.hhs.gov). Written comments should be received within 60 days of this notice.

Dated: May 17, 2007.

**Elaine Parry,**

*Acting Director, Office of Program Services.*

[FR Doc. E7-10100 Filed 5-24-07; 8:45 am]

**BILLING CODE 4162-20-P**

## DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2007-0037]

### Homeland Security Advisory Council

**AGENCY:** Department of Homeland Security.

**ACTION:** Committee management; Notice of closed Federal advisory committee meeting.

**SUMMARY:** The Homeland Security Advisory Council will meet on June 11, 2007, in New York, NY. The meeting will be closed to the public.

**DATES:** The Homeland Security Advisory Council will meet Monday, June 11, 2007 from 8:30 a.m. to 3:30 p.m.

**ADDRESSES:** The meeting will be held at Warwick Hotel, 65 West 54th Street, New York, NY 10019, USA. Requests to have written material distributed to each member of the committee prior to the meeting should reach the contact

person at the address below by May 31, 2007. Send written material to U.S. Department of Homeland Security, Homeland Security Advisory Council, Washington, DC 20538. Comments must be identified by DHS-2007-0037 and may be submitted by one of the following methods:

- **Federal eRulemaking Portal:**

<http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail:** [HSAC@dhs.gov](mailto:HSAC@dhs.gov). Include the docket number in the subject line of the message.

- **Fax:** 202-282-9207.

- **Mail:** U.S. Department of Homeland Security, Homeland Security Advisory Council, Attn: Ruth Smith, 3801 Nebraska Avenue, NW., Washington, DC 20528.

**Instructions:** All submissions received must include the words “Department of Homeland Security” and the docket number for this action. Comments received will be posted without alteration at [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

**Docket:** For access to the docket to read background documents or comments received by the Homeland Security Advisory Council, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Homeland Security, Homeland Security Advisory Council, Attention: Ruth Smith, (202) 447-3135, fax: (202) 282-9207.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App.

(Pub. L. 92-463). The HSAC exists to provide organizationally independent advice and recommendations to the Secretary of the Department aiding in the creation and expeditious implementation of critical and actionable policy and operational capacities across the spectrum of Homeland Security operations. The HSAC shall periodically report, as appropriate, to the Secretary on matters within the scope of that function. The HSAC serves as an advisory body with the goal of providing advice upon the request of the Secretary.

The committee will meet for the purpose of discussions with senior Department of Homeland Security Officials and will discuss priorities and the progress of various initiatives.

### Basis for Closure

The Federal Advisory Committee Act permits the closure of advisory committee meetings, or portions thereof, as a matter of public interest subject to the requirements of the Government in the Sunshine Act (5 U.S.C. 552b(c)). At this meeting, the Committee will participate in sensitive discussions with senior officials regarding priorities and ongoing initiatives in the department.

Pursuant to 5 U.S.C. 552b(c)(9)(B), the nature of the discussions could lead to premature disclosure of information on Department of Homeland Security actions that would be “likely to significantly frustrate implementation of a proposed agency action.” Additionally, discussions of ongoing investigations with Department of

Homeland Security enforcement components and outside law enforcement partners fall within the meaning of 5 U.S.C. 552b(c)(7)(E) insofar as they will "disclose investigative techniques and procedures."

The closed meeting will be dedicated to pre-decisional discussions of the updates to the National Response Plan and the rollout of radiation screening in ports, as well as the investigative and enforcement efforts of Immigration and Customs Enforcement, Customs and Border Protection, New York Police Department, and the New York State Department of Public Safety. The predecisional discussion with Coast Guard and FEMA will involve information that, if publicly disclosed, is likely to inhibit the government's ability to implement the National Response Plan and the planned radiation screening programs. The discussions with internal and external enforcement components will involve information about sensitive investigative techniques and procedures.

Dated: May 14, 2007.

**Doug Hoelscher,**

*Executive Director, Homeland Security Advisory Committees.*

[FR Doc. 07-2642 Filed 5-23-07; 12:38 pm]

**BILLING CODE 4410-10-P**

## DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2007-0021]

### United States Visitor and Immigrant Status Indicator Technology (US-VISIT); Privacy Act of 1974; Notice of Decommission of System of Records

**AGENCY:** United States Visitor and Immigrant Status Indicator Technology (US-VISIT), DHS.

**ACTION:** Notice of Decommission for System of Records.

**SUMMARY:** The Department of Homeland Security (DHS), US-VISIT Program, conducted a proof of concept (POC) for Increment 2C (70 FR 39300, US-VISIT Privacy Impact Assessment, July 7, 2005) to assess the capability of automatically, passively, and remotely recording the entry and exit of US-VISIT covered individuals at U.S. land border ports of entry (POEs) using Radio Frequency Identification (RFID)-enabled I-94 (Arrival/Departure) Forms. To support the US-VISIT Increment 2C POC, the Automated Identification Management System (AIDMS) was created to link the unique and

individually-assigned RFID tag number to existing biographic information received from the Treasury Enforcement Communications System (TECS) and the entry and exit event information for each covered individual crossing the land border. The AIDMS maintained four general categories of records: traveler (i.e., covered individual) identification information, RFID tag related information, RFID tag read event information, and border crossing history information. The traveler identification information and the border crossing history information were duplicative of information stored in TECS and the Arrival/Departure Information System (ADIS). The RFID tag information was comprised of data collected about the issuance and status of the Form I-94 as well as data associated with the reading of an RFID tag. On November 7, 2006, US-VISIT concluded the Increment 2C POC. Upon completion of the estimated one year POC (as noted in the US-VISIT Notice published August 4, 2005, 70 FR 44934), AIDMS has been decommissioned because data is no longer being collected or stored in the system. All data previously stored in AIDMS will be deleted/destroyed 30 days after publication of this notice and in accordance with the National Archives and Records Administration (NARA) General Records Schedule (GRS) 20, Item 1.a. The AIDMS SORN was previously published in the **Federal Register** on July 5, 2005, at 70 FR 38700. A Privacy Impact Assessment regarding this decommission has been published at <http://www.dhs.gov/privacy>.

The purpose of this notice is to inform the public of the termination of AIDMS on June 25, 2007.

**Disposition:** In accordance with NARA GRS 20, Item 1.a, the data collected and stored in AIDMS will be deleted/destroyed 30 days after publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Steve Yonkers, Privacy Officer, US-VISIT Program, Department of Homeland Security, Washington, DC 20528; telephone 202-298-5200 (this is not a toll free number).

Dated: May 16, 2007.

**Hugo Teufel III,**

*Chief Privacy Officer.*

[FR Doc. E7-10085 Filed 5-24-07; 8:45 am]

**BILLING CODE 4410-10-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5125-N-21]

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Kathy Ezzell, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where

property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B-17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army*: Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM-ZS, Rm 8536, 2511 Jefferson Davis Hwy., Arlington, VA 22202; (703)

601-2545; *Coast Guard*: Commandant, U.S. Coast Guard, Attn: Teresa Sheinberg, 2100 Second St, SW., Rm 6109, Washington, DC 20593-0001; (202) 267-6142; *Energy*: Mr. John Watson, Department of Energy, Office of Engineering & Construction Management, ME-90, 1000 Independence Ave, SW., Washington, DC 20585; (202) 586-0072; *GSA*: Mr. John E.B. Smith, Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501-0084; *Interior*: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS2603, Washington, DC 20240; (202) 513-0747; *Navy*: Mr. Warren Meekins, Associate Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374-5065; (202) 685-9305; (These are not toll-free numbers).

Dated: May 17, 2007.

**Mark R. Johnston,**

*Deputy Assistant Secretary for Special Needs.*

#### **Title V, Federal Surplus Property Program Federal Register Report for 05/25/2007**

##### **Suitable/Available Properties**

###### *Building*

###### **Colorado**

Bldgs. 123, 128, 129  
National Forest  
White River CO  
Landholding Agency: GSA  
Property Number: 54200720006  
Status: Surplus  
GSA Number: 7-A-CO-0662  
Comments: school house/1500 sq. ft., cabin/500 sq. ft., hut/150 sq. ft., off-site use only  
Green Mountain Shower Bldg.  
CR 1813  
Silverthorne Co: Summit CO 80498  
Landholding Agency: GSA  
Property Number: 54200720019  
Status: Surplus  
GSA Number: 7-I-CO-0664  
Comments: 512 sq. ft. shower building, off-site use only

###### **Michigan**

Social Security Bldg.  
929 Stevens Road  
Flint MI 48503  
Landholding Agency: GSA  
Property Number: 54200720020  
Status: Excess  
GSA Number: 1-G-MI-822  
Comments: 10,283 sq. ft., most recent use—office

##### **Suitable/Available Properties**

###### *Building*

###### **North Dakota**

North House  
10951 County Road  
Hannah Co: Cavalier ND 58239  
Landholding Agency: GSA  
Property Number: 54200720008  
Status: Surplus  
GSA Number: 7-X-ND-0515-1A  
Comments: 1128 sq. ft. residence, off-site use only

###### **South House**

10949 County Road  
Hannah Co: Cavalier ND 58239  
Landholding Agency: GSA  
Property Number: 54200720009  
Status: Surplus  
GSA Number: 7-X-ND-0515-1B  
Comments: 1128 sq. ft. residence, off-site use only

###### **North House**

Highway 40  
Noonan Co: Divide ND 58765  
Landholding Agency: GSA  
Property Number: 54200720010  
Status: Surplus  
GSA Number: 7-X-ND-0517-1A  
Comments: 1564 sq. ft. residence, off-site use only

###### **South House**

Highway 40  
Noonan Co: Divide ND 58765  
Landholding Agency: GSA  
Property Number: 54200720011  
Status: Surplus  
GSA Number: 7-X-ND-0517-1B  
Comments: 1564 sq. ft. residence, off-site use only

##### **Suitable/Available Properties**

###### *Building*

###### **North Dakota**

North House  
Rt. 1, Box 66  
Sarles Co: Cavalier ND 58372  
Landholding Agency: GSA  
Property Number: 54200720012  
Status: Surplus  
GSA Number: 7-X-ND-0516-1B  
Comments: 1228 sq. ft. residence, off-site use only

###### **South House**

Rt. 1, Box 67  
Sarles Co: Cavalier ND 58372  
Landholding Agency: GSA  
Property Number: 54200720013  
Status: Surplus  
GSA Number: 7-X-ND-0516-1A  
Comments: 1228 sq. ft. residence, off-site use only

###### **House #1**

10925 Hwy 28  
Sherwood Co: Renville ND 58782  
Landholding Agency: GSA

Property Number: 54200720014  
 Status: Surplus  
 GSA Number: 7-X-ND-0518-1B  
 Comments: 1228 sq. ft. residence, off-site use only  
 House #2  
 10927 Hwy 28  
 Sherwood Co: Renville ND 58782  
 Landholding Agency: GSA  
 Property Number: 54200720015  
 Status: Surplus  
 GSA Number: 7-X-ND-0518-1A  
 Comments: 1228 sq. ft. residence, off-site use only

#### **Suitable/Available Properties**

##### *Building*

North Dakota

North House  
 10913 Hwy 83  
 Westhope Co: Bottineau ND 58793  
 Landholding Agency: GSA  
 Property Number: 54200720016  
 Status: Surplus  
 GSA Number: 7-X-ND-0519-1B  
 Comments: 1218 sq. ft. residence, off-site use only  
 South House  
 10909 Hwy 83  
 Westhope Co: Bottineau ND 58793  
 Landholding Agency: GSA  
 Property Number: 54200720017  
 Status: Surplus  
 GSA Number: 7-X-ND-0519-1A  
 Comments: 1218 sq. ft. residence, off-site use only

Vermont

Rochester House/Garage  
 Rt. 100  
 Rochester VT 05767  
 Landholding Agency: GSA  
 Property Number: 54200720021  
 Status: Surplus  
 GSA Number: 1-A-VT-0478-1A  
 Comments: 1152 sq. ft., off-site use only

#### **Suitable/Available Properties**

##### *Building*

Washington

Bldg. 1933  
 50 Acre Drive  
 Eltopia WA 99330  
 Landholding Agency: Interior  
 Property Number: 61200720006  
 Status: Unutilized  
 Comments: 709 sq. ft., most recent use—residence, possible asbestos/lead paint, off-site use only  
 Bldg. 1933g  
 50 Acre Drive  
 Eltopia WA 99330  
 Landholding Agency: Interior  
 Property Number: 61200720007  
 Status: Unutilized  
 Comments: 264 sq. ft., most recent use—garage, possible asbestos/lead paint, off-site use only

Bldg. 1934  
 40 Acre Drive  
 Eltopia WA  
 Landholding Agency: Interior  
 Property Number: 61200720008  
 Status: Unutilized  
 Comments: 709 sq. ft., most recent use—residence, possible asbestos/lead paint, off-site use only

Bldg. 1934g  
 40 Acre Drive  
 Eltopia WA 99330  
 Landholding Agency: Interior  
 Property Number: 61200720009  
 Status: Unutilized  
 Comments: 264 sq. ft., most recent use—garage, possible asbestos/lead paint, off-site use only

#### **Suitable/Available Properties**

Summary for Suitable/Available Properties = Total number of Properties 20

#### **Suitable/Unavailable Properties**

##### *Land*

North Carolina

6.35 acres  
 Marine Corps Base  
 Camp Lejeune NC  
 Landholding Agency: Navy  
 Property Number: 77200720051  
 Status: Underutilized  
 Comments: triangular-shaped parcel  
 6.8 acre  
 Marine Corps Base  
 Camp Lejeune NC  
 Landholding Agency: Navy  
 Property Number: 77200720053  
 Status: Underutilized  
 Comments: 6.8 acres  
 Summary for Suitable/Unavailable Properties = Total number of Properties 2

#### **Unsuitable Properties**

##### *Building*

Alabama

Bldgs. 25402, 25406, 30116  
 Ft. Rucker  
 Dale AL 36362  
 Landholding Agency: Army  
 Property Number: 21200720001  
 Status: Unutilized  
 Reasons: Extensive deterioration

California

Bldg. 3267  
 Naval Base  
 San Diego CA  
 Landholding Agency: Navy  
 Property Number: 77200720039  
 Status: Unutilized  
 Reasons: Secured Area  
 Quarters/Garages  
 Lighthouse Station

Trinidad CA 95570  
 Landholding Agency: Coast Guard  
 Property Number: 88200720001  
 Status: Unutilized  
 Reasons: Extensive deterioration

#### **Unsuitable Properties**

##### *Building*

Colorado

Bldgs. 0111a, 0112a, 0113a  
 Pueblo Chemical Depot  
 Pueblo CO 81006  
 Landholding Agency: Army  
 Property Number: 21200720002  
 Status: Unutilized  
 Reasons: Secured Area  
 4 Bldgs.  
 Fort Carson  
 56231, 56232, 56234, 56250  
 El Paso CO 80913  
 Landholding Agency: Army  
 Property Number: 21200720003  
 Status: Unutilized  
 Reasons: Secured Area  
 Bldgs. 00011, 00012  
 Pueblo Chemical Depot  
 Pueblo CO 81006  
 Landholding Agency: Army  
 Property Number: 21200720007  
 Status: Underutilized  
 Reasons: Secured Area  
 Bldgs. 00519, 00535, 00560  
 Pueblo Chemical Depot  
 Pueblo CO 81006  
 Landholding Agency: Army  
 Property Number: 21200720008  
 Status: Underutilized  
 Reasons: Secured Area

#### **Unsuitable Properties**

##### *Building*

Georgia

Bldg. 00050  
 Fort Benning  
 Dahlonge GA 30597  
 Landholding Agency: Army  
 Property Number: 21200720004  
 Status: Excess  
 Reasons: Extensive deterioration  
 Bldgs. 03814, 08594  
 Fort Benning  
 Muscogee GA 31905  
 Landholding Agency: Army  
 Property Number: 21200720005  
 Status: Excess  
 Reasons: Extensive deterioration  
 Bldgs. 08621, 08641, 08731  
 Fort Benning  
 Muscogee GA 31905  
 Landholding Agency: Army  
 Property Number: 21200720006  
 Status: Excess  
 Reasons: Extensive deterioration  
 Bldgs. 00404, 00406  
 Fort Gordon  
 Richmond GA 30905

Landholding Agency: Army  
Property Number: 21200720009  
Status: Unutilized  
Reasons: Extensive deterioration

#### Unsuitable Properties

##### *Building*

Georgia  
4 Bldgs.  
Fort Gordon  
25104, 81102, 0T002, 0T036  
Richmond GA 30905  
Landholding Agency: Army  
Property Number: 21200720010  
Status: Unutilized  
Reasons: Extensive deterioration  
Bldgs. 00205, 01016, 01567  
Fort Stewart  
Hinesville GA 31314  
Landholding Agency: Army  
Property Number: 21200720011  
Status: Excess  
Reasons: Extensive deterioration  
Bldgs. 00129, 00145  
Hunter Army Airfield  
Savannah GA 31409  
Landholding Agency: Army  
Property Number: 21200720012  
Status: Excess  
Reasons: Extensive deterioration  
7 Bldgs.  
Marine Logistics Base  
Albany GA  
Landholding Agency: Navy  
Property Number: 77200720040  
Status: Excess  
Directions: 7100, 7106, 7108, 7110,  
5584, 7964, 7966  
Reasons: Secured Area

#### Unsuitable Properties

##### *Building*

Hawaii  
Bldg. 389  
Naval Station  
Pearl Harbor HI 96860  
Landholding Agency: Navy  
Property Number: 77200720041  
Status: Excess  
Reasons: Secured Area

##### *Indiana*

Bldgs. 169D, 169E  
Naval Support Activity Crane  
Crane Co: Martin IN 47522  
Landholding Agency: Navy  
Property Number: 77200720042  
Status: Unutilized  
Reasons: Secured Area  
Within 2000 ft. of flammable or  
explosive material  
4 Bldgs.  
Naval Support Activity Crane 2171,  
2174, 2175, 2176  
Crane Co: Martin IN 47522  
Landholding Agency: Navy

Property Number: 77200720043  
Status: Unutilized  
Reasons: Secured Area  
Within 2000 ft. of flammable or  
explosive material

#### Unsuitable Properties

##### *Building*

Indiana  
4 Bldgs.  
Naval Support Activity Crane  
2500, 2512, 2514, 2515  
Crane Co: Martin IN 47522  
Landholding Agency: Navy  
Property Number: 77200720044  
Status: Unutilized  
Reasons: Secured Area  
Within 2000 ft. of flammable or  
explosive material  
Bldg. 3036  
Naval Support Activity Crane  
Crane Co: Martin IN 47522  
Landholding Agency: Navy  
Property Number: 77200720045  
Status: Unutilized  
Reasons: Secured Area  
Within 2000 ft. of flammable or  
explosive material

##### *Kentucky*

Bldgs. 00248, 01173  
Blue Grass Army Depot  
Richmond KY 40475  
Landholding Agency: Army  
Property Number: 21200720013  
Status: Unutilized  
Reasons: Secured Area

#### Unsuitable Properties

##### *Building*

Kentucky  
Bldg. 00719  
Fort Campbell  
Christian KY 42223  
Landholding Agency: Army  
Property Number: 21200720014  
Status: Unutilized  
Reasons: Extensive deterioration  
Bldgs. 00826, 0828, 00877  
Fort Campbell  
Christian KY 42223  
Landholding Agency: Army  
Property Number: 21200720015  
Status: Unutilized  
Reasons: Extensive deterioration  
6 Bldgs.  
Fort Campbell  
Christian KY 42223  
Landholding Agency: Army  
Property Number: 21200720016  
Status: Unutilized  
Directions: 02332, 02334, 02401, 02430,  
2431, 2436  
Reasons: Extensive deterioration  
5 Bldgs.  
Fort Campbell

Christian KY 42223  
Landholding Agency: Army  
Property Number: 21200720017  
Status: Unutilized  
Directions: 02506, 02515, 02530, 02536,  
02541  
Reasons: Extensive deterioration

#### Unsuitable Properties

##### *Building*

Kentucky  
Bldgs. 02603, 02902  
Fort Campbell  
Christian KY 42223  
Landholding Agency: Army  
Property Number: 21200720018  
Status: Unutilized  
Reasons: Extensive deterioration  
Bldgs. 02904, 02905, 02907  
Fort Campbell  
Christian KY 42223  
Landholding Agency: Army  
Property Number: 21200720019  
Status: Unutilized  
Reasons: Extensive deterioration  
5 Bldgs.  
Fort Campbell  
Christian KY 42223  
Landholding Agency: Army  
Property Number: 21200720020  
Status: Unutilized  
Directions: 03101, 03102, 03202, 03204,  
03306  
Reasons: Extensive deterioration  
Bldgs. 04859, 04860  
Fort Campbell  
Christian KY 42223  
Landholding Agency: Army  
Property Number: 21200720021  
Status: Unutilized  
Reasons: Extensive deterioration

#### Unsuitable Properties

##### *Building*

Kentucky  
Bldgs. 05330, 05511, 05513  
Fort Campbell  
Christian KY 42223  
Landholding Agency: Army  
Property Number: 21200720022  
Status: Unutilized  
Reasons: Extensive deterioration  
7 Bldgs.  
Fort Campbell  
Christian KY 42223  
Landholding Agency: Army  
Property Number: 21200720023  
Status: Unutilized  
Directions: 06454, 06456, 06460, 06464,  
06468, 06470, 06474  
Reasons: Extensive deterioration  
Bldg. 06612  
Fort Campbell  
Christian KY 42223  
Landholding Agency: Army  
Property Number: 21200720024

Status: Unutilized  
Reasons: Extensive deterioration  
Bldgs. 07173, 7201, 7297  
Fort Campbell  
Christian KY 42223  
Landholding Agency: Army  
Property Number: 21200720025  
Status: Unutilized  
Reasons: Extensive deterioration

**Unsuitable Properties***Building*

Maryland  
Bldg. 00901  
Fort Detrick  
Frederick MD 21702  
Landholding Agency: Army  
Property Number: 21200720026  
Status: Unutilized  
Reasons: Secured Area  
Bldgs. 04272, 04554  
Fort Meade  
Anne Arundel MD 20755  
Landholding Agency: Army  
Property Number: 21200720027  
Status: Unutilized  
Reasons: Extensive deterioration

*Minnesota*

House  
Glacial Ridge  
13997 Hwy 2W  
Red Lake Falls MN  
Landholding Agency: Interior  
Property Number: 61200720004  
Status: Excess  
Reasons: Extensive deterioration

**Unsuitable Properties***Building*

Mississippi  
Bldgs. 95, 96  
Naval Air Station  
Meridian MS 39309  
Landholding Agency: Navy  
Property Number: 77200720046  
Status: Unutilized  
Reasons: Secured Area  
Within airport runway clear zone  
Within 2000 ft. of flammable or  
explosive material  
Bldg. 167  
Naval Air Station  
Meridian MS 39309  
Landholding Agency: Navy  
Property Number: 77200720047  
Status: Unutilized  
Reasons: Secured Area  
Bldgs. 212, 228  
Naval Air Station  
Meridian MS 39309  
Landholding Agency: Navy  
Property Number: 77200720048  
Status: Unutilized  
Reasons: Secured Area  
Bldgs. 266, 267

Naval Air Station  
Meridian MS 39309  
Landholding Agency: Navy  
Property Number: 77200720049  
Status: Unutilized  
Reasons: Secured Area

**Unsuitable Properties***Building*

Mississippi  
Bldgs. 351, 445  
Naval Air Station  
Meridian MS 39309  
Landholding Agency: Navy  
Property Number: 77200720050  
Status: Unutilized  
Reasons: Secured Area

*Montana*

Bldg. 2321  
Big Mountain Electronic Site  
Flathead MT  
Landholding Agency: GSA  
Property Number: 54200720007  
Status: Excess  
GSA Number: 7-A-MT-0622-1A  
Reasons: Other—tower

*New Jersey*

Bldg. 3402  
Picatinny Arsenal  
Dover NJ 07806  
Landholding Agency: Army  
Property Number: 21200720028  
Status: Unutilized  
Reasons: Extensive deterioration

**Unsuitable Properties***Building**New York*

Bldgs. 0087, 0100  
Brookhaven Natl Laboratory  
Upton NY 11973  
Landholding Agency: Energy  
Property Number: 41200720002  
Status: Excess  
Reasons: Within 2000 ft. of flammable  
or explosive material  
Secured Area  
Bldgs. 0134A, 0179A  
Brookhaven Natl Laboratory  
Upton NY 11973  
Landholding Agency: Energy  
Property Number: 41200720003  
Status: Excess  
Reasons: Secured Area  
Within 2000 ft. of flammable or  
explosive material  
Bldgs. 0210, 0211  
Brookhaven Natl Laboratory  
Upton NY 11973  
Landholding Agency: Energy  
Property Number: 41200720004  
Status: Excess  
Reasons: Within 2000 ft. of flammable  
or explosive material  
Secured Area

Bldgs. 0475, 0481  
Brookhaven Natl Laboratory  
Upton NY 11973  
Landholding Agency: Energy  
Property Number: 41200720005  
Status: Excess  
Reasons: Within 2000 ft. of flammable  
or explosive material  
Secured Area

**Unsuitable Properties***Building**New York*

Bldgs. 0629, 0952  
Brookhaven Natl Laboratory  
Upton NY 11973  
Landholding Agency: Energy  
Property Number: 41200720006  
Status: Excess  
Reasons: Secured Area  
Within 2000 ft. of flammable or  
explosive material  
Bldg. 60  
Floyd Bennett Field  
Tract 01-109  
Brooklyn NY  
Landholding Agency: Interior  
Property Number: 61200720005  
Status: Unutilized  
Reasons: Secured Area  
North Carolina  
Bldg. 02723  
Fort Bragg  
Ft. Bragg NC 28310  
Landholding Agency: Army  
Property Number: 21200720029  
Status: Unutilized  
Reasons: Extensive deterioration

**Unsuitable Properties***Building**North Carolina*

4 Bldgs.  
Fort Bragg  
T3020, T3021, D3026, D3029  
Ft. Bragg NC 28310  
Landholding Agency: Army  
Property Number: 21200720030  
Status: Unutilized  
Reasons: Extensive deterioration  
4 Bldgs.  
Fort Bragg  
T3033, T3034, T3035, T3036  
Ft. Bragg NC 28310  
Landholding Agency: Army  
Property Number: 21200720031  
Status: Unutilized  
Reasons: Extensive deterioration  
Bldg. 9656  
Fort Bragg  
Ft. Bragg NC 28310  
Landholding Agency: Army  
Property Number: 21200720032  
Status: Unutilized  
Reasons: Extensive deterioration

4 Bldgs.  
Fort Bragg  
42145, 42245, 42848, 42948  
Ft. Bragg NC 28310  
Landholding Agency: Army  
Property Number: 21200720033  
Status: Unutilized  
Reasons: Extensive deterioration

#### Unsuitable Properties

##### *Building*

North Carolina  
Bldgs. 81703, 81706, 81821  
Fort Bragg  
Ft. Bragg NC 28310  
Landholding Agency: Army  
Property Number: 21200720034  
Status: Unutilized  
Reasons: Extensive deterioration  
Bldgs. 82121, 82313  
Fort Bragg  
Ft. Bragg NC 28310  
Landholding Agency: Army  
Property Number: 21200720035  
Status: Unutilized  
Reasons: Extensive deterioration

South Carolina  
L. Mendel Fed. Bldg.  
334 Meeting Street  
Charleston SC 29403  
Landholding Agency: GSA  
Property Number: 54200720018  
Status: Excess  
GSA Number: 4-G-SC-604  
Reasons: Contamination

#### Unsuitable Properties

##### *Building*

Tennessee  
17 Bldgs.  
Naval Support Activity  
Millington TN 38054  
Landholding Agency: Navy  
Property Number: 77200720052  
Status: Excess  
Directions: 2005–2008, 2010–2015,  
2017, 2052–2053, 2055, 2057, 2059–  
2060  
Reasons: Secured Area  
Utah  
Bldgs. 03300, 03312  
Deseret Chemical Depot  
Stockton UT 84071  
Landholding Agency: Army  
Property Number: 21200720036  
Status: Excess  
Reasons: Secured Area  
Bldgs. 07083, 07200  
Deseret Chemical Depot  
Stockton UT 84071  
Landholding Agency: Army  
Property Number: 21200720037  
Status: Excess  
Reasons: Secured Area

#### Unsuitable Properties

##### *Building*

Virginia  
Bldg. 00030  
Defense Supply Center  
Richmond VA 23297  
Landholding Agency: Army  
Property Number: 21200720038  
Status: Unutilized  
Reasons: Secured Area  
Bldgs. 00170, 00171, 00173  
Defense Supply Center  
Richmond VA 23297  
Landholding Agency: Army  
Property Number: 21200720039  
Status: Unutilized  
Reasons: Secured Area  
Bldgs. 00174, 00175  
Defense Supply Center  
Richmond VA 23297  
Landholding Agency: Army  
Property Number: 21200720040  
Status: Unutilized  
Reasons: Secured Area  
Bldgs. 1632, 8400  
Fort Lee  
Prince George VA 23801  
Landholding Agency: Army  
Property Number: 21200720041  
Status: Unutilized  
Reasons: Extensive deterioration

#### Unsuitable Properties

##### *Building*

Virginia  
Bldgs. T2225, T2845, T2842  
Fort Pickett  
Blackstone VA 23824  
Landholding Agency: Army  
Property Number: 21200720042  
Status: Unutilized  
Reasons: Extensive deterioration  
4 Bldgs.  
Fort Belvoir  
Fairfax VA 22060  
Landholding Agency: Army  
Property Number: 21200720043  
Status: Unutilized  
Directions: 0629, 0630, 00704, 00771  
Reasons: Extensive deterioration  
Bldgs. 01147, 01148  
Fort Belvoir  
Fairfax VA 22060  
Landholding Agency: Army  
Property Number: 21200720044  
Status: Unutilized  
Reasons: Extensive deterioration  
4 Bldgs.  
Fort Belvoir  
Fairfax VA 22060  
Landholding Agency: Army  
Property Number: 21200720045  
Status: Unutilized  
Directions: 05002, 05009, 05010, 05014  
Reasons: Extensive deterioration

#### Unsuitable Properties

##### *Building*

Virginia  
5 Bldgs.  
Fort Belvoir  
Fairfax VA 22060  
Landholding Agency: Army  
Property Number: 21200720046  
Status: Unutilized  
Directions: 05033, 05034, 05035, 05036,  
05037  
Reasons: Extensive deterioration  
Bldgs. 05040, 05043  
Fort Belvoir  
Fairfax VA 22060  
Landholding Agency: Army  
Property Number: 21200720047  
Status: Unutilized  
Reasons: Extensive deterioration  
4 Bldgs.  
Fort Belvoir  
Fairfax VA 22060  
Landholding Agency: Army  
Property Number: 21200720048  
Status: Unutilized  
Directions: 05065, 05066, 05067, 05069  
Reasons: Extensive deterioration

#### Unsuitable Properties

##### *Building*

Virginia  
6 Bldgs.  
Fort Belvoir  
Fairfax VA 22060  
Landholding Agency: Army  
Property Number: 21200720049  
Status: Unutilized  
Directions: 05071, 05072, 05073, 05075,  
05076, 05077  
Reasons: Extensive deterioration  
Bldgs. 05081, 05088  
Fort Belvoir  
Fairfax VA 22060  
Landholding Agency: Army  
Property Number: 21200720050  
Status: Unutilized  
Reasons: Extensive deterioration  
7 Bldgs.  
Fort Belvoir  
Fairfax VA 22060  
Landholding Agency: Army  
Property Number: 21200720051  
Status: Unutilized  
Directions: 05090, 05092, 05094, 05095,  
05096, 05097, 05098  
Reasons: Extensive deterioration

[FR Doc. E7–9889 Filed 5–24–07; 8:45 am]

BILLING CODE 4210-67-P

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018-0132; Research to Support Outdoor Recreation Management at Lake Umbagog National Wildlife Refuge - Phase 2**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on May 31, 2007. We 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.

**DATES:** You must submit comments on or before June 25, 2007.

**ADDRESSES:** Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-6566 (fax) or OIRA\_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358-2269 (fax); or hope\_grey@fws.gov (e-mail).

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Hope Grey by mail, fax, or e-mail (see ADDRESSES), or by telephone at (703) 358-2482.

**SUPPLEMENTARY INFORMATION:**

OMB Control Number: 1018-0132.

Title: Research to Support Outdoor Recreation Management at Lake Umbagog National Wildlife Refuge - Phase 2.

Service Form Number(s): 3-2330 and 3-2330A.

Type of Request: New collection.

Affected Public: Visitors to and camp/home owners near Lake Umbagog National Wildlife Refuge.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Estimated Annual Number of

Respondents: 500 (250 per survey).

Estimated Total Annual Responses: 500 (250 per survey).

Estimated Time Per Response: 15 minutes for visitor survey; 20 minutes for camp/home owner survey.

Estimated Total Annual Burden Hours: 146.

*Abstract:* Lake Umbagog National Wildlife Refuge (NWR), located in northern New Hampshire and Maine, contains significant natural and recreational resources. In 2006, we began a research study to gather information to help support application of visitor carrying capacity at the refuge. We conducted a survey of visitors to the refuge to determine relevant indicators of quality for the visitor experience. Indicators of quality are measurable, manageable variables that reflect the essence or meaning of management objectives.

We have asked OMB to renew this information collection to include phase 2 of this study. During phase 2, we plan to survey visitors and nearby camp and home owners to identify standards of quality for relevant indicator variables and to determine attitudes toward management actions that we might use to ensure that the standards of quality are maintained.

We propose to conduct two separate surveys. One survey will include a sample of visitors to Lake Umbagog NWR and the second survey will include private camp and home owners adjacent to the refuge. We will collect the same information during both surveys; however, we will ask camp and home owners for additional information about how often they use the refuge.

*Comments:* On February 22, 2007, we published in the **Federal Register** (72 FR 8003) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on April 23, 2007. We received one comment.

The commenter objected to the use of Lake Umbagog NWR for hunting, trapping, and related recreational uses. Legislation creating this and other units of the National Wildlife Refuge System specifically allows for these public uses. In addition, the National Wildlife Refuge Improvement Act of 1997 (16 U.S.C. 668dd), which guides planning and management of the National Wildlife Refuge System, identifies six wildlife-dependent recreational uses that should be given priority and provides a process for ensuring that these and other activities do not conflict with the management purpose and goals of each refuge. The commenter also suggested that we use results from a nationwide survey about the recreational habits of citizens of the United States for planning at Lake Umbagog NWR instead of the proposed survey. While the survey mentioned by the commenter may be useful for tracking national recreational trends,

information about appropriate use levels for specific indicators of quality at Lake Umbagog NWR can only be obtained from the proposed surveys. The information that we will collect is important especially at Lake Umbagog NWR. U.S. Senate Report 108-371 notes increasing concern at this refuge over growing recreational use and its potential impacts on sensitive wildlife populations.

We again invite comments concerning this information collection on:

(1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

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

(4) ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: May 1, 2007

**Hope Grey,**

Information Collection Clearance Officer,  
Fish and Wildlife Service.

[FR Doc. E7-10115 Filed 5-24-07; 8:45 am]

Billing Code 4310-55-S

**DEPARTMENT OF THE INTERIOR****Meeting of the California Desert Advisory Council**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** Notice is hereby given, in accordance with Public Laws 92-463 and 94-579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of BLM-administered public lands on Friday, June 22, 2007 from 8 a.m. to 4 p.m., and meet in formal session on Saturday, June 23 from 8 a.m. to 3 p.m. at the historic Mission Inn, 3649 Mission Inn Ave., Riverside, CA 92501.

The Council and interested members of the public will depart for the field tour at 8 a.m. from the lobby of the Mission Inn. The public is welcome to participate in the tour but should plan on providing their own transportation, lunch, and beverage.

Agenda topics for the formal session on Saturday will include updates by Council members and reports from the BLM District Manager and five field office managers. Additional agenda topics are being developed. Once finalized, the field tour and meeting agendas will be published in a news release prior to the meeting and posted on the BLM California state Web site at <http://www.blm.gov/ca/news/rac.html>.

**SUPPLEMENTARY INFORMATION:** All Desert District Advisory Council meetings are open to the public. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

While the Saturday meeting is tentatively scheduled from 8 a.m. to 3 p.m., the meeting could conclude prior to 3 p.m. should the Council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

**FOR FURTHER INFORMATION CONTACT:** Stephen Razo, BLM California Desert District External Affairs (951) 697-5217.

Dated: May 17, 2007.

**Steven J. Borchard,**  
District Manager.

[FR Doc. E7-10088 Filed 5-24-07; 8:45 am]

**BILLING CODE 4310-40-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR-050-1020-MJ; HAG07-0126]

#### Notice of Public Meetings—John Day/ Snake Resource Advisory Council (RAC)

**AGENCY:** Bureau of Land Management (BLM), Prineville District.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the Department of the Interior, BLM John Day Snake RAC will meet as indicated below:

The John Day/Snake RAC is scheduled to meet on June 27, 2007, at the Walla Walla Suites at 7 E. Oak Street in Walla Walla, WA 99362. The meeting time will be from approximately 9 a.m. to 3 p.m. A public comment period will begin at 1 p.m. and end at 1:15 p.m. (Pacific Daylight Time). The meeting may include such topics as off-highway vehicle and travel management, noxious weeds, planning, Sage grouse, and other matters as may reasonably come before the council.

**Meeting Procedures:** The meeting is open to the public. The public may present written comments to the RAC. Depending on the number of persons wishing to provide oral comments and agenda topics to be covered, the time to do so may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM representative indicated below. For a copy of the information to be distributed to the RAC members, please submit a written request to the BLM Prineville District Office 10 days prior to the meeting.

#### FOR FURTHER INFORMATION CONTACT:

Additional information concerning the John Day/Snake RAC may be obtained from Virginia Gibbons, BLM Public Affairs Specialist, Prineville District Office, 3050 N.E. Third Street, Prineville, Oregon 97754, (541) 416-6647 or e-mail [Virginia.Gibbons@or.blm.gov](mailto:Virginia.Gibbons@or.blm.gov).

Dated: May 18, 2007.

**Deborah Henderson-Norton,**  
District Manager.

[FR Doc. E7-10135 Filed 5-24-07; 8:45 am]

**BILLING CODE 4310-33-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 30-Day Notice of Submission to Office of Management and Budget; Opportunity for Public Comment

**AGENCY:** Department of Interior, National Park Service.

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (Public Law 104-13, 44 U.S.C. 3507) and 5 CFR part 1320, this notice announces the National Park Service's (NPS) intention to request an extension for eight currently approved information collections (ICR) for the Land and Water Conservation Fund (L&WCF) and Urban Park and Recreation Recovery (UPARR) grant programs.

1. L&WCF Description and Notification (DNF) Form. The DNF is necessary to provide data input into the NPS Automated Project information system which provides timely data on projects funded over the life of the L&WCF program.

2. L&WCF Program Performance Report. As required by OMB Circular A-102, grantees must submit performance reports which describe the status of the work required under the project scope.

3. L&WCF Project Agreement and Amendment Form. The Project Agreement and Amendment forms set forth the obligations assumed by the State through its acceptance of Federal assistance under the L&WCF Act and any special terms and conditions.

4. L&WCF On-Site Inspection Report. The On-Site Inspection Reports are used to ensure compliance by grantees with applicable Federal and program guidelines, and to ensure the continued viability of the funded site.

5. L&WCF Conversion of Use Provisions. To convert assisted sites to other than public outdoor recreation, L&WCF project sponsors must provide relevant information necessary to comply with Section 6(f)(3) of the L&WCF Act of 1965.

6. UPARR Project Performance Report. As required by OMB Circular A-102, grant recipients must submit performance reports which describe the status of the work required under the project scope.

7. UPARR Conversion of Use Provisions. To convert assisted sites to other than public recreation, UPARR project sponsors must provide relevant information necessary to comply with the Section 1010 of the UPARR Act of 1978.

8. UPARR Project Agreement and Amendment Form. The Project Agreement and Amendment Forms set forth the obligations assumed by grant recipients through their acceptance of Federal assistance under the UPARR Act and any special terms and conditions.

**DATES:** Public comments on these eight Information Collection Requests (ICRs) will be accepted on or before June 25, 2007.

**ADDRESSES:** You may submit comments directly to the Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, OMB, by fax at 202/395-6566, or by electronic mail at [aira\\_docket@omb.eop.gov](mailto:aira_docket@omb.eop.gov). Please also send a copy of your comments to Michael D. Wilson, Chief, State and Local Assistance Programs Division, NPS (2225), 1849 C St., NW., Washington, DC 20240, or electronically to [michael\\_d\\_wilson@nps.gov](mailto:michael_d_wilson@nps.gov).

**FOR FURTHER INFORMATION CONTACT:** Sylvia H. Wood, Outdoor Recreation Planner, State and Local Assistance Programs Division, 1849 C St., NW., (2225), Washington, DC 20240, or via phone at 202/354-6914, via e-mail at [sylvia\\_wood@nps.gov](mailto:sylvia_wood@nps.gov), or via fax at 202/354-6900. You are entitled to a copy of the entire ICR package free of charge.

*Comments Received on the 60-Day Federal Register Notice:* The NPS published the 60-Day **Federal Register** Notice to solicit comments on these proposed ICRs on March 14, 2007, on pages 11899-11900. There were no public comments received as a result of publishing this 60-Day **Federal Register** Notice.

**SUPPLEMENTARY INFORMATION:**

*Expiration Dates:* May 31, 2007 & September 30, 2007.

*Type of Request:* Extension of currently approved information collections.

*Title:* L&WCF Description and Notification Form (DNF).

*Form:* NPS 10-903.

*OMB Number:* 1024-0031.

*Expiration Date:* May 31, 2007.

*Type of request:* Data Input.

*Description of need:* Provision of computer data.

*Frequency of collection:* On occasion.

*Description of respondents:* State Governments, DC and Territories.

*Estimated average number of respondents:* 56 per year.

*Estimated average number of responses:* 450 year.

*Estimated average time burden per respondent:* 1 hour.

*Frequency of response:* 8 per respondent.

*Estimated total annual reporting burden:* 450 hours.

*Title:* L&WCF Program Performance Report.

*Form:* None.

*OMB Number:* 1024-0032.

*Expiration Date:* May 31, 2007.

*Type of request:* Performance Report describing project status.

*Description on need:* For monitoring project status.

*Frequency of collection:* On occasion.

*Description of respondents:* State Government, DC and Territories.

*Estimated average number of respondents:* 56 per year.

*Estimated average number of responses:* 700 per year.

*Estimated average time burden per response:* 1 hour.

*Frequency of response:* 12.5 per respondent.

*Estimated total annual reporting burden:* 700 hours.

*Title:* L&WCF Project Agreement and Amendment Forms.

*Form(s):* 10-902 and 10-902a.

*OMB Number:* 1024-0033.

*Expiration Date:* May 31, 2007.

*Type of request:* Grant agreement.

*Description of need:* Sets forth conditions of the grant used.

*Frequency of collection:* On occasion.

*Description of respondents:* State Governments, DC and Territories.

*Estimated average number of respondents:* 56 per year.

*Estimated average number of responses:* 450 year.

*Estimated average time burden per response:* 3 hours.

*Frequency of response:* 8 per respondent.

*Estimated total annual reporting burden:* 1,350 hours.

*Title:* L&WCF On-Site Inspection Report.

*Form:* None.

*OMB Number:* 1024-0034.

*Expiration Date:* May 31, 2007.

*Type of request:* Site condition/comment checklist.

*Description of need:* To assure program/Grant/Federal compliance.

*Frequency of collection:* On occasion.

*Description of respondents:* State Governments, DC and Territories.

*Estimated average number of respondents:* 56 per year.

*Estimated average number of responses:* 7,400 per year.

*Estimated average time burden per response:* 0.5 hours.

*Frequency of response:* 132 per respondent.

*Estimated total annual reporting burden:* 3,700 hours.

*Title:* L&WCF Conversion of Use provisions.

*Form:* None.

*OMB Number:* 1024-0047.

*Expiration Date:* May 31, 2007.

*Type of request:* Application to substitute replacement property for the funded site.

*Description of need:* Compliance with L&WCF Act, Section 6(f)(3).

*Frequency of collection:* On occasion.

*Description of respondents:* State Governments, DC and Territories.

*Estimated average number of respondents:* 56 per year.

*Estimated average number of responses:* 50 per year.

*Estimated average time burden per response:* 35 hours.

*Frequency of response:* Once per respondent.

*Estimated total annual reporting burden:* 1,750 hours.

*Title:* UPARR Project Performance Report.

*Form:* None.

*OMB Number:* 1024-0028

*Expiration Date:* September 30, 2007.

*Type of request:* Performance Report describing project status.

*Description of need:* For monitoring project status.

*Frequency of collection:* Annually.

*Description of respondents:* Urban cities and counties.

*Estimated average number of respondents:* 35 per year.

*Estimated average number of responses:* 164 per year.

*Estimated average time burden per response:* 1.5 hours.

*Frequency of response:* 4.7 per respondent.

*Estimated total annual reporting burden:* 246 hours.

*Title:* UPARR Conversion of Use Provisions.

*Form:* None.

*OMB Number:* 1024-0048.

*Expiration Date:* May 31, 2007.

*Type of request:* Application to substitute replacement property for the funded site.

*Description of need:* Compliance with the UPARR Act, Section 1010.

*Frequency of collection:* On occasion.

*Description of respondents:* Urban cities and counties.

*Estimated average number of respondents:* 3 per year.

*Estimated average number of responses:* 3 per year.

*Estimated average time burden per response:* 25 hours.

*Frequency of response:* Once per respondent.

*Estimated total annual reporting burden:* 75 hours.

*Title:* UPARR Project Agreement and Amendment Forms.

*Form(s):* 10–912 and 10–915.

*OMB Number:* 1024–0089.

*Expiration Date:* May 31, 2007.

*Type of request:* Grant agreement.

*Description of need:* Sets forth condition of the grant award.

*Frequency of collection:* On occasion.

*Description of respondents:* Urban counties and cities.

*Estimated average number of respondents:* 20 per year.

*Estimated average number of responses:* 20 per year.

*Estimated average time burden per response:* 1 hour.

*Frequency of response:* once per respondent.

*Estimated total annual reporting burden:* 20 hours.

Comments are invited on (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. 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.

Dated: May 21, 2007.

**Leonard E. Stowe,**

*NPS, Information Collection Clearance Officer.*

[FR Doc. 07–2599 Filed 5–24–07; 8:45 am]

BILLING CODE 4312–53–M

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Emergency Approval of a New Information Collection; 60-Day Notice of Intent To Request an Extension of the Collection of Information; Interagency Access Pass Application Process

**AGENCY:** Department of the Interior, National Park Service.

**ACTION:** Notice and request for comments.

**SUMMARY:** Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and

Recordkeeping Requirements, the National Park Service (NPS) has requested and received emergency approval on the collection of information; Interagency Access Pass Application Process (OMB #1024–0252). The NPS invites public comments on the extension of this currently approved collection.

**DATES:** Public comments will be accepted on or before July 24, 2007.

**ADDRESSES:** Send written comments to: Brandon Flint, NPS, WASO Recreation Fee Program Office, 1849 C St., NW., (2608), Washington, DC 20240; *e-mail:* [brandon\\_flint@nps.gov](mailto:brandon_flint@nps.gov), or by fax at 202/371–2401. Also, you may send comments to Leonard Stowe, NPS Information Collection Clearance Officer, 1849 C St., NW., (2605), Washington, DC 20240, or by *e-mail* at [leonard\\_stowe@nps.gov](mailto:leonard_stowe@nps.gov).

**FOR FURTHER INFORMATION CONTACT:** Brandon Flint, NPS, WASO Recreation Fee Program Office, 1849 C St., NW., (2608), Washington, DC 20240; *phone:* 202/513-7096; *e-mail:* [brandon\\_flint@nps.gov](mailto:brandon_flint@nps.gov), or by fax at 202–371–2401.

#### SUPPLEMENTARY INFORMATION:

*Title:* The Interagency Access Pass Application Process.

*Bureau Form Number:* None.

*OMB Number:* 1024–0252.

*Expiration Date:* 10/31/2007.

*Type of request:* Extension of a currently approved collection.

*Description of Need:* The currently approved information collection responds to The Federal Lands Recreation Enhancement Act (FLREA) which requires the Secretary of Agriculture, and the Secretary of the Interior, to make the America the Beautiful—The National Parks and Federal Recreational Lands Pass available, for free, to any United States citizen or person domiciled in the United States who has been medically determined to be permanently disabled for purposes of Section 7(20)(B)(i) of the Rehabilitation Act of 1973 (29 U.S.C. 705(20)(B)(i)). The Act further requires that the applicant provide adequate proof of the disability of such citizenship or residency. The Act specifies that the Pass shall be valid for the lifetime of the pass holder. The America the Beautiful—The National Parks and Federal Recreational Lands Access Pass (Interagency Access Pass) was created to meet the requirements of the FLREA. An Interagency Access Pass is a free, lifetime permit that is issued without charge by the Bureau of Land Management, Bureau of Reclamation, United States Fish and Wildlife Service, United States Forest Service, and the

National Park Service to citizens or persons who are domiciled (permanent residents) in the United States, regardless of age, and who have a medical determination and documentation of permanent disability. Furthermore, the Pass is to be non-transferable and entitles the permittee and any person accompanying him in a single, private, non-commercial vehicle, or alternatively, the permittee and 3 adults to enter with him where entry to the area is by any means other than private, non-commercial vehicle. The Pass must be signed by the holder.

In order to issue the Interagency Access Pass only to persons who have been medically determined to be permanently disabled, in accordance with the FLREA direction and in order to clarify, simplify, and to provide uniform guidance for the public on the process for obtaining the Interagency Access Pass, the Secretaries of Agriculture and Interior established eligibility and required documentation guidelines for issuing the Interagency Access Pass and published them within the America the Beautiful—The National Parks and Federal Recreational Lands Pass Standard Operating Procedures. The procedures require the individual to appear in person and sign the Pass in the presence of the issuing agency officer. Acceptable documentation to verify that the individual had been medically determined to have a permanent disability has been identified and includes:

A statement by a licensed physician attesting that the applicant has a permanent physical, mental, or sensory impairment that substantially limits one or more major life activities, and stating the nature of the impairment;  
OR

A document issued by a Federal agency, such as the Veteran's Administration, which attests that the applicant has been medically determined to be eligible to receive Federal benefits as a result of blindness or permanent disability. Other acceptable Federal agency documents include proof of receipt of Social Security Disability Income (SSDI) or Supplemental Security Income (SSI);  
OR

A document issued by a State agency such as the vocational rehabilitation agency, which attests that the applicant has been medically determined to be eligible to receive vocational rehabilitation agency benefits or services as a result of medically determined blindness or permanent disability. Showing a State motor

vehicle department disability sticker, license plate or hand tag is not acceptable documentation;

Information available to the general public through agency Web sites and publication will inform potential Pass applicants of the documentation requirements. However, there are instances where applicants learn about the Pass when arriving at a recreation site and do not have the required documentation available. For those instances, a fourth option is made available at recreation sites. If a person claims eligibility for the Access Pass but cannot produce any of the documentation outlined, that person must read, sign, and date the Statement of Disability Form in the presence of the officer issuing the Pass. If the applicant cannot read and/or sign, someone else may read, date, and sign the statement on his/her behalf in the applicant's presence, and the presence of the officer issuing the Pass. The Interagency Access Pass replaces the Golden Access Passport that was established in 1980 by an amendment to the Land and Water Conservation Fund Act (L&WCFA) of 1965. Previously issued Golden Access Passports will remain valid for the lifetime of the Passport holder. The requested information and Statement of Disability have been collected and used since the creation of the Golden Access Passport in 1980 to verify that the individual had been medically determined to have a permanent disability for the issuance of the Golden Access Passport under OMB control number 0596-0173, under the authority of the L&WCFA.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. 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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Anonymous comments will not be accepted.

All responses to this notice will be summarized and included in the request for the Office of Management and

Budget (OMB) approval. All comments will become a matter of public record.

*Description of respondents:* United States citizens or persons domiciled in the United States who have been medically determined to be permanently disabled for the purposes of Section 7(20)(B)(i) of the Rehabilitation Act of 1973 (29 U.S.C. 705 (20)(B)(i)).

*Estimated average number of respondents:* 73,400 per year.

*Estimated average number of responses:* 73,400 per year.

*Estimated average time burden per response:* 5 minutes.

*Frequency of response:* once per respondent.

*Estimated total annual reporting burden:* 6117 hours.

Dated: May 21, 2007.

**Leonard E. Stowe**

NPS, Information Collection Clearance Officer.

[FR Doc. 07-2600 Filed 5-24-07; 8:45 am]

**BILLING CODE 4312-53-M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### National Park of American Samoa; Federal Advisory Commission; Notice of Meeting

Notice is given in accordance with the Federal Advisory Committee Act that a meeting of the National Park of American Samoa Federal Advisory Commission will be held from 10 a.m. to 12 p.m., Saturday, July 14, 2007, at the National Park of American Samoa visitor center in Pago Plaza. The agenda for the meeting will include:

Welcome and Introductions.

Request for suggestions for exhibits for the visitor center.

Request for review of wayside exhibit signs.

Scoping for opening a trail from Upper Sauma Ridge to the Vatia Powerline Trail.

Report on work that the park has been performing.

Other Board issues.

Public Comments on any park issue.

The meeting is open to the public and the public is encouraged to make comments or ask questions. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. For copies of the minutes, contact the National Park of American Samoa Superintendent at 684-633-7082, or e-mail [NPSA\\_Superintendent@nps.gov](mailto:NPSA_Superintendent@nps.gov).

Dated: April 19, 2007.

**Roger Moder,**

Superintendent.

[FR Doc. 07-2598 Filed 5-24-07; 8:45am]

**BILLING CODE 4312-53-M**

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-1111-1113 (Preliminary)]

### Glycine From India, Japan, and Korea

#### Determinations

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from India, Japan, and Korea of glycine, provided for in statistical reporting number 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTS),<sup>2</sup> that are alleged to be sold in the United States at less than fair value (LTFV).

#### Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigations under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> The imported products subject to investigation also include sodium glycinate which is provided for in subheading 2922.49.80 of the HTS.

Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

### Background

On March 30, 2007, a petition was filed with the Commission and Commerce by GEO Specialty Chemicals, Inc., Lafayette, IN, alleging that an industry in the United States is materially injured by reason of LTFV imports of glycine from India, Japan, and Korea. Accordingly, effective March 30, 2007, the Commission instituted antidumping duty investigation Nos. 731-TA-1111-1113 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 9, 2007 (72 FR 17580). The conference was held in Washington, DC, on April 20, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 14, 2007. The views of the Commission are contained in USITC Publication 3921 (May 2007), entitled *Glycine from India, Japan, and Korea: Investigation Nos. 731-TA-1111-1113 (Preliminary)*.

Issued: May 21, 2007.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E7-10098 Filed 5-24-07; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2007-0047]

#### Student Data Form; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comment.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Student Data Form.

**DATES:** Comments must be submitted (postmarked, sent, or received) by July 24, 2007.

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

*Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA-2007-0047, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.-4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and OSHA docket number for this ICR (Docket No. OSHA-2007-0047). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

*Docket:* To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Gail Butler at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Gail Butler, Division of Administration and Training Information, OSHA Office of Training and Education, 2020 S. Arlington Heights Road, Arlington Heights, Illinois 60005; telephone: (847) 297-4810.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 et seq.) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). Section 21 of the OSH Act (29 U.S.C. 670) authorizes OSHA to conduct education and training courses. These courses must ensure an adequate number of qualified personnel to fulfill the purposes of the OSH Act, provide them with short-term training, inform them of the importance and proper use of safety and health equipment, and train employers and employees to recognize, avoid, and prevent unsafe and unhealthful working conditions.

Under Section 21 of the OSH Act, the OSHA Training Institute (the "Institute") provides basic, intermediate, and advanced training and education in occupational safety and health for Federal and State compliance officers, Agency professionals and technical support personnel, employers, employees, organizations representing employees and employers, educators who develop curricula and teach occupational safety and health courses, and representatives of professional safety and health groups. The Institute provides courses on occupational safety and health at its national training facility in Arlington Heights, Illinois.

Students attending Institute courses complete the one-page Student Data Form (OSHA Form 182, 8/04 edition) on the first day of class. The form collects information under five major categories titled "Course Information," "Personal Data," "Employer Data," "Emergency Contacts," and "Student Groups." The OSHA Office of Training and Education (the "Office") compiles, for each fiscal year, the following information from the "Course Information" and "Student Groups" categories: Total student

attendance at the Institute; the number of students attending each training course offered by the Institute; and the types of students attending these courses (for example, students from Federal or State occupational safety and health agencies). The Office uses this information to demonstrate, in an accurate and timely manner, that the Agency is providing the training and employee education mandated by Section 21 of the Act. OSHA also uses this information to evaluate training output, and to make decisions regarding program/course revisions, budget support, and tuition costs.

The Agency uses the information collected under the "Course Information," "Personal Data," and "Employer Data" to identify private sector students so that it can collect tuition costs from them or their employers as authorized by 31 U.S.C. 9701 ("Fees and Charges for Government Services and Things of Value"); Office of Management and Budget Circular A-25 ("User Charges"); and 29 CFR part 1949 ("Office of Training and Education, Occupational Safety and Health Administration"). The information in the "Personal Data" and "Emergency Contacts" categories permits OSHA to contact students who are residing in local hotels/motels if an emergency arises at their home or place of employment, and to alert supervisors/alternate contacts of a trainee's injury or illness.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA is requesting OMB to extend its approval of the information collection requirements contained in the Student Data Form. The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB.

*Type of Review:* Extension of a currently approved information collection requirement.

*Title:* Student Data Form.

*OMB Number:* 1218-0172.

*Affected Public:* Individuals; business or other for-profit organizations; Federal government; State, Local, or Tribal governments.

*Number of Respondents:* 2,000.

*Frequency:* On occasion.

*Total Responses:* 2,000.

*Average Time per Response:* 5 minutes.

*Estimated Total Burden Hours:* 167 hours.

*Estimated Cost (Operation and Maintenance):* \$-0-.

## IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this ICR (Docket No. OSHA-2007-0047). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov) Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at <http://www.regulations.gov>. This document, as well as news releases and other relevant information, also are available at OSHA's Web page at <http://www.osha.gov>.

## V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5-2002 (67 FR 65008).

Signed at Washington, DC, on May 17, 2007.

**Edwin G. Foulke, Jr.**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. E7-9943 Filed 5-24-07; 8:45 am]

**BILLING CODE 4510-26-P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference from the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows (ending time is approximate):

*International (application review):* June 13, 2007. This meeting, from 12 p.m. to 3 p.m. DST, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 21, 2007, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to these meetings can be obtained from Ms.

Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682-5691.

Dated: May 21, 2007

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations,  
National Endowment for the Arts.*

[FR Doc. E7-10079 Filed 5-24-07; 8:45 am]

BILLING CODE 7537-01-P

## OFFICE OF THE U.S. TRADE REPRESENTATIVE

### Request for Petitions To Accelerate Tariff Elimination and Modify the Rules of Origin Under the U.S.-Chile Free Trade Agreement

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of opportunity to file petitions requesting accelerated tariff elimination and changes to the rules of origin under the U.S.-Chile Free Trade Agreement ("the Agreement" or "USCFTA").

**SUMMARY:** This notice solicits petitions requesting accelerated tariff elimination under the USCFTA and describes the procedures for filing petitions. This notice also solicits proposals on appropriate changes that USTR should consider for liberalizing the USCFTA's rules of origin.

**DATES:** Public comments are due at USTR by close of business, July 20, 2007.

**ADDRESSES:** Submissions by electronic mail: [FR0712@ustr.eop.gov](mailto:FR0712@ustr.eop.gov). Submissions by facsimile: Kent Shigetomi, Office of the Americas, at (202) 395-9675. USTR strongly encourages the public to submit documents electronically rather than by facsimile. See requirements for submissions below.

**FOR FURTHER INFORMATION CONTACT:** Kent Shigetomi, Office of the Americas, Office of the United States Trade Representative, Room 523, 600 17th Street, NW., Washington, DC 20508; telephone: (202) 395-3412; facsimile: (202) 395-9675; e-mail: [FR0712@ustr.eop.gov](mailto:FR0712@ustr.eop.gov).

**SUPPLEMENTARY INFORMATION:** On December 5, 2005, the U.S.-Chile Free Trade Commission ("FTC" or "the Commission"), the bilateral body responsible for supervising the implementation of the USCFTA, decided to launch negotiations to accelerate the elimination of tariffs under the Agreement. Article 3.3(4) of the USCFTA provides that Parties may

agree to accelerate the elimination of customs duties set out in their tariff schedules. Section 201(b) of the U.S.-Chile Free Trade Agreement Implementation Act ("the FTA Act" or "the Act") authorizes the President to proclaim modifications in the staging of duty treatment set out in the Agreement, subject to the Act's consultation and layover requirements.

Further, on January 24, 2007, the Commission agreed to consider liberalizing the rules of origin established in the Agreement, particularly in light of more recent free trade agreements. The USCFTA requires each government to provide preferential tariff treatment to goods that meet the Agreement's origin rules. In the United States, those rules are implemented through the FTA Act. Under the Act, goods imported into the United States qualify for preferential treatment if they meet the requirements of the general USCFTA rules of origin set out in section 202 of the Act and the USCFTA product-specific rules set out in the HTS. The Agreement allows the Parties to amend the Agreement's origin rules as they deem appropriate. Section 202(o)(2) of the USCFTA Act authorizes the President to proclaim modifications to the USCFTA's product-specific origin rules set forth in the HTS, subject to the consultation and layover provisions of section 103(a) of the Act.

### Additional Information

The United States and Chile have not yet decided whether to accelerate the elimination of tariffs or to make further changes to the Agreement's rules of origin and, if such changes were made, what the scope or extent of such changes should be. The United States and Chile expect to take into account several factors in considering whether to make such changes, including (1) the extent that any such changes may reduce transaction and manufacturing costs or increase trade between Chile and the United States; (2) the feasibility of devising, implementing, and monitoring new rules of origin; and (3) the level and breadth of interest that manufacturers, processors, traders, and consumers in the United States and Chile express for making particular changes. The United States and Chile expect to make only those changes that are broadly supported by stakeholders in both countries.

### Requirements for Comments/Proposals

Submitters should indicate whether they have discussed their proposals with representatives of the relevant sector in Chile and, if such discussions have taken place, what the result of

those discussions was. Submissions should indicate if representatives of the relevant sector in Chile do not support the proposal. USTR encourages interested parties to consider submitting proposals jointly with interested parties in Chile.

**Scope and Coverage of Proposals:** USTR encourages interested parties to review the broadest appropriate range of items and to submit proposals that reflect a consensus reached after such a broad-based review. A single proposal can thus include requests covering multiple tariff headings. Proposals should cover entire 8-digit tariff subheadings, and may also be submitted at the 6, 4, or 2 digit level where the intent is to cover all subsidiary duties.

**Requirements for Submissions:** In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an interested party cannot make a submission by e-mail, it should send the submission by facsimile. Facsimile submissions should not exceed 20 pages.

E-mail submissions should be single copy transmissions in English, and use the appropriate subject line, "Chile FTA Tariff Acceleration," "Chile FTA Rules of Origin," or both, depending on the nature of the submission. Documents should be submitted as WordPerfect ("\*.WPD"), MS Word ("\*.DOC"), or text ("\*.TXT") files. Documents should not be submitted as electronic image files or contain embedded images (for example, "\*.JPG", "\*.TIF", "\*.PDF", "\*.BMP", or "\*.GIF") as these files are often excessively large. Supporting documentation submitted as spreadsheets are acceptable in QuattroPro or Excel, pre-formatted for printing on 8½ x 11 inch paper. To the extent possible, an interested party should include any data attachments to the submission in the same file as the submission itself, and not as separate files. E-mail submissions should not include separate cover letters or messages in the body of the e-mail. An interested party should include information that might appear in a cover letter directly in the attached file containing the submission itself, including the identity of the submitter and the submitter's e-mail address.

Petitions will be available for public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. If the submission contains business confidential information, the submitter must provide a non-confidential version of the

submission that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the submitter must mark the confidential submission as "Business Confidential" in large, bold letters at the top and bottom of every page of the document. The submitter must clearly mark the public version that does not contain business confidential information as either "Public Version" or "Non-Confidential" in large, bold letters at the top and bottom of every page. The file name of any documents containing business confidential information attached to an e-mail transmission should begin with the characters "BC-". The file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the person or party submitting the petition. Submissions by e-mail should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the submission. The e-mail address for submissions is [FR0712@ustr.eop.gov](mailto:FR0712@ustr.eop.gov). USTR shall make available for review public versions of all documents relating to this review shortly after the due date by appointment in the USTR Public Reading Room, 1724 F Street, NW., Washington, DC. Availability of documents may be ascertained and appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395-6186.

**Everett Eissenstat,**

*Assistant U.S. Trade Representative for the Americas.*

[FR Doc. E7-10150 Filed 5-24-07; 8:45 am]

**BILLING CODE 3190-W7-P**

## PEACE CORPS

### Proposed Information Collection Requests

**AGENCY:** Peace Corps.

**ACTION:** Notice of public use form review request to the Office of Management and Budget (OMB).

**SUMMARY:** Pursuant to the Paperwork Reduction Act (44 U.S.C., chapter 3501 et seq.), the Peace Corps has submitted to the Office of Management and Budget a request for renewal of information collections, OMB Control Number 0420-0529, the Peace Corps Week Brochure Registration Form (formerly called the Peace Corps Day Brochure Registration Form). The purpose of this

notice is to allow for public comments on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether their information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collections information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. A copy of the information collection may be obtained from Vivian Nguyen, Office of Domestic Programs, Peace Corps, 1111 20th Street, NW., Room 2121, Washington, DC 20526. Ms. Nguyen may be contacted by telephone at 202-692-1462 or 800-424-8580, Peace Corps Headquarters, ext. 1462, or e-mail at [vnguyen@peacecorps.gov](mailto:vnguyen@peacecorps.gov). Comments on the form should also be addressed to the attention of Ms. Nguyen and should be received on or before July 24, 2007.

### Information Collection Abstract

*Title:* Peace Corps Week Brochure Registration Form.

*Need For and Use of This Information:* This collection of information is necessary because the Peace Corps' Office of Domestic Programs builds awareness of the continuing benefits that former Volunteers bring back to the United States after their service through its Coverdell World Wise Schools program, the Fellows/USA graduate fellowship program, Returned Volunteers Services program, and through the Peace Corps Week program. The Peace Corps Week program is in support of the third goal of the Peace Corps. For more than 13 years, programs and publications have aimed to harness the cross-cultural experiences of returned Peace Corps Volunteers (RPCVs) to foster better global understanding among Americans, and particularly students, throughout the United States.

The information is used by the Office of Domestic Programs to send presentation and education materials to RPCVs, which enhances the quality of the presentations carried out by RPCVs to people in their home communities. Information is also used by Public Affairs Specialists to promote Peace Corps Week regionally, broadly raising awareness for the Peace Corps and augmenting recruiting efforts. Parents of currently serving Volunteers may also

receive Peace Corps Week presentation kits.

*Respondents:* Returned Peace Corps Volunteers.

*Respondents Obligation to Reply:* Voluntary.

*Burden on the Public:*

a. Annual reporting burden: 500 hours.

b. Annual record keeping burden: 0.

c. Estimated average burden per response: 3 minutes.

d. Frequency of response: one time.

e. Estimated number of likely respondents: 10,000.

f. Estimated cost to respondents: \$1.15.

Responses will be returned by postage-paid business reply card, fax, e-mail, and downloaded from the Peace Corps Week Web site ([www.peacecorps.gov](http://www.peacecorps.gov)).

Dated: May 18, 2007.

**Wilbert Bryant,**

*Associate Director for Management.*

[FR Doc. 07-2601 Filed 5-24-07; 8:45 am]

**BILLING CODE 6051-01-M**

## PEACE CORPS

### Proposed Information Collection Requests

**AGENCY:** Peace Corps.

**ACTION:** Notice to re-new public use form review request to the Office of Management and Budget (OMB Control Number 0420-001).

**SUMMARY:** Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Peace Corps has submitted to the Office of Management and Budget (OMB) a request to approve the re-newel of a information collection, OMB Control Number 0420-0001, the National Agency Check (NAC) Questionnaire for Peace Corps Volunteer Background Investigation. This is a renewal of an active information collection. The purpose of this information collection is necessary to perform a background investigation of people in the Peace Corps Volunteer programs. The Peace Corps Volunteer Background Investigation is used to obtain information from Federal sources about Peace Corps applicants who meet the minimum qualifications for service and have been invited to train for specific programs in host countries overseas. Information provided by the investigation will be used by the Peace Corps' Office of Placement in order to make a final determination as to an applicant's/trainee's suitability for service. The purpose of this notice is to allow for public comment on whether

the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether their information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

A copy of the information collection may be obtained from Ms. Patricia Sayer, Peace Corps, Volunteer Recruitment and Selection, 1111 20th Street, NW., Room 6414, Washington, DC 20526. Ms. Sayer may be contacted by telephone at 202-692-1836 or 800-424-8580, Peace Corps Headquarters, ext. 1836, or e-mail at [psayer@peacecorps.gov](mailto:psayer@peacecorps.gov). Comments on the form should also be addressed to the attention of Ms. Sayer and should be received on or before July 24, 2007.

#### Information Collection Abstract

**Title:** National Agency Check (NAC) Questionnaire Form for Peace Corps Volunteer Background Investigations.

**Need for and use of this information:** The National Agency Check (NAC) Questionnaire for Peace Corps Volunteer Background Investigation is necessary to screen information from Federal sources about Peace Corps applicants who meet the minimum qualifications for service. Information provided by the investigation will be used by the Peace Corps' Office of Placement in order to make a final determination as to an applicant's/trainee's suitability for service. The National Agency Check (NAC) Questionnaire for Peace Corps Volunteer Background Investigation supports the first goal of the Peace Corps as required by Congressional legislation.

**Respondents:** Potential Volunteers and Trainees.

**Respondent's Obligation to Reply:** Voluntary.

#### Burden on the Public:

- Annual reporting burden: 2,500 hours.
- Annual record keeping burden: 1,360 hours.
- Estimated average burden per response: 15 minutes.
- Frequency of response: one time.
- Estimated number of likely respondents: 10,000.

f. Estimated cost to respondents: \$4.59.

At this time, responses will be returned by mail.

Dated: May 18, 2007.

**Wilbert Bryant,**

*Associated Director for Management.*

[FR Doc. 07-2602 Filed 5-24-07; 8:45am]

**BILLING CODE 6051-01-M**

## PEACE CORPS

### Proposed Information Collection Requests

**AGENCY:** Peace Corps.

**ACTION:** Notice of re-instatement of public use form review request to the Office of Management and Budget (OMB).

**SUMMARY:** Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Peace Corps has submitted to the Office of Management and Budget (OMB) a request for re-instatement of OMB Control Number 0420-0510, the Peace Corps Health Status Review form (PC-1789S). This is a re-instatement of an expired information collection with revisions. The revisions includes an additional HIV question to the PC-1789S form Volunteer Medical Application: Health Status Review for Peace Corps Volunteers. The purpose of this information collection is necessary to ensure that Volunteers meet this medical eligibility requirement, all applicants for service must undergo physical and dental examination prior to Volunteer service to provide the information needed for clearance, and to serve as a reference for any future Volunteer medical clearance, and to serve as a reference for any future Volunteer disability claims. The Health Status Review form is used to review the medical history of individual applicants, and currently serving Volunteers. The results of these examinations are used to ensure that applicants for Volunteer service will, with reasonable accommodation, be able to serve in the Peace Corps without jeopardizing their health.

The purpose of this notice is to allow for public comment on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether their information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and

clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

A copy of the information collection may be obtained from Ms. Emilie Deady, Peace Corps, Office of Volunteer Support, 1111 20th Street, NW., Room 5205, Washington, DC 20526. Ms. Deady may be contacted by telephone at 202-692-1509. Ms. Deady may be e-mailed at [edeady@peacecorps.gov](mailto:edeady@peacecorps.gov). Comments on the form should also be addressed to the attention of Ms. Deady and should be received on or before July 24, 2007.

#### Information Collection Abstract

**Title:** The Peace Corps Health Status Review form (PC-1789).

**Need For and Use of this Information:** The Health Status Review is used to review the medical history of individual applicants, and currently serving Volunteers. The results of these examinations are used to ensure that applicants for Volunteer service will, with reasonable accommodation, be able to serve in the Peace Corps without jeopardizing their health.

**Respondents:** Potential and current Volunteers.

**Respondent's Obligation To Reply:** Voluntary.

#### BURDEN ON THE PUBLIC

|                                           | PC-1789<br>health<br>status<br>review |
|-------------------------------------------|---------------------------------------|
| a. Estimated number of respondents.       | 9,700.                                |
| b. Estimated average burden per response. | 45 minutes.                           |
| c. Frequency of response .....            | one time.                             |
| d. Annual reporting burden .....          | 7,275 hours.                          |
| e. Estimated annual cost to respondents.  | \$138,298.                            |

Dated: May 18, 2007

**Wilbert Bryant,**

*Associate Director for Management.*

[FR Doc. 07-2603 Filed 5-24-07; 8:45 am]

**BILLING CODE 6051-01-M**

## PEACE CORPS

### Notice to Add A New System of Records

**AGENCY:** Peace Corps.

**ACTION:** Notice to add a new system of records.

**SUMMARY:** As required under the Privacy Act of 1974, (5 U.S.C. 552a), as

amended, the Peace Corps is giving notice of a new system of records, Coverdell World Wise Schools System.

**DATES:** This action will be effective without further notice on July 9, 2007 unless comments are received by June 25, 2007 that would result in a contrary determination.

**ADDRESSES:** You may submit comments by e-mail to [sglasow@peacecorps.gov](mailto:sglasow@peacecorps.gov). Include Privacy Act System of Records in the subject line of the message. You may also submit comments by mail to Suzanne Glasow, Office of the General Counsel, Peace Corps, Suite 8200, 1111 20th Street, NW., Washington, DC 20526. Contact Suzanne Glasow for copies of comments.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Glasow, Associate General Counsel, 202-692-2150, [sglasow@peacecorps.gov](mailto:sglasow@peacecorps.gov).

**SUPPLEMENTARY INFORMATION:** The Privacy Act, 5 U.S.C. 552a, provides that the public will be given a 30-day period in which to comment on the new system. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the proposed system. In accordance with 5 U.S.C. 552a, Peace Corps has provided a report on this system to OMB and the Congress.

**SYSTEM NAME:**

PC-29, Coverdell World Wise Schools System.

**SYSTEM LOCATION:**

Coverdell World Wise Schools, Office of Domestic Programs, Peace Corps, 1111 20th Street, NW., Washington, DC 20526.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Currently serving Peace Corps Volunteers, Returned Peace Corps Volunteers, and Educators.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

When applicable, information in the system includes, but is not limited to: Name; social security number; approximate end of service date; type of assignment; country of assignment; region of assignment; home of record city, state, and zip code; e-mail address; address; home phone; work phone; dates of service; school name; school street address, city, state, zip code; school phone; fax number; ethnic makeup of student body; special request information; how the educator heard about the program; RPCV status; participation status in the Correspondence Match Program; grade

level taught; number of students participating; preferences for Peace Corps Volunteer match; dates of program activity; release for Peace Corps to release school information; release to quote educator in Coverdell World Wise Schools materials; year the educator was matched to a Peace Corps Volunteer.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM (INCLUDES ANY REVISIONS OR AMENDMENTS):**

The Peace Corps Act, 22 U.S.C. 2501, et seq.

**PURPOSE:**

To administer the Correspondence Match Program, which pairs currently-serving Peace Corps Volunteers with U.S. educators in support of the third goal of the Peace Corps: To increase U.S. citizens' understanding of other countries and cultures. Through the Correspondence Match Program, U.S. educators and students receive letters, e-mails, telephone calls, photographs, and artifacts from the Peace Corps Volunteer in their country of service. To administer the Speakers Match Program, which provides returned Peace Corps Volunteers and U.S. educators for the purposes of classroom presentations. To support other activities of the Coverdell World Wise Schools Program, including, but not limited to, educator conferences and print and online resource publication.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:**

Peace Corps general routine uses A through L apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

On paper and in computerized databases.

**RETRIEVABILITY:**

Paper files are retrieved by Educator name and year the educator was matched to a Peace Corps Volunteer. Computerized Database files are retrieved for Peace Corps Trainees and Volunteers by name; social security number; participation status in the Correspondence Match Program; approximate end of service date; type of assignment; country of assignment; region of assignment; home of record city, state, and zip code; and e-mail address. For Returned Peace Corps Volunteers, by name; address; home phone; work phone; e-mail address; country of service; type of assignment; and dates of service. For Educators, by name; school name; school street address, city, state, zip code; school phone; fax number; home phone; e-mail

address; ethnic makeup of student body; special request information; how the educator heard about the program; RPCV status; participation status in the Correspondence Match Program; grade level taught; number of students participating; preferences for Peace Corps Volunteer match; dates of program activity; release for Peace Corps to disclose school information; and release to quote educator in Coverdell World Wise Schools materials.

**SAFEGUARDS:**

Computer records are maintained in a secure, password-protected computer system. The office supervisors authorize the appropriate level of record access for each user. Databases are backed up nightly. The domestic back-up media is stored in a data center until delivered to General Services Administration/ Department of Defense-approved facilities for offsite storage. Paper records are maintained in lockable file cabinets. The paper records and computer media are maintained in secure, access-controlled areas or buildings.

**RETENTION AND DISPOSAL:**

Paper records are retained by Coverdell World Wise Schools for five years, then retired to the Federal Records Center and destroyed after 20 years. Volunteer Electronic records are retained until two years after Peace Corps Volunteers' completion of service, at which point they are automatically deleted from the database. Returned Peace Corps Volunteer electronic records are stored indefinitely in Speakers Match database.

Educator records are retained until two years after their last activity, at which point they are moved to the electronic archives of the Correspondence Match database.

**SYSTEM MANAGER:**

Director, Coverdell World Wise Schools, Office of Domestic Programs, Peace Corps, 1111 20th Street, NW., Washington, DC 20526.

**PROCEDURES FOR NOTIFICATION, ACCESS, AND CONTESTING:**

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

## RECORD SOURCE CATEGORIES:

Record subject.

## EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: May 22, 2007.

**Wilbert Bryant,**

*Associate Director for Management.*

[FR Doc. E7-10142 Filed 5-24-07; 8:45 am]

BILLING CODE 6051-01-P

## DEPARTMENT OF STATE

## [PUBLIC NOTICE 5815]

### Culturally Significant Objects Imported for Exhibition Determinations: "The Arts of Latin America, 1492-1820"

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "The Arts of Latin America, 1492-1820", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, California, from on or about August 6, 2007, until on or about October 28, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453-8050). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: May 21, 2007.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E7-10122 Filed 5-24-07; 8:45 am]

BILLING CODE 4710-05-P

## DEPARTMENT OF STATE

## [PUBLIC NOTICE 5816]

### Culturally Significant Objects Imported for Exhibition Determinations: "Geli Korzhev, Russia, 2nd Half of the 20th Century"

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Geli Korzhev, Russia, 2nd Half of the 20th Century", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Russian Art, Minneapolis, Minnesota, from on or about September 10, 2007, until on or about January 5, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453-8050). The address is U.S. Department of State, SA-44, 301 4th Street, SW. Room 700, Washington, DC 20547-0001.

Dated: May 17, 2007.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E7-10121 Filed 5-24-07; 8:45 am]

BILLING CODE 4710-05-P

## DEPARTMENT OF STATE

## [Public Notice 5767]

### Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1 p.m. on Tuesday, June 12, 2007, in Room 4420, at U.S. Coast Guard

Headquarters, 2100 2nd Street SW., Washington, DC 20593-0001. The purpose of the meeting is to finalize preparations for the 57th Session of the Technical Co-operation Committee (TCC) of International Maritime Organization (IMO), to be held at the International Coffee Organization, 22 Berners Street, London, England, from June 18th to 21st, and the 98th Session of Council to be held at the Royal Horticulture Halls and Conference Center, 80 Vincent Square, London, England, from June 25th to 29th. Discussion at this open public meeting will focus on papers received and draft U.S. positions.

Items of particular interest for the 57th Session of the Technical Co-operation Committee (TCC) include:

- Reports and financing of the Integrated Technical Co-operation Program (ITCP);
- Links between the ITCP and the Millennium Development Goals;
- Report on the planned output of the Committee for 2006-2007 and consideration of the planned output of the Committee for 2008-2009 and;
- Election of the Chairman and the Vice-Chairman for 2008.

Items of particular interest for the 98th Session of Council include:

- Reports of Committees;
- Resource management;
- Strategy and planning;
- Voluntary IMO member state audit scheme;
- Implementation of Article 17 of the IMO Convention, and;
- Status of the Convention and membership of the Organization.

Members of the public may attend these meetings up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should call or send an e-mail two days before the meeting to [Kevin.B.Ferrie@uscg.mil](mailto:Kevin.B.Ferrie@uscg.mil). Interested persons may also seek information by writing: Director of National and International Standards, U.S. Coast Guard Headquarters, Commandant (CG-3PS), room 1218, 2100 Second Street, SW., Washington, DC 20593-0001 or by calling: (202) 372-1357.

Dated: May 15, 2007.

**Michael E. Tousley,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

[FR Doc. E7-10125 Filed 5-24-07; 8:45 am]

BILLING CODE 4710-09-P

**DEPARTMENT OF STATE****[Public Notice 5812]****Notice of Receipt of Application for a Presidential Permit for Pipeline Facilities To Be Constructed, Operated, and Maintained on the Borders of the United States**

The Department of State has received an application from Enbridge Energy Limited Partnership ("EELP") for a Presidential permit, pursuant to Executive Order 13337 of April 30, 2004, to construct, connect, operate, and maintain a 36-inch diameter crude oil and liquid hydrocarbon pipeline at the U.S.-Canadian border at Neche, Pembina County, North Dakota, for the purpose of transporting liquid hydrocarbons and other petroleum products between the United States and Canada. EELP seeks this authorization in connection with its Alberta Clipper Pipeline Project ("Alberta Clipper Project"), which is designed to transport Canadian crude oil from the Western Canadian Sedimentary Basin ("WCSB") to existing refinery markets in the Midwest region of the United States.

EELP is a limited partnership duly organized under the laws of the State of Delaware. EELP is a wholly-owned subsidiary of Enbridge Energy Partners, L.P. ("Enbridge Partners") which is a Delaware master limited partnership headquartered at 1100 Louisiana St., Suite 3300, Houston, Texas 7702. According to the application, Enbridge Partners is a publicly held limited partnership with shares traded on the New York Stock Exchange. According to the description in EELP's application, the proposed new border crossing would consist of approximately forty (40) feet of pipeline on each side of the international boundary, which would be buried to a minimum depth of three (3) feet below ground level; the border crossing would be part of the Alberta Clipper Project, which would consist in the United States of 326 miles of 36-inch diameter pipeline from the U.S.-Canadian border at Pembina County, North Dakota, to the existing Enbridge Superior tank farm and terminal facilities in Douglas County, Wisconsin.

As required by E.O. 13337, the Department of State is circulating this application to concerned Federal agencies for comment.

**DATES:** The Department of State welcomes public comment and invites those who are interested in submitting comments relative to this proposal to provide such comments, in duplicate, on or before June 25, 2007 to Jeff Izzo, International Energy Commodity Policy,

Room 4843, Department of State, Washington, DC 20520. The application and related documents that are part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of International Energy and Commodity Policy during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Jeff Izzo, Office of International Energy and Commodity Policy (EEB/ESC/IEC/EPC), Room 4843, Department of State, Washington, DC 20520, telephone 202-647-1291, facsimile 202-647-4037, e-mail [izzojr@state.gov](mailto:izzojr@state.gov).

**Stephen J. Gallogly,**

*Director, Office of International Energy and Commodities Policy, Department of State.*

[FR Doc. E7-10124 Filed 5-24-07; 8:45 am]

**BILLING CODE 4710-07-P**

**DEPARTMENT OF STATE****[Public Notice 5813]****Notice of Receipt of Application for a Presidential Permit for Pipeline Facilities To Be Constructed, Operated, and Maintained on the Borders of the United States**

The Department of State has received an application from Enbridge Pipelines (Southern Lights) LLC ("EPSL") for a Presidential permit, pursuant to Executive Order 13337 of April 30, 2004, to construct, connect, operate, and maintain a 20-inch crude oil and liquid hydrocarbon pipeline at the U.S.-Canadian border at Neche, Pembina County, North Dakota, for the purpose of transporting liquid hydrocarbons and other petroleum products between the United States and Canada. EPSL seeks this authorization in connection with its Southern Lights Pipeline Project ("SLr Project"), which is designed to transport Canadian crude oil from the Western Canadian Sedimentary Basin ("WCSB") to existing refinery markets in the Midwest region of the United States.

EPSL is a limited liability company, organized under the laws of the State of Delaware. EPSL is a wholly-owned subsidiary of Enbridge Energy Company, Inc., a Delaware Corporation, and an indirectly-owned subsidiary of Enbridge Inc., a corporation organized under the laws of Canada. EPSL's primary U.S. business address is 1100 Louisiana St., Suite 3300, Houston, Texas 7702. According to the description in EPSL's application, the proposed new border crossing would consist of approximately forty (40) feet of pipeline on each side of the international boundary, which would be

buried to a minimum depth of three (3) feet below ground level; the border crossing would be part of the LSr Project, which would consist in the U.S. of 136 miles of 20-inch diameter pipeline from the U.S.-Canadian border at Pembina County, North Dakota, to the existing Enbridge Clearbrook tank farm and terminal facilities in Clearwater County, Minnesota.

As required by E.O. 13337, the Department of State is circulating this application to concerned Federal agencies for comment.

**DATES:** The Department of State welcomes public comment and invites those who are interested in submitting comments relative to this proposal to provide such comments, in duplicate, on or before June 25, 2007 to Jeff Izzo, International Energy Commodity Policy, Room 4843, Department of State, Washington, DC 20520. The application and related documents that are part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of International Energy and Commodity Policy during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Jeff Izzo, Office of International Energy and Commodity Policy (EEB/ESC/IEC/EPC), Room 4843, Department of State, Washington, DC 20520, telephone 202-647-1291, facsimile 202-647-4037, e-mail [izzojr@state.gov](mailto:izzojr@state.gov).

**Stephen J. Gallogly,**

*Director, Office of International Energy and Commodities Policy, Department of State.*

[FR Doc. E7-10123 Filed 5-24-07; 8:45 am]

**BILLING CODE 4710-07-P**

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration****Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**TIME AND DATE:** June 11, 2007, 1 p.m. to 5 p.m., Eastern Daylight Time, and June 12, 2007, 8 a.m. to 12 noon, Eastern Daylight Time.

**PLACE:** This meeting will take place at the Hilton Indianapolis, located at 120 West Market Street, Indianapolis, IN 46204.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing

the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

**FOR FURTHER INFORMATION CONTACT:** Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827-4565.

Dated: May 22, 2007.

**William A. Quade,**

*Acting Associate Administrator for Enforcement and Program Delivery.*

[FR Doc. 07-2644 Filed 5-23-07; 1:26 pm]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

#### The Red River Valley & Western Railroad

[Waiver Petition Docket Number FRA-2005-21037]

The Red River Valley & Western Railroad (RRVW) has petitioned the FRA to grant a waiver of compliance of the Safety Glazing Standards, 49 CFR Part 223, for a change within the waiver above. The request is to allow Locomotive Number RRVW 1276 to service new business within an extended 25 mile radius of Breckenridge, Minnesota. There has been no record of vandalism or any record of any accident/incident or injury to any railroad employee prior to the issuance of the present glazing waiver and up to present time. The track speed will remain the same and will not exceed 25 miles per hour. Most of the area is remote and not heavily populated.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the

end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2005-21037) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL-401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78). The Statement may also be found at <http://dms.dot.gov>.

Issued in Washington, DC on May 21, 2007.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E7-10153 Filed 5-24-07; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236, as detailed below.

#### Docket Number FRA-2007-28095

*Applicant:* Union Pacific Railroad Company, Mr. Mark Barnum, Senior

Director of Operating Practices, 1400 Douglas Street, Stop 1050, Omaha, Nebraska 68179-1050.

The Union Pacific Railroad Company (UP) seeks relief from the requirements of the Rules, Standards and Instructions of 49 CFR Section 236.566, to the extent that UP be permitted to operate "light" locomotive consists, where the lead locomotive is either not equipped with an automatic cab signal apparatus or is equipped with an automatic cab signal apparatus that is inoperative, on two short segments of main tracks between Milepost 146.9 and Milepost 146.5 and between Milepost 149.1 and Milepost 149.7 on the Marysville Subdivision near Marysville, Kansas.

*Applicant's justification for relief:* The relief would be limited to light locomotive consists (i.e., locomotive consists without cars attached), and is solely for the purpose of allowing these locomotives to move to or from trains or yard movements. Movements made under the waiver would be at restricted speed, regardless of a more favorable signal indication.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning this proceeding should be identified by Docket Number FRA-2007-28095 and may be submitted by one of the following methods:

- *Web site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic site;

- *Fax:* 202-493-2251;

• *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 7th Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001; or

• *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 7th Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as

practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://dms.dot.gov>.

Issued in Washington, DC on May 21, 2007.

**Grady C. Cothen, Jr.**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E7–10152 Filed 5–24–07; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 35027]

#### United States Steel Corporation— Acquisition of Control Exemption— Texas & Northern Railway Company

United States Steel Corporation (USS), a noncarrier,<sup>1</sup> has filed a verified notice of exemption to acquire from Lone Star Technologies, Inc. (LST), control of Texas & Northern Railway Company (T&NR), a Class III rail carrier, operating in Texas. According to USS, USS and LST have entered into an agreement and plan of merger, submitted to the Board, for USS to control certain subsidiaries of LST, including Lone Star Steel Company, LP (LSS).<sup>2</sup> USS states that by this agreement with LST, USS will indirectly control T&NR and through Transtar, continue to control six common carriers.

The transaction will be consummated on or about June 14, 2007.

<sup>1</sup> USS controls Transtar Inc. (Transtar), a noncarrier holding company, which owns one Class II carrier, the Elgin, Joliet, and Eastern Railway Company, and the following five Class III carriers: Birmingham Southern Railroad Company; Delray Connecting Railroad Company; The Lake Terminal Railroad Company; McKeesport Connecting Railroad Company; and Union Railroad Company.

<sup>2</sup> T&NR is a wholly owned subsidiary of LSS that provides rail services for LSS and others.

The parties represent and warrant that: (1) T&NR does not connect with any of the Transtar railroads; (2) the acquisition and continuance in control is not part of a series of anticipated transactions that would connect the T&NR with any of the railroads in the Transtar corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves the control of one Class II and one or more Class III carriers, the exemption is subject to the labor protection requirements of 49 U.S.C. 11326(b).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35027, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on Brian M. McShea, United States Steel Corporation, 600 Grant Street, Room 1500, Pittsburgh, PA 15219–2800; John A. Vuono, Vuono & Gray, LLC, 2310 Grant Building, Pittsburgh, PA 15219; and Robert F. Spears, Texas & Northern Railway Company, Lone Star Technologies, Inc., 15660 N. Dallas Parkway, Suite 500, Dallas, TX 75248.

Board decisions and notices are available on our Web site at “[WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).”

Decided: May 18, 2007.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. E7–10114 Filed 5–24–07; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 678X)]

#### CSX Transportation, Inc.— Abandonment Exemption-in Clay County, IL

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49

CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.86-mile line of railroad on its Northern Region, Louisville Division, Illinois Subdivision, from milepost BXO 74.14 to milepost BXO 75.0, known as the Flora North Branch, City of Flora, in Clay County, IL. The line traverses United States Postal Service Zip Code 62839.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic handled on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 27, 2007, unless stayed pending reconsideration.<sup>1</sup> Petitions to stay that do not involve environmental issues,<sup>2</sup> formal expressions of intent to file an

<sup>1</sup> Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. CSXT initially indicated in its notice of exemption a proposed consummation date of June 25, 2007, but because the verified notice was filed on May 8, 2007, consummation may not take place prior to June 27, 2007. By filing made on May 11, 2007, CSXT has revised its notice to show that consummation may not take place until June 27, 2007.

<sup>2</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

OFA under 49 CFR 1152.27(c)(2),<sup>3</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 4, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 14, 2007, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Steven C. Armbrust, 500 Water Street—J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 1, 2007. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 245-0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by May 25, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "WWW.STB.DOT.GOV."

Decided: May 18, 2007.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Vernon A. Williams,**  
Secretary.

[FR Doc. E7-10073 Filed 5-24-07; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF THE TREASURY

### Bureau of Engraving and Printing

#### 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 Engraving and Printing within the Department of the Treasury is soliciting comments concerning survey and other research designed to establish benchmark measures of awareness, confidence and behavior, test messages and potential program taglines and materials relating to the Bureau's redesigned currency public education program.

**DATES:** Written comments should be received on or before July 23, 2007 to be assured consideration.

**ADDRESSES:** Direct all written comments to Department of the Treasury, Bureau of Engraving and Printing, Ellen Gano, 14th & C Streets, SW., Washington, DC 20228, (202) 874-1211.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Department of the Treasury, Bureau of Engraving and Printing, Pamela V. Grayson, 14th & C Streets, SW., Washington, DC 20228, (202) 874-2212.

#### SUPPLEMENTARY INFORMATION:

*Title:* Redesigned Currency Information Collection.

*Abstract:* The Bureau of Engraving and Printing requests approval to conduct a series of information collection activities with the public in support of its public education program regarding the introduction of redesigned currency. These collections will include: A survey used to establish baseline measures of awareness of currency changes, confidence in the currency and authentication behavior, and subsequent surveys to evaluate changes in these measures; a survey to evaluate potential messages designed to encourage the public to examine and learn currency security features; a survey to evaluate potential taglines that will help call attention to new security

features while maintaining confidence in U.S. currency; and, a survey to test draft materials to be developed in support of the program. The collection will also include in-depth interviews with bank tellers and others who frequently conduct cash transactions as part of their job, to identify special needs and tools for their use.

*Current Actions:* This is a new collection.

*Type of Review:* Regular.

*Affected Public:* The affected public includes all adult (18 or older) members of the U.S. population.

*Estimated Number of Respondents:* 5,850.

*Estimated Total Annual Burden Hours:* 1,990.

*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. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: May 23, 2007.

**Pamela V. Grayson,**

Management Analyst.

[FR Doc. E7-10133 Filed 5-24-07; 8:45 am]

**BILLING CODE 4840-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Pima Cotton Trust Fund

**AGENCY:** U.S. Customs and Border Protection, Homeland Security.

**ACTION:** General notice.

**SUMMARY:** On December 20, 2006, President Bush signed into law the Tax Relief and Health Care Act of 2006. Within Division C of the Act, section 407 of Title IV establishes a Cotton Trust Fund in the Treasury of the United States to be known as the "Pima Cotton Trust Fund." The Pima Cotton Trust Fund is comprised of funds transferred from the general fund of the Treasury in amounts equal to duties collected since January 1, 1994, on certain imports of pima cotton products. Section 407 of the Act authorizes distributions out of the Trust Fund in each of fiscal years 2007 and 2008, payable to eligible manufacturers and spinners of certain pima cotton products, as well as to a nationally

<sup>3</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,300. See 49 CFR 1002.2(f)(25).

recognized association established for the promotion of pima cotton grown in the United States for use in textile and apparel goods. Eligible claimants are directed to follow the statutory procedures to claim a distribution from the Pima Cotton Trust Fund. This document sets forth the law and announces applicable deadlines for claim and affidavit submission as well as the address to which claims, affidavits and related information must be sent.

**DATES:** For fiscal year 2007 distributions, all claims and affidavits must be mailed to CBP and postmarked no later than July 1, 2007. For fiscal year 2008 distributions, all claims and affidavits must be mailed to CBP and postmarked no later than March 1, 2008.

**ADDRESSES:** Claims, affidavits and supporting documentation for distribution from the Pima Cotton Trust Fund must be sent to U.S. Customs and Border Protection, Office of International Trade, Summary and Account Management Division, Entry and Drawback Management Branch, *Attention:* Pima Cotton Trust Fund Unit, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Sharon Taylor at (202) 344-2326 or via e-mail at *Sharon.Taylor@dhs.gov*.

**SUPPLEMENTARY INFORMATION:**

**Background**

Within Division C of the Tax Relief and Health Care Act of 2006 (Public Law 109-432, 120 Stat. 2922), section 407 of Title IV establishes a Cotton Trust Fund in the Treasury of the United States to be known as the Pima Cotton Trust Fund, from which distributions are authorized to be payable to eligible manufacturers and spinners of certain pima cotton products as well as to a nationally recognized association for the promotion of pima cotton grown in the United States for use in textile and apparel goods.

This document sets forth the statute in its entirety and informs claimants how to apply for a distribution from the fund.

**Section 407, Division C, Title IV, of the Tax Relief and Health Care Act of 2006**

The statute reads as follows:

*SEC. 407. Cotton Trust Fund.*

(a) *Establishment of Trust Fund.*—There is established in the Treasury of the United States a trust fund to be known as the “Pima Cotton Trust Fund” (in this section referred to as the “Trust Fund”), consisting of such amounts as

may be transferred to the Trust Fund under subsection (b).

(b) *Transfer of Amounts.*—

(1) In general.—Beginning October 1, 2006, the Secretary of the Treasury shall transfer to the Trust Fund, from the general fund of the Treasury, amounts determined by the Secretary of the Treasury to be equivalent to the amounts received in the general fund that are attributable to duties received since January 1, 1994, on articles under subheadings 5208.21.60, 5208.22.80, 5208.29.80, 5208.31.80, 5208.32.50, 5208.39.80, 5208.41.80, 5208.42.50, 5208.49.80, 5208.51.80, 5208.52.50, and 5208.59.80 of the Harmonized Tariff Schedule of the United States, subject to the limitation in paragraph (2).

(2) *Limitation.*—The Secretary may not transfer more than \$16,000,000 to the Trust Fund in any fiscal year, and may not transfer any amount beginning on or after October 1, 2008.

(c) *Distribution of Funds.*—From amounts in the Trust Fund, the Commissioner of the Bureau of Customs and Border Protection shall make the following payments annually beginning in fiscal year 2007:

(1) 25 percent of the amounts in the Trust Fund shall be paid annually to a nationally recognized association established for the promotion of pima cotton grown in the United States for the use in textile and apparel goods.

(2) 25 percent of the amounts in the Trust Fund shall be paid annually to yarn spinners of pima cotton grown in the United States, and shall be allocated to each spinner in an amount that bears the same ratio as—

(A) the spinner's production of ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number) from pima cotton grown in the United States in single and plied form during the period January 1, 1998, through December 31, 2003 (as evidenced by an affidavit provided by the spinner) bears to —

(B) the production of the yarns described in subparagraph (A) during the period January 1, 1998, through December 31, 2003, for all spinners who qualify under this paragraph.

(3) 50 percent of the amounts in the Trust Fund shall be paid annually to those manufacturers who cut and sew cotton shirts in the United States who certify that they used imported cotton fabric during the period January 1, 1998, through July 1, 2003, and shall be allocated to each such manufacturer in an amount that bears the same ratio as—

(A) the dollar value (excluding duty, shipping, and related costs) of imported woven cotton shirting fabric of 80s or higher count and 2-ply in warp

purchased by the manufacturer during calendar year 2002 (as evidenced by an affidavit from the manufacturer that meets the requirements of subsection (d)) used in the manufacturing of men's and boys' cotton shirts, bears to—

(B) the dollar value (excluding duty, shipping, and related costs) of the fabric described in subparagraph (A) purchased during calendar year 2002 by all manufacturers who qualify under this paragraph.

(d) *Affidavit of Shirting Manufacturers.*—The affidavit required by subsection (c)(3)(A) is a notarized affidavit provided by an officer of the manufacturer of men's and boys' shirts concerned that affirms—

(1) that the manufacturer used imported cotton fabric during the period January 1, 1998, through July 1, 2003, to cut and sew men's and boys' woven cotton shirts in the United States;

(2) the dollar value of imported woven cotton shirting fabric of 80s or higher count and 2-ply in warp purchased during calendar year 2002;

(3) that the manufacturer maintains invoices along with other supporting documentation (such as price lists and other technical descriptions of the fabric qualities) showing the dollar value of such fabric purchased, the date of purchase, and evidencing the fabric as woven cotton fabric of 80s or higher count and 2-ply in warp; and

(4) that the fabric was suitable for use in the manufacturing of men's and boys' cotton shirts.

(e) *Date of Purchase.*—For purposes of the affidavit under subsection (d), the date of purchase shall be the invoice date, and the dollar value shall be determined excluding duty, shipping, and related costs.

(f) *Affidavit of Yarn Spinners.*—The affidavit required by subsection (c)(2)(A) is a notarized affidavit provided by an officer of the producer of ring spun yarns that affirms—

(1) that the producer used pima cotton grown in the United States during the period January 1, 2002, through December 31, 2002, to produce ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during 2002;

(2) the quantity, measured in pounds, of ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during calendar year 2002; and

(3) that the producer maintains supporting documentation showing the quantity of such yarns produced, and evidencing the yarns as ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in

single and plied form during calendar year 2002.

(g) *No Appeal*.—Any amount paid by the Commissioner of the Bureau of Customs and Border Protection under this section shall be final and not subject to appeal or protest.

*Procedures for Claiming a Distribution Under the Statute*

Claimants are directed to follow the legal procedures set forth in section 407 of the Act to claim a distribution from the Pima Cotton Trust Fund.

*Deadlines for Claim/Affidavit Submission*

In order for CBP to be able to comply with the statutory requirement to make the first payment in fiscal year 2007, all

claims and affidavits for fiscal year 2007 distributions must be mailed to CBP and postmarked no later than July 1, 2007. Claims and affidavits for fiscal year 2008 distributions must be mailed to CBP and postmarked no later than March 1, 2008.

*Address*

Claims and affidavits for distribution from the Pima Cotton Trust Fund, including any supporting documentation that may be subsequently requested by CBP, must be sent to: U.S. Customs and Border Protection, Office of International Trade, Summary and Account Management Division, Attention: Pima Cotton Trust Fund Unit, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

*Affidavit Content*

Claimants are advised to note that sections 407(d) and (f) of the Act require each affidavit to contain a definitive statement regarding period of use, dollar amount or quantity, and supporting documentation. Claimants need not submit supporting documentation to CBP with their affidavits, but must maintain such documentation as they have affirmed to exist in their respective affidavits.

Dated: May 21, 2007.

**Deborah J. Spero,**

*Acting Commissioner, U.S. Customs and Border Protection.*

[FR Doc. E7-10090 Filed 5-24-07; 8:45 am]

**BILLING CODE 9111-14-P**

Corrections

Federal Register  
Vol. 72, No. 101  
Friday, May 25, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF VETERANS  
AFFAIRS  
  
Annual Pay Ranges for Physicians and  
Dentists of the Veterans Health  
Administration (VHA)

*Correction*  
  
In notice document 07-2401  
beginning on page 27637 in the issue of

Wednesday, May 16, 2007, make the  
following correction:  
  
On page 27638, in the third column,  
in PAY TABLE 7.—COVERED CLINICAL  
SPECIALTIES, “Orthopedic Surgery”  
should be inserted above “Radiology  
(Interventionalist)”.

[FR Doc. C7-2401 Filed 5-24-07; 8:45 am]

**BILLING CODE 1505-01-D**



# Federal Register

---

**Friday,  
May 25, 2007**

---

## **Part II**

### **Department of Health and Human Services**

---

**Centers for Medicare & Medicaid Services**

---

**42 CFR Parts 422 and 423  
Medicare Program; Revisions to the  
Medicare Advantage and Part D  
Prescription Drug Contract  
Determinations, Appeals, and  
Intermediate Sanctions Processes;  
Proposed Rules**

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Medicare & Medicaid Services

### 42 CFR Parts 422 and 423

[CMS-4124-P]

RIN 0938-AO78

### Medicare Program; Revisions to the Medicare Advantage and Part D Prescription Drug Contract Determinations, Appeals, and Intermediate Sanctions Processes

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would clarify the Medicare program provisions relating to contract determinations involving Medicare Advantage (MA) organizations and Medicare Part D prescription drug plan sponsors, including eliminating the reconsideration process for review of contract determinations; revising the provisions related to appeals of contract determinations and clarifying the process for MA organizations and Part D plan sponsors to complete corrective action plans. This proposed rule would also clarify the intermediate sanction and civil money penalty (CMP) provisions that apply to MA organizations and Medicare Part D prescription drug plan sponsors, modify elements of their compliance plans, and revise provisions to ensure HHS has access to the books and records of MA organizations and Part D plan sponsors' first tier, downstream, and related entities.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 24, 2007.

**ADDRESSES:** In commenting, please refer to file code CMS-4124-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two

copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-4124-P, P.O. Box 8012, Baltimore, MD 21244-8012.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-4124-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members. Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

#### FOR FURTHER INFORMATION CONTACT:

Christine Perenich, (410) 786-2987.

Kevin Stansbury, (410) 786-2570.

Stephanie Kaisler, (410) 786-0957, for issues regarding access to records and compliance.

Rita Wurm, (410) 786-1139, for issues regarding access to records and compliance.

#### SUPPLEMENTARY INFORMATION:

*Submitting Comments:* We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS-4124-P and the specific "issue identifier" that

precedes the section on which you choose to comment.

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

#### Abbreviations

Because of the many terms to which we refer by abbreviation in this proposed rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

|      |                                                                        |
|------|------------------------------------------------------------------------|
| ALJ  | Administrative Law Judge                                               |
| BBA  | Balanced Budget Act of 1997                                            |
| BBRA | Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999   |
| CAP  | Corrective Action Plan                                                 |
| CMP  | Civil Money Penalty                                                    |
| CMS  | Centers for Medicare & Medicaid Services                               |
| DAB  | Departmental Appeals Board                                             |
| ESRD | End-Stage Renal Disease                                                |
| FWA  | Fraud, Waste, and Abuse                                                |
| HHS  | Department of Health and Human Services                                |
| MA   | Medicare Advantage                                                     |
| MMA  | Medicare Prescription Drug, Improvement, and Modernization Act of 2003 |
| M+C  | Medicare + Choice                                                      |
| OIG  | Office of the Inspector General                                        |
| PBM  | Pharmaceutical Benefit Manager                                         |
| PDE  | Prescription Drug Event                                                |
| PPO  | Preferred Provider Organization                                        |

#### I. Background

[If you choose to comment on issues in this section, please include the caption "BACKGROUND" at the beginning of your comments.]

### *A. Overview of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA)*

The President signed the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) into law on December 8, 2003. The MMA established the Medicare prescription drug benefit program and renamed the Medicare+Choice program the Medicare Advantage (MA) program. In accordance with the MMA, we revised the existing Medicare regulations applicable to the MA program at 42 CFR part 422 and published regulations governing the prescription drug benefit program at 42 CFR part 423.

As we have gained more experience with MA organizations and Part D prescription drug plan sponsors, we are proposing clarifications to the Medicare program provisions relating to contract determinations involving Medicare Advantage organizations and Medicare Part D prescription drug plan sponsors, including eliminating the reconsideration process for review of contract determinations; revising the provisions related to appeals of contract determinations and clarifying the process for MA organizations and Part D plan sponsors to complete corrective action plans. This proposed rule would clarify the intermediate sanction and civil money penalty (CMP) provisions that apply to MA organizations and Medicare Part D prescription drug plan sponsors. We have also proposed changes to clarify the compliance plan requirements and our access to the books and records of an MA organization or Part D sponsor's first tier, downstream, and related entities.

### *B. Relevant Legislative History and Overview*

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) established the Medicare+Choice (M+C) program. Under section 1851(a)(1) of the Act, every individual with Medicare Parts A and B, except for individuals with end-stage renal disease (ESRD), could elect to receive benefits either through the original Medicare program or an M+C plan, if one was offered where the beneficiary lived. The primary goal of the M+C program was to provide Medicare beneficiaries with a wider range of health plan choices.

The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), amended the M+C provisions of the

BBA. Further amendments were made to the M+C program by the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554), enacted December 21, 2000.

The President signed the MMA into law on December 8, 2003. Title I of the MMA added new sections 1860D–1 through 1860D–42 to the Act creating the Medicare Prescription Drug Benefit program, a landmark change to the Medicare program since its inception in 1965.

Sections 201 through 241 of Title II of the MMA made significant changes to the M+C program. As directed by Title II of the MMA, we renamed the M+C program the MA program. We also revised our regulations to include new payment and bidding provisions based largely on risk, to recognize the addition of regional Preferred Provider Organization (PPO) plans, to address the provision of prescription drug benefits under the Medicare Part D regulations, and to make other changes.

The MMA, at section 1860D–12(b)(3) of the Act, directed that specific aspects of the MA contracting requirements apply to the prescription drug plan benefit program. Consequently, the processes for contract determinations and the administrative appeal rights in the two programs are virtually identical.

We published the regulations implementing the MA and prescription drug benefit regulations separately, though their development and publication were closely coordinated. On August 3, 2004, we published proposed rules for the MA program (69 FR 46866) and prescription drug benefit program (69 FR 46632). The final regulations implementing both the MA and prescription drug programs were published on January 28, 2005 (70 FR 4588 and 70 FR 4194, respectively). We revised some of our proposed provisions in the final rules in response to public comments. For further discussion of the revisions we made to our proposed rules, see the final rules cited above. CMS has not issued previous guidance, other than regulatory requirements regarding contract determinations, corrective action plans, contract determination appeals, intermediate sanctions or civil money penalties. However, CMS has published guidance on how to develop an effective fraud, waste and abuse (FWA) prevention program. This guidance is found in Chapter 9 of the Prescription Drug Benefit Manual entitled “Part D Program

to Control Fraud, Waste and Abuse.” This rule proposes further revisions to the MA and prescription drug regulations and we welcome your comments on our proposed regulations.

## **II. Provisions of the Proposed Regulations**

[If you choose to comment on issues in this section, please include the caption “PROVISIONS OF THE PROPOSED REGULATIONS” at the beginning of your comments.]

### *A. Overview of Proposed Changes to the Medicare Advantage Program and the Prescription Drug Benefit Program*

Our experience involving contract determinations, appeals, intermediate sanctions, and CMPs since the enactment of the Balanced Budget Act of 1997 have led us to propose changes to our regulations. In this rule, we propose to simplify the procedures for contract determinations; to clarify the procedures regarding submission and review of corrective action plans; to clarify the procedures for imposition of intermediate sanctions and CMPs; and to clarify the procedures to appeal CMPs imposed under the MA and Part D programs.

In addition, we propose revisions to the appeal procedures for all types of contract determinations, which would make these procedures identical for decisions not to contract, for nonrenewals, and for terminations. We propose to provide for enhanced beneficiary protections when we decide to terminate a plan on an expedited basis.

In this rule, we are also proposing changes and making clarifications to Subpart K, contract requirements under the MA and Part D programs. We have proposed changes to clarify HHS' access to the books and records of a MA organization or Part D sponsor's first tier, downstream, and related entities, including records relating to Part D rebates and price concessions and any underlying PDE records. We have also proposed changes to clarify that certain elements of the compliance plan apply to first tier, downstream, and related entities.

The proposed changes would ensure that both the MA and Medicare Part D prescription drug benefit programs may operate as efficiently as possible within the guidelines of the statute.

Below, we set forth the proposed regulation changes and corresponding proposed implementation dates:

| Proposed regulation change                                                                                                                             | Proposed implementation date |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| Incorporation of Fraud, Waste, and Abuse Prevention Measures into Compliance Plan .....                                                                | 1/1/2009                     |
| Requirement to apply Compliance Plan's training and communication requirements to first tier, downstream, and related entities .....                   | 1/1/2009                     |
| Mandatory procedures for self-reporting potential fraud and misconduct .....                                                                           | 1/1/2009                     |
| Requirement to obtain access to Part D sponsor's first tier, downstream, and related entity's books and records through contractual arrangements ..... | 1/1/2009                     |
| Elimination of CMS' requirement to inform organization of renewal .....                                                                                | 1/1/2008                     |
| Change date of CMS' notification of non-renewal from May 1 to September 1 .....                                                                        | 1/1/2008                     |
| Provide for same administrative appeal rights (including CAP) for all contract determinations (non-renewal, expedited termination, termination) .....  | 1/1/2008                     |
| Change regarding CAP process may be provided prior to notification of termination, and the imposition of time limits on Corrective Action Plans .....  | 1/1/2008                     |
| Change immediate termination to expedited termination with CMS setting the effective date of termination .....                                         | 1/1/2008                     |
| Elimination of Reconsideration Step for contract determination appeals .....                                                                           | 1/1/2008                     |
| Implementation of Burden of Proof for contract determinations .....                                                                                    | 1/1/2008                     |
| Ability for a hearing officer to issue summary judgment .....                                                                                          | 1/1/2008                     |
| Request for Administrator review, submission of information, and timeframe associated with Administrator review .....                                  | 1/1/2008                     |
| Settlement of Civil Money Penalties .....                                                                                                              | 1/1/2008                     |
| Appeal procedures for Civil Money Penalties .....                                                                                                      | 1/1/2008                     |

### B. Distribution Table

The following crosswalk table references the changes we propose to

make to the prescription drug and the MA programs. We propose to make the same changes to 42 CFR Parts 422 and 423 with minimum differences. The

crosswalk lists the section headings, for parts 422 and 423, and indicates if the section is being deleted.

TABLE 1.—CROSSWALK OF PART 422 AND PART 423 CFR SECTIONS

| Section heading                                                                                                                                   | Section references in part 422          | Section references in part 423 |
|---------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|--------------------------------|
| Definitions .....                                                                                                                                 | 422.2 .....                             | 423.4.                         |
| Compliance Plan .....                                                                                                                             | 422.503(b)(4)(vi) .....                 | 423.504(b)(4)(vi).             |
| Access to Facilities and Records .....                                                                                                            | 422.504(e) and 422.503(d)(2)(iii) ..... | 423.505(e).                    |
| Contract Provisions .....                                                                                                                         | 422.504(i) .....                        | 423.505(i).                    |
| Effective Date and Term of Contract .....                                                                                                         | 422.505 .....                           | 423.506.                       |
| Non-renewal of contract .....                                                                                                                     | 422.506 .....                           | 423.507.                       |
| Termination of contract by CMS .....                                                                                                              | 422.510 .....                           | 423.509.                       |
| Notice of contract determination .....                                                                                                            | 422.644 .....                           | 423.642.                       |
| Effect of contract determination .....                                                                                                            | 422.646 .....                           | 423.643.                       |
| Reconsideration: applicability .....                                                                                                              | 422.648 (delete) .....                  | 423.644 (delete).              |
| Request for reconsideration .....                                                                                                                 | 422.650 (delete) .....                  | 423.645 (delete).              |
| Opportunity to submit evidence .....                                                                                                              | 422.652 (delete) .....                  | 423.646 (delete).              |
| Reconsidered determination .....                                                                                                                  | 422.654 (delete) .....                  | 423.647 (delete).              |
| Notice of reconsidered determination .....                                                                                                        | 422.656 (delete) .....                  | 423.648 (delete).              |
| Effect of reconsidered determination .....                                                                                                        | 422.658 (delete) .....                  | 423.649 (delete).              |
| Right to a hearing and burden of proof .....                                                                                                      | 422.660 .....                           | 423.650.                       |
| Request for hearing .....                                                                                                                         | 422.662 .....                           | 423.651.                       |
| Postponement of effective date of a contract determination when a request for a hearing with respect to a contract determination is filed timely. | 422.664 .....                           | 423.652.                       |
| Time and Place of Hearing .....                                                                                                                   | 422.670 .....                           | 423.655.                       |
| Discovery .....                                                                                                                                   | 422.682 .....                           | 423.661.                       |
| Prehearing and Summary Judgment .....                                                                                                             | 422.684 .....                           | 423.662.                       |
| Review by the Administrator .....                                                                                                                 | 422.692 .....                           | 423.666.                       |
| Reopening of initial contract determination or intermediate sanction or decision of a hearing officer or the Administrator.                       | 422.696 .....                           | 423.668.                       |
| Effect of revised determination .....                                                                                                             | 422.698 (delete) .....                  | 423.669 (delete).              |
| Types of intermediate sanctions and civil money penalties .....                                                                                   | 422.750 .....                           | 423.750.                       |
| Basis for imposing intermediate sanctions and civil money penalties .....                                                                         | 422.752 .....                           | 423.752.                       |
| Procedures for imposing intermediate sanctions and civil money penalties.                                                                         | 422.756 .....                           | 423.756.                       |
| Collection of civil money penalty imposed by CMS .....                                                                                            | 422.758 .....                           | 423.758.                       |
| Determinations regarding the amount of civil money penalties and assessment imposed by CMS.                                                       | 422.760 .....                           | 423.760.                       |
| Settlement of penalties .....                                                                                                                     | 422.762 .....                           | 423.762.                       |
| Other applicable provisions .....                                                                                                                 | 422.764 .....                           | 423.764.                       |
| Basis and scope .....                                                                                                                             | 422.1000 .....                          | 423.1000.                      |
| Definitions .....                                                                                                                                 | 422.1002 .....                          | 423.1002.                      |
| Scope and applicability .....                                                                                                                     | 422.1004 .....                          | 423.1004.                      |
| Appeal rights .....                                                                                                                               | 422.1006 .....                          | 423.1006.                      |
| Appointment of representatives .....                                                                                                              | 422.1008 .....                          | 423.1008.                      |

TABLE 1.—CROSSWALK OF PART 422 AND PART 423 CFR SECTIONS—Continued

| Section heading                                                                                                 | Section references in part 422 | Section references in part 423 |
|-----------------------------------------------------------------------------------------------------------------|--------------------------------|--------------------------------|
| Authority of representatives .....                                                                              | 422.1010 .....                 | 423.1010.                      |
| Fees for services of representatives .....                                                                      | 422.1012 .....                 | 423.1012.                      |
| Charge for transcripts .....                                                                                    | 422.1014 .....                 | 423.1014.                      |
| Filing of briefs with the Administrative Law Judge or Departmental Appeals Board, and opportunity for rebuttal. | 422.1016 .....                 | 423.1016.                      |
| Notice and effect of initial determinations .....                                                               | 422.1018 .....                 | 423.1018.                      |
| Request for hearing .....                                                                                       | 422.1020 .....                 | 423.1020.                      |
| Parties to the hearing .....                                                                                    | 422.1022 .....                 | 423.1022.                      |
| Designation of hearing official .....                                                                           | 422.1024 .....                 | 423.1024.                      |
| Disqualification of Administrative Law Judge .....                                                              | 422.1026 .....                 | 423.1026.                      |
| Prehearing conference .....                                                                                     | 422.1028 .....                 | 423.1028.                      |
| Notice of prehearing conference .....                                                                           | 422.1030 .....                 | 423.1030.                      |
| Conduct of prehearing conference .....                                                                          | 422.1032 .....                 | 423.1032.                      |
| Record, order, and effect of prehearing conference .....                                                        | 422.1034 .....                 | 423.1034.                      |
| Time and place of hearing .....                                                                                 | 422.1036 .....                 | 423.1036.                      |
| Change in time and place of hearing .....                                                                       | 422.1038 .....                 | 423.1038.                      |
| Joint hearing .....                                                                                             | 422.1040 .....                 | 423.1040.                      |
| Hearing on new issues .....                                                                                     | 422.1042 .....                 | 423.1042.                      |
| Subpoenas .....                                                                                                 | 422.1044 .....                 | 423.1044.                      |
| Conduct of hearing .....                                                                                        | 422.1046 .....                 | 423.1046.                      |
| Evidence .....                                                                                                  | 422.1048 .....                 | 423.1048.                      |
| Witnesses .....                                                                                                 | 422.1050 .....                 | 423.1050.                      |
| Oral and written summation .....                                                                                | 422.1052 .....                 | 423.1052.                      |
| Record of hearing .....                                                                                         | 422.1054 .....                 | 423.1054.                      |
| Waiver of right to appear and present evidence .....                                                            | 422.1056 .....                 | 423.1056.                      |
| Dismissal of request for hearing .....                                                                          | 422.1058 .....                 | 423.1058.                      |
| Dismissal for abandonment .....                                                                                 | 422.1060 .....                 | 423.1060.                      |
| Dismissal for cause .....                                                                                       | 422.1062 .....                 | 423.1062.                      |
| Notice and effect of dismissal and right to request review .....                                                | 422.1064 .....                 | 423.1064.                      |
| Vacating a dismissal of request for hearing .....                                                               | 422.1066 .....                 | 423.1066.                      |
| Administrative Law Judge's decision .....                                                                       | 422.1068 .....                 | 423.1068.                      |
| Removal of hearing to Departmental Appeals Board .....                                                          | 422.1070 .....                 | 423.1070.                      |
| Remand by the Administrative Law Judge .....                                                                    | 422.1072 .....                 | 423.1072.                      |
| Right to request Departmental Appeals Board review of Administrative Law Judge's decision or dismissal.         | 422.1074 .....                 | 423.1074.                      |
| Request for Departmental Appeals Board review .....                                                             | 422.1076 .....                 | 423.1076.                      |
| Departmental Appeals Board action on request for review .....                                                   | 422.1078 .....                 | 423.1078.                      |
| Procedures before Departmental Appeals Board on review .....                                                    | 422.1080 .....                 | 423.1080.                      |
| Evidence admissible on review .....                                                                             | 422.1082 .....                 | 423.1082.                      |
| Decision or remand by the Departmental Appeals Board .....                                                      | 422.1084 .....                 | 423.1084.                      |
| Effect of Departmental Appeals Board decision .....                                                             | 422.1086 .....                 | 423.1086.                      |
| Extension of time for seeking judicial review .....                                                             | 422.1088 .....                 | 423.1088.                      |
| Basis, timing, and authority for reopening an Administrative Law Judge or Board decision.                       | 422.1090 .....                 | 423.1090.                      |
| Revision of reopened decision .....                                                                             | 422.1092 .....                 | 423.1092.                      |
| Notice and effect of revised decision .....                                                                     | 422.1094 .....                 | 423.1094.                      |

*C. Proposed Changes to Part 422—Medicare Advantage Program and Part 423—Medicare Prescription Drug Benefit Program*

Sections 422.2 and 423.4—Definitions

We are proposing to correct a technical oversight in both regulations by including the definitions of “downstream entity,” “first tier entity,” and “related entity,” in the overall definitions sections of both the MA and Part D regulations at § 422.2 and § 423.4 to ensure that these terms are used consistently throughout both programs. Since these three terms are only defined in Subpart K of Parts 422 and 423, we are proposing to add them to Subpart A, General Provisions at § 422.4 and § 423.4. The definitions are as follows:

*First tier entity* means any party that enters into a written arrangement, acceptable to CMS, with a Part D sponsor or an MA organization or applicant to provide administrative services or health care services for a Medicare eligible individual under the Part D or MA program.

*Downstream entity* means any party that enters into a written arrangement, acceptable to CMS, below the level of the arrangement between a Part D sponsor or an MA organization (or applicant) and a first tier entity. These written arrangements continue down to the level of the ultimate provider of both health and administrative services.

*Related entity* means any entity that is related to the Part D sponsor or MA organization by common ownership or

control and (1) Performs some of the Part D sponsor or MA organization's management functions under contract or delegation; (2) Furnishes services to Medicare enrollees under an oral or written agreement; or (3) Leases real property or sells materials to the Part D sponsor or MA organization at a cost of more than \$2,500 during a contract period.

Below is a flow chart that provides examples of, and describes the relationships between, Part D sponsors, and first tier, downstream, and related entities. In accordance with the proposed changes above, we are removing the term “subcontractor” from this previously published flowchart. The original flowchart was published in the final version of Chapter 9 of the Part

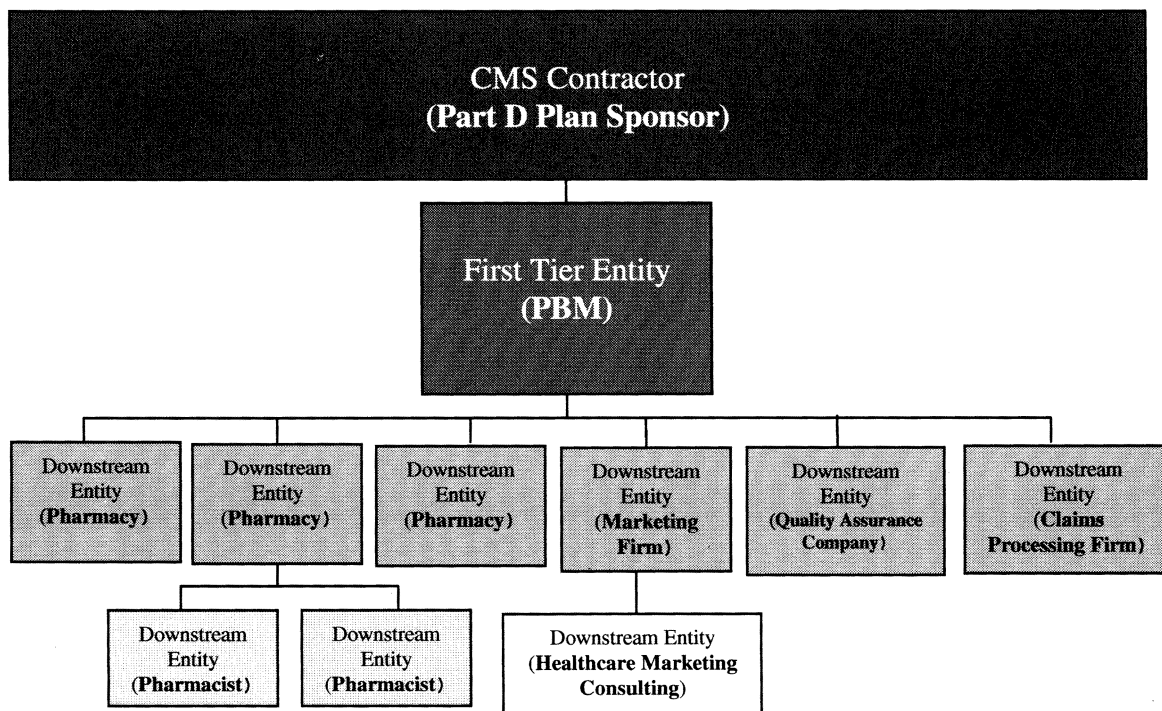
D Manual last year. We will make conforming changes to the manual at a

later date. After the flowchart we have provided examples of first tier and

downstream entities for MA organizations.

### Exhibit 1: Example of Stakeholder Relationship

#### Flow Chart



An example of a first tier entity for MA organizations would be a provider group that contracts with the MA organization to provide health care services to MA members. An example of a downstream entity for MA organizations would be an individual provider who contracts with a provider group that contracts with the MA organization to provide health care services to MA members.

#### Sections 422.503 and 423.504—General Provisions

The current regulations at § 423.504 include a requirement that a Part D sponsor's compliance plan consist of training and education as well as effective lines of communication between the compliance officer, and the organization's employees, contractors, agents, directors, and managers. The terms "contractor" and "agent" are not defined in current regulation, and it has been unclear to the industry which entities are subject to the training and education, and the effective lines of communication requirements. In response to industry concerns and to eliminate the confusion associated with

using the term "contractor", currently used in those sections, we are proposing to revise paragraphs (b)(4)(vi)(C) and (b)(4)(vi)(D) of § 423.504 to clarify that a compliance plan must consist of training, education, and effective lines of communication between the compliance officer and the Part D sponsor's employees, managers, and directors, as well as the Part D sponsor's "first tier, downstream, and related entities" which are defined at 422.500 and 423.501. This proposed change would clarify that Part D plan sponsors need to apply these training and communication requirements to all entities they are partnering with to provide benefits or services in the Part D program, not just their direct employees within their organizations.

Pursuant to our authority under section 1856(b)(1) of the Act to establish Medicare Advantage standards by regulation, we are also proposing to require MA organizations to apply their training and education and effective lines of communication requirements to their first tier, downstream, and related entities. Since many MA-PDs, as Part D sponsors, have already been required to

apply these requirements to the entities they contract with to deliver the Part D benefit, we are taking this opportunity to make the compliance plan requirements uniform across MA organizations, MA-PDs, and other Part D sponsors.

Additionally, we propose clarifying paragraph (b)(4)(vi) in § 422.503 and § 423.504 by removing what we believe to be a duplicative and confusing "final element" of the compliance plan—a "comprehensive fraud, waste, and abuse plan to detect, correct, and prevent fraud, waste and abuse" at paragraph (b)(4)(vi)(H) of both regulations. We are proposing to remove this element because we received feedback from many Part D sponsors indicating that it was not clear whether CMS was requiring a fraud, waste, and abuse (FWA) plan separate and distinct from a compliance plan. In fact, we believe that a compliance plan that meets the compliance plan requirements in the regulations already has a "comprehensive fraud, waste, and abuse plan to detect, correct, and prevent fraud, waste, and abuse."

In April 2006, we issued Chapter 9 of the Part D Manual (“Part D Program to Control Fraud, Waste and Abuse”) as “best practices” guidance for Part D sponsors to develop a FWA plan. We intended for Chapter 9 to be similar to the type of best practices guidance issued by the Office of the Inspector General (OIG) in its Compliance Program Guidance for drug manufacturers and health care providers. While we clarified in Chapter 9 that Part D sponsors could choose whether to incorporate FWA measures in a compliance plan or develop a separate, stand-alone FWA plan, we believe the final element continues to cause potential confusion to the industry and therefore, are proposing to remove this element from (b)(4)(vi) of 422.503 and 422.504.

We continue to believe an effective compliance plan includes procedures and policies for preventing fraud, waste, and abuse and have proposed changes to the introductory clause of § 423.504(b)(4)(vi) that reflect our policy stance. Since Congress mandated that Part D sponsors have a “program to control fraud, waste, and abuse” (section 1860D–4(c)(1)(D) of the Act), we also are clarifying that if Part D plan sponsors develop an effective compliance plan that incorporates measures to detect, prevent, and correct fraud, waste, and abuse, this compliance plan would also satisfy the statutory requirement for sponsors to have a FWA plan. Part D sponsors should look to Chapter 9 as recommended guidance for the types of measures we recommend in detecting and preventing fraud, waste, and abuse. Chapter 9 can be viewed at [http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/PDBManual\\_Chapter9\\_FWA.pdf](http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/PDBManual_Chapter9_FWA.pdf).

Also pursuant to our authority under section 1856(b)(1) of the Act, we are proposing to make the same change to the introductory clause of § 422.503(b)(4)(vi) so that the compliance plan requirements for MA organizations will be identical to those for Part D sponsors. We propose that MA organizations must include “measures to detect, correct, and prevent fraud, waste, and abuse” throughout the 7 elements of the compliance plan requirement. While the existing MA compliance plan requirement does not explicitly refer to the prevention of fraud, waste, and abuse, it has always been our expectation that fraud, waste, and abuse would be addressed through the implementation of each of the 7 elements in a compliance plan, enumerated at paragraphs (A) through (G) of § 422.504(b)(4)(vi). It has been our

longstanding policy that an effective MA compliance plan addresses the detection, correction, and prevention of fraud, waste, and abuse in the MA program, and our proposed change would make this policy explicit in our regulations. We welcome your comments on this proposal.

Since we are proposing to remove § 423.504(b)(4)(vi)(H), we are proposing to add paragraph (b)(4)(vi)(G)(3) to § 423.504 to include a provision on self-reporting of potential fraud or misconduct, which was addressed in § 423.504(b)(4)(vi)(H). Pursuant to our authority under section 1856(b)(1) of the Act we also propose to add paragraph (b)(4)(vi)(G)(3) to § 422.503 to add a self-reporting provision to the MA regulations as well, in order to make the compliance plan requirements uniform across MA organizations and Part D sponsors.

We note that when the original Part C regulations were issued in a June 26, 1998 interim final rule establishing a new part 422, they included a self-reporting requirement at § 423.501(b)(4)(vi)(H). (See 63 FR 35100.) Unlike the current Part D self-reporting provision, this original paragraph (H) required that compliance plans have an “adhered-to-process for reporting to [CMS] and/or the OIG credible information of violations of law by the [MA] organization \* \* \*.” In a June 29, 2000 final rule responding to comments on the June 26, 1998 interim final rule, this mandatory self-reporting requirement was eliminated. (See 65 FR 40264–40265, 40299.)

We believe that the decision to eliminate a mandatory self-reporting requirement has contributed to some highly publicized cases in which we have first found out about a major MA organization compliance issue when it appeared in the press. We have expressed our concerns in such situations that the matter was not promptly reported to us when it came to the attention of the MA organization in question. We believe that it is important for the government to have information on possible fraud or misconduct as soon as possible in order to determine whether any actions would be appropriate. We therefore are proposing to restore a mandatory self-reporting requirement for MA organizations, and to make the self-reporting provision that applies to Part D sponsors mandatory. The language in the new proposed § 423.504(b)(4)(vi)(G)(3) and new proposed § 422.503(b)(4)(vi)(G)(3) accordingly provides for mandatory self-reporting. We welcome your comments on all of these changes.

#### Sections 422.504 and 423.505—General Provisions

We are proposing to clarify which entities under contract to MA organizations and Part D sponsors are subject to the contract provisions in the MA and Part D programs. Currently, the contract provisions at 422.504 and 423.505 refer to such entities as the MA organization or Part D sponsor’s “contractors” and “subcontractors,” which as we described above, are undefined terms in the statute and regulations. We are proposing, where applicable, to delete the term “contractor” and replace the term “subcontractor” with the terms “first tier and downstream entity” in 422.504(e) and (i) to clarify which entities are subject to the contract provisions at 422.504.

We are also proposing, where applicable, to delete the term “contractor,” and replace the term “subcontractor” with the terms “first tier entity” and “downstream entity” in the Part D contract provisions at 423.505(e) and (i) for the same reasons. We believe using “first tier and downstream entity” instead of “subcontractor” would lessen the potential for confusion in the Part D program. To clarify, under the Part D program, an example of a “first tier entity” is a pharmaceutical benefit manager (PBM) under contract to a Part D sponsor to provide all or some aspect of the Part D benefit on behalf of the sponsor. An example of a “downstream entity” in the Part D program is a pharmacy under contract to such a PBM. As discussed above, we are proposing to use the definitions of “first tier entity” and “downstream entity” (as well as “related entity”) set forth at § 423.501 to lessen any potential confusion in both programs. We welcome your comments on these proposed changes to the contract provisions.

We have existing authority under section 1860D–12(b)(3)(c) of the Act and § 422.504(e) and § 423.505(e) to inspect and audit any books, contracts, requests, and records of a Part D sponsor or MA organization relating to the Part D program. In the preamble to the Part D proposed rule, published on January 28, 2005 (70 FR 4194), describing these provisions, we clearly stated our inspection and audit rights with respect to a Part D sponsor and its contractors, subcontractors, and related entities under the section entitled “Access to Facilities and Records.” (69 FR 46632, 46712). These third party disclosure requirements were finalized in the final MA and Part D rules and were approved

under the Paperwork Reduction Act approval under OMB #0938–1004 (Part C) and OMB #0938–1000 (Part D). The information collection section of this preamble also references the OMB approval numbers.

In addition, we note that the solicitation for a Part D application already requires that a Part D sponsor's contract or letter of agreement with each subcontractor "contain language ensuring that the subcontractor will make its books and other records available in accordance with 42 CFR 423.505(i)(2)."

Under this established legal authority, HHS, the Comptroller General, or their designees have the right to inspect, evaluate, and audit the books and other records of Part D sponsors and their first tier, downstream, and related entities. These rights continue for a period of 10 years from the final date of the contract period or the date of audit completion, whichever is later. However, based on industry feedback and our own varied experience with accessing Medicare payment-related records from subcontracting entities, we believe we need to provide clarity to both the Part D sponsors and their first tier, downstream, and related entities regarding our expectation for complying with this disclosure requirement. Our expectation is that the first tier, downstream, and related entities will, upon CMS' or our designees' request, produce any pertinent contracts, books, documents, papers, and records relating to the Part D program.

We are proposing in this rule to add a provision to the contracts and written arrangements between sponsors and their first tier, downstream, and related entities at § 423.505(i)(3)(iv) to clarify that this information can be provided to either the Part D sponsor or directly to CMS or our designees. We do not intend this new contract provision to explicitly require first tier, downstream, or related entities to produce their books and records directly to the Part D sponsor. Instead, we propose to leave it to the contracting parties to determine during their contract negotiations the process for submitting the requested information to CMS or our designees. The provision must be clear as to whether or not the requested documentation is to be submitted through the Part D sponsor to CMS, or submitted directly to CMS or our designees. The parties could also decide to have such books and records made directly available to CMS or our designees through onsite access. The Part D sponsor should be prepared to submit evidence of this agreed upon provision in its executed contracts to CMS.

Because of the proposed contract provision, we are also proposing to redesignate § 423.505(i)(4)(iv) as § 423.505(i)(4)(v).

In accessing Part D-related books and records, HHS, the Comptroller General, or its designees have the authority to collect any information from the first tier, downstream, or related entities that is related to the Medicare Part D prescription drug transaction. Examples of this type of information include, but are not limited to: Policies and procedures; compliance plans; statements of conflict of interest; proof of beneficiary identification; documentation of the quantity and frequency of drugs being received by the beneficiary; evidence of the prescriber of the Part D drugs and the individual who signs for the drugs; and documentation relating to the drug's history and origin. This information is critical to our ability to effectively oversee and monitor the Part D benefit, with the ultimate goal of protecting the Medicare Trust Fund and those beneficiaries enrolled in Part D. The information provided will be used to conduct investigations and audits of the Part D sponsors and its first tier, downstream, or related entities, to ensure compliance with Medicare Part D requirements, and to address potential fraud, waste, and abuse in the Part D benefit.

CMS or our designees will make information requests as necessary to support any Part D investigations and audits. There is no continuous reporting requirement under sections 423.505(e) and (i), but rather requests are dependent upon the nature and severity of the complaint and the extent to which the investigation relies on supporting data from the first tier, downstream, and related entities.

In addition to proposing a new contract provision at § 423.505(i)(4)(iv), we are also proposing minor regulatory changes which clarify the sponsor's CMS contractual requirements. While we continue to believe our regulations clearly state our authority to access the books and records of a sponsor's first tier, downstream, and related entities, we are proposing to add language about these partnering entities to § 423.505(b)(10) and proposing to consolidate § 423.505(e)(2) and (3) into one provision at (e)(2). We are proposing these revisions to make explicit the Part D plan sponsor's contractual obligation to ensure HHS, the Comptroller General, or their designees have access to any books and records related to the Part D program, including those of a sponsor's first tier, downstream, and related entities. These

proposed revisions do not impose any new requirements on Part D sponsors or its partnering entities.

We are also proposing to clarify, without specific regulatory change in this rule that HHS, the Comptroller General, or their designees have the authority under the statute to request records relating to Part D rebate and any other price concessions information from Part D sponsors or their first tier, downstream, or related entities. These records would include, for example, copies of rebate agreements between PBMs and manufacturers and any records reflecting discounts, price concessions, chargebacks, rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced price services, grants or other price concessions or similar benefits offered to some or all purchasers.

Part D plan sponsors must maintain, as required by § 423.505(d), financial records, books and records pertaining to "determinations of amounts payable under the contract," agreements, contracts, and subcontracts, and "all prescription drug claims for the current period and 10 prior periods." Since Part D sponsors have delegated many Part D functions to their first tier entities, many of these records reside with first tier entities, such as PBMs. We are taking this opportunity in this proposed rule to make explicit that we have the authority to request verification of payment purposes, any records relating to rebates and any other price concessions between PBMs and manufacturers that may impact payments made to sponsors in the Part D program.

We believe our proposal to obtain rebate and price-concession related records is supported by the statute. Sections 1860D–15(d)(2) and 1860D–15(f)(1)(A) of the Act give us authority to request any information "necessary" to carry out the payment provisions in section 1860D–15 of the Act, which include payments of direct subsidies, reinsurance, and risk corridor costs to sponsors. While the rebate and other price concession information reported by the sponsors may provide some payment information, it may not be enough for us to determine in all cases whether appropriate payments have been made to the sponsor. It may be "necessary" for us to obtain more detailed rebate and other price concession information from first tier entities in order to verify proper payments made to the sponsor. For example, we must receive accurate and complete rebate and other price concession information in order to determine what was "actually paid" and

to clearly reflect what was a gross covered cost, which excludes administrative costs.

As stated in the CMS 2007 Prescription Drug Sponsor Call Letter, "CMS must assume that if a PBM retains a portion of the manufacturer rebates it negotiates on behalf of the Part D sponsors then the direct payment the sponsor pays the PBM for its services will be less, that is, the sponsor receives a price concession from the PBM." If the rebates are passed completely through to the Plan then the charge from the PBM to the Plan would be an administrative cost that will need to be deducted from the "gross covered prescription drug costs" which along with the "actually paid costs" are a basis for CMS payment to the plans.

In addition, such rebate and other price concession information is critical to our oversight efforts in curbing fraud, waste, and abuse in the Part D program. Congress granted us, under section 1860D-2(d)(3) of the Act, the right to conduct periodic audits of a sponsor's financial statements, books, and records "to protect against fraud and abuse and to ensure proper disclosure and accounting" in the Part D program. Given the history of rebate reporting problems the government has encountered with PBMs in administering the Medicaid Drug Rebate Act, we believe we must have the ability to evaluate and inspect records relating to Part D rebates and other price concessions in order to fulfill our statutory duty of protecting beneficiaries from fraud and abuse and to ensure the financial integrity of the Part D program. Therefore, we propose when appropriate, to reserve the right to request records relating to Part D rebates and price concessions from the sponsor's first tier entities.

To the extent information necessary to verify payment would be collected under the auspices of section 1860D-15 of the Act, the restrictions on using such information under 1860D-15(f) and (d) of the Act would also apply. Thus, the information collected to verify payment would be used only in carrying out the provisions of section 1860D-15 of the Act, and would not be used for other purposes.

We are also clarifying in this proposed rule that in instances of suspected improper payment or potential fraud, we may obtain the actual records used by a Part D sponsor to submit its prescription drug event (PDE) data for payment, whether such records are with the sponsor or its first tier, downstream, or related entities. Sections 1860D-15(d)(2)(A) and 1860D-15(f)(1) of the Act require the sponsor to

disclose or provide "such information as the Secretary determines is necessary" to verify appropriate payments made to the Part D sponsor and to do so in a "form and manner" specified by the Secretary. The Secretary has also delegated to CMS inspection and audit rights under section 1860D-15(f)(1)(B) of the Act to ensure proper payments to sponsors.

Based on these authorities, we are clarifying in the preamble of this proposed rule that we have the ability to access any records used by a Part D plan sponsor to calculate and submit its PDE data, including any records with the sponsor's first tier, downstream, or related entities, for purposes of verifying payment. In order to verify accurate payments to the Part D plan sponsor, we may need at times to evaluate the records which comprised the basis for the PDE submission to ensure there are no inconsistencies, inaccuracies, or mistakes contained in these records which could have resulted in inappropriate or inaccurate determinations of payment. Moreover, we may need to review the underlying records of the PDE submission for purposes of investigating allegations of misconduct such as data tampering, fraudulent misrepresentation, or omissions of data which could have affected whether appropriate and accurate payments were made to the sponsor.

In such instances of suspected fraud or improper payment, we may request from the sponsor, or its first tier, downstream, and related entities, records that include for example, the prescription drug claim or transaction record submitted by a pharmacy to a PBM. We are soliciting comment on what types of records should be subject to this access requirement. Again, to the extent such information would be provided under the authority of 1860D-15 of the Act, the restrictions on use in that section would also apply.

We note that any failure or omission by a first tier, downstream, or related entity to provide information requested by us, or to allow HHS access to its books and records relating to payment, would constitute a violation by the MA organization or Part D plan sponsor of its contract with us and a violation of the MA and Part D regulations. Such a failure would provide the basis for any applicable adverse actions, including potentially, the imposition of intermediate sanctions, civil money penalties, or contract termination against the Part D sponsor or MA organization. We welcome comments on these proposed changes.

Sections 422.505 and 423.506—Effective Date and Term of Contract

We propose removing § 422.505(c)(1) and § 423.506(c)(1), which state that contracts with MA organizations or Part D plan sponsors are only renewed if CMS informs the MA organization or Part D sponsor that it has authorized a renewal. Section 1857(c)(1) of the Act provides that the contract renews automatically, unless CMS or the organization notifies the other party of its intent to terminate the contract at the end of the existing contract term. Therefore, we propose to revise § 422.505(c) and § 423.506(c) to state that in accordance with § 422.506 and § 423.507, contracts are renewed annually only if the MA organization or Part D plan sponsor has not provided us with a notice of intent not to renew and we have not provided the MA organization or Part D plan sponsor with a notice of intent not to renew. This proposed change would better align the regulations with the statute.

Sections 422.506 and § 423.507—Nonrenewal of a Contract

We propose revising the introductory text for § 422.506(b)(2) and § 423.507(b)(2). In addition, we propose revising § 422.506(b)(2)(i) and § 423.507(b)(2)(i). The existing provisions require us to provide plans with notice of both renewal and nonrenewal decisions by May 1. We propose that a notice only be provided if we decide not to renew an MA organization or a Part D plan sponsor's contract with us. As discussed above, Section 1857(c)(1) of the Act provides for an automatically renewable contract and does not require us to provide notice when we decide to renew a plan or sponsor's contract with us. We propose revising the § 422.506(b)(2) introductory text and the § 423.507(b)(2) introductory text to clarify that we must provide notice of our decision not to authorize renewal of a contract. In addition, we propose to revise § 422.506(b)(2)(i) and § 423.507(b)(2)(i) to require that we provide notice by September 1 of the contract year, rather than May 1. If an MA organization or Part D sponsor receives a non-renewal notice from CMS, we will not provide information regarding the MA or Part D plans that the organization or sponsor offers in certain hard copy materials, such as the "Medicare & You" handbook. Information regarding the plans would continue to be available on the CMS website. For purposes of this proposed rule, a non-renewal would take effect on January 1 of the following contract year, whereas a termination may take effect at any time during the

contract year. Our proposed provisions would make contract renewal automatic, without notice, unless we notify the MA organization or Medicare Part D plan sponsor of our intent to nonrenew the contract by September 1 of the current contract year. We welcome comments on these proposed changes.

Changing the notification deadline to September 1 would provide us with additional time to make a determination as to whether an MA organization or Part D plan sponsor is in compliance with our requirements and should have its contract renewed for the following contract year. It has been our experience that the May 1 deadline does not provide us with enough time to obtain accurate up-to-date information in order to make a decision about contract renewals. This change would provide more time for us to make an accurate determination concerning contract non-renewals.

We propose redesignating § 422.506(b)(3) as § 422.506(b)(4) and redesignating § 423.507(b)(3) as § 423.507(b)(4). We propose adding a new paragraph at § 422.506(b)(3) and § 423.507(b)(3) which would clarify the CAP process for nonrenewals. The Act requires us to provide MA organizations and Part D plan sponsors with a reasonable opportunity to develop a CAP prior to terminating a contract, in this case, a nonrenewal. The CAP process for nonrenewals would be the same process as we propose for terminations. We propose a more structured process which outlines the processes and timeframes for CAPs. Since we have the discretion to provide plans with the opportunity to develop and implement a CAP either prior to, or after, sending out a notice of intent to nonrenew, we would provide an MA organization or Part D plan sponsor with an opportunity to develop and implement a CAP prior to sending the sponsor or organization a notice of intent to nonrenew. This proposal marks a divergence from our past practice with respect to the CAP process as we have previously asked sponsors or organizations to develop CAPs subsequent to notifying them of a nonrenewal or termination decision. Our proposal clarifies that, in the future, once we issue a notice of nonrenewal or a notice of termination, the MA organization or Part D plan sponsor would not have an opportunity to submit a CAP. We would provide that opportunity to organizations and sponsors prior to issuing a notice of intent to nonrenew or a notice of intent to terminate. MA organizations and Part D plan sponsors should take very

seriously any request from us to develop and implement a CAP since a failure to comply may result in a nonrenewal or termination action. We welcome comments on these proposed changes.

We propose time limits at § 422.506(b)(3) and § 423.507(b)(3) for the development and implementation of a CAP. Our experience with the CAP process is that plans may attempt to draw out the process indefinitely in the absence of a time limit. We do not believe that the statute intends for this process to go on indefinitely. We propose to provide the MA organization or Part D plan sponsor 45 days in which to submit a CAP to us. If we find that the CAP is unacceptable, the MA organization or Part D plan sponsor would have an additional 30 days to revise and resubmit the CAP. If we then find the CAP acceptable, we would provide the MA organization or Part D plan sponsor with a deadline by which the CAP must be implemented. If we find that the second version of the CAP is unacceptable, we would be under no obligation to accept further revisions to the CAP and would have the discretion to proceed directly to issuing a notice of nonrenewal to the MA organization or Part D plan sponsor. We welcome comments on these proposed changes.

#### Sections 422.510 and 423.509— Termination of Contract by CMS

We propose revising § 422.510(a)(1) and § 423.509(a)(1) to clarify one of the bases for contract termination. The existing provision states that we may terminate an MA organization or Part D plan sponsor's contract with us if the MA organization or Part D plan sponsor "failed substantially to carry out the terms of its contract with CMS." We propose language to clarify that we may terminate an MA organization or Part D plan sponsor's contract if the organization substantially failed to carry out the terms of its contract with us for the current term or its contract from a previous term. This clarification would be consistent with section 1857(c)(1) of the Act, which states that a contract must be for a period of at least 1 year with the contract being automatically renewable from term to term, absent notice from either party of an intent to terminate the contract at the end of the current term. Given that we have already adopted automatically renewable multi-year contracts, failure to substantially carry out a contract term necessarily would apply to all years of the contract.

We propose revising § 422.510(b) and § 423.509(b) introductory text and revising the paragraph heading for § 422.510(b)(2) and § 423.509(b)(2) to

delete the term "immediate" and replace it with "expedited". In addition, we propose revising § 422.510(b)(2)(i) and § 423.509(b)(2)(i) to state that an expedited termination would take effect on a date specified by us. According to the existing regulations, an immediate termination takes effect once the MA organization or Part D plan sponsor receives notice that we intend to immediately terminate the plan's contract with us and a plan's enrollees are automatically disenrolled from the plan on the date such notice is received. Our proposed change would provide greater protection for Medicare beneficiaries because we would have time between notifying a plan of an expedited termination decision and the actual date of termination to provide enrollees of the MA or Part D plan with enough information to enroll in another plan. We welcome comments on these proposed changes.

These changes are supported by section 1857(h)(2) of the Act which permits us to terminate a contract with an MA organization or Part D plan sponsor without providing the plan with an opportunity to submit a CAP and without notice and opportunity for a hearing, where the notice and hearing procedures required by section 1857(h)(1) of the Act would pose an imminent and serious risk to the health of enrollees in the plan. Section 1857(h)(2) of the Act is silent on the specifics of this alternate termination process and does not require "immediate" termination; merely that the procedures at section 1857(h)(1) of the Act shall not apply.

We would also clarify that we would be able to invoke the expedited termination process when a determination regarding an MA organization is made according to § 422.510(a)(5). The existing regulations state that we invoke the current immediate termination process when a determination is made according to § 422.510(a)(4) for the MA program and § 423.509(a)(4) or (a)(5) for the Medicare Part D program. By adding (a)(5) as a basis for an expedited termination for MA organizations, the grounds for expedited terminations would be identical for the MA and Part D programs. The addition of § 422.510(a)(5) would provide consistency between the Part C regulations and the Part D regulations.

We propose to amend our procedures at § 422.510(c) and § 423.509(c) to provide more structure to the process for the submission and review of CAPs. The Act requires us to provide MA organizations and Part D plan sponsors with a reasonable opportunity to

develop and implement a CAP before we terminate the organization or sponsor's contract. The CAP process we are proposing is the same process for nonrenewals outlined above and which we are proposing at § 422.506 and § 423.507, providing for a more structured process and timeframes for the development and implementation of a CAP.

#### Subpart N—Medicare Contract Determinations and Appeals

We propose revisions to subpart N of 42 CFR part 422 and 42 CFR part 423 to coordinate and improve the contract determination and appeals processes for MA organizations and Part D plan sponsors. We propose removing the reconsideration process for appeals of all types of contract determinations. We also propose to make the appeals process consistent for all three types of contract determinations (terminations, nonrenewals, and decisions by us not to enter into a contract with an applicant). In addition, we propose that the MA organization or Part D plan sponsor have the burden of proof in appealing a contract determination. Below is a more detailed explanation of our proposals.

We propose removing the provisions regarding the reconsideration process for appeals of contract determinations at § 422.648, § 422.650, § 422.652, § 422.654, § 422.656, § 422.658, § 423.644, § 423.645, § 423.646, § 423.647, § 423.648, and § 423.649. Section 1857(h) of the Act requires only that we provide an organization with notice and an opportunity for a hearing before terminating a contract. The reconsideration process is not required by statute. Eliminating the reconsideration process would expedite the appeals process which would benefit MA organizations and Part D plan sponsors as well as CMS. We welcome comments on the proposal to eliminate the reconsideration process for appeals or contract determinations.

#### Sections 422.644 and 423.642—Notice of Contract Determination

We are proposing to make conforming changes to § 422.644(b)(2) and § 423.642(b)(2) as a result of the changes we are making to the immediate termination process. Consistent with the proposed revisions we have previously described, we propose to revise § 422.644(c) and § 423.642(c) to state that we would determine the effective date of an expedited termination. We also propose adding the reference § 422.510(a)(4) as a basis for which we may undertake an expedited termination.

We also propose to revise the provisions at § 422.644(d) and § 423.642(d) to conform to the proposed change previously described whereby we would provide notice of nonrenewal to MA organizations or Part D plan sponsors by September 1, rather than the current May 1. We welcome comments on the proposal to shift the date of the notice of nonrenewal from May 1 to September 1.

#### Sections 422.646 and 423.643—Effect of Contract Determination

We propose making conforming changes to the provisions at § 422.646 and § 423.643 to reflect our proposal to eliminate the reconsideration process. The current regulations state that a contract determination is final unless an MA organization or Part D plan sponsor requests reconsideration. Since we have proposed eliminating the reconsideration process, we are proposing a conforming change to indicate that a contract determination would be a final decision unless a timely request for a hearing is filed.

#### Sections 422.660 and 423.650—Right to a Hearing and Burden of Proof

We also propose making conforming changes to the provisions at § 422.660(a) and 423.650(a) to reflect our proposal to eliminate the reconsideration process. These provisions would then state that if we determine that an applicant is not qualified to enter into a contract with us and the applicant chooses to appeal the determination, a hearing before a CMS hearing officer would be the first step in the appeal process. We propose to make similar conforming changes to § 422.660(b) and § 423.650(b), to indicate that a hearing before a CMS hearing officer would be the first step in appealing a nonrenewal determination or a termination decision.

We propose to add a new provision at § 422.660(c) and at § 423.650(c) to clarify that the burden of proof would be on the MA organization or Part D plan sponsor at a hearing appealing a CMS contract determination. We believe case law supports our decision to place the burden of proof on the affected party in an administrative hearing on a contract determination involving a Part D plan sponsor or MA organization. The DAB has previously held that in a termination proceeding by the Secretary, the facility bears the ultimate burden of proving it is in compliance with program requirements. (See *Hillman Rehabilitation Center*, DAB No. 1611 (1990), *aff'd Hillman Rehabilitation Center v. United States*, No. 98–3789 (GEB)(D.N.J. May 13, 1999).) We require that MA

organizations and Part D sponsors are in compliance with our program requirements during the entire contract period. When we provide a notice of nonrenewal or termination, the basis for the notice is noncompliance with contractual and regulatory provisions. Once we have determined that the MA organization or Part D plan sponsor is out of compliance, the MA organization or Part D plan sponsor has the burden to prove it was in compliance. In addition, we also propose to specify that the MA organization or Part D plan sponsor must demonstrate substantial compliance with the relevant MA or Part D plan requirements as of the earliest of the following dates: (1) The date the organization or sponsor received written notice of the contract determination; (2) the date of the most recent on-site audit conducted as the basis of the termination; (3) or the date of the alleged breach of the current contract or past substantial noncompliance as determined by CMS. We welcome comments on these proposed changes.

Based on our experience with appeals of contract determinations, we have found the current regulations do not provide hearing officers with a particular “compliance date” to use as a reference point in issuing a ruling. This creates the potential for inconsistency in the decisions issued by hearing officers. We believe our proposal to provide a framework for hearing officers to use in establishing a compliance date as a reference point will lessen the potential for such inconsistency. By requiring the compliance date to be the earliest of the three possible dates, the hearing will reflect that circumstances may differ on a case by case basis. For example, where an onsite audit was conducted or where a significant breach occurred, we think it is appropriate for us to base our decision to terminate a plan's contract on the date of either the audit or the breach. However, where an onsite audit did not occur, or where the basis of our termination decision is not one major breach, we think it is appropriate to use the date we notified the MA organization or Part D sponsor of our intent to terminate as a reference point. Without a specific date as a reference point for evaluating compliance, the hearing officer lacks the information necessary to arrive at a determination. We welcome comments on these proposed changes.

#### Sections 422.662 and 423.651—Request for a Hearing

We propose to revise § 422.662(b) and § 423.651(b) to conform to our proposed

change to eliminate the reconsideration process. These provisions would specify that a request for a hearing must be filed within 15 days after the date of the initial determination.

**Sections 422.664 and 423.652—  
Postponement of Effective Date of a  
Contract Determination When a Request  
for a Hearing is Filed Timely**

We propose to revise § 422.664 and § 423.652 to postpone the effective date of a contract determination when an MA organization or Part D sponsor timely requests a hearing to appeal the contract determination. However, the postponement would not override the requirement that any final decision in favor of the plan or sponsor must be issued by July 15 for an initial contract to be effective for the upcoming year. Thus, if an organization's application is not approved and the hearing officer's decision is not provided until August, the applicant would not be able to have a contract for the next year. This is consistent with our current process. We do not currently postpone the effective date of termination in cases of immediate termination, and we are not proposing any change in policy with respect to expedited terminations.

**Sections 422.670 and 423.655—Time  
and Place of Hearing**

We propose revising § 422.670(a) and § 423.655(a), to require the hearing officer to send written notice to the parties specifying the general and specific issues to be resolved at the hearing, outlining the burden of proof and providing any information about the hearing procedures. In addition, the notice would inform the parties that they may conduct formal discovery.

**Sections 422.682 and 423.661—  
Discovery**

We propose revising § 422.682 and § 423.661, to clarify the scope of permissible discovery, and to require the hearing officer to conclude discovery and provide all documents to both the hearing officer and the opposing party at least 10 days prior to the hearing. It has been our experience that such a deadline, which is not set out in the existing regulations, is necessary to provide enough time for the parties or the hearing officer to review documents prior to the hearing. We welcome comments on these proposed changes.

**Sections 422.684 and 423.662—  
Prehearing and Summary Judgment**

We propose to amend the provisions at § 422.684 and § 423.662 (and revise the section heading accordingly) to

permit the hearing officer to rule on a motion for summary judgment filed by either of the parties to the hearing. In ruling on such a motion, we propose that the hearing officer would be bound by CMS regulations and general instructions. Where no factual dispute exists, the hearing officer may make a decision on the papers, without the need for a hearing. This would be more efficient and cost effective for both parties when no factual dispute exists. We welcome comments on these proposed changes.

**Sections 422.692 and 423.666—Review  
by the Administrator**

The existing regulations only explicitly permit Administrator review of a hearing officer's decision in appeals of a contract termination. We clarify that this review is available for all appeals of CMS contract terminations, including decisions not to contract with an applicant and nonrenewals.

We propose revising the provisions at § 422.692(a) and § 423.666(a) to allow us to request Administrator review of a hearing officer's decision regarding a contract determination. The existing regulations permit only the MA organization or Part D sponsor to request Administrator review. In addition, we propose to amend the same provisions to permit both the parties to submit written arguments to the Administrator.

We propose revising the provisions at § 422.692(b) and § 423.666(b), to permit the Administrator, upon receipt of a request for Administrator review, to accept or decline to review the hearing decision. The existing regulations require the Administrator to review the decision when a request for review is received. We believe that providing the Administrator with the discretion to accept or decline the request for review would lead to a more expeditious resolution of appeals of contract determinations.

We propose redesignating § 422.692(c) as § 422.692(e) and redesignating § 423.666(c) as § 423.666(e).

We propose adding a new § 422.692(c) and § 423.666(c), to require the Administrator to make a determination as to whether to accept or decline the request for review within 30 days of the request of the review. The failure of the Administrator to make a determination within 30 days of the request would be treated as a decision to decline the request for review. We believe that providing this timeline would assist all parties in reaching a final decision in an expeditious manner. We welcome comments on these proposed changes.

In addition, we propose amending our existing regulations to add a new paragraph at § 422.692(d) and § 423.666(d) which specifies that Administrator review is based on the hearing record and any written arguments submitted by the parties. However, review would not be based on any new evidence, such as evidence that was not before the hearing officer. We believe the specified sources provide a sufficient basis for the Administrator to make a determination.

If the Administrator declines to review the hearing officer's decision, the decision of the hearing officer would become final and binding.

**Sections 422.696 and 423.668—  
Reopening of Initial Contract  
Determination or Intermediate Sanction  
or Decision of a Hearing Officer of the  
Administrator**

We propose to revise the section headings for § 422.696 and § 423.668 from "Reopening of a contract or reconsidered determination or decision of a hearing officer or the Administrator" to "Reopening of an initial contract determination or decision of a hearing officer or the Administrator" to conform to our proposed elimination of the reconsideration process described above.

**Sections 422.698 and 423.669—Effect of  
Revised Determination**

We propose making a conforming change to reflect our proposed elimination of the reconsideration process by removing in its entirety § 422.698 and § 423.669, "Effect of revised determination."

**Subpart O—Intermediate Sanctions**

We are proposing several changes to our regulations in Subpart O—Intermediate Sanctions in 42 CFR Part 422 and 42 CFR Part 423, to clarify our policies and procedures for imposing intermediate sanctions and Civil Money Penalties (CMPs) on MA organizations and Part D sponsors. Specifically, we propose to modify the appeals procedures for intermediate sanctions and clarify which set of procedures affected parties should use to appeal a CMP. We are soliciting public comment on our proposed changes to subpart O.

**Sections 422.750 and 423.750—Types of  
Intermediate Sanctions and Civil  
Monetary Penalties**

We propose reorganizing § 422.750 and § 423.750, to distinguish the three different types of intermediate sanctions from CMPs. We also propose to clarify that each of the three intermediate

sanctions, (suspension of enrollment, suspension of payment, and suspension of marketing) would remain in effect until we are satisfied that the reasons for the initial suspensions have been corrected and are not likely to reoccur. This revision reflects our current policy and practice.

For clarity, we propose specifying at § 422.750(b) and § 423.750(b) that we may impose CMPs in the dollar amounts specified in § 422.760 and § 423.760. We propose to remove the prior reference at § 422.750(a)(1) and § 423.750(a)(1) to the range of CMPs because it is confusing.

#### Sections 422.752 and 423.752—Basis for Imposing Intermediate Sanctions and Civil Money Penalties

At § 422.752 and § 423.752, we are proposing to reorganize the regulation to clarify the breakdown of responsibility between CMS and the OIG for imposing intermediate sanctions and CMPs based on the type of violation involved. Specifically, we clarify that CMS may impose a suspension of enrollment, payment, or marketing on an MA organization or Part D sponsor for violations specified in § 422.752(a)(1) through (a)(8) and for violations specified in § 423.752(a)(1) through (a)(6).

As part of the reorganization to the regulation, we also are proposing to add a new § 422.752(c) and § 423.752(c), to clarify that in addition to the intermediate sanctions, we continue to have authority to impose CMPs for contract determinations made under § 422.510(a) and § 423.509(a). However, as specified in § 422.752(c)(2) and § 423.752(c)(2), OIG would continue to have sole authority to impose CMPs for any determinations concerning the MA organization or the Part D sponsor committing or participating in false, fraudulent, or abusive activities affecting the Medicare program, including the submission of false or fraudulent data, as stated in § 422.510(a)(4) and § 423.509(a)(4).

#### Sections 422.756 and 423.756—Procedures for Imposing Intermediate Sanctions and Civil Money Penalties

At § 422.756 and § 423.756 we propose to eliminate the existing informal reconsideration process used for review of a decision by CMS to impose an intermediate sanction, and allow an MA organization or Part D sponsor to proceed directly to a hearing, pursuant to the same procedures used to appeal contract determinations in Subpart N. (See § 422.660 through § 422.698 and § 423.650 through § 423.669.) We believe it would be more efficient and effective to allow the MA

organization or Part D sponsor to proceed to a hearing in appealing an intermediate sanction. We note that a request to appeal an intermediate sanction before a hearing officer does not delay the intermediate sanction from taking effect on the date specified in the sanction notice. We welcome comments on these proposed changes.

Because we propose to eliminate the informal reconsideration step, we propose that an MA organization or Part D sponsor have an opportunity to present information to us that may affect our decision to impose an intermediate sanction prior to the sanction taking effect. We recognize there may be occasions when we receive information that we previously did not have when making a decision to impose an intermediate sanction. Therefore, we propose that MA organizations and Part D sponsors have an opportunity to submit a written rebuttal statement as specified at § 422.756(a)(2) and § 423.756(a)(2), and to require the rebuttal statement be provided to us within ten (10) calendar days after the MA organization or sponsor receives notice of the intermediate sanction. The 10 calendar days begin the day after the notice of intermediate sanction is mailed to the plan. A notice of intermediate sanction is sent by overnight mail and by e-mail or fax.

In some cases we may decide to impose multiple sanctions, for example, contract termination, intermediate sanction, or CMP, against an MA organization or Part D sponsor. We propose to have the CMP appeal process go to an ALJ while the other actions such as an intermediate sanction or a termination go to a CMS hearing official. Although the same underlying conduct may be the basis for both actions we believe that the separate processes would result in more consistent decision making by hearing officers and ALJs.

#### Sections 422.758 and 423.758—Collection of Civil Money Penalties Imposed by CMS

At § 422.758 and § 423.758 we propose to revise the section heading “Maximum amount of civil money penalties imposed by CMS” to read “Collection of civil money penalties imposed by CMS.” In addition, we propose to revise § 422.758 and § 423.758. Specifically, we propose that we would initiate collection of the CMPs if the MA organization or Part D sponsor does not timely request a hearing, or if our decision to impose a CMP is upheld by an ALJ.

#### Sections 422.760 and 423.760—Determinations Regarding the Amount of Civil Money Penalties and Assessment Imposed by CMS

We propose redesignating the existing § 422.760 as § 422.764 and redesignating the existing § 423.760 as § 423.764 because in this rule we have made explicit which provisions of section 1128A of the Act apply to CMP appeals procedures in proposed subpart T in parts 422 and 423.

We propose adding a new § 422.760 and § 423.760 to clarify that we use the statutory factors in section 1128(A) of the Act in determining the appropriate amount of civil money penalties or assessments to impose on an MA organization or Part D sponsor. These factors, if applicable, include the nature of the conduct, the degree of culpability, the prior history of offenses, the financial condition of the MA organization or Medicare Part D sponsor presenting the claims, and other matters as fair administration may require. These factors are based on the same statutory factors used in other Medicare enforcement programs, including those in the nursing facility enforcement context.

We also propose to clarify in § 422.760(b) and § 423.760(b), the amounts that may be assessed for CMPs that we impose. We welcome comments on these proposed changes.

#### Sections 422.762 and 423.762—Settlement of Penalties

We propose to add a new § 422.762 and § 423.762 to clarify that in accordance with section 1128A(f) of the Act, we have the authority to settle CMPs imposed by us. This provision would make it explicit what the parties may agree to settle the dispute instead of litigating an appeal. We welcome comments on these proposed changes.

#### Sections 422.764 and 423.764—Other Applicable Provisions

We propose to redesignate § 422.760 and § 423.760 as § 422.764 and § 423.764 respectively to conform to the changes proposed at the new § 422.760 and § 423.760. No substantive changes to the text have been made.

#### Subpart T—Appeal Procedures for Civil Money Penalties

We propose to reserve subparts P, Q, R, and S in Part 422. In addition, we propose to add a new subpart T in Part 422 and Part 423, respectively. These new subparts would outline the CMP appeal procedures for MA organizations and Part D sponsors.

Our current MA and Part D regulations do not specify which

procedures an MA organization or Part D sponsor must use to appeal a CMS-imposed penalty under either of these two programs. The regulations at 42 CFR part 422.760 and 42 CFR part 423.760 state only that the provisions of section 1128A of the Act (except paragraphs (a) and (b)) apply to civil money penalties under this subpart to the same extent that they apply to a civil money penalty or procedure under section 1128A of the Act. Nor have we issued any guidance directing parties to the appropriate appeals procedures for MA and Part D CMPs.

Therefore, to ensure a consistent approach in this area, we are proposing incorporating appeals procedures for parties to use when appealing a CMP imposed under the MA or Part D program in a new subpart T in Parts 422 and 423 respectively.

Based on certain statutory requirements and policy considerations, we are proposing to adopt CMP appeals procedures almost identical to those in part 498 of Title 42, which are used by certain Medicare providers and suppliers to challenge adverse agency enforcement decisions. Part 498 sets forth the rules for administrative and judicial review of CMS determinations that affect participation in the Medicare and Medicaid programs for a wide array of medical providers of services. These rules, issued on June 12, 1987 (52 FR 22446), have been used by CMS for almost 20 years and provide established appeals procedures for various types of adverse agency determinations, including civil money penalties imposed on nursing facilities. We welcome comments on the proposed changes to adopt most aspects of 42 CFR 498 into the 42 CFR 422 and 42 CFR 423 proposed regulations.

The statute authorizing CMPs in the MA and Part D programs require the provisions of section 1128A of the Act, (except for subsection (a) and (b)), to apply to MA and Part D CMP proceedings, in the “same manner” as such provisions apply to other CMPs imposed under section 1128A. (See section 1857(g)(4) of the Act.) CMPs imposed on nursing facilities are also authorized under section 1128A of the Act. (See section 1819(h)(2)(B)(ii) of the Act (SNFs) and section 1919(h)(3)(C)(ii) of the Act (NFs), which state that “[t]he provisions of the section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty[] in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).”) Based on this common statutory basis, we believe using the Part 498 procedures to hear CMP appeals in

the MA and Part D programs is consistent with Congress’ intent.

We also believe that relying on Part 498 appeals procedures for CMP appeals in the MA and Part D programs make sense for policy reasons. We have substantial experience using these procedures and they provide an established infrastructure and well-vetted process for hearing CMP appeals. The bases on which we may impose CMP in the MA and Part D programs are also somewhat similar to those used in the nursing facility context. For example, CMPs can be imposed on MA organization and Part D sponsors for a wide range of regulatory and/or contractual violations, which may be brought to the agency’s attention based on audit findings. We believe the part 498 appeals procedures are the most appropriate procedures to use for hearing disputes involving a wide range of violations. We welcome your comments on our proposal to adopt the part 498 procedures as our CMP appeals procedures.

While the statute authorizing CMPs in the MA and Part D programs requires the provisions of section 1128A of the Act, (except for subsections (a) and (b)), to apply to MA and Part D CMP proceedings, it does not require that section 1128A’s provisions apply to other CMP appeals procedures in the exact same manner, or without some consideration for the MA or Part D program’s unique characteristics. In fact, section 1857(g)’s “same manner” language appears throughout the Act and serves as the statutory basis for several different types of CMP enforcement and appeals procedures. In the past, we have used our discretion to tailor certain hearing procedures to the particular type when developing other CMP appeals proceedings. Since the MA and Part D programs differ from the nursing facility program, we are proposing modifying certain sections of part 498 to take into account some of these differences.

For example, we have proposed removing the reconsideration step in the MA and Part D CMP appeals procedures since this step in part 498 only applies to initial determinations made for prospective providers entering the Medicare or Medicaid program and is not applicable to CMP appeals. Removing the reconsideration step in subpart T would also help expedite the CMP appeals process.

Since it is not clearly stated in part 498’s regulations, we are proposing to make explicit in our regulations that in a hearing of a CMP appeal before an ALJ or the Departmental Appeals Board (DAB), the ultimate burden of

persuasion would rest on the MA organization or Part D sponsor. The DAB has previously held that in a provider termination proceeding by the Secretary, the facility bears the ultimate burden of proving it is in compliance with program requirements. (See *Hillman Rehabilitation Center*, DAB No. 1611 (1990), aff’d *Hillman Rehabilitation Center v. United States*, No. 98–3789 (GEB) (D.N.J. May 13, 1999).) The DAB has also held that the same allocation of the burden of proof is appropriate where a CMP has been imposed on a nursing facility participating in Medicare. (See *Batavia Nursing and Convalescent Center*, DAB No. 1904 (2004).) We believe the administrative caselaw supports our decision to place the burden of proof on the affected party in an administrative hearing on the imposition of MA and Part D CMPs. As discussed above, noncompliance with requirements for MA and Part D organizations who participate in Medicare is analogous to noncompliance by providers (including nursing facilities) who participate in the program. Moreover, like the providers in the cited cases, an MA or Part D organization is party in possession of the most complete evidence of the state of its compliance. Thus, placing the ultimate burden of persuasion on the organization is fair.

### III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The following information collection requirements included in this proposed rule and their associated burdens are subject to the PRA.

We are soliciting public comment on each of the issues for the following sections of this document that contain

information collection requirements and are not currently approved by the OMB.

#### *Section 422.503 General Provisions*

Sections 422.503(b)(4)(vi)(C) and (b)(4)(vi)(D) require a MA organization to have a compliance plan, which includes measures to detect, correct, and prevent fraud, waste, and abuse. The compliance plan shall include effective training and education between the compliance officer and the MA organization's employees, managers and directors, the MA organization's first tier, downstream, and related entities; and, effective lines of communication between the compliance officer, members of the compliance committee, the MA organization's employees, managers and directors, and the MA organization's first tier, downstream, and related entities.

The burden associated with this requirement is the time and effort put forth by the MA organization to prepare a compliance plan that meets the requirements of this section. While this requirement is subject to the PRA, it is currently approved under OMB #0938–1004.

Section 422.503(b)(4)(vi)(G)(3) would require a MA organization to have procedures in place for mandatory self-reporting of potential fraud or misconduct related to the MA program to the appropriate government authority. The MA organization would be required to report potential fraud or misconduct related to the MA program to the appropriate government authority.

The burden associated with this requirement is the time and effort put forth by the MA organization to implement procedures for mandatory self-reporting. We estimate it would take one MA organization 40 hours to fulfill this requirement. The total number of MA organizations affected by this requirement is 393. The total one-time burden for this requirement would be 15,720 hours. We cannot anticipate how many plans will need to report any potentially fraudulent activities to CMS. However, based on historical evidence, we believe that less than 10 MA organizations would be required to self-report potential fraud or misconduct related to the MA program. While this burden is subject to the PRA, we expect that less than 10 entities will be affected. Therefore, we believe these collection requirements are exempt as specified at 5 CFR 1320.3(c)(4).

#### *Section 422.504 Contract Provisions*

Section 422.504(e)(2) requires MA organizations to agree to allow HHS, the Comptroller General, or their designees

to audit, evaluate, or inspect any books, contracts, medical records, patient care documentation, and other records of the MA organization, its first tier, downstream, related entity, or its transferee that pertain to any aspect of services performed, reconciliation of benefit liabilities, and determination of amounts payable under the contract, or as the Secretary may deem necessary to enforce the contract.

The burden associated with this requirement is the time and effort put forth by the MA organization to maintain appropriate records and documentation. While this requirement is subject to the PRA, it is currently approved under OMB #0938–1004.

Section 422.504(i)(2) requires the MA organization to require all first tier, downstream, and related entities to agree that HHS, the Comptroller General, or their designees have the right to inspect, evaluate, and audit any pertinent contracts, books, documents, papers, and records of the first tier, downstream, and related entities involving transactions related to CMS' contract with the MA organization.

The burden associated with this requirement is the time and effort put forth by the MA organization's first tier, downstream, and related entities to maintain appropriate records and documentation. While the burden associated with this requirement is subject to the PRA, it is currently approved under OMB #0938–1004.

#### *Section 422.505 Effective Date and Term of Contract*

Section 422.505(c) requires MA organizations who wish not to renew their contract to submit a notice of intent to CMS.

The burden associated with this requirement is the time and effort put forth by the MA organization to prepare the notice and submit it to CMS. While this requirement is subject to the PRA, it is currently approved under OMB #0938–0753.

#### *Section 422.506 Nonrenewal of Contract*

Section 422.506 requires an MA organization to develop and submit a CAP to correct the deficiencies that are the basis of the termination decision. The MA organization must submit the CAP within 45 days of receiving notice of termination.

The burden associated with this requirement is the time and effort it would take for the MA organization to develop and submit a CAP. While this requirement is subject to the PRA, we expect less than 10 entities will be affected; therefore, we believe these

collection requirements are exempt as specified at 5 CFR 1320.3(c)(4).

#### *Section 423.504 General Provisions*

Sections 423.504(b)(4)(vi)(C) and (b)(4)(vi)(D) require Part D Sponsors to have a compliance plan, which includes measures to detect, correct, and prevent fraud, waste, and abuse. The compliance plan shall include effective training and education between the compliance officer and the Part D sponsor's employees, managers and directors, and the Part D plan sponsor's first tier, downstream, and related entities; and effective lines of communication between the compliance officer, members of the compliance committee, the Part D sponsor's employees, managers and directors, and the Part D sponsor's first tier, downstream, and related entities.

The burden associated with this requirement is the time and effort put forth by the Part D sponsor to prepare a compliance plan that meets the requirements of this section. While this requirement is subject to the PRA, it is currently approved under OMB #0938–1000.

Section 423.504(b)(4)(vi)(G)(3) would require a Part D sponsor to have procedures in place for mandatory self-reporting of potential fraud or misconduct related to the Part D program to the appropriate government authority. The Part D sponsor would be required to report potential fraud or misconduct related to the Part D program to the appropriate government authority.

The burden associated with this requirement is the time and effort put forth by the Part D sponsor to implement procedures for mandatory self-reporting. We estimate it would take one Part D sponsor 40 hours annually to fulfill this requirement. The total number of Part D sponsors affected by this requirement is 91. The total one-time burden would be 3,640 hours. We cannot anticipate how many plans will need to report any potentially fraudulent activities to CMS. However, in the event a Part D sponsor needed to self-report potential fraud or misconduct related to the Part D sponsor the total burden would be 5 hours annually. If every sponsor had to report potential fraud or misconduct, the total burden would be 455 annual hours.

#### *Section 423.505 Contract Provisions*

Section 423.505(e)(2) requires Part D sponsors to make available its premises, physical facilities, equipment, and records that relate to its Medicare enrollees, and any additional relevant

information that CMS may require. The Part D sponsor also agrees to make available any books, contracts, medical records, patient care documentation, and other records of the Part D sponsor, first tier, downstream and related entity(s), or its transferee.

The burden associated with this requirement is the time and effort put forth by the Part D sponsor to make available records that relate to its Medicare enrollees. The burden associated with this requirement is currently approved under OMB #0938–1000.

Section 423.505(i)(2) requires the Part D sponsor to require all first tier, downstream, and related entities to agree that HHS, the Comptroller General, or their designees have the right to inspect, evaluate, and audit any pertinent contracts, books, documents, papers, and records of the first tier, downstream, and related entities involving transactions related to CMS' contract with the Part D sponsor.

The burden associated with this requirement is the time and effort put forth by the Part D sponsor's first tier, downstream, and related entities to maintain appropriate records and documentation. While this requirement is subject to the PRA, it is currently approved under OMB #0938–1000. However, we have prepared the following analysis of the costs and burden associated with our proposal to require sponsors to include a provision in their contracts requiring their first tier and downstream entities to produce or make available their books and records.

In the January 28, 2005 final rule that implemented the Medicare Prescription

Drug Program (70 FR 4194), we noted that "The administrative cost estimates are based on taking into account the normal fixed costs associated with administering a prescription drug benefit, for example, such functions as claims processing, responding to customer inquiries, information, dissemination, appeals processes, pharmacy network negotiations, and contracting. The other factor taken into account when developing our estimate is that Prescription Drug Plans (PDPs) and Medicare Advantage Prescription Drug Plans (MA-PDs) will likely incur slightly higher administrative costs during the initial few years of the Part D benefit due to start-up costs related to implementation and initial operation for a new benefit." The narrative explains that the average administrative costs associated with insurance products are typically expressed as a percentage relative to net standard benefit expenses and that the administrative load is expected to decline slightly over time. For purposes of this analysis, the impact is presented in burden hours and broken out into requests for purposes of:

1. Provision in Contracts;
2. BI Audit; and
3. Investigation of complaints.

#### 1. Provision in contracts

Ultimately, this additional provision would have to be discussed like all other provisions of a contract between a Part D sponsor and its first tier, downstream, and related entities. Since we have the authority to request this information and the Part D sponsor has attested to providing this data, we do not believe that this issue would be contentious or constitute negotiation

discussion. We believe that, at the most, this provision would require 1 hour of attorney time to draft and discuss the provision.

#### 2. BI Audit

Currently, there are a total of 650 Part D contracts (90 of those contracts represent PDPs and the remainder, 560 contracts, represents MA-PDs and employer groups). A further breakdown of those numbers out to the plan level would be: 4,927 total MA-PDs and PDP plans (including employer groups). We note that if employer groups are excluded, the actual number drops to 4,191.

Based on this information, it is believed that 16 percent of the plans will be audited during the course of a contract year. Of the plans audited, it is estimated that approximately 10 percent of the plans will be required to produce evidence or other supporting documentation related to "first tier, downstream and other related entities." It is further asserted that the labor hours required to produce the required documentation for those entities would be estimated at 10 hours per plan. Therefore, based on the number of Part D plans, the percentage of organizations that might be required to produce documentation for "first tier, downstream, and other related entities" and the number of labor hours required to produce this documentation we expect that the total impact would be 140 hours in administrative costs. The following table summarizes our calculation of the burden estimate for Part D plans:

|                                                                                                                                                      |     |
|------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Total number of Part D plans (PDP, MA-PD & Employer Groups) .....                                                                                    | 650 |
| Percentage of plans to be audited (16%) .....                                                                                                        | 104 |
| Percentage of plans audited that would be required to produce additional documentation for "first tier, downstream and related entities" (10%) ..... | 10  |
| Burden hours required to assemble documentation and submit to CMS (10 hours/plan) .....                                                              | 100 |

3. Investigation of complaints  
Based on the past 18 months, we assume that investigation of complaints

that require contacting a Part D plan to request documentation from first tier, downstream, and related entities would

be approximately six instances. In the following table, we show our estimate of burden hours for downstream entities:

|                                                                                                                                                                            |         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| Total number of Part D plans (PDP, MA-PD & Employer Groups) .....                                                                                                          | 650     |
| Percentage of plans to be audited (16%) .....                                                                                                                              | 104     |
| Percentage of plans audited that would be required to produce additional documentation for "first tier, downstream and related entities" (10%) .....                       | 10      |
| Average number of "downstream entities" (e.g. pharmacy network):                                                                                                           |         |
| Retail .....                                                                                                                                                               | 55,000  |
| Mail Order .....                                                                                                                                                           | 1       |
| Home Infusion .....                                                                                                                                                        | 150     |
| Long Term Care .....                                                                                                                                                       | 593     |
| I/T/U .....                                                                                                                                                                | 329     |
| Total burden hours required for downstream entities to assemble and submit documentation to the Part D organizations (hours/organization) at 3 hrs/downstream entity ..... | 166,440 |

**Section 423.506 Effective Date and Term of Contract**

This section states that an entity is determined qualified to renew its contract annually only if the Part D sponsor has not provided CMS with a notice of intention not to renew and CMS has not provided the Part D sponsor with a notice of intention not to renew.

The burden associated with this requirement is the time and effort put forth by the Part D sponsor to prepare a notice of intent not to renew and

submit it to CMS. While this requirement is subject to the PRA, it is currently approved under OMB #0938–0964.

**Section 423.507 Nonrenewal of Contract**

Section 423.507 requires a Part D Plan Sponsor to develop and submit a corrective action plan (CAP) to correct the deficiencies that are the basis of the termination decision. The Part D Sponsor must submit the CAP within 45 days of receiving notice of termination.

The burden associated with this requirement is the time and effort it would take for the Part D Sponsor to develop and submit a CAP. While this requirement is subject to the PRA, we expect less than 10 entities will be affected; therefore, we believe these collection requirements are exempt as specified at 5 CFR 1320.3(c)(4).

As reflected in the table that follows, the aggregate annual burden associated with the collection of information section totals 73,236 hours.

| OMB No.                           | Requirements                                                            | Number of respondents | Burden hours        | Total annual burden                                               |
|-----------------------------------|-------------------------------------------------------------------------|-----------------------|---------------------|-------------------------------------------------------------------|
| 0938–1004 .....                   | 422.503(b)(4)(vi)(C) and (b)(4)(vi)(D), 422.504(e)(2) & 422.504(i)(2).  | 393 .....             | 96 hours .....      | 12,576 hours (based on 131 responses per year).                   |
| None-requesting OMB approval .... | 422.503(b)(4)(vi)(G)(3) .....                                           | 393 .....             | 40 hours .....      | 15,720 hours (based on every plan reporting fraud or misconduct). |
| 0938–0753 .....                   | 422.505(c) .....                                                        | 5–10 .....            | 2 hours per notice. | 20 hours (estimated using 10 respondents).                        |
| None/Exempt .....                 | 422.506 .....                                                           | Less than 10 ....     | N/A .....           | N/A.                                                              |
| 0938–1000* .....                  | 423.504(b)(4)(vi)(C) and (b)(4)(vi)(D), 423.505(e)(2), & 423.505(i)(2). | 430 .....             | 96 hours .....      | 41,280 hours.                                                     |
| None-requesting OMB approval .... | 423.504(b)(4)(vi)(G)(3) .....                                           | 91 .....              | 40 hours .....      | 3,640 hours.                                                      |
| Exemption mentioned in 0938–0964. | 423.506 .....                                                           | Less than 10 ....     | N/A .....           | N/A.                                                              |
| None/Exempt .....                 | 423.507 .....                                                           | Less than 10 ....     | N/A .....           | N/A.                                                              |
| Total Annual Burden .....         | .....                                                                   | .....                 | .....               | 73,236 hours.                                                     |

\*This package will be revised to reflect new respondent numbers & annual burden, which are previously discussed in this section (166,440 hours). The total annual burden of 73,236 hours includes 19,360 new hours, which added to 166,440 gives a total new burden of 185,800 hours which have not previously been approved.

If you comment on any of these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Attn.: Melissa Musotto, CMS–4124–P, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Carolyn Lovett, CMS Desk Officer, (CMS–4124–P), carolyn\_lovett@omb.eop.gov. Fax (202) 395–6974.

**IV. Response to Comments**

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed

with a subsequent document, we will respond to the comments in the preamble to that document.

**V. Regulatory Impact Statement**

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule. The provisions of this proposed rule would require MA

and Part D sponsors to spend a total of approximately 186,000 additional hours on the functions addressed in this proposed rule. This includes our reestimates of burden. The details behind these estimates are presented in the preceding Paperwork Reduction Act section.

Assuming an average cost to plans and downstream entities of \$37.50 an hour for staff time spent on auditing and related functions covered by this proposed rule, the total net incremental cost of this proposal would be approximately \$7 million (\$37.50 × 185,000 hours), far below the \$100 million threshold for a major rule. This cost would be spread more or less evenly across participating plans, and hence would impose negligible burden on any plan in relation to existing administrative costs.

In the Regulatory Impact Analysis of the January 28, 2005 final rule that implemented the Medicare Prescription Drug Program (70 FR 4194), we noted that “The administrative cost estimates are based on taking into account the normal fixed costs associated with administering a prescription drug

benefit, for example, such functions as claims processing, responding to customer inquiries, information, dissemination, appeals processes, pharmacy network negotiations, and contracting.” This estimate included audit and related costs. The estimate was that administrative costs would constitute about one tenth of the cost of the program, or about \$5 billion a year. (Similar estimates were prepared for the Medicare Advantage program’s final rule.) Accordingly, the estimated cost of this proposed rule adds negligibly to the total administrative costs of these programs.

With respect to economic benefits, we have no reliable basis for estimating the effects of these proposals. It is important to understand that MA and Part D sponsors—not the government—bear the direct consequences of all their program costs, including unnecessary costs created by downstream entities. These plans are paid on a capitated basis and the amounts paid are not adjusted for realized costs. Hence, these plans already have strong incentives to prevent all forms of waste, including fraud and abuse. Accordingly, we estimate the benefits of these proposals as likely to be small, though larger than the costs involved. These benefits will accrue primarily to the plans themselves and, over time, to the participants who pay lower premiums as a result of plans’ cost-reducing incentives.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. Individuals and States are not included in the definition of a small entity. As explained above, this proposed rule will not impose consequential costs on affected entities. Accordingly, we have determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, and are not preparing an initial regulatory flexibility analysis.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has

fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$120 million. This rule will have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

#### List of Subjects

##### 42 CFR Part 422

Administrative practice and procedure, Grant programs—health, Health care, Health insurance, Health maintenance organizations (HMO), Loan programs—health, Medicare, Reporting and recordkeeping requirements.

##### 42 CFR Part 423

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services would amend 42 CFR chapter IV as set forth below:

#### PART 422—MEDICARE ADVANTAGE PROGRAM

1. The authority citation for part 422 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

##### Subpart A—General Provisions

2. Section 422.2 is amended by adding the definitions “Downstream entity”, “First tier entity”, and “Related entity” to read as follows:

##### § 422.2 Definitions.

\* \* \* \* \*

*Downstream entity* means any party that enters into a written arrangement, acceptable to CMS, below the level of

the arrangement between an MA organization (or applicant) and a first tier entity. These written arrangements continue down to the level of the ultimate provider of both health and administrative services.

*First tier entity* means any party that enters into a written arrangement, acceptable to CMS, with an MA organization or applicant to provide administrative services or health care services for a Medicare eligible individual under the MA program.

\* \* \* \* \*

*Related entity* means any entity that is related to the MA organization by common ownership or control and

(1) Performs some of the MA organization’s management functions under contract or delegation;

(2) Furnishes services to Medicare enrollees under an oral or written agreement; or

(3) Leases real property or sells materials to the MA organization at a cost of more than \$2,500 during a contract period.

\* \* \* \* \*

#### Subpart K—Contracts With Medicare Advantage Organizations

3. Amend § 422.503 by—

A. Revising paragraph (b)(4)(vi) introductory text.

B. Revising paragraphs (b)(4)(vi)(C) and (b)(4)(vi)(D).

C. Adding paragraph (b)(4)(vi)(G)(3)

D. Removing paragraph (b)(4)(vi)(H).  
The revisions and additions read as follows:

##### § 422.503 General provisions.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(vi) A compliance plan, which must include measures to detect, correct, and prevent fraud, waste, and abuse, shall include the following elements:

\* \* \* \* \*

(C) Effective training and education between the compliance officer and the MA organization’s employees, managers and directors, and the MA organization’s first tier, downstream, and related entities.

(D) Effective lines of communication between the compliance officer, members of the compliance committee, the MA organization’s employees, managers and directors, and the MA organization’s first tier, downstream, and related entities.

\* \* \* \* \*

(G) \* \* \*

(3) The MA organization must have procedures for mandatory self-reporting of potential fraud or misconduct related

to the MA program to the appropriate government authority. The MA organization is required to report potential fraud or misconduct related to the MA program to the appropriate government authority.

\* \* \* \* \*

4. Amend § 422.504 by—

A. Republishing paragraph (e) introductory text.

B. Revising paragraph (e)(1) introductory text

C. Revising paragraph (i) introductory text and (i)(1).

D. Revising paragraph (i)(2) introductory text.

E. Revising paragraph (i)(2)(ii).

F. Revising paragraph (i)(3) introductory text.

G. Revising paragraph (i)(3)(ii).

H. Revising paragraph (i)(3)(iii)

I. Revising paragraph (i)(4) introductory text.

The revisions and additions read as follows:

#### § 422.504 Contract provisions.

\* \* \* \* \*

(e) *Access to facilities and records.* The MA organization agrees to the following:

(1) HHS, the Comptroller General, or their designee may evaluate, through inspection, audit, or other means—

\* \* \* \* \*

(2) HHS, the Comptroller General, or their designees may audit, evaluate, or inspect any books, contracts, medical records, patient care documentation, and other records of the MA organization, its first tier, downstream, related entity, or its transferee that pertain to any aspect of services performed, reconciliation of benefit liabilities, and determination of amounts payable under the contract, or as the Secretary may deem necessary to enforce the contract.

\* \* \* \* \*

(i) *MA organization relationship with first tier, downstream, and related entities.* (1) Notwithstanding any relationship(s) that the MA organization may have with first tier, downstream, and related entities, the MA organization maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of its contract with CMS.

(2) The MA organization agrees to require all first tier, downstream, and related entities to agree that—

(i) HHS, the Comptroller General, or their designees have the right to inspect, evaluate, and audit any pertinent contracts, books, documents, papers, and records of the first tier,

downstream, and related entities involving transactions related to CMS' contract with the MA organization.

\* \* \* \* \*

(3) All contracts or written arrangements between MA organizations and providers, related entities, first tier and downstream entities must contain the following:

\* \* \* \* \*

(ii) Accountability provisions that indicate that the MA organization may only delegate activities or functions to a provider, first tier, downstream, or related entity, in a manner consistent with the requirements set forth at paragraph (i)(4) of this section.

(iii) A provision requiring that any services or other activity performed by a related entity, first-tier, or downstream entity in accordance with a contract or written agreement are consistent and comply with the MA organization's contractual obligations.

(4) If any of the MA organizations' activities or responsibilities under its contract with CMS are delegated to other parties, the following requirements apply to any provider or first tier, downstream and related entity:

\* \* \* \* \*

5. Amend § 422.505 by revising paragraph (c) to read as follows:

#### § 422.505 Effective date and term of contract.

\* \* \* \* \*

(c) *Renewal of contract.* In accordance with § 422.506, contracts are renewed annually only if the MA organization has not provided CMS with a notice of intention not to renew and CMS has not provided the MA organization with a notice of intention not to renew.

\* \* \* \* \*

6. Amend § 422.506 by—

A. Revising paragraph (b)(2) introductory text.

B. Revising paragraph (b)(2)(i).

C. Redesignating paragraph (b)(3) as (b)(4).

D. Adding a new paragraph (b)(3).

The revisions and additions read as follows:

#### § 422.506 Nonrenewal of contract.

\* \* \* \* \*

(b) \* \* \*

(2) *Notice of non-renewal.* CMS provides notice of its decision not to authorize renewal of a contract as follows:

(i) To the MA organization by September 1 of the contract year.

\* \* \* \* \*

(3) *Corrective action plan.* (i) Before nonrenewing a contract, CMS will provide the MA organization with a

reasonable opportunity to develop and submit a corrective action plan (CAP).

(ii) The MA organization must develop and submit the CAP within 45 days of receiving a request for a CAP.

(iii) If CMS determines the CAP is unacceptable, CMS will provide the MA organization with an additional 30 days to submit a revised CAP.

(iv) If CMS determines the CAP is acceptable, CMS will notify the MA organization of a deadline by which the CAP must be fully implemented. CMS has sole discretion on whether the CAP is fully implemented.

(v) Failure to develop and implement a CAP within the timeframes specified in paragraphs (3)(i) through (3)(iii) of this section may result in the nonrenewal of the MA contract.

\* \* \* \* \*

7. Amend § 422.510 by—

A. Republishing paragraph (a) introductory text.

B. Revising paragraph (a)(1).

C. Revising paragraph (b) introductory text.

D. Revising paragraph (b)(2) heading.

E. Revising paragraph (b)(2)(i).

F. Revising paragraph (c).

The revisions read as follows:

#### § 422.510 Termination of contract by CMS.

(a) *Termination by CMS.* CMS may terminate a contract for any of the following reasons:

(1) The MA organization has failed substantially to carry out the terms of—

(i) Its current contract term with CMS, or

(ii) Its contract with CMS from the preceding contract term.

\* \* \* \* \*

(b) *Notice.* If CMS decides to terminate a contract for reasons other than the grounds specified in § 422.510(a)(4) or § 422.510(a)(5), it gives notice of the termination as follows:

\* \* \* \* \*

(2) *Expedited termination of contract by CMS.* (i) For terminations based on violations prescribed in § 422.510(a)(4) or § 422.510(a)(5), CMS notifies the MA organization in writing that its contract will be terminated on a date specified by CMS. If termination is effective in the middle of a month, CMS has the right to recover the prorated share of the capitation payments made to the MA organization covering the period of the month following the contract termination.

\* \* \* \* \*

(c) *Corrective action plan.*—(1) *General.* Before terminating a contract for reasons other than the grounds specified in paragraphs (a)(4) or (a)(5) of

this section, CMS will provide the MA organization with a reasonable opportunity to develop and submit a corrective action plan (CAP).

(i) The MA organization must develop and submit the CAP within 45 days of receiving a request for a CAP.

(ii) If CMS determines the CAP is unacceptable, CMS will provide the MA organization with an additional 30 days to submit a revised CAP.

(iii) If CMS determines the CAP is acceptable, CMS will notify the MA organization of a deadline by which the CAP must be fully implemented. CMS has sole discretion on whether the CAP is fully implemented.

(iv) Failure to develop and implement a CAP within the timeframes specified in paragraphs (c)(1)(i) through (c)(1)(iii) may result in the termination of the MA contract.

(2) *Exceptions.* If a contract is terminated under § 422.510(a)(4) or § 422.510(a)(5), the MA organization will not have the opportunity to submit a CAP.

\* \* \* \* \*

#### Subpart N—Medicare Contract Determinations and Appeals

8. Amend § 422.644 by—

A. Republishing paragraph (b) introductory text.

B. Revising paragraph (b)(2).

C. Revising paragraph (c).

D. Revising paragraph (d).

The revisions read as follows:

#### § 422.644 Notice of contract determination.

\* \* \* \* \*

(b) The notice specifies—

(1) \* \* \*

(2) The MA organization's right to request a hearing.

(c) For CMS-initiated terminations, CMS mails notice to the MA organization 90 days before the anticipated effective date of the termination. For terminations based on determinations described at § 422.510(a)(4) or § 422.510(a)(5) CMS notifies the MA organization of the date that it will terminate the organization's MA contract.

(d) When CMS determines that it will not authorize a contract renewal, CMS mails the notice to the MA organization by September 1 of the current contract year.

9. Section 422.646 is revised to read as follows:

#### § 422.646 Effect of contract determination.

The contract determination is final and binding unless a timely request for a hearing is filed under § 422.662.

#### § 422.648 [Removed]

10. Section 422.648 is removed.

#### § 422.650 [Removed]

11. Section 422.650 is removed.

#### § 422.652 [Removed]

12. Section 422.652 is removed.

#### § 422.654 [Removed]

13. Section 422.654 is removed.

#### § 422.656 [Removed]

14. Section 422.656 is removed.

#### § 422.658 [Removed]

15. Section 422.658 is removed.

16. Revise § 422.660 to read as follows:

#### § 422.660 Right to a hearing and burden of proof.

(a) The following parties are entitled to a hearing:

(1) A contract applicant that has been determined to be unqualified to enter into a contract with CMS under Part C of Title XVIII of the Act pursuant to § 422.501.

(2) An MA organization whose contract has been terminated pursuant to § 422.510.

(3) An MA organization whose contract has not been renewed pursuant to § 422.506.

(4) An MA organization who has had an intermediate sanction imposed pursuant to § 422.752(a) through (b).

(b) The MA organization bears the burden of proof to demonstrate that it was in substantial compliance with the requirements of the MA program on the earliest of the following three dates:

(1) The date the organization received written notice of the contract determination or intermediate sanction.

(2) The date of the most recent on-site audit conducted by CMS.

(3) The date of the alleged breach of the current contract or past substantial noncompliance as determined by CMS.

(c) Notice of any decision favorable to the MA organization appealing a determination that it is not qualified to enter into a contract with CMS must be issued by July 15 for the contract in question to be effective on January 1 of the following year.

17. Amend § 422.662 by revising paragraph (b) to read as follows:

#### § 422.662 Request for hearing.

\* \* \* \* \*

(b) *Time for filing a request.* A request for a hearing must be filed within 15 days from the date CMS notifies the MA organization of its determination.

\* \* \* \* \*

18. Revise § 422.664 to read as follows:

#### § 422.664 Postponement of effective date of a contract determination when a request for a hearing is filed timely.

(a) *Hearing.* When a request for a hearing is timely filed, CMS will postpone the proposed effective date of the contract determination listed at § 422.641 until a hearing decision is reached and affirmed by the Administrator following review according to § 422.692 in instances where an MA organization or CMS requests Administrator review and the Administrator accepts the matter for review.

(b) *Exceptions:* (1) If a final decision is not reached on CMS' determination for an initial contract by July 15, CMS will not enter into a contract with the applicant for the following year.

(2) A contract terminated in accordance with § 422.510(a)(4) or § 422.510(a)(5) will be terminated on the date specified by CMS and will not be postponed if a hearing is requested.

19. Amend § 422.670 by revising paragraph (a) to read as follows:

#### § 422.670 Time and place of hearing.

(a) The hearing officer fixes a time and place for the hearing, which is not to exceed 30 days from the receipt of request for the hearing, and sends written notice to the parties. The notice informs the parties of—

(1) The general and specific issues to be resolved, the burden of proof, and information about the hearing procedure, and

(2) The ability to conduct formal discovery.

\* \* \* \* \*

20. Revise § 422.682 to read as follows:

#### § 422.682 Discovery.

(a) Either party may make a request to another party for the production of documents for inspection and copying which are relevant and material to the issues before the hearing officer.

(b) The hearing officer will provide the parties with a reasonable time for inspection and reproduction of documents, provided that discovery is concluded at least 10 calendar days prior to the hearing.

(c) The hearing officer's order on discovery matters is final.

21. Revise § 422.684 to read as follows:

#### § 422.684 Prehearing and summary judgment.

(a) *Prehearing.* The hearing officer may schedule a prehearing conference if he or she believes that a conference would more clearly define the issues.

(b) *Summary judgment.* Either party to the hearing may ask the hearing

officer to rule on a motion for summary judgment.

22. Amend § 422.692 by—  
 A. Revising paragraph (a).  
 B. Revising paragraph (b).  
 C. Redesignating paragraph (c) as paragraph (e).  
 D. Adding a new paragraph (c).  
 E. Adding a new paragraph (d).

The revisions and additions read as follows:

**§ 422.692 Review by Administrator.**

(a) *Request for review by Administrator.* CMS or an MA organization that has received a hearing decision regarding a contract determination may request review by the Administrator within 15 calendar days of receiving the hearing decision as provided under § 422.690(b). Both the MA organization and CMS may provide written arguments to the Administrator for review.

(b) *Decision to review the hearing decision.* After receiving a request for review, the Administrator has the discretion to elect to review the hearing decision in accordance with paragraph (d) of this section or to decline to review the hearing decision.

(c) *Notification of Administrator determination.* The Administrator notifies both parties of his or her determination regarding review of the hearing decision within 30 days of receiving the request for review. If the Administrator declines to review the hearing decision or the Administrator does not make a determination regarding review within 30 days, the decision of the hearing officer is final.

(d) *Review by the Administrator.* If the Administrator elects to review the hearing decision regarding a contract determination, the Administrator shall review the hearing officer's decision and determine, based upon this decision, the hearing record, and any written arguments submitted by the MA organization or CMS, whether the determination should be upheld, reversed, or modified.

\* \* \* \* \*

23. Amend § 422.696 by—  
 A. Revising the section heading.  
 B. Revising paragraph (a).  
 The revisions read as follows:

**§ 422.696 Reopening of an initial contract determination or decision of a hearing officer or the Administrator.**

(a) *Initial determination.* CMS may reopen and revise an initial determination upon its own motion.

\* \* \* \* \*

**§ 422.698 [Removed]**

24. Section 422.698 is removed.

**Subpart O—Intermediate Sanctions**

25. Revise § 422.750 to read as follows:

**§ 422.750 Types of intermediate sanctions and civil money penalties.**

(a) The following intermediate sanctions may be imposed and will continue in effect until CMS is satisfied that the deficiency on which the determination was based has been corrected and is not likely to reoccur:

- (1) Suspension of enrollment of Medicare beneficiaries.
  - (2) Suspension of payment to the MA organization for Medicare beneficiaries who are enrolled in the MA plan.
  - (3) Suspension of all marketing activities to Medicare beneficiaries by an MA organization for all MA plans.
- (b) CMS may impose civil money penalties as specified in § 422.760.
26. Amend § 422.752 by—  
 A. Revising the section heading.  
 B. Revising paragraph (a) introductory text.  
 C. Revising paragraph (b).  
 D. Adding a new paragraph (c).  
 The revisions and additions read as follows:

**§ 422.752 Basis for imposing intermediate sanctions and civil money penalties.**

(a) *All intermediate sanctions.* For the violations listed in this paragraph, CMS may impose one or more of the sanctions as specified in § 422.750(a) on any MA organization that has a contract in effect. The MA organization may also be subject to other applicable remedies available under law.

\* \* \* \* \*

(b) *Suspension of enrollment and marketing.* If CMS makes a determination that could lead to a contract termination under § 422.510(a), CMS may impose the intermediate sanctions at § 422.750(a)(1) and (a)(3).

(c) *Civil Money Penalties.*

(1) *CMS.* In addition to, or in place of, any intermediate sanctions, CMS may impose civil money penalties in the amounts specified in § 422.760 for any of the determinations at § 422.510(a), except § 422.510(a)(4).

(2) *OIG.* In addition to, or in place of any intermediate sanctions imposed by CMS, the OIG, in accordance with section 1003 of this chapter, may impose civil money penalties for the following:

- (i) Violations listed at § 422.752(a).
- (ii) Determinations made pursuant to § 422.510(a)(4).

27. Amend § 422.756 by—

- A. Revising the section heading.
- B. Revising paragraph (a).
- C. Revising paragraph (b).

D. Revising paragraph (f).

The revisions read as follows:

**§ 422.756 Procedures for imposing intermediate sanctions and civil money penalties.**

(a) *Notice of intermediate sanction and opportunity to respond.*—(1) *Notice of intent.* Before imposing the intermediate sanction, CMS—

(i) Sends a written notice to the MA organization stating the nature and basis of the proposed intermediate sanction and the MA organization's right to a hearing as specified in paragraph (b); and

(ii) Sends the OIG a copy of the notice.

(2) *Opportunity to respond.* CMS allows the MA organization 10 calendar days from receipt of the notice to provide a written rebuttal. CMS considers receipt of notice as the day after notice is sent by fax, e-mail, or submitted for overnight mail.

(b) *Hearing.* The MA organization may request a hearing before a CMS hearing officer. A written request must be received by CMS within 15 calendar days of the MA organization receiving the notice of intent to impose an intermediate sanction. A request for a hearing under § 422.660 does not delay the date specified by CMS when the sanction becomes effective. The MA organization must follow the right to a hearing procedure as specified at § 422.660 through § 422.684.

\* \* \* \* \*

(f) Notice to impose *civil money penalties.*

(1) *CMS notice to OIG.* If CMS determines that an MA organization has failed to comply with a requirement as described in § 422.752, CMS notifies the OIG of this determination. OIG may impose a civil money penalty upon an MA organization as specified at § 422.752(c)(2).

(2) *CMS notice of civil money penalties to MA organizations.* If CMS makes a determination to impose a CMP as described in § 422.752(c)(1), CMS will send a written notice of the Agency's decision to impose a civil money penalty to include—

(i) A description of the basis for the determination.

(ii) The basis for the penalty.

(iii) The amount of the penalty.

(iv) The date the penalty is due.

(v) The MA organization's right to a hearing under subpart T.

(vi) Information about where to file the request for hearing.

28. Revise § 422.758 to read as follows:

**§ 422.758 Collection of civil money penalties imposed by CMS.**

(a) When an MA organization does not request a hearing, CMS initiates collection of the civil money penalty following the expiration of the timeframe for requesting an ALJ hearing as specified in Subpart T.

(b) If an MA organization requests a hearing and CMS' decision to impose a civil money penalty is upheld, CMS may initiate collection of the civil money penalty once the administrative decision is final.

29. Amend § 422.760 by—

A. Redesignating § 422.760 as § 422.764.

B. Adding a new § 422.760 to read as follows:

**§ 422.760 Determinations regarding the amount of civil money penalties and assessment imposed by CMS.**

(a) *Determining the appropriate amount of any penalty.* In determining the amount of penalty imposed under § 422.752(c)(1), CMS will consider as appropriate:

- (1) The nature of the conduct;
- (2) The degree of culpability of the MA organization;
- (3) The harm which resulted or could have resulted from the conduct of MA organization;
- (4) The financial condition of the MA organization;
- (5) The history of prior offenses by the MA organization or principals of the MA organization; and,
- (6) Such other matters as justice may require.

(b) *Amount of penalty.* CMS may impose civil money penalties in the following amounts:

(1) If the deficiency on which the determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more MA enrollees—up to \$25,000 for each determination.

(2) For each week that a deficiency remains uncorrected after the week in which the MA organization receives CMS' notice of the determination—up to \$10,000.

(3) If CMS makes a determination that a MA organization has terminated its contract other than in a manner described under § 422.512 and that the MA organization has therefore failed to substantially carry out the terms of the contract—\$250 per Medicare enrollee from the terminated MA plan or plans at the time the MA organization terminated its contract, or \$100,000, whichever is greater.

30. Adding a new § 422.762 to read as follows:

**§ 422.762 Settlement of penalties.**

For civil money penalties imposed by CMS, CMS may settle civil money penalty cases at any time before a final decision is rendered.

**Subpart P—[Reserved]**

31. Subpart P is reserved.

**Subpart Q—[Reserved]**

32. Subpart Q is reserved.

**Subpart R—[Reserved]**

33. Subpart R is reserved.

**Subpart S—[Reserved]**

34. Subpart S is reserved.

35. A new subpart T is added to read as follows:

**Subpart T—Appeal Procedures for Civil Money Penalties**

Sec.

- 422.1000 Basis and scope.
- 422.1002 Definitions.
- 422.1004 Scope and applicability.
- 422.1006 Appeal rights.
- 422.1008 Appointment of representatives.
- 422.1010 Authority of representatives.
- 422.1012 Fees for services of representatives.
- 422.1014 Charge for transcripts.
- 422.1016 Filing of briefs with the Administrative Law Judge or Departmental Appeals Board, and opportunity for rebuttal.
- 422.1018 Notice and effect of initial determinations.
- 422.1020 Request for hearing.
- 422.1022 Parties to the hearing.
- 422.1024 Designation of hearing official.
- 422.1026 Disqualification of Administrative Law Judge.
- 422.1028 Prehearing conference.
- 422.1030 Notice of prehearing conference.
- 422.1032 Conduct of prehearing conference.
- 422.1034 Record, order, and effect of prehearing conference.
- 422.1036 Time and place of hearing.
- 422.1038 Change in time and place of hearing.
- 422.1040 Joint hearing.
- 422.1042 Hearing on new issues.
- 422.1044 Subpoenas.
- 422.1046 Conduct of hearing.
- 422.1048 Evidence.
- 422.1050 Witnesses.
- 422.1052 Oral and written summation.
- 422.1054 Record of hearing.
- 422.1056 Waiver of right to appear and present evidence.
- 422.1058 Dismissal of request for hearing.
- 422.1060 Dismissal for abandonment.
- 422.1062 Dismissal for cause.
- 422.1064 Notice and effect of dismissal and right to request review.
- 422.1066 Vacating a dismissal of request for hearing.
- 422.1068 Administrative Law Judge's decision.
- 422.1070 Removal of hearing to Departmental Appeals Board.

422.1072 Remand by the Administrative Law Judge.

422.1074 Right to request Departmental Appeals Board review of Administrative Law Judge's decision or dismissal.

422.1076 Request for Departmental Appeals Board review.

422.1078 Departmental Appeals Board action on request for review.

422.1080 Procedures before the Departmental Appeals Board on review.

422.1082 Evidence admissible on review.

422.1084 Decision or remand by the Departmental Appeals Board.

422.1086 Effect of Departmental Appeals Board Decision.

422.1088 Extension of time for seeking judicial review.

422.1090 Basis, timing, and authority for reopening an Administrative Law Judge or Board decision.

422.1092 Revision of reopened decision.

422.1094 Notice and effect of revised decision.

**Subpart T—Appeal procedures for Civil Money Penalties****§ 422.1000 Basis and scope.**

(a) *Statutory basis.*

(1) Section 1128A(c)(2) of the Act provides that the Secretary may not collect a civil money penalty until the affected party has had notice and opportunity for a hearing.

(2) Section 1857(g) of the Act provides that, for MA organizations out of compliance with the requirements in part 422 specified remedies may be imposed instead of, or in addition to, termination of the MA organization's contract. Section 1857(g)(4) of the Act makes certain provisions of section 1128A of the Act applicable to civil money penalties imposed on MA organizations.

(b) [Reserved]

**§ 422.1002 Definitions.**

As used in this subpart—

*Affected party* means an MA organization impacted by an initial determination or if applicable, by any subsequent determination or decision issued under this part. For this definition, “party” means the affected party or CMS, as appropriate.

*ALJ* stands for Administrative Law Judge.

*Departmental Appeals Board or Board* means a Board established in the Office of the Secretary to provide impartial review of disputed decisions made by the operating components of the Department.

*MA organization* has the meaning given the term in § 422.2 of this title.

**§ 422.1004 Scope and applicability.**

(a) *Scope.* (1) This subpart sets forth procedures for reviewing initial determinations that CMS makes with

respect to the matters specified in paragraph (b) of this section.

(2) The determinations listed in this section affect participation in the Medicare program.

(3) The following provisions in this subpart specify the applicability of the provisions of part 422, subpart O to civil money penalties or remedies imposed on the indicated entities on MA organizations and MA-Part DD organizations.

(b) *Initial determinations by CMS.* CMS makes initial determinations with respect to the imposition of civil money penalties in accordance with part 422, subpart O.

#### **§ 422.1006 Appeal rights.**

(a) *Appeal rights of MA organizations.* (1) Any MA organization dissatisfied with an initial determination as specified in § 422.1004, has a right to a hearing before an ALJ in accordance with this subpart and may request Departmental Appeals Board review of the ALJ decision.

(2) MA organizations may request judicial review of the Departmental Appeals Board's decision that imposes a CMP.

(b) [Reserved]

#### **§ 422.1008 Appointment of representatives.**

(a) An affected party may appoint as its representative anyone not disqualified or suspended from acting as a representative in proceedings before the Secretary or otherwise prohibited by law.

(b) If the representative appointed is not an attorney, the party must file written notice of the appointment with the ALJ or the Departmental Appeals Board.

(c) If the representative appointed is an attorney, the attorney's statement that he or she has the authority to represent the party is sufficient.

#### **§ 422.1010 Authority of representatives.**

(a) A representative appointed and qualified in accordance with § 422.1008 may, on behalf of the represented party—

(1) Give and accept any notice or request pertinent to the proceedings set forth in this part;

(2) Present evidence and allegations as to facts and law in any proceedings affecting that party to the same extent as the party; and

(3) Obtain information to the same extent as the party.

(b) A notice or request may be sent to the affected party, to the party's representative, or to both. A notice or request sent to the representative has

the same force and effect as if it had been sent to the party.

#### **§ 422.1012 Fees for services of representatives.**

Fees for any services performed on behalf of an affected party by an attorney appointed and qualified in accordance with § 422.1008 are not subject to the provisions of section 206 of Title II of the Act, which authorizes the Secretary to specify or limit those fees.

#### **§ 422.1014 Charge for transcripts.**

A party that requests a transcript of prehearing or hearing proceedings or Board review must pay the actual or estimated cost of preparing the transcript unless, for good cause shown by that party, the payment is waived by the ALJ or the Departmental Appeals Board, as appropriate.

#### **§ 422.1016 Filing of briefs with the Administrative Law Judge or Departmental Appeals Board, and opportunity for rebuttal.**

(a) *Filing of briefs and related documents.* If a party files a brief or related document such as a written argument, contention, suggested finding of fact, conclusion of law, or any other written statement, it must submit an original and 1 copy to the ALJ or the Departmental Appeals Board, as appropriate. The material may be filed by mail or in person and must include a statement certifying that a copy has been furnished to the other party.

(b) *Opportunity for rebuttal.* (1) The other party will have 20 days from the date of mailing or personal service to submit any rebuttal statement or additional evidence. If a party submits a rebuttal statement or additional evidence, it must file an original and 1 copy with the ALJ or the Board and furnish a copy to the other party.

(2) The ALJ or the Board will grant an opportunity to reply to the rebuttal statement only if the party shows good cause.

#### **§ 422.1018 Notice and effect of initial determinations.**

(a) *Notice of initial determination.*—CMS, as required under 422.756(f)(2) in Subpart O, mails notice of an initial determination to the affected party, setting forth the basis or reasons for the determination, the effect of the determination, and the party's right to a hearing, and information about where to file the request for hearing.

(b) *Effect of initial determination.* An initial determination is binding unless—

(1) The affected party requests a hearing; or

(2) CMS revises its decision.

#### **§ 422.1020 Request for hearing.**

(a) *Manner and timing of request.*

(1) An MA organization is entitled to a hearing as specified in § 422.1006 and may file a request for a hearing with the Departmental Appeals Board office specified in the initial determination.

(2) The MA organization or its legal representative or other authorized official must file the request, in writing, to the appropriate Departmental Appeals Board office, with a copy to CMS, within 60 calendar days from receipt of the notice of initial determination, to request a hearing before an ALJ to appeal any determination by CMS to impose a civil money penalty.

(b) *Content of request for hearing.* The request for hearing must—

(1) Identify the specific issues, and the findings of fact and conclusions of law with which the affected party disagrees; and

(2) Specify the basis for each contention that the finding or conclusion of law is incorrect.

#### **§ 422.1022 Parties to the hearing.**

The parties to the hearing are the affected party and CMS, as appropriate.

#### **§ 422.1024 Designation of hearing official.**

(a) The Chair of the Departmental Appeals Board, or his or her delegate designates an ALJ or a member or members of the Departmental Appeals Board to conduct the hearing.

(b) If appropriate, the Chair or the delegate may substitute another ALJ or another member or other members of the Departmental Appeals Board to conduct the hearing.

(c) As used in this part, "ALJ" includes a member or members of the Departmental Appeals Board who are designated to conduct a hearing.

#### **§ 422.1026 Disqualification of Administrative Law Judge.**

(a) An ALJ may not conduct a hearing in a case in which he or she is prejudiced or partial to the affected party or has any interest in the matter pending for decision.

(b) A party that objects to the ALJ designated to conduct the hearing must give notice of its objections at the earliest opportunity.

(c) The ALJ will consider the objections and decide whether to withdraw or proceed with the hearing.

(1) If the ALJ withdraws, another ALJ will be designated to conduct the hearing.

(2) If the ALJ does not withdraw, the objecting party may, after the hearing, present its objections to the Departmental Appeals Board as reasons

for changing, modifying, or reversing the ALJ's decision or providing a new hearing before another ALJ.

**§ 422.1028 Prehearing conference.**

(a) At any time before the hearing, the ALJ may call a prehearing conference for the purpose of delineating the issues in controversy, identifying the evidence and witnesses to be presented at the hearing, and obtaining stipulations accordingly.

(b) On the request of either party or on his or her own motion, the ALJ may adjourn the prehearing conference and reconvene at a later date.

**§ 422.1030 Notice of prehearing conference.**

(a) *Timing of notice.* The ALJ will fix a time and place for the prehearing conference and mail written notice to the parties at least 10 days before the scheduled date.

(b) *Content of notice.* The notice will inform the parties of the purpose of the conference and specify what issues are sought to be resolved, agreed to, or excluded.

(c) *Additional issues.* Issues other than those set forth in the notice of determination or the request for hearing may be considered at the prehearing conference if—

(1) Either party gives timely notice to that effect to the ALJ and the other party; or

(2) The ALJ raises the issues in the notice of prehearing conference or at the conference.

**§ 422.1032 Conduct of prehearing conference.**

(a) The prehearing conference is open to the affected party or its representative, to the CMS representatives and their technical advisors, and to any other persons whose presence the ALJ considers necessary or proper.

(b) The ALJ may accept the agreement of the parties as to the following:

(1) Facts that are not in controversy.  
(2) Questions that have been resolved favorably to the affected party after the determination in dispute.

(3) Remaining issues to be resolved.  
(c) The ALJ may request the parties to indicate the following:

(1) The witnesses that will be present to testify at the hearing.

(2) The qualifications of those witnesses.

(3) The nature of other evidence to be submitted.

**§ 422.1034 Record, order, and effect of prehearing conference.**

(a) *Record of prehearing conference.*

(1) A record is made of all agreements

and stipulations entered into at the prehearing conference.

(2) The record may be transcribed at the request of either party or the ALJ.

(b) *Order and opportunity to object.*

(1) The ALJ issues an order setting forth the results of the prehearing conference, including the agreements made by the parties as to facts not in controversy, the matters to be considered at the hearing, and the issues to be resolved.

(2) Copies of the order are sent to all parties and the parties have 10 days to file objections to the order.

(3) After the 10 days have elapsed, the ALJ settles the order.

(c) *Effect of prehearing conference.* The agreements and stipulations entered into at the prehearing conference are binding on all parties, unless a party presents facts that, in the opinion of the ALJ, would make an agreement unreasonable or inequitable.

**§ 422.1036 Time and place of hearing.**

(a) The ALJ fixes a time and place for the hearing and gives the parties written notice at least 10 days before the scheduled date.

(b) The notice informs the parties of the general and specific issues to be resolved at the hearing.

**§ 422.1038 Change in time and place of hearing.**

(a) The ALJ may change the time and place for the hearing either on his or her own initiative or at the request of a party for good cause shown, or may adjourn or postpone the hearing.

(b) The ALJ may reopen the hearing for receipt of new evidence at any time before mailing the notice of hearing decision.

(c) The ALJ gives the parties reasonable notice of any change in time or place or any adjournment or reopening of the hearing.

**§ 422.1040 Joint hearings.**

When two or more affected parties have requested hearings and the same or substantially similar matters are at issue, the ALJ may, if all parties agree, fix a single time and place for the prehearing conference or hearing and conduct all proceedings jointly. If joint hearings are held, a single record of the proceedings is made and a separate decision issued with respect to each affected party.

**§ 422.1042 Hearing on new issues.**

(a) *Basic rules.* (1) Within the time limits specified in paragraph (b), the ALJ may, at the request of either party, or on his or her own motion, provide a hearing on new issues that impinge on the rights of the affected party.

(2) The ALJ may consider new issues even if CMS has not made initial or reconsidered determinations on them, and even if they arose after the request for hearing was filed or after a prehearing conference.

(3) The ALJ may give notice of hearing on new issues at any time after the hearing request is filed and before the hearing record is closed.

(b) *Notice and conduct of hearing on new issues.* (1) Unless the affected party waives its right to appear and present evidence, notice of the time and place of hearing on any new issue will be given to the parties in accordance with § 422.1036.

(2) After giving notice, the ALJ will, except as provided in paragraph (c) of this section, proceed to hearing on new issues in the same manner as on an issue raised in the request for hearing.

(c) *Remand to CMS.* At the request of either party, or on his or her own motion, in lieu of a hearing under paragraph (b) of this section, the ALJ may remand the case to CMS for consideration of the new issue and, if appropriate, a determination. If necessary, the ALJ may direct CMS to return the case to the ALJ for further proceedings.

**§ 422.1044 Subpoenas.**

(a) *Basis for issuance.* The ALJ, upon his or her own motion or at the request of a party, may issue subpoenas if they are reasonably necessary for the full presentation of a case.

(b) *Timing of request by a party.* The party must file a written request for a subpoena with the ALJ at least 5 days before the date set for the hearing.

(c) *Content of request.* The request must:

(1) Identify the witnesses or documents to be produced;  
(2) Describe their addresses or location with sufficient particularity to permit them to be found; and  
(3) Specify the pertinent facts the party expects to establish by the witnesses or documents, and indicate why those facts could not be established without use of a subpoena.

(d) *Method of issuance.* Subpoenas are issued in the name of the Secretary.

**§ 422.1046 Conduct of hearing.**

(a) *Participants in the hearing.* The hearing is open to the parties and their representatives and technical advisors, and to any other persons whose presence the ALJ considers necessary or proper.

(b) *Hearing procedures.* (1) The ALJ inquires fully into all of the matters at issue, and receives in evidence the testimony of witnesses and any

documents that are relevant and material.

(2) If the ALJ believes that there is relevant and material evidence available which has not been presented at the hearing, he may, at any time before mailing of notice of the decision, reopen the hearing to receive that evidence.

(3) The ALJ decides the order in which the evidence and the arguments of the parties are presented and the conduct of the hearing.

(4) CMS has the burden of coming forward with evidence related to disputed findings that is sufficient (together with any undisputed findings and legal authority) to establish a *prima facie* case that CMS has a legally sufficient basis for its determination.

(5) The affected party has the burden of coming forward with evidence sufficient to establish the elements of any affirmative argument or defense which it offers.

(6) The affected party bears the ultimate burden of persuasion. To prevail, the affected party must prove by a preponderance of the evidence on the record as a whole that there is no basis for the determination.

(c) *Review of the penalty.* When an administrative law judge finds that the basis for imposing a civil money penalty exists, as specified in § 422.752, the administrative law judge may not—

(1) Set a penalty of zero or reduce a penalty to zero, or

(2) Review the exercise of discretion by CMS to impose a civil money penalty.

#### **§ 422.1048 Evidence.**

Evidence may be received at the hearing even though inadmissible under the rules of evidence applicable to court procedure. The ALJ rules on the admissibility of evidence.

#### **§ 422.1050 Witnesses.**

Witnesses at the hearing testify under oath or affirmation. The representative of each party is permitted to examine his or her own witnesses subject to interrogation by the representative of the other party. The ALJ may ask any questions that he or she deems necessary. The ALJ rules upon any objection made by either party as to the propriety of any question.

#### **§ 422.1052 Oral and written summation.**

The parties to a hearing are allowed a reasonable time to present oral summation and to file briefs or other written statements of proposed findings of fact and conclusions of law. Copies of any briefs or other written statements must be sent in accordance with § 422.1016.

#### **§ 422.1054 Record of hearing.**

A complete record of the proceedings at the hearing is made and transcribed in all cases.

#### **§ 422.1056 Waiver of right to appear and present evidence.**

(a) *Waiver procedures.* (1) If an affected party wishes to waive its right to appear and present evidence at the hearing, it must file a written waiver with the ALJ.

(2) If the affected party wishes to withdraw a waiver, it may do so, for good cause, at any time before the ALJ mails notice of the hearing decision.

(b) *Effect of waiver.* If the affected party waives the right to appear and present evidence, the ALJ need not conduct an oral hearing except in one of the following circumstances:

(1) The ALJ believes that the testimony of the affected party or its representatives or other witnesses is necessary to clarify the facts at issue.

(2) CMS shows good cause for requiring the presentation of oral evidence.

(c) *Dismissal for failure to appear.* If, despite the waiver, the ALJ sends notice of hearing and the affected party fails to appear, or to show good cause for the failure, the ALJ will dismiss the appeal in accordance with § 422.1060.

(d) *Hearing without oral testimony.* When there is no oral testimony, the ALJ will—

(1) Make a record of the relevant written evidence that was considered in making the determination being appealed, and of any additional evidence submitted by the parties;

(2) Furnish to each party copies of the additional evidence submitted by the other party; and

(3) Give both parties a reasonable opportunity for rebuttal.

(e) *Handling of briefs and related statements.* If the parties submit briefs or other written statements of evidence or proposed findings of facts or conclusions of law, those documents will be handled in accordance with § 422.1016.

#### **§ 422.1058 Dismissal of request for hearing.**

(a) The ALJ may, at any time before mailing the notice of the decision, dismiss a hearing request if a party withdraws its request for a hearing or the affected party asks that its request be dismissed.

(b) An affected party may request a dismissal by filing a written notice with the ALJ.

#### **§ 422.1060 Dismissal for abandonment.**

(a) The ALJ may dismiss a request for hearing if it is abandoned by the party that requested it.

(b) The ALJ may consider a request for hearing to be abandoned if the party or its representative—

(1) Fails to appear at the prehearing conference or hearing without having previously shown good cause for not appearing; and

(2) Fails to respond, within 10 days after the ALJ sends a “show cause” notice, with a showing of good cause.

#### **§ 422.1062 Dismissal for cause.**

On his or her own motion, or on the motion of a party to the hearing, the ALJ may dismiss a hearing request either entirely or as to any stated issue, under any of the following circumstances:

(a) *Res judicata.* There has been a previous determination or decision with respect to the rights of the same affected party on the same facts and law pertinent to the same issue or issues which has become final either by judicial affirmance or, without judicial consideration, because the affected party did not timely request reconsideration, hearing, or review, or commence a civil action with respect to that determination or decision.

(b) *No right to hearing.* The party requesting a hearing is not a proper party or does not otherwise have a right to a hearing.

(c) *Hearing request not timely filed.* The affected party did not file a hearing request timely and the time for filing has not been extended.

#### **§ 422.1064 Notice and effect of dismissal and right to request review.**

(a) Notice of the ALJ's dismissal action is mailed to the parties. The notice advises the affected party of its right to request that the dismissal be vacated as provided in § 422.1066.

(b) The dismissal of a request for hearing is binding unless it is vacated by the ALJ or the Departmental Appeals Board.

#### **§ 422.1066 Vacating a dismissal of request for hearing.**

An ALJ may vacate any dismissal of a request for hearing if a party files a request to that effect within 60 days from receipt of the notice of dismissal and shows good cause for vacating the dismissal.

#### **§ 422.1068 Administrative Law Judge's decision.**

(a) *Timing, basis and content.* As soon as practical after the close of the hearing, the ALJ issues a written decision in the case. The decision is based on the evidence of record and

contains separate numbered findings of fact and conclusions of law.

(b) *Notice and effect.* A copy of the decision is mailed to the parties and is binding on them unless—

(1) A party requests review by the Departmental Appeals Board within the time period specified in § 422.846, and the Board reviews the case;

(2) The Departmental Appeals Board denies the request for review and the party seeks judicial review by filing an action in a United States District Court or, in the case of a civil money penalty, in a United States Court of Appeals;

(3) The decision is revised by an ALJ or the Departmental Appeals Board; or

(4) The decision is a recommended decision directed to the Board.

#### **§ 422.1070 Removal of hearing to Departmental Appeals Board.**

(a) At any time before the ALJ receives oral testimony, the Board may remove itself from any pending request for a hearing.

(b) Notice of removal is mailed to each party.

(c) The Board conducts the hearing in accordance with the rules that apply to ALJ hearings under this subpart.

#### **§ 422.1072 Remand by the Administrative Law Judge.**

(a) If CMS requests remand, and the affected party concurs in writing or on the record, the ALJ may remand any case properly before him or her to CMS for a determination satisfactory to the affected party.

(b) The ALJ may remand at any time before notice of hearing decision is mailed.

#### **§ 422.1074 Right to request Departmental Appeals Board review of Administrative Law Judge's decision or dismissal.**

Either of the parties has a right to request Departmental Appeals Board review of the ALJ's decision or dismissal order, and the parties are so informed in the notice of the ALJ's action.

#### **§ 422.1076 Request for Departmental Appeals Board review.**

(a) *Manner and time of filing.* (1) Any party that is dissatisfied with an ALJ's decision or dismissal of a hearing request, may file a written request for review by the Departmental Appeals Board.

(2) The requesting party or its representative or other authorized official must file the request with the DAB within 60 calendar days from receipt of the notice of decision or dismissal, unless the Board, for good cause shown by the requesting party, extends the time for filing.

(b) *Content of request for review.* A request for review of an ALJ decision or dismissal must specify the issues, the findings of fact or conclusions of law with which the party disagrees, and the basis for contending that the findings and conclusions are incorrect.

#### **§ 422.1078 Departmental Appeals Board action on request for review.**

(a) *Request by CMS.* The Departmental Appeals Board may dismiss, deny, or grant a request made by CMS for review of an ALJ decision or dismissal.

(b) *Request by the affected party.* The Board may deny or grant the affected party's request for review or may dismiss the request for one of the following reasons:

(1) The affected party requests dismissal of its request for review.

(2) The affected party did not file timely or show good cause for late filing.

(3) The affected party does not have a right to review.

(4) A previous determination or decision, based on the same facts and law, and regarding the same issue, has become final through judicial affirmance or because the affected party failed to timely request reconsideration, hearing, Board review, or judicial review, as appropriate.

(c) *Effect of dismissal.* The dismissal of a request for Departmental Appeals Board review is binding and not subject to further review.

(d) *Review panel.* If the Board grants a request for review of the ALJ's decision, the review will be conducted by a panel of three members of the Board, designated by the Chair or Deputy Chair.

#### **§ 422.1080 Procedures before the Departmental Appeals Board on review.**

The parties are given, upon request, a reasonable opportunity to file briefs or other written statements as to fact and law, and to appear before the Departmental Appeals Board to present evidence or oral arguments. Copies of any brief or other written statement must be sent in accordance with § 422.1016.

#### **§ 422.1082 Evidence admissible on review.**

(a) The Departmental Appeals Board may admit evidence into the record in addition to the evidence introduced at the ALJ hearing, (or the documents considered by the ALJ if the hearing was waived), if the Board considers that the additional evidence is relevant and material to an issue before it.

(b) If it appears to the Board that additional relevant evidence is available, the Board will require that it be produced.

(c) Before additional evidence is admitted into the record—

(1) Notice is mailed to the parties (unless they have waived notice) stating that evidence will be received regarding specified issues; and

(2) The parties are given a reasonable time to comment and to present other evidence pertinent to the specified issues.

(d) If additional evidence is presented orally to the Board, a transcript is prepared and made available to any party upon request.

#### **§ 422.1084 Decision or remand by the Departmental Appeals Board.**

(a) When the Departmental Appeals Board reviews an ALJ's decision or order of dismissal, or receives a case remanded by a court, the Board may either issue a decision or remand the case to an ALJ for a hearing and decision or a recommended decision for final decision by the Board.

(b) In a remanded case, the ALJ initiates additional proceedings and takes other actions as directed by the Board in its order of remand, and may take other action not inconsistent with that order.

(c) Upon completion of all action called for by the remand order and any other consistent action, the ALJ promptly makes a decision or, as specified by the Board, certifies the case to the Board with a recommended decision.

(d) The parties have 20 days from the date of a notice of a recommended decision to submit to the Board any exception, objection, or comment on the findings of fact, conclusions of law, and recommended decision.

(e) After the 20-day period, the Board issues its decision adopting, modifying or rejecting the ALJ's recommended decision.

(f) If the Board does not remand the case to an ALJ, the following rules apply:

(1) The Board's decision—

(i) Is based upon the evidence in the hearing record and any further evidence that the Board receives during its review;

(ii) Is in writing and contains separate numbered findings of fact and conclusions of law; and

(iii) May modify, affirm, or reverse the ALJ's decision.

(2) A copy of the Board's decision is mailed to each party.

#### **§ 422.1086 Effect of Departmental Appeals Board Decision.**

(a) *General rule.* The Board's decision is binding unless—

(1) The affected party has a right to judicial review and timely files a civil

action in a United States District Court or, in the case of a civil money penalty, in a United States Court of Appeals; or

(2) The Board reopens and revises its decision in accordance with § 422.862.

(b) *Right to judicial review.* Section 422.1006 specifies the circumstances under which an affected party has a right to seek judicial review.

(c) *Special rules: Civil money penalty.* (1) Finality of Board's decision. When CMS imposes a civil money penalty, notice of the Board's decision (or denial of review) is the final administrative action that initiates the 60-day period for seeking judicial review.

#### **§ 422.1088 Extension of time for seeking judicial review.**

(a) Any affected party that is dissatisfied with a Departmental Appeals Board decision and is entitled to judicial review must commence civil action within 60 calendar days from receipt of the notice of the Board's decision, unless the Board extends the time in accordance with paragraph (c) of this section.

(b) The request for extension must be filed in writing with the Board before the 60-day period ends.

(c) For good cause shown, the Board may extend the time for commencing civil action.

#### **§ 422.1090 Basis, timing, and authority for reopening an ALJ or Board decision.**

(a) *Basis and timing for reopening.* An ALJ of Departmental Appeals Board decision may be reopened, within 60 days from the date of the notice of decision, upon the motion of the ALJ or the Board or upon the petition of either party to the hearing.

(b) *Authority to reopen.* (1) A decision of the Departmental Appeals Board may be reopened only by the Departmental Appeals Board.

(2) A decision of an ALJ may be reopened by that ALJ, by another ALJ if that one is not available, or by the Departmental Appeals Board. For purposes of this paragraph, an ALJ is considered to be unavailable if the ALJ has died, terminated employment, or been transferred to another duty station, is on leave of absence, or is unable to conduct a hearing because of illness.

#### **§ 422.1092 Revision of reopened decision.**

(a) *Revision based on new evidence.* If a reopened decision is to be revised on the basis of new evidence that was not included in the record of that decision, the ALJ or the Departmental Appeals Board—

(1) Notifies the parties of the proposed revision; and

(2) Unless the parties waive their right to hearing or appearance—

(i) Grants a hearing in the case of an ALJ revision; and

(ii) Grants opportunity to appear in the case of a Board revision.

(b) *Basis for revised decision and right to review.*

(1) If a revised decision is necessary, the ALJ or the Departmental Appeals Board, as appropriate, renders it on the basis of the entire record.

(2) If the decision is revised by an ALJ, the Departmental Appeals Board may review that revised decision at the request of either party or on its own motion.

#### **§ 422.1094 Notice and effect of revised decision.**

(a) *Notice.* The notice mailed to the parties states the basis or reason for the revised decision and informs them of their right to Departmental Appeals Board review of an ALJ revised decision, or to judicial review of a Board reviewed decision.

(b) *Effect—(1) ALJ revised decision.* An ALJ revised decision is binding unless it is reviewed by the Departmental Appeals Board.

(2) *Departmental Appeals Board revised decision.* A Board revised decision is binding unless a party files a civil action in a district court of the United States within the time frames specified in § 422.858.

### **PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT**

36. The authority citation for part 423 continues to read as follows:

**Authority:** Secs. 1102, 1860D–1 through 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, and 1395hh).

#### **Subpart A—General Provisions**

37. Section 423.4 is amended by adding the definitions of “Downstream entity”, “First tier entity”, and “Related entities” to read as follows:

##### **§ 423.4 Definitions.**

\* \* \* \* \*

*Downstream entity* means any party that enters into a written arrangement, acceptable to CMS, below the level of the arrangement between a Part D plan sponsor (or applicant) and a first tier entity. These written arrangements continue down to the level of the ultimate provider of both health and administrative services.

\* \* \* \* \*

*First tier entity* means any party that enters into a written arrangement, acceptable to CMS, with a Part D plan sponsor or applicant to provide administrative services or health care

services for a Medicare eligible individual under Part D.

\* \* \* \* \*

*Related entity* means any entity that is related to the Part D sponsor by common ownership or control and

(1) Performs some of the Part D plan sponsor's management functions under contract or delegation;

(2) Furnishes services to Medicare enrollees under an oral or written agreement; or

(3) Leases real property or sells materials to the Part D plan sponsor at a cost of more than \$2,500 during a contract period.

\* \* \* \* \*

#### **Subpart K—Application Procedures and Contracts With Part D Plan Sponsors**

39. Amend § 423.504 by—

A. Revising paragraph (b)(4)(vi) introductory text.

B. Revising paragraphs (b)(4)(vi)(C) and (b)(4)(vi)(D).

C. Adding paragraph (b)(4)(vi)(G)(3).

D. Removing paragraph (b)(4)(vi)(H). The revisions read as follows:

##### **§ 423.504 General provisions.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(vi) A compliance plan, which must include measures to detect, correct, and prevent fraud, waste, and abuse, shall include the following elements:

\* \* \* \* \*

(C) Effective training and education between the compliance officer, and the Part D plan sponsor's employees, managers and directors, and the Part D plan sponsor's first tier, downstream, and related entities.

(D) Effective lines of communication between the compliance officer, members of the compliance committee, the Part D plan sponsor's employees, managers and directors, and the Part D plan sponsor's first tier, downstream, and related entities.

\* \* \* \* \*

(G) \* \* \*

(3) The Part D plan sponsor must have procedures for mandatory self-reporting of potential fraud or misconduct related to the Part D program to the appropriate government authority. The Part D sponsor is required to report potential fraud or misconduct related to the Part D program to the appropriate government authority.

40. Amend § 423.505 by—

A. Republishing paragraph (b) introductory text.

B. Revising paragraph (b)(10).

C. Republishing paragraph (e) introductory text.

D. Revising paragraph (e)(1) introductory text.

E. Revising paragraph (e)(2).

F. Revising paragraph (i) introductory text and (i)(1).

G. Revising paragraph (i)(2) introductory text.

H. Revising paragraph (i)(2)(i).

I. Revising paragraph (i)(3) introductory text.

J. Revising paragraph (i)(3)(ii).

K. Revising paragraph (i)(3)(iii).

L. Adding paragraphs (i)(3)(iv) and (v).

M. Revising paragraph (i)(4) introductory text.

N. Revising paragraph (i)(4)(iv).

O. Redesignating (i)(4)(iv) as (i)(4)(v).

The revisions and additions read as follows:

**§ 423.505 Contract provisions.**

\* \* \* \* \*

(b) *Requirements for contracts.* The Part D plan sponsor agrees to—

\* \* \* \* \*

(10) Allow CMS to inspect and audit any books and records of a Part D plan sponsor and its delegated first tier, downstream and related entities, that pertain to the information regarding costs provided to CMS under paragraph (b)(9) of this section, or, if a fallback entity, the information submitted under subpart Q.

\* \* \* \* \*

(e) *Access to facilities and records.* The Part D plan sponsor agrees to the following:

(1) HHS, the Comptroller General, or their designee may evaluate, through audit, inspection, or other means—

\* \* \* \* \*

(2) The Part D plan sponsor agrees to make available to HHS, the Comptroller General, or their designees, for the purposes specified in paragraph (d) of this section, its premises, physical facilities and equipment, records relating to its Medicare enrollees, and any additional relevant information that CMS may require. The Part D plan sponsor also agrees to make available any books, contracts, medical records, patient care documentation, and other records of the Part D plan sponsor, first tier, downstream and related entity(s), or its transferee that pertain to any aspect of services performed, reconciliation of benefit liabilities, and determination of amounts payable under the contract, or as the Secretary may deem necessary to enforce the contract.

\* \* \* \* \*

(i) *Relationship with first tier, downstream, and related entities.* (1) Notwithstanding any relationship(s) that

the Part D plan sponsor may have with first tier, downstream, and related entities, the Part D sponsor maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of its contract with CMS.

(2) The Part D sponsor agrees to require all first tier, downstream, and related entities to agree that—

(i) HHS, the Comptroller General, or their designees have the right to inspect, evaluate, and audit any pertinent contracts, books, documents, papers, and records of the first tier, downstream, and related entities involving transactions related to CMS' contract with the Part D sponsor.

\* \* \* \* \*

(3) All contracts or written arrangements between Part D sponsors and pharmacies or other providers, related entities, first tier and downstream entities must contain the following:

\* \* \* \* \*

(ii) Accountability provisions that indicate that the Part D sponsor may delegate activities or functions to a pharmacy, first tier, downstream, and related entity, only in a manner consistent with requirements set forth at paragraph (i)(4) of this section.

(iii) A provision requiring that any services or other activity performed by a related entity, first tier, downstream, and related entity in accordance with a contract or written agreement are consistent and comply with the Part D plan sponsor's contractual obligations.

(iv) A provision requiring the Part D sponsor's first tier, downstream, and related entities to produce upon request by CMS or its designees any pertinent contracts, books, documents, papers, and records relating to the Part D program to either the sponsor or directly to CMS or its designees.

(v) All contracts or written arrangements must specify that the related entity, contractor, or subcontractor must comply with all applicable Federal laws, regulations, and CMS instructions.

(4) If any of the Part D plan sponsors' activities or responsibilities under its contract with CMS is delegated to other parties, the following requirements apply to any first tier, downstream, and related entity, or pharmacy:

\* \* \* \* \*

(v) All contracts or written arrangements must specify that the first tier, downstream, or related entity, or pharmacy must comply with all applicable Federal laws, regulations, and CMS instructions.

\* \* \* \* \*

41. Amend § 423.506 by revising paragraph (c) to read as follows:

**§ 423.506 Effective date and term of contract.**

\* \* \* \* \*

(c) *Qualification to renew a contract.*

In accordance with § 423.507 of this subpart, an entity is determined qualified to renew its contract annually only if the Part D plan sponsor has not provided CMS with a notice of intention not to renew and CMS has not provided the Part D organization with a notice of intention not to renew.

\* \* \* \* \*

42. Amend § 423.507 by—

A. Revising paragraph (b)(2) introductory text.

B. Revising paragraph (b)(2)(i).

C. Redesignating paragraph (b)(3) as (b)(4).

D. Adding a new paragraph (b)(3).

The revisions and additions read as follows:

**§ 423.507 Nonrenewal of contract.**

\* \* \* \* \*

(b) \* \* \*

(2) *Notice of non-renewal.* CMS provides notice of its decision not to authorize renewal of a contract as follows:

(i) To the Part D plan sponsor by September 1 of the contract year.

\* \* \* \* \*

(3) *Corrective action plan.* (i) Before nonrenewing a contract, CMS will provide the Part D sponsor with a reasonable opportunity to develop and submit a corrective action plan (CAP).

(ii) The Part D sponsor must develop and submit the CAP within 45 days of receiving a request for a CAP.

(iii) If CMS determines the CAP is unacceptable, CMS will provide the Part D sponsor with an additional 30 days to submit a revised CAP.

(iv) If CMS determines the CAP is acceptable, CMS will notify the Part D sponsor of a deadline by which the CAP must be fully implemented. CMS has sole discretion on whether the CAP is fully implemented.

(v) Failure to develop and implement a CAP within the timeframes specified in paragraphs (3)(i) through (3)(iii) of this section may result in the nonrenewal of the Part D contract.

\* \* \* \* \*

43. Section 423.509 is amended by—

A. Revising paragraph (a)(1).

B. Revising paragraph (b) introductory text.

C. Revising paragraph (b)(2).

D. Revising paragraph (c).

The revisions read as follows:

**§ 423.509 Termination of contract by CMS.**

(a) \* \* \*

(1) The Part D plan sponsor has failed substantially to carry out the terms of—

(i) Its current contract term with CMS, or

(ii) Its contract with CMS from the preceding contract term.

\* \* \* \* \*

(b) *Notice.* If CMS decides to terminate a contract for reasons other than the grounds specified § 423.509(a)(4) or § 423.509(a)(5), it gives notice of the termination as follows:

\* \* \* \* \*

(2) *Expedited termination of contract by CMS.* (i) For terminations based on violations prescribed in § 423.509(a)(4) or § 423.509(a)(5), CMS notifies the Part D plan sponsor in writing that its contract will be terminated on a date specified by CMS. If termination is effective in the middle of a month, CMS has the right to recover the prorated share of the capitation payments made to the Part D plan sponsor covering the period of the month following the contract termination.

\* \* \* \* \*

(c) *Corrective action plan.*—(1) *General.* Before terminating a contract for reasons other than the grounds specified in paragraphs (a)(4) or (a)(5) of this section, CMS will provide the MA organization with a reasonable opportunity to develop and submit a corrective action plan (CAP).

(i) The Part D plan sponsor must develop and submit the CAP within 45 days of receiving a request for a CAP.

(ii) If CMS determines the CAP is unacceptable to CMS, the Part D plan sponsor will have an additional 30 days to submit a revised CAP.

(iii) If CMS determines the CAP is acceptable, CMS will notify the Part D plan sponsor of a deadline by which the CAP must be fully implemented. CMS has sole discretion on whether the CAP is fully implemented.

(iv) Failure to develop and implement a CAP within the timeframes specified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section, may result in the termination of the Part D contract.

(2) *Exceptions.* If a contract is terminated under § 423.509(a)(4) or § 423.509(a)(5), the Part D plan sponsor will not have the opportunity to submit a CAP.

\* \* \* \* \*

## Subpart N—Medicare Contract Determinations and Appeals

44. Amend § 423.642 by—  
A. Republishing paragraph (b) introductory text.

B. Revising paragraph (b)(2).

C. Revising paragraph (c).

D. Revising paragraph (d).

The revisions read as follows:

### § 423.642 Notice of contract determination.

\* \* \* \* \*

(b) The notice specifies the—

(1) \* \* \*

(2) The Part D sponsor's right to request a hearing.

(c) For CMS-initiated terminations, CMS mails notice to the Part D sponsor 90 days before the anticipated effective date of the termination. For terminations based on determinations described at § 423.509(a)(4) or § 423.509(a)(5), CMS notifies the Part D sponsor of the date that it will terminate the organization's Part D contract.

(d) When CMS determines that it will not authorize a contract renewal, CMS mails the notice to the Part D sponsor by September 1 of the current contract year.

45. Section 423.643 is revised to read as follows:

### § 423.643 Effect of contract determination.

The contract determination is final and binding unless a timely request for a hearing is filed under § 423.651.

### § 423.644 [Removed]

46. Section 423.644 is removed.

### § 423.645 [Removed]

47. Section 423.645 is removed.

### § 423.646 [Removed]

48. Section 423.646 is removed.

### § 423.647 [Removed]

49. Section 423.647 is removed.

### § 423.648 [Removed]

50. Section 423.648 is removed.

### § 423.649 [Removed]

51. Section 423.649 is removed.

52. Revise § 423.650 to read as follows:

### § 423.650 Right to a hearing and burden of proof.

(a) The following parties are entitled to a hearing:

(1) A contract applicant that has been determined to be unqualified to enter into a contract with CMS pursuant to § 423.503.

(2) A Part D sponsor whose contract has been terminated pursuant to § 423.509.

(3) A Part D sponsor whose contract has not been renewed pursuant to § 423.507.

(4) A Part D sponsor who has had an intermediate sanction imposed according to § 423.752(a) and § 423.752(b).

(b) The Part D sponsor bears the burden of proof to demonstrate that it

was in substantial compliance with the requirements of the Part D program on the earliest of the following three dates:

(1) The date the sponsor received written notice of the contract determination or intermediate sanction.

(2) The date of the most recent on-site audit conducted by CMS.

(3) The date of the alleged breach of the current contract or past substantial noncompliance as determined by CMS.

(c) Notice of any decision favorable to the Part D sponsor appealing a determination that it is not qualified to enter into a contract with CMS must be issued by July 15 for the contract in question to be effective on January 1 of the following year.

53. Amend § 423.651 by revising paragraph (b) to read as follows:

### § 423.651 Request for hearing.

\* \* \* \* \*

(b) *Time for filing a request.* A request for a hearing must be filed within 15 days from the date CMS notifies the Part D sponsor of its determination.

\* \* \* \* \*

54. Revise § 423.652 to read as follows:

### § 423.652 Postponement of effective date of a contract determination when a request for a hearing is filed timely.

(a) *Hearing.* When a request for a hearing is timely filed, CMS will postpone the proposed effective date of the contract determination listed at § 423.641 until a hearing decision is reached and affirmed by the Administrator following review pursuant to § 423.666 in instances where a Part D sponsor or CMS requests Administrator review and the Administrator accepts the matter for review.

(b) *Exceptions:* (1) If a final decision is not reached on CMS's for an initial contract by July 15, CMS will not enter into a contract with the applicant for the following year.

(2) A contract terminated in accordance with § 423.509(a)(4) or § 423.509(a)(5) will be terminated on the date specified by CMS and will not be postponed if a hearing is requested.

55. Amend § 423.655 by revising paragraph (a) to read as follows:

### § 423.655 Time and place of hearing.

(a) The hearing officer fixes a time and place for the hearing, which is not to exceed 30 days from the receipt of request for the hearing, and sends written notice to the parties. The notice informs the parties of—

(1) The general and specific issues to be resolved, the burden of proof, and information about the hearing procedure, and

(2) The ability to conduct formal discovery.

\* \* \* \* \*

56. Revise § 423.661 to read as follows:

**§ 423.661 Discovery.**

(a) Either party may make a request to another party for the production of documents for inspection and copying which are relevant and material to the issues before the hearing office.

(b) The hearing officer will provide the parties with a reasonable time for inspection and reproduction of documents, provided that discovery concluded at least 10 calendar days prior to the hearing.

(c) The hearing officer's order on discovery matters is final.

57. Revise § 423.662 to read as follows:

**§ 423.662 Prehearing and summary judgment.**

(a) *Prehearing.* The hearing officer may schedule a prehearing conference if he or she believes that a conference would more clearly define the issues.

(b) *Summary judgment.* Either party to the hearing, may ask the hearing officer to rule on a motion for summary judgment.

58. Amend § 423.666 by—

- A. Revising paragraph (a).
- B. Revising paragraph (b).
- C. Redesignating paragraph (c) as paragraph (e).

- D. Adding a new paragraph (c).
- E. Adding a new paragraph (d).

The revisions and additions read as follows:

**§ 423.666 Review by Administrator.**

(a) *Request for review by Administrator.* CMS or a Part D sponsor that has received a hearing decision regarding a contract determination may request review by the Administrator within 15 calendar days of receiving the hearing decision as provided under § 423.665(b). Both the Part D sponsor and CMS may provide written arguments to the Administrator for review.

(b) *Decision to review the hearing decision.* After receiving a request for review, the Administrator has the discretion to elect to review the hearing determination in accordance with paragraph (d) of this section or to decline to review the hearing decision.

(c) *Notification of Administrator determination.* The Administrator notifies both parties of his or her determination regarding review of the hearing decision within 30 days of receiving the request for review. If the Administrator declines to review the

hearing decision or the Administrator does not make a determination regarding review within 30 days, the decision of the hearing officer is final.

(d) *Review by the Administrator.* If the Administrator elects to review the hearing decision regarding a contract determination, the Administrator shall review the hearing officer's decision and determine, based upon this decision, the hearing record, and any written arguments submitted by the Part D sponsor or CMS, whether the determination should be upheld, reversed, or modified.

\* \* \* \* \*

59. Amend § 423.668 by—

- A. Revising the section heading.
- B. Revising paragraph (a).

The revisions read as follows:

**§ 423.668 Reopening of an initial contract determination or decision of a hearing officer or the Administrator.**

(a) *Initial determination.* CMS may reopen and revise an initial determination upon its own motion.

\* \* \* \* \*

**§ 423.669 [Removed]**

60. Section 423.669 is removed.

**Subpart O—Intermediate Sanctions**

61. Revise § 423.750 to read as follows:

**§ 423.750 Types of intermediate sanctions and civil money penalties.**

(a) The following intermediate sanctions may be imposed and will continue in effect until CMS is satisfied that the deficiency on which the determination was based has been corrected and is not likely to reoccur.

(1) Suspension of enrollment of Medicare beneficiaries.

(2) Suspension of payment to the Part D plan sponsor for Medicare beneficiaries who are enrolled in the Part D plan.

(3) Suspension of all marketing activities to Medicare beneficiaries by a Part D plan sponsor for all Part D plans.

(b) CMS may impose civil money penalties as specified in § 423.760.

62. Amend § 423.752 by—

- A. Revising the section heading.
- B. Revising paragraph (a) introductory text.
- C. Revising paragraph (b).
- D. Adding a new paragraph (c).

The revisions and additions read as follows:

**§ 423.752 Basis for imposing intermediate sanctions and civil money penalties.**

(a) *All intermediate sanctions.* For the violations listed in this paragraph (a), CMS may impose one, or more, of the

sanctions as specified in § 423.750(a) on any Part D plan sponsor that has a contract in effect. The Part D plan sponsor may also be subject to other applicable remedies available under law.

\* \* \* \* \*

(b) *Suspension of enrollment and marketing.* If CMS makes a determination that could lead to a contract termination under § 423.509(a), CMS may impose the intermediate sanctions at § 423.750(a)(1) and (a)(3).

(c) *Civil Money Penalties.* (1) CMS. In addition to, or in place of, any intermediate sanctions, CMS may impose civil money penalties in the amounts specified in § 423.760, for any of the determinations at § 423.509(a), except § 423.509(a)(4).

(2) *OIG.* In addition to, or in place of any intermediate sanctions imposed by CMS, the OIG, in accordance with section 1003 of this chapter, may impose civil money penalties for the following:

- (i) Violations listed at § 423.752(a).
- (ii) Determinations made pursuant to § 423.509(a)(4).

63. Amend § 423.756 by—

- A. Revising the section heading.
- B. Revising paragraph (a).
- C. Revising paragraph (b).
- D. Revising paragraph (f).

The revisions read as follows:

**§ 423.756 Procedures for imposing intermediate sanctions and civil money penalties.**

(a) *Notice of intermediate sanction and opportunity to respond.*— (1) *Notice of intent.* Before imposing the intermediate sanctions, CMS—

- (i) Sends a written notice to the Part D plan sponsor stating the nature and basis of the proposed intermediate sanction, and the Part D plan sponsor's right to a hearing as specified in paragraph (b) of this section; and
- (ii) Sends the OIG a copy of the notice.

(2) *Opportunity to respond.* CMS allows the Part D plan sponsor 10 days from receipt of the notice to provide a written rebuttal. CMS considers receipt of notice as the day after notice is sent by fax, e-mail, or submitted for overnight mail.

(b) *Hearing.* The Part D sponsor may request a hearing before a CMS hearing officer. A written request must be received by CMS within 15 calendar days of the Part D sponsor receiving the notice of intent to impose an intermediate sanction. A request for a hearing under § 423.650 does not delay the date specified by CMS when the sanction becomes effective. The Part D sponsor must follow the right to a

hearing procedure as specified at § 423.650 through § 423.662.

\* \* \* \* \*

(f) *Notice to impose civil money penalties.* (1) *CMS notice to OIG.* If CMS determines that a Part D sponsor has committed an act or failed to comply with a requirement as described in § 423.752, CMS notifies the OIG of this determination. OIG may impose a civil monetary penalty upon a Part D sponsor as specified at § 423.752(c)(2).

(2) *CMS notice of civil money penalties to Part D plan sponsors.* If CMS makes a determination to impose a CMP described in § 423.509(c)(1), CMS will send a written notice of the Agency's decision to impose a civil money penalty to include—

(i) A description of the basis for the determination.

(ii) The basis for the penalty.

(iii) The amount of the penalty.

(iv) The date the penalty is due.

(v) The Part D sponsor's right to a hearing as specified under § 423.650.

(vi) Information about where to file the request for hearing.

64. Revise § 423.758 to read as follows:

**§ 423.758 Collection of civil money penalties imposed by CMS.**

(a) When a Part D plan sponsor does not request a hearing CMS initiates collection of the civil money penalty following the expiration of the timeframe for requesting an ALJ hearing as specified in Subpart T.

(b) If a Part D sponsor requests a hearing and CMS's decision to impose a civil money penalty is upheld, CMS may initiate collection of the civil money penalty once the administrative decision is final.

65. Amend § 423.760 by—

A. Redesignating § 423.760 as § 423.764.

B. Adding a new § 423.760 to read as follows:

**§ 423.760 Determinations regarding the amount of civil money penalties and assessment imposed by CMS.**

(a) *Determining the appropriate amount of any penalty.* In determining the amount of penalty imposed under § 423.752(c)(1), CMS will consider as appropriate:

(1) The nature of the conduct;

(2) The degree of culpability of the Part D sponsor;

(3) The harm which resulted or could have resulted from the conduct of the Part D sponsor;

(4) The financial condition of the Part D sponsor;

(5) The history of prior offenses by the Part D sponsor or principals of the Part D sponsor; and,

(6) Such other matters as justice may require.

(b) *Amount of penalty.* CMS may impose civil money penalties in the following amounts:

(1) If the deficiency on which the determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more Part D enrollees—up to \$25,000 for each determination.

(2) For each week that a deficiency remains uncorrected after the week in which the Part D sponsor receives CMS' notice of the determination—up to \$10,000.

(3) If CMS makes a determination that a Part D sponsor has terminated its contract other than in a manner described under § 423.510 and that the Part D sponsor has therefore failed to substantially carry out the terms of the contract, \$250 per Medicare enrollee from the terminated Part D sponsor or plans at the time the Part D sponsor terminated its contract, or \$100,000, whichever is greater.

66. Adding a new § 423.762 to read as follows:

**§ 423.762 Settlement of penalties.**

For civil money penalties imposed by CMS, CMS may settle civil money penalty cases at any time before a final decision is rendered.

67. A new subpart T is added to read as follows:

**Subpart T—Appeal Procedures for Civil Money Penalties**

Sec.

423.1000 Basis and scope.

423.1002 Definitions.

423.1004 Scope and applicability.

423.1006 Appeal rights.

423.1008 Appointment of representatives.

423.1010 Authority of representatives.

423.1012 Fees for services of representative.

423.1014 Charge for transcripts.

423.1016 Filing of briefs with the Administrative Law Judge or Departmental Appeals Board, and opportunity for rebuttal.

423.1018 Notice and effect of initial determinations.

423.1020 Request for hearing.

423.1022 Parties to the hearing.

423.1024 Designation of hearing official.

423.1026 Disqualification of Administrative Law Judge.

423.1028 Prehearing conference.

423.1030 Notice of prehearing conference.

423.1032 Conduct of prehearing conference.

423.1034 Record, order, and effect of prehearing conference.

423.1036 Time and place of hearing.

423.1038 Change in time and place of hearing.

423.1040 Joint hearings.

423.1042 Hearing on new issues.

423.1044 Subpoenas.

423.1046 Conduct of hearing.

423.1048 Evidence.

423.1050 Witnesses.

423.1052 Oral and written summation.

423.1054 Record of hearing.

423.1056 Waiver of right to appear and present evidence.

423.1058 Dismissal of request for hearing.

423.1060 Dismissal for abandonment.

423.1062 Dismissal for cause.

423.1064 Notice and effect of dismissal and right to request review.

423.1066 Vacating a dismissal of request for hearing.

423.1068 Administrative Law Judge's decision.

423.1070 Removal of hearing to Departmental Appeals Board.

423.1072 Remand by the Administrative Law Judge.

423.1074 Right to request Departmental Appeals Board review of Administrative Law Judge's decision or dismissal.

423.1076 Request for Departmental Appeals Board review.

423.1078 Departmental Appeals Board action on request for review.

423.1080 Procedures before the Departmental Appeals Board on review.

423.1082 Evidence admissible on review.

423.1084 Decision or remand by the Departmental Appeals Board.

423.1086 Effect of Departmental Appeals Board Decision.

423.1088 Extension of time for seeking judicial review.

423.1090 Basis, timing, and authority for reopening an Administrative Law Judge or Board decision.

423.1092 Revision of reopened decision.

423.1094 Notice and effect of revised decision.

**Subpart T—Appeal procedures for Civil Money Penalties**

**§ 423.1000 Basis and scope.**

(a) *Statutory basis.* (1) Section 1128A(c)(2) of the Act provides that the Secretary may not collect a civil money penalty until the affected party has had notice and opportunity for a hearing.

(2) Section 1857(g) of the Act provides that, for Part D sponsors found to be out of compliance with the requirements in part 423, specified remedies may be imposed instead of, or in addition to, termination of the Part D sponsor's contract. Section 1857(g)(4) of the Act makes certain provisions of section 1128A of the Act applicable to civil money penalties imposed on Part D sponsors.

(b) [Reserved]

**§ 423.1002 Definitions.**

As used in this subpart—

*Affected party* means a Part D sponsor impacted by an initial determination or if applicable, by any subsequent determination or decision issued under this part, and “*party*” means the affected party or CMS, as appropriate.

*ALJ* stands for Administrative Law Judge.

*Departmental Appeals Board or Board* means a Board established in the Office of the Secretary to provide impartial review of disputed decisions made by the operating components of the Department.

*Part D sponsor* has the meaning given the term in § 423.4.

#### **§ 423.1004 Scope and applicability.**

(a) *Scope.* (1) This subpart sets forth procedures for reviewing initial determinations that CMS makes with respect to the matters specified in paragraph (b).

(2) The determinations listed in this section affect participation in the Medicare program.

(3) The following provisions in this subpart specify the applicability of the provisions of part 423, subpart O to civil money penalties or remedies imposed on the indicated entities on Part D sponsors

(b) *Initial determinations by CMS.* CMS makes initial determinations with respect to the imposition of civil money penalties in accordance with part 423, subpart T.

#### **§ 423.1006 Appeal rights.**

(a) *Appeal rights of Part D sponsors.* (1) Any Part D sponsor dissatisfied with an initial determination as specified in § 423.1004, has a right to a hearing before an ALJ in accordance with this subpart and may request Departmental Appeals Board review of the ALJ decision.

(2) Part D sponsors may request judicial review of the Departmental Appeals Board's decision that imposes a CMP.

(b) [Reserved]

#### **§ 423.1008 Appointment of representatives.**

(a) An affected party may appoint as its representative anyone not disqualified or suspended from acting as a representative in proceedings before the Secretary or otherwise prohibited by law.

(b) If the representative appointed is not an attorney, the party must file written notice of the appointment with the ALJ or the Departmental Appeals Board.

(c) If the representative appointed is an attorney, the attorney's statement that he or she has the authority to represent the party is sufficient.

#### **§ 423.1010 Authority of representatives.**

(a) A representative appointed and qualified in accordance with § 423.1008 may, on behalf of the represented party—

(1) Give and accept any notice or request pertinent to the proceedings set forth in this part;

(2) Present evidence and allegations as to facts and law in any proceedings affecting that party to the same extent as the party; and

(3) Obtain information to the same extent as the party.

(b) A notice or request may be sent to the affected party, to the party's representative, or to both. A notice or request sent to the representative has the same force and effect as if it had been sent to the party.

#### **§ 423.1012 Fees for services of representatives.**

Fees for any services performed on behalf of an affected party by an attorney appointed and qualified in accordance with § 423.1008 are not subject to the provisions of section 206 of Title II of the Act, which authorizes the Secretary to specify or limit those fees.

#### **§ 423.1014 Charge for transcripts.**

A party that requests a transcript of prehearing or hearing proceedings or Board review must pay the actual or estimated cost of preparing the transcript unless, for good cause shown by that party, the payment is waived by the ALJ or the Departmental Appeals Board, as appropriate.

#### **§ 423.1016 Filing of briefs with the ALJ or Departmental Appeals Board, and opportunity for rebuttal.**

(a) *Filing of briefs and related documents.* If a party files a brief or related document such as a written argument, contention, suggested finding of fact, conclusion of law, or any other written statement, it must submit an original and 1 copy to the ALJ or the Departmental Appeals Board, as appropriate. The material may be filed by mail or in person and must include a statement certifying that a copy has been furnished to the other party.

(b) *Opportunity for rebuttal.* (1) The other party will have 20 days from the date of mailing or personal service to submit any rebuttal statement or additional evidence. If a party submits a rebuttal statement or additional evidence, it must file an original and 1 copy with the ALJ or the Board and furnish a copy to the other party.

(2) The ALJ or the Board will grant an opportunity to reply to the rebuttal statement only if the party shows good cause.

#### **§ 423.1018 Notice and effect of initial determinations.**

(a) *Notice of initial determination—(1) General rule.* CMS, as required under

422.756(f)(2), mails notice of an initial determination to the affected party, setting forth the basis or reasons for the determination, the effect of the determination, the party's right to a hearing, and information about where to file the request for a hearing.

(b) *Effect of initial determination.* An initial determination is binding unless—

(1) The affected party requests a hearing; or

(2) CMS revises its decision.

#### **§ 423.1020 Request for hearing.**

(a) *Manner and timing of request.* (1) An Part D sponsor is entitled to a hearing as specified in § 423.1006 and may file a request with the Departmental Appeals Board office specified in the initial determination.

(2) The Part D sponsor or its legal representative or other authorized official must file the request, in writing, to the appropriate Departmental Appeals Board office, with a copy to CMS, within 60 calendar days from receipt of the notice of initial determination, to request a hearing before an ALJ to appeal any determination by CMS to impose a civil money penalty.

(b) *Content of request for hearing.* The request for hearing must—

(1) Identify the specific issues, and the findings of fact and conclusions of law with which the affected party disagrees; and

(2) Specify the basis for each contention that a CMS finding or conclusion of law is incorrect.

#### **§ 423.1022 Parties to the hearing.**

The parties to the hearing are the affected party and CMS, as appropriate.

#### **§ 423.1024 Designation of hearing official.**

(a) The Chair of the Departmental Appeals Board, or his or her delegate, designates an ALJ or a member or members of the Departmental Appeals Board to conduct the hearing.

(b) If appropriate, the Chair or the delegate may substitute another ALJ or another member or other members of the Departmental Appeals Board to conduct the hearing.

(c) As used in this part, "ALJ" includes a member or members of the Departmental Appeals Board who are designated to conduct a hearing.

#### **§ 423.1026 Disqualification of Administrative Law Judge.**

(a) An ALJ may not conduct a hearing in a case in which he or she is prejudiced or partial to the affected party or has any interest in the matter pending for decision.

(b) A party that objects to the ALJ designated to conduct the hearing must

give notice of its objections at the earliest opportunity.

(c) The ALJ will consider the objections and decide whether to withdraw or proceed with the hearing.

(1) If the ALJ withdraws, another ALJ will be designated to conduct the hearing.

(2) If the ALJ does not withdraw, the objecting party may, after the hearing, present its objections to the Departmental Appeals Board as reasons for changing, modifying, or reversing the ALJ's decision or providing a new hearing before another ALJ.

#### **§ 423.1028 Prehearing conference.**

(a) At any time before the hearing, the ALJ may call a prehearing conference for the purpose of delineating the issues in controversy, identifying the evidence and witnesses to be presented at the hearing, and obtaining stipulations accordingly.

(b) On the request of either party or on his or her own motion, the ALJ may adjourn the prehearing conference and reconvene at a later date.

#### **§ 423.1030 Notice of prehearing conference.**

(a) *Timing of notice.* The ALJ will fix a time and place for the prehearing conference and mail written notice to the parties at least 10 days before the scheduled date.

(b) *Content of notice.* The notice will inform the parties of the purpose of the conference and specify what issues are sought to be resolved, agreed to, or excluded.

(c) *Additional issues.* Issues other than those set forth in the notice of determination or the request for hearing may be considered at the prehearing conference if—

(1) Either party gives timely notice to that effect to the ALJ and the other party; or

(2) The ALJ raises the issues in the notice of prehearing conference or at the conference.

#### **§ 423.1032 Conduct of prehearing conference.**

(a) The prehearing conference is open to the affected party or its representative, to the CMS representatives and their technical advisors, and to any other persons whose presence the ALJ considers necessary or proper.

(b) The ALJ may accept the agreement of the parties as to the following:

(1) Facts that are not in controversy.

(2) Questions that have been resolved favorably to the affected party after the determination in dispute.

(3) Remaining issues to be resolved.

(c) The ALJ may request the parties to indicate the following:

(1) The witnesses that will be present to testify at the hearing.

(2) The qualifications of those witnesses.

(3) The nature of other evidence to be submitted.

#### **§ 423.1034 Record, order, and effect of prehearing conference.**

(a) *Record of prehearing conference.*

(1) A record is made of all agreements and stipulations entered into at the prehearing conference.

(2) The record may be transcribed at the request of either party or the ALJ.

(b) *Order and opportunity to object.*

(1) The ALJ issues an order setting forth the results of the prehearing conference, including the agreements made by the parties as to facts not in controversy, the matters to be considered at the hearing, and the issues to be resolved.

(2) Copies of the order are sent to all parties and the parties have 10 days to file objections to the order.

(3) After the 10 days have elapsed, the ALJ settles the order.

(c) *Effect of prehearing conference.*

The agreements and stipulations entered into at the prehearing conference are binding on all parties, unless a party presents facts that, in the opinion of the ALJ, would make an agreement unreasonable or inequitable.

#### **§ 423.1036 Time and place of hearing.**

(a) The ALJ fixes a time and place for the hearing and gives the parties written notice at least 10 days before the scheduled date.

(b) The notice informs the parties of the general and specific issues to be resolved at the hearing.

#### **§ 423.1038 Change in time and place of hearing.**

(a) The ALJ may change the time and place for the hearing either on his or her own initiative or at the request of a party for good cause shown, or may adjourn or postpone the hearing.

(b) The ALJ may reopen the hearing for receipt of new evidence at any time before mailing the notice of hearing decision.

(c) The ALJ gives the parties reasonable notice of any change in time or place or any adjournment or reopening of the hearing.

#### **§ 423.1040 Joint hearings.**

When two or more affected parties have requested hearings and the same or substantially similar matters are at issue, the ALJ may, if all parties agree, fix a single time and place for the prehearing conference or hearing and conduct all proceedings jointly. If joint

hearings are held, a single record of the proceedings is made and a separate decision issued with respect to each affected party.

#### **§ 423.1042 Hearing on new issues.**

(a) *Basic rules.* (1) Within the time limits specified in paragraph (b) of this section, the ALJ may, at the request of either party, or on his or her own motion, provide a hearing on new issues that impinge on the rights of the affected party.

(2) The ALJ may consider new issues even if CMS has not made initial or reconsidered determinations on them, and even if they arose after the request for hearing was filed or after a prehearing conference.

(3) The ALJ may give notice of hearing on new issues at any time after the hearing request is filed and before the hearing record is closed.

(b) *Notice and conduct of hearing on new issues.*

(1) Unless the affected party waives its right to appear and present evidence, notice of the time and place of hearing on any new issue will be given to the parties in accordance with § 423.1036.

(2) After giving notice, the ALJ will, except as provided in paragraph (c), proceed to hearing on new issues in the same manner as on an issue raised in the request for hearing.

(c) *Remand to CMS.* At the request of either party, or on his or her own motion, in lieu of a hearing under paragraph (b), the ALJ may remand the case to CMS for consideration of the new issue and, if appropriate, a determination. If necessary, the ALJ may direct CMS to return the case to the ALJ for further proceedings.

#### **§ 423.1044 Subpoenas.**

(a) *Basis for issuance.* The ALJ, upon his or her own motion or at the request of a party, may issue subpoenas if they are reasonably necessary for the full presentation of a case.

(b) *Timing of request by a party.* The party must file a written request for a subpoena with the ALJ at least 5 days before the date set for the hearing.

(c) *Content of request.* The request must:

(1) Identify the witnesses or documents to be produced;

(2) Describe their addresses or location with sufficient particularity to permit them to be found; and

(3) Specify the pertinent facts the party expects to establish by the witnesses or documents, and indicate why those facts could not be established without use of a subpoena.

(d) *Method of issuance.* Subpoenas are issued in the name of the Secretary.

**§ 423.1046 Conduct of hearing.**

(a) *Participants in the hearing.* The hearing is open to the parties and their representatives and technical advisors, and to any other persons whose presence the ALJ considers necessary or proper.

(b) *Hearing procedures.* (1) The ALJ inquires fully into all of the matters at issue, and receives in evidence the testimony of witnesses and any documents that are relevant and material.

(2) If the ALJ believes that there is relevant and material evidence available which has not been presented at the hearing, he may, at any time before mailing of notice of the decision, reopen the hearing to receive that evidence.

(3) The ALJ decides the order in which the evidence and the arguments of the parties are presented and the conduct of the hearing.

(4) CMS has the burden of coming forward with evidence related to disputed findings that is sufficient (together with any undisputed findings and legal authority) to establish a prima facie case that CMS has a legally sufficient basis for its determination.

(5) The affected party has the burden of coming forward with evidence sufficient to establish the elements of any affirmative argument or defense which it offers.

(6) The affected party bears the ultimate burden of persuasion. To prevail, the affected party must prove by a preponderance of the evidence on the record as a whole that there is no basis for the determination.

(c) *Review of the penalty.* When an ALJ finds that the basis for imposing a civil money penalty exists, as specified in § 423.752, the ALJ may not—

(1) Set a penalty of zero or reduce a penalty to zero, or

(2) Review the exercise of discretion by CMS to impose a civil money penalty.

**§ 423.1048 Evidence.**

Evidence may be received at the hearing even though inadmissible under the rules of evidence applicable to court procedure. The ALJ rules on the admissibility of evidence.

**§ 423.1050 Witnesses.**

Witnesses at the hearing testify under oath or affirmation. The representative of each party is permitted to examine his or her own witnesses subject to interrogation by the representative of the other party. The ALJ may ask any questions that he or she deems necessary. The ALJ rules upon any objection made by either party as to the propriety of any question.

**§ 423.1052 Oral and written summation.**

The parties to a hearing are allowed a reasonable time to present oral summation and to file briefs or other written statements of proposed findings of fact and conclusions of law. Copies of any briefs or other written statements must be sent in accordance with § 423.1016.

**§ 423.1054 Record of hearing.**

A complete record of the proceedings at the hearing is made and transcribed in all cases.

**§ 423.1056 Waiver of right to appear and present evidence.**

(a) *Waiver procedures.* (1) If an affected party wishes to waive its right to appear and present evidence at the hearing, it must file a written waiver with the ALJ.

(2) If the affected party wishes to withdraw a waiver, it may do so, for good cause, at any time before the ALJ mails notice of the hearing decision.

(b) *Effect of waiver.* If the affected party waives the right to appear and present evidence, the ALJ need not conduct an oral hearing except in one of the following circumstances:

(1) The ALJ believes that the testimony of the affected party or its representatives or other witnesses is necessary to clarify the facts at issue.

(2) CMS shows good cause for requiring the presentation of oral evidence.

(c) *Dismissal for failure to appear.* If, despite the waiver, the ALJ sends notice of hearing and the affected party fails to appear, or to show good cause for the failure, the ALJ will dismiss the appeal in accordance with § 423.1058.

(d) *Hearing without oral testimony.* When there is no oral testimony, the ALJ will—

(1) Make a record of the relevant written evidence that was considered in making the determination being appealed, and of any additional evidence submitted by the parties;

(2) Furnish to each party copies of the additional evidence submitted by the other party; and

(3) Give both parties a reasonable opportunity for rebuttal.

(e) *Handling of briefs and related statements.* If the parties submit briefs or other written statements of evidence or proposed findings of facts or conclusions of law, those documents will be handled in accordance with § 423.1016.

**§ 423.1058 Dismissal of request for hearing.**

(a) The ALJ may, at any time before mailing the notice of the decision,

dismiss a hearing request if a party withdraws its request for a hearing or the affected party asks that its request be dismissed.

(b) An affected party may request a dismissal by filing a written notice with the ALJ.

**§ 423.1060 Dismissal for abandonment.**

(a) The ALJ may dismiss a request for hearing if it is abandoned by the party that requested it.

(b) The ALJ may consider a request for hearing to be abandoned if the party or its representative—

(1) Fails to appear at the prehearing conference or hearing without having previously shown good cause for not appearing; and

(2) Fails to respond, within 10 days after the ALJ sends a “show cause” notice, with a showing of good cause.

**§ 423.1062 Dismissal for cause.**

On his or her own motion, or on the motion of a party to the hearing, the ALJ may dismiss a hearing request either entirely or as to any stated issue, under any of the following circumstances:

(a) *Res judicata.* There has been a previous determination or decision with respect to the rights of the same affected party on the same facts and law pertinent to the same issue or issues which has become final either by judicial affirmation or, without judicial consideration, because the affected party did not timely request reconsideration, hearing, or review, or commence a civil action with respect to that determination or decision.

(b) *No right to hearing.* The party requesting a hearing is not a proper party or does not otherwise have a right to a hearing.

(c) *Hearing request not timely filed.* The affected party did not file a hearing request timely and the time for filing has not been extended.

**§ 423.1064 Notice and effect of dismissal and right to request review.**

(a) Notice of the ALJ's dismissal action is mailed to the parties. The notice advises the affected party of its right to request that the dismissal be vacated as provided in § 423.1066.

(b) The dismissal of a request for hearing is binding unless it is vacated by the ALJ or the Departmental Appeals Board.

**§ 423.1066 Vacating a dismissal of request for hearing.**

An ALJ may vacate any dismissal of a request for hearing if a party files a request to that effect within 60 days from receipt of the notice of dismissal and shows good cause for vacating the dismissal.

**§ 423.1068 Administrative Law Judge's decision.**

(a) *Timing, basis and content.* As soon as practical after the close of the hearing, the ALJ issues a written decision in the case. The decision is based on the evidence of record and contains separate numbered findings of fact and conclusions of law.

(b) *Notice and effect.* A copy of the decision is mailed to the parties and is binding on them unless—

(1) A party requests review by the Departmental Appeals Board within the time period specified in § 423.1076, and the Board reviews the case;

(2) The Departmental Appeals Board denies the request for review and the party seeks judicial review by filing an action in a United States District Court or, in the case of a civil money penalty, in a United States Court of Appeals;

(3) The decision is revised by an ALJ or the Department Appeals Board; or

(4) The decision is a recommended decision directed to the Board.

**§ 423.1070 Removal of hearing to Departmental Appeals Board.**

(a) At any time before the ALJ receives oral testimony, the Board may remove itself any pending request for a hearing.

(b) Notice of removal is mailed to each party.

(c) The Board conducts the hearing in accordance with the rules that apply to ALJ hearings under this subpart.

**§ 423.1072 Remand by the Administrative Law Judge.**

(a) If CMS requests remand, and the affected party concurs in writing or on the record, the ALJ may remand any case properly before him or her to CMS for a determination satisfactory to the affected party.

(b) The ALJ may remand at any time before notice of hearing decision is mailed.

**§ 423.1074 Right to request Departmental Appeals Board review of Administrative Law Judge's decision or dismissal.**

Either of the parties has a right to request Departmental Appeals Board review of the ALJ's decision or dismissal order, and the parties are so informed in the notice of the ALJ's action.

**§ 423.1076 Request for Departmental Appeals Board review.**

(a) *Manner and time of filing.* (1) Any party that is dissatisfied with an ALJ's decision or dismissal of a hearing request, may file a written request for review by the Departmental Appeals Board.

(2) The requesting party or its representative or other authorized

official must file the request with the DAB within 60 calendar days from receipt of the notice of decision or dismissal, unless the Board, for good cause shown by the requesting party, extends the time for filing.

(b) *Content of request for review.* A request for review of an ALJ decision or dismissal must specify the issues, the findings of fact or conclusions of law with which the party disagrees, and the basis for contending that the findings and conclusions are incorrect.

**§ 423.1078 Departmental Appeals Board action on request for review.**

(a) *Request by CMS.* The Departmental Appeals Board may dismiss, deny, or grant a request made by CMS for review of an ALJ decision or dismissal.

(b) *Request by the affected party.* The Board may deny or grant the affected party's request for review or may dismiss the request for one of the following reasons:

(1) The affected party requests dismissal of its request for review.

(2) The affected party did not file timely or show good cause for late filing.

(3) The affected party does not have a right to review.

(4) A previous determination or decision, based on the same facts and law, and regarding the same issue, has become final through judicial affirmance or because the affected party failed to timely request reconsideration, hearing, Board review, or judicial review, as appropriate.

(c) *Effect of dismissal.* The dismissal of a request for Departmental Appeals Board review is binding and not subject to further review.

(d) *Review panel.* If the Board grants a request for review of the ALJ's decision, the review will be conducted by a panel of three members of the Board, designated by the Chair or Deputy Chair.

**§ 423.1080 Procedures before the Departmental Appeals Board on review.**

The parties are given, upon request, a reasonable opportunity to file briefs or other written statements as to fact and law, and to appear before the Departmental Appeals Board to present evidence or oral arguments. Copies of any brief or other written statement must be sent in accordance with § 423.1016.

**§ 423.1082 Evidence admissible on review.**

(a) The Departmental Appeals Board may admit evidence into the record in addition to the evidence introduced at the ALJ hearing, (or the documents considered by the ALJ if the hearing was

waived), if the Board considers that the additional evidence is relevant and material to an issue before it.

(b) If it appears to the Board that additional relevant evidence is available, the Board will require that it be produced.

(c) Before additional evidence is admitted into the record—

(1) Notice is mailed to the parties (unless they have waived notice) stating that evidence will be received regarding specified issues; and

(2) The parties are given a reasonable time to comment and to present other evidence pertinent to the specified issues.

(d) If additional evidence is presented orally to the Board, a transcript is prepared and made available to any party upon request.

**§ 423.1084 Decision or remand by the Departmental Appeals Board.**

(a) When the Departmental Appeals Board reviews an ALJ's decision or order of dismissal, or receives a case remanded by a court, the Board may either issue a decision or remand the case to an ALJ for a hearing and decision or a recommended decision for final decision by the Board.

(b) In a remanded case, the ALJ initiates additional proceedings and takes other actions as directed by the Board in its order of remand, and may take other action not inconsistent with that order.

(c) Upon completion of all action called for by the remand order and any other consistent action, the ALJ promptly makes a decision or, as specified by the Board, certifies the case to the Board with a recommended decision.

(d) The parties have 20 days from the date of a notice of a recommended decision to submit to the Board any exception, objection, or comment on the findings of fact, conclusions of law, and recommended decision.

(e) After the 20-day period, the Board issues its decision adopting, modifying or rejecting the ALJ's recommended decision.

(f) If the Board does not remand the case to an ALJ, the following rules apply:

(1) The Board's decision—

(i) Is based upon the evidence in the hearing record and any further evidence that the Board receives during its review;

(ii) Is in writing and contains separate numbered findings of fact and conclusions of law; and

(iii) May modify, affirm, or reverse the ALJ's decision.

(2) A copy of the Board's decision is mailed to each party.

**§ 423.1086 Effect of Departmental Appeals Board Decision.**

(a) *General rule.* The Board's decision is binding unless—

(1) The affected party has a right to judicial review and timely files a civil action in a United States District Court or, in the case of a civil money penalty, in a United States Court of Appeals; or

(2) The Board reopens and revises its decision in accordance with § 423.1092.

(b) *Right to judicial review.* Section 423.1006 specifies the circumstances under which an affected party has a right to seek judicial review.

(c) *Special rules: Civil money penalty.* Finality of Board's decision. When CMS imposes a civil money penalty, notice of the Board's decision (or denial of review) is the final administrative action that initiates the 60-day period for seeking judicial review.

**§ 423.1088 Extension of time for seeking judicial review.**

(a) Any affected party that is dissatisfied with an Departmental Appeals Board decision and is entitled to judicial review must commence civil action within 60 calendar days from receipt of the notice of the Board's decision, unless the Board extends the time in accordance with paragraph (c) of this section.

(b) The request for extension must be filed in writing with the Board before the 60-day period ends.

(c) For good cause shown, the Board may extend the time for commencing civil action.

**§ 423.1090 Basis, timing, and authority for reopening an ALJ or Board decision.**

(a) *Basis and timing for reopening.* An ALJ of Departmental Appeals Board

decision may be reopened, within 60 days from the date of the notice of decision, upon the motion of the ALJ or the Board or upon the petition of either party to the hearing.

(b) *Authority to reopen.* (1) A decision of the Departmental Appeals Board may be reopened only by the Departmental Appeals Board.

(2) A decision of an ALJ may be reopened by that ALJ, by another ALJ if that one is not available, or by the Departmental Appeals Board. For purposes of this paragraph, an ALJ is considered to be unavailable if the ALJ has died, terminated employment, or been transferred to another duty station, is on leave of absence, or is unable to conduct a hearing because of illness.

**§ 423.1092 Revision of reopened decision.**

(a) Revision based on new evidence. If a reopened decision is to be revised on the basis of new evidence that was not included in the record of that decision, the ALJ or the Departmental Appeals Board—

(1) Notifies the parties of the proposed revision; and

(2) Unless the parties waive their right to hearing or appearance—

(i) Grants a hearing in the case of an ALJ revision; and

(ii) Grants opportunity to appear in the case of a Board revision.

(b) *Basis for revised decision and right to review.*

(1) If a revised decision is necessary, the ALJ or the Departmental Appeals Board, as appropriate, renders it on the basis of the entire record.

(2) If the decision is revised by an ALJ, the Departmental Appeals Board may review that revised decision at the

request of either party or on its own motion.

**§ 423.1094 Notice and effect of revised decision.**

(a) *Notice.* The notice mailed to the parties states the basis or reason for the revised decision and informs them of their right to Departmental Appeals Board review of an ALJ revised decision, or to judicial review of a Board reviewed decision.

(b) *Effect—(1) ALJ revised decision.* An ALJ revised decision is binding unless it is reviewed by the Departmental Appeals Board.

(2) *Departmental Appeals Board revised decision.* A Board revised decision is binding unless a party files a civil action in a district court of the United States within the time frames specified in § 423.858.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

**Editorial Note:** This document was received at the Office of the Federal Register on May 21, 2007.

Dated: November 9, 2006.

**Leslie V. Norwalk,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Approved: January 9, 2007.

**Michael O. Leavitt,**

*Secretary.*

[FR Doc. 07–2579 Filed 5–21–07; 4:20 pm]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 423

[CMS-4130-P]

RIN 0938-A074

#### Medicare Program; Policy and Technical Changes to the Medicare Prescription Drug Benefit

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would both codify prior clarifications of our policies associated with the Medicare Prescription Drug Benefit (also known as Medicare Part D) and propose certain clarifications of these policies. *These clarifications include the following:* Codifying our expectations of Part D sponsors regarding providing adequate access to home infusion pharmacies for infused covered Part D drugs and proposing standards with respect to timeliness of delivery of drugs; codifying our guidance that certain supplies associated with the inhalation of insulin are included in the definition of Part D drug; refining our definition of what may be included in the drug costs Part D sponsors use as the basis for calculating beneficiary cost sharing, reporting drug costs to CMS for the purposes of reinsurance reconciliation and risk sharing, as well submitting bids to CMS; reiterating our previous guidance explaining how we interpret the statutory exclusion from the definition of a Part D drug for any drug when used for the treatment of sexual or erectile dysfunction, unless that drug was used for an FDA-approved purpose other than sexual or erectile dysfunction; and codifying our guidance on plan-to-plan reconciliation and reconciliation to a payer other than the Part D of record. In addition, we are correcting the regulations to ensure that they reflect the appropriate subsidy for partial subsidy individuals subject to a late enrollment penalty. We also propose changes to the retiree drug subsidy regulations, including permitting non-calendar year plans to choose between the current year's or the subsequent year's Part D cost limits in certain circumstances and codifying our previous guidance on aggregating plan options for purposes of meeting the net test for actuarial equivalence.

**DATES:** To be assured consideration, comments must be received at one of

the addresses provided below, no later than 5 p.m. on July 24, 2007.

**ADDRESSES:** In commenting, please refer to file code CMS-4130-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Submit electronic comments on CMS regulations with an open comment period." (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-4130-P, P.O. Box 8014, Baltimore, MD 21244-8014.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-4130-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members. Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the HHS Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** For overall questions about this proposed rule, please contact Alissa DeBoy, (410) 786-6041. For other detailed questions on clarifications and/or proposed changes herein, please contact the following individuals for the applicable subpart.

Subpart B—James Slade, (410) 786-1073.

Subpart C—Vanessa Duran, (410) 786-8697 or Gregory Dill, (312) 353-1754.

Subparts F and G—Deondra Moseley, (410) 786-4577 or Meghan Elrington, (410) 786 8675.

Subpart I—James Slade, (410) 786-1073.

Subpart J—Deborah Larwood, (410) 786-9500 or Vanessa Duran, (410) 786-8697.

Subpart K—Mark Smith, (410) 786-8015.

Subpart P—Deondra Moseley, (410) 786-4577 or Christine Hinds, (410) 786-4578.

Subpart R—Adam Shaw, (410) 786-1091.

Subpart S—Christine Hinds, (410) 786-4578.

#### SUPPLEMENTARY INFORMATION:

*Submitting Comments:* We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS-4130-P and the specific "issue identifier" that precedes the section on which you choose to comment.

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.cms.hhs.gov/eRulemaking>. Click on the link "Electronic Comments on CMS Regulations" on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

## I. Background

The Medicare Prescription Drug Benefit (also known as Part D) is a voluntary prescription drug benefit program enacted into law on December 8, 2003 in section 101 of title I of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173). In the January 28, 2005 **Federal Register** (70 FR 4194), we published a final rule implementing the provisions of Part D, and these provisions became effective March 22, 2005.

Since publication of the January 28, 2005 final rule, we have issued several clarifications or interpretations of the final rule by way of interpretive guidance documents. In addition, we have issued guidance explaining how we will interpret a change to the Social Security Act (“Act”) that excludes drugs used in the treatment of erectile dysfunction from Part D, with a certain exception. In order to ensure public awareness of our policies, as well as to avoid potential confusion regarding them, in this preamble, we explain many of the respective clarifications or interpretations. Relatedly, we are proposing to codify some of these clarifications in regulation through this proposed rule, as well as making certain technical corrections to the January 28, 2005 final rule.

In addition, due to our experience to date in implementing Part D, we are proposing several new clarifications of our policy for Part D plans, to be implemented in contract year 2009, on which we specifically invite public comment.

## II. Provisions of the Proposed Rule

### A. Subpart B—Eligibility and Enrollment

#### 1. Approval of Marketing Materials and Enrollment Forms (§ 423.50)

In the preamble of the January 28, 2005 final rule, we discussed the approval of marketing materials and enrollment forms, to correspond with the regulations text at § 423.50. (70 FR 4223) In our response to public comments, we stated that it was “appropriate to allow providers and pharmacies to *market* to beneficiaries.” (emphasis added). (70 FR 4223) When we used the term “market” in the final rule, we used the term “market” in a more general sense, to mean assisting in enrollment or education directed at beneficiaries.

Subsequent to our publication of the final rule, we issued the *Medicare Marketing Guidelines* (“*The Guidelines*”). (See Centers for Medicare

& Medicaid Services, *Medicare Marketing Guidelines for: Medicare Advantage Plans (MAs); Medicare Advantage Prescription Drug Plans (MA-PDs); Prescription Drug Plans (PDPs); 1876 Cost Plans* <http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/FinalMarketingGuidelines.pdf> (last updated July 25, 2006).) *The Guidelines* contain a specific definition of the term, “marketing.” The *Guidelines* define “marketing” as “[s]teering, or attempting to steer, an undecided potential enrollee towards a plan, or limited number of plans, and for which the individual or entity performing marketing activities expects compensation directly or indirectly from the plan for such marketing activities.” (*The Guidelines*, page 8.) This definition further clarifies that neither “[a]ssisting in enrollment” nor “education” constitute “marketing.” (*The Guidelines*, page 8.) *The Guidelines* require Part D plan sponsors to ensure that their contracted providers agree to refrain from “marketing” to beneficiaries, as that term is defined by *The Guidelines* (that is, steering or attempting to steer an undecided beneficiary toward a plan based on the provider’s financial interest). Thus, our intent in the preamble was to acknowledge that providers and pharmacies are free to engage in either “assisting in enrollment” or “education” (as those terms are defined on page 6 of *The Guidelines*), including provider promotional activities as permitted under *The Guidelines*. We believe that the context of our discussion in the preamble demonstrates that we were discussing providers and pharmacies assisting in beneficiary enrollment, based on the beneficiary’s needs, and education. This is consistent with *The Guidelines*, which encourage providers to assist beneficiaries in objective assessments of the beneficiaries’ needs and potential plan options that may meet those needs. Given that the *Guidelines*’ definition of “market” was not issued until after publication of the final rule, we wish to emphasize our consistent policy: providers and pharmacies that are contracted with plan sponsors may not “market” to beneficiaries, as the term is defined in *The Guidelines*. However, providers and pharmacies may assist in enrollment, including participating in provider promotion activities within the parameters established in *The Guidelines*, and educate beneficiaries. We clarify this policy here in this proposed rule so as to avoid any confusion arising from our inaccurate

use of the term “market” in our discussion of the approval of marketing materials and enrollment forms in the January 28, 2005 final rule.

Section 423.50(f)(1)(v) states that in conducting marketing activities, a Part D plan may not “[u]se providers, provider groups, or pharmacies to distribute printed information comparing the benefits of different Part D plans unless the providers, provider groups or pharmacies accept and display materials from all Part D plan sponsors.” (70 FR 4532) One might infer from this language that when a Part D plan uses providers, provider groups, or pharmacies to distribute printed information comparing the benefits of different Part D plans, that the providers, provider groups, or pharmacies must not only accept and display printed information comparing the benefits of the Part D plans with whom they contract, but that they also must accept and display printed information comparing the benefits of different Part D plans with whom they do *not* contract. This interpretation would likely lead to beneficiary confusion because if a provider were required, per its contract with Part D plan sponsors, to display materials for plans with which the provider does not contract, beneficiaries, who may want to continue using the applicable provider because the provider has a history with the beneficiary, may mistakenly believe that he or she may continue to use the applicable non-contracted provider and receive the maximum amount of benefit. Even though we are requiring that plan sponsors only require their contracted providers to accept and display comparative materials from plans with which the provider contracts, *the Guidelines* require that providers in a health care setting inform prospective enrollees where they can obtain information on the full range of plan options, including referring beneficiaries to 1–800–MEDICARE, <http://www.medicare.gov>, State Health Insurance Assistance Programs. (*The Guidelines*, page 124.) We clarify here that a Part D plan can use providers, provider groups, or pharmacies to distribute printed information comparing the benefits of different Part D plans, so long as the providers, provider groups, or pharmacies accept and display printed information comparing the benefits of different Part D plans with whom they contract; the providers, provider groups, or pharmacies are not obliged to accept and display any comparative information regarding those Part D plans with whom they do *not* contract. This

clarification applies to comparative marketing materials and is in accord with *The Guidelines*. (*The Guidelines*, page 125.) We are codifying the policy in regulation by revising § 423.50(f)(1) to indicate a Part D plan may use providers, provider groups and pharmacies to distribute printed information comparing the benefits of different plans, so long as the providers, provider groups or pharmacies accept and display materials from all Part D plan sponsors with which the providers, provider groups or pharmacies contract.

## 2. Procedures To Determine and Document Creditable Status of Prescription Drug Coverage (§ 423.56)

In the regulation text of the January 28, 2005 final rule, we have identified a typographical error in § 423.56(b)(6). As published, § 423.56(b)(6) directs the reader to reference § 423.205 for a definition of the term “Medicare supplemental policy”. (70 FR 4532) However, the proper reference for the definition of the term “Medicare supplemental policy” is § 403.205. Therefore, we are revising the regulation text accordingly to state the correct reference; that is, § 403.205.

## B. Subpart C—Benefits and Beneficiary Protections

### 1. Definitions

#### a. Part D Drug

##### (1) Erectile Dysfunction

In the preamble of the January 28, 2005 final rule (70 FR 4228 *et seq.*), we addressed the regulatory definition of the term “Part D drug” in § 423.100. (70 FR 4534) We stated that in accordance with section 1860D–2(e)(2) of the Act, the definition of a Part D drug would specifically exclude drugs or classes of drugs, or their medical uses, which may be excluded from coverage or otherwise restricted under Medicaid under section 1927(d)(2) of the Act, with the exception of smoking cessation agents. On October 26, 2005, section 1860D–2(e)(2)(A) of the Act was amended to exclude from the statutory definition of a Part D drug “a drug when used for the treatment of sexual or erectile dysfunction, unless such drug were used to treat a condition, other than sexual or erectile dysfunction, for which the drug has been approved by the Food and Drug Administration.” Consequently, beginning January 1, 2007, erectile dysfunction (ED) drugs will not be classified as Part D drugs under § 423.100 when they are used for the treatment of sexual or erectile dysfunction, unless they are used to treat a condition, other than sexual or

erectile dysfunction, for which the drug has been approved by the FDA. We note here that ED drugs will also not meet the definition of a Part D drug for off-label uses that by definition are not approved by the FDA. This includes non-FDA-approved uses contained in one of the compendia listed in section 1927(g)(1)(B)(i) of the Act: American Hospital Formulary Service Drug Information, United States Pharmacopeia-Drug Information (or its successor publications), and the DRUGDEX Information System.

This ED exclusion is cited in 1927(d)(2)(K), and because our definition of a Part D drug in § 423.100(2)(ii) excludes drugs which may be excluded under section 1927(d)(2) of the Act, no regulation text change is required. Similar to other excluded drugs contained in section 1927(d)(2) of the Act, those plans that wish to continue coverage of ED drugs may do so as a supplemental benefit through enhanced alternative coverage, consistent with existing policy. To ensure adequate notice of this new ED exclusion, we issued a question and answer (Q&A) notice to plans throughout our Healthcare Plan Management System (HPMS) on July 10, 2006 (Q&A 7682 [http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std\\_alp.php?p\\_sid=F\\*VR\\*Ygi](http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std_alp.php?p_sid=F*VR*Ygi)). We believe that this Q&A, coupled with a considerable amount of media attention on the topic, has provided the industry a significant amount of notice regarding the implementation of this ED exclusion. Our provider and beneficiary outreach programs are also including the new ED exclusion in their broader education program to ensure all groups are prepared for the implementation of the ED exclusion on January 1, 2007.

##### (2) Morbid Obesity

Section 423.100 defines the term “Part D drug” and excludes from that definition “[d]rugs or classes of drugs, or their medical uses, which may be excluded from coverage or otherwise restricted under Medicaid under sections 1927(d)(2) or (d)(3) of the Act, except for smoking cessation agents.” (70 FR 4534) In the corresponding preamble of the January 28, 2005 final rule, we explained that this list of excluded drugs included agents when used for anorexia, weight loss, or weight gain and agents when used for cosmetic purposes or hair growth. (70 FR 4228) However, in the preamble we erroneously asserted that to the extent that a drug was dispensed for a “medically accepted indication” (70 FR 4230) as described in section 1860D–

2(e)(1) of the Act, weight loss agents could be covered for the treatment of morbid obesity. Therefore, we clarify here that agents, when used for anorexia, weight loss, or weight gain, are specifically excluded from the definition of Part D drugs. Thus, a weight loss agent, even when not used for cosmetic purposes, is still “an agent used for anorexia, weight loss, or weight gain,” for purposes of the exclusion from the definition of Part D drug. Similar to other excluded drugs contained in section 1927(d)(2) of the Act, those plans that wish to continue coverage of weight loss agents may do so as a supplemental benefit through enhanced alternative coverage, consistent with existing policy.

Since publication of the January 28, 2005 final rule, we have received requests for clarification about our preamble language regarding drugs used to treat morbid obesity. We clarified our policy in Q&A guidance to Part D plans released in Spring 2005. (Q&A 5279 [http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std\\_alp.php?p\\_sid=7KFqChi](http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std_alp.php?p_sid=7KFqChi).) There, we stated that weight loss agents prescribed for the treatment of morbid obesity are not Part D drugs covered under 1860D–2(e)(2) of the Act, because even though they are not used for other excluded purposes such as cosmetic or hair growth, they nevertheless remain agents for anorexia, weight loss, or weight gain that are excluded from the definition of Part D drugs under section 1860D–2(e)(2) of the Act. We note that we are not expanding or changing current policy regarding the exclusion of agents used for weight loss from the definition of Part D drug. Rather, we are clarifying existing policy regarding the definition of a Part D drug that excludes agents used for weight loss, including in connection with morbid obesity.

##### (3) Insulin Inhalation Drugs and Supplies

[If you choose to comment on issues in this section, please include the caption “INSULIN INHALATION DRUGS AND SUPPLIES” at the beginning of your comments.]

With the passage of the MMA, Congress included within the definition of “Part D drug” found in section 1860D–2(e) of the Act “medical supplies associated with the injection of insulin (as defined in regulations of the Secretary)” as Part D drugs. We believe that Congress’ intent was to ensure that a beneficiary with diabetes had access to both the insulin and the supplies required to deliver insulin into the body. For example, in the conference report for the MMA, the conferees

specifically stated that: "It is the intent of conferees that the definition of insulin, and medical supplies associated with the administration of insulin, as a covered prescription drug shall include medical supplies that the Secretary determines to be reasonable and necessary, such as insulin, insulin syringes, and insulin delivery devices that are not otherwise covered under the durable medical equipment benefit." (H.R. Conf. Rep. 108–391, 108th Cong., 1st Sess. at 442 (2003))

Administration of insulin by injection, especially since it involves multiple injections daily, has fueled constant research into the delivery of insulin by another route. While there have been promising developments of an alternative delivery method over the past 8 years, no other insulin delivery method had obtained FDA approval as of the time we were undertaking rulemaking to implement the Part D program. Thus, in the final rule, we interpreted the term "medical supplies associated with the injection of insulin" as comprising syringes, needles, alcohol swabs, gauze, and insulin delivery devices not otherwise covered by Part B, such as insulin pens, pen supplies, and needle-free syringes. In doing this, we provided greater detail to Part D sponsors on what exactly met the definition of a Part D drug, but, like Congress, we derived our definition based upon the only approved administration method available to diabetics at the time.

On January 26, 2006, the FDA approved the first-ever inhaled insulin. This inhaled medication is a dry powder inhaler ("DPI") that requires a patient to place a small amount of powdered insulin into a hand-held chamber that permits inhalation of the insulin into the lungs.

Subsequent to the FDA approval, we began to receive questions regarding the reimbursement of this new product. For example, inquirers wanted to know whether the inhalation supplies associated with this new product would be included in the definition of a Part D drug, because while administration by inhalation offers the beneficiary an alternative method of receiving insulin for those appropriately qualified, the chamber and any associated accessories involved in inhalation are not specifically described in the definition of a Part D drug.

Upon review of these issues, we concluded it was not Congress' intention to prevent access to this novel insulin delivery method, as doing so would deny millions of Medicare beneficiaries an alternative way to manage diabetes. Thus, we have

determined that, consistent with Congressional intent, supplies associated with the inhalation of insulin meet the definition of a Part D drug. We propose to codify our existing guidance (Q&A 7940 [http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std\\_alp.php?p\\_sid=sXyWmkki](http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std_alp.php?p_sid=sXyWmkki)) and revise the definition of a Part D drug to include "[s]upplies that are directly associated with delivering insulin into the body through inhalation, such as the inhalation chamber used to deliver the insulin."

While this new definition would make these insulin inhalation supplies eligible for reimbursement as a Part D drug, unless our formulary guidelines required otherwise, it would be the Part D sponsor's decision (through its Pharmacy and Therapeutics Committee) whether to place these products on the formulary. Additionally, we would expect sponsors to apply drug utilization management tools to ensure the appropriate use of these supplies.

We note that our extension of insulin-related supplies extends only to those supplies that are directly associated with delivering the insulin into the body through inhalation, such as the inhalation chamber used to deliver the insulin. Where the relationship is more indirect, for example auxiliary supplies that might be used to hold the chamber, ease actuation or store the chamber, we would not consider such items to be an insulin delivery-related supply. We reiterate our statement in the final rule that our intention is to narrowly construe what constitutes these medical supplies in order to avoid an inappropriate expansion of the Part D benefit.

#### (4) Vaccine Administration Fee

We also propose to amend the definition of Part D drug to include a reference to vaccine administration on or after January 1, 2008, to conform to Section 1860D–2(e)(1)(B) of the Act, which was recently amended by Section 202(b) of the Tax Relief and Health Care Act of 2006. We intend to reflect the statutory change in the final rule.

#### b. Long-Term Care Facilities

In the January 28, 2005 final rule, § 423.100 defines the term "long term care facility" as a "skilled nursing facility as defined in section 1819(a) of the Act, or a medical institution or a nursing facility for which payment is made for an institutionalized individual under section 1902(q)(1)(B) of the Act." (70 FR 4534) However, in our corollary discussion of that term in the preamble, we inadvertently omitted institutions

for mental disease (IMDs) from the list of facilities that meet the definition of a long term care (LTC) facility. (70 FR 4236)

Since publication of the January 28, 2005 final rule, we have received numerous requests for clarification regarding the status of IMDs in terms of our definition of the term "long term care facility". Consequently, we have clarified, in Q&A guidance to Part D plans released on October 21, 2005 (<http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/IMDICFParmacyGuidance.pdf>), the status of IMDs. The definition of an LTC facility would include an IMD that is a nursing facility or other medical institution (which is a term defined at 42 CFR 4435.1009) and receives Medicaid payment for its services to an institutionalized individual under section 1902(q)(1)(B) of the Act. In other words, to the extent that a nursing facility or medical institution that is an IMD has as an inpatient any institutionalized individual (which means any full benefit dual eligible individual for whom payment is made for IMD services under Medicaid throughout a month, as provided in section 1902(q)(1)(B) of the Act), that IMD will fall within the definition of an LTC facility in § 423.100. We are aware that there exists a statutory Federal financial participation exclusion under Medicaid affecting residents of IMDs between the ages of 22 and 64. However, the IMD exception to the definition of "medical assistance" under section 1902(q)(1)(B) of the Act does not apply to individuals who are age 65 and older. Thus, a State may elect to provide Medicaid coverage for services of an IMD to individuals over age 65. In these cases, all elderly full-benefit dual eligibles who are inpatients in an IMD for a full month are considered institutionalized individuals for that month. We note that we are not expanding or changing current policy regarding the definition of an LTC facility, but rather clarifying that IMDs are among the medical institutions that meet the definition of an LTC facility in § 423.100.

We also clarify that as medical institutions, hospitals, (including long-term care hospitals) that receive payments under section 1902(q)(1)(B) of the Act can meet the definition of an LTC facility. To the extent that inpatients in these hospitals exhaust their Part A inpatient days benefit, and payment is no longer available under Part A or Part B for drugs that would otherwise meet the definition of a Part D drug, such drugs are Part D drugs. Consequently, Part D sponsors must

ensure that they provide convenient access to network LTC pharmacies (which, in the case of a hospital, is typically the hospital's in-house pharmacy) for all of their enrollees who are inpatients in a hospital where the hospital is a "medical institution" under 1902(q)(1)(B) and therefore would meet the Part D definition of an LTC facility and whose Part A benefits have been exhausted.

#### c. Contracted Pharmacy Network

Section 423.100 defines the "contracted pharmacy network" as "pharmacies, including retail, mail-order, and institutional pharmacies, under contract with a Part D sponsor to provide covered Part D drugs at negotiated prices to Part D enrollees." (70 FR 4533) There, we made a technical error by inadvertently omitting clarifying language indicating that a pharmacy in a contracted pharmacy network must be licensed. We view this change as necessary in order to bring it in line with our term "retail pharmacy" which requires that a retail pharmacy be "licensed." (70 FR 4535) Further, we believe this is an important clarification to be made, given our commitment to safeguard beneficiaries' interests and health with respect to access to covered Part D drugs through network pharmacies, be they retail, home infusion, long-term care, I/T/U, or other types of pharmacies. Accordingly, we will revise the definition of "contracted pharmacy network" to state that a pharmacy participating in a contracted pharmacy network must be licensed.

#### d. Negotiated Prices

[If you choose to comment on issues in this section, please include the caption "NEGOTIATED PRICES" at the beginning of your comments.]

Under § 423.104(d)(2)(i), beneficiary cost sharing under the initial coverage limit is equal to 25 percent of "actual cost." (70 FR 4535) In addition, in accordance with § 423.104(g)(1), a Part D sponsor is required to provide beneficiaries with "access to negotiated prices for covered Part D drugs \* \* \* even if no benefits are payable to the beneficiary \* \* \* because of the application of any deductible or 100 percent coinsurance requirement." (70 FR 4536) In other words, even if a beneficiary is paying 100 percent of his or her costs, the beneficiary must be charged the same negotiated prices at a network pharmacy that would otherwise be used for calculating cost sharing.

Actual cost is defined in § 423.100 as "the negotiated price for a covered Part D drug when the drug is purchased at

a network pharmacy, and the usual and customary price when a beneficiary purchases the drug at an out-of-network pharmacy consistent with § 423.124(a)." (70 FR 4533.) In § 423.100 "negotiated prices" means prices for covered Part D drugs that—

- Are available to beneficiaries at the point of sale at network pharmacies;
- Are reduced by those discounts, direct or indirect subsidies, rebates, other price concessions, and direct or indirect remunerations that the Part D sponsor has elected to pass through to Part D enrollees at the point of sale; and
- Includes any dispensing fees. (70 FR 4534.)

On July 20, 2006, we issued guidance to Part D sponsors stating that, in order to minimize disruption to plan operations, for 2006 and 2007, sponsors could, at their option, base beneficiary cost-sharing not on the price ultimately charged by the pharmacy for the drug, but on the price the sponsor paid a pharmacy benefit manager (PBM) or other intermediary for the drug. We also stated our intent to issue a proposed rule that would require a single approach for calculating beneficiary cost sharing, based upon the price ultimately received by the pharmacy.

In order to resolve the confusion caused by the Prescription Drug Benefit final rule, we are now proposing to amend the definition of "negotiated prices" to be effective for Part D contract year 2009 to require that beneficiary cost sharing must be based upon the price ultimately received by the pharmacy or other dispensing provider.

Therefore, we are proposing to revise § 423.100 so that the first part of the definition of "negotiated prices" would state that negotiated prices are prices that the Part D sponsor (or other intermediary contracting organization) and the network dispensing pharmacy or other network dispensing provider have negotiated as the amount the network dispensing pharmacy or other network dispensing provider will receive, in total, for a particular drug. The term "intermediary contracting organization" refers to organizations such as pharmacy benefit managers that contract with plan sponsors to negotiate pharmacy contracts on their behalf.

We would also revise the definition of "negotiated prices" to include prices for covered Part D drugs negotiated between the Part D sponsor and other network dispensing providers. Part D sponsors can contract with providers other than a pharmacy to dispense covered Part D drugs, including them in their network. Therefore, we are amending the definition of negotiated prices to reflect the prices for covered

Part D drugs that Part D sponsors negotiate with all of their network dispensing providers.

In addition, although the definition of negotiated prices continues to state that these prices are reduced by discounts, rebates, and other direct and indirect remuneration that the Part D sponsor has elected to pass through to Part D enrollees at the point of sale, it is our understanding that in practice, Part D sponsors are unable to actually apply discounts, rebates, and other price concessions at the point of sale in order to reduce the price negotiated with the dispensing pharmacy or other dispensing provider. We recognize that negotiated prices would include only those price concessions actually passed through in order to result in a lower price to the beneficiary at the pharmacy (or other dispensing provider). To the extent no price concessions are passed through, of course, the negotiated prices would not be reduced.

#### 2. Requirements Related to Qualified Prescription Drug Coverage (§ 423.104)—Waiver of Reduction of Part D Cost-Sharing by Pharmacies

In the January 28, 2005 final rule, we stated that we would allow waivers or reductions of cost-sharing by pharmacies to count as incurred costs. (70 FR 4240) Our statement, however, was limited only to pharmacies that are not also acting as other wrap-around coverage that generally would not count toward TrOOP. We did not intend to allow pharmacy waivers to count as incurred costs in cases where a pharmacy also met the definition of a group health plan, insurance or otherwise, or a third party payment arrangement, as those terms are defined in § 423.100. As provided in the definition of incurred costs in § 423.100 (70 FR 4534), wraparound assistance with covered Part D drug costs by group health plans, insurance or otherwise, or a third party payment arrangement does not count as costs incurred toward a Part D enrollee's annual out-of-pocket threshold.

In response to numerous requests for clarification of our policy with regard to waiver or reduction of Part D cost-sharing by network pharmacies, particularly by safety-net pharmacies, we have clarified, in question-and-answer guidance to Part D plans released on June 27, 2005 (Q & A number 5115 [http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std\\_alp.php?p\\_sid=gIVVcxhi](http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std_alp.php?p_sid=gIVVcxhi)), that although we will generally allow waivers or reductions of Part D cost-sharing by pharmacies to count toward

as incurred costs, this will not be the case for pharmacies affiliated with entities whose wraparound coverage does not count as an incurred cost. This includes pharmacies operated by entities that are group health plans, insurance, government-funded health programs, or third party payment arrangements with an obligation to pay for covered Part D drugs. As a result, many safety-net providers (who, because they are fully or partially funded through government grants are considered government-funded health programs as defined in § 423.100) will be unable to have any waiver or reduction of cost-sharing their pharmacies apply to Part D enrollees' Part D cost-sharing count as an incurred cost. This clarification does not represent a change or expansion to current policy given that, consistent with the section 1860D–2(b)(4)(C) of the Act, our regulations have made abundantly clear that cost-sharing paid for or reimbursed by group health plans, insurance or otherwise, or other third party payment arrangements cannot be counted toward a Part D enrollee's incurred cost total.

### 3. Access to Covered Part D Drugs (§ 423.120)

#### a. Applicability of Some Nonretail Pharmacies to Standards for Convenient Access (§ 423.120(a)(2))

In § 423.120(a)(2), we made a technical error by inadvertently referring to “rural health clinics” as “rural health centers.” (70 FR 4537) In fact, there is no such entity as a “rural health center” for purposes of the Medicare statute or regulations. Our intent was to reference facilities described in section 1861(aa)(2) of the Act, as demonstrated by our reference in § 423.464(f)(1)(vii) to “Rural health centers as defined under section 1861(aa)(2) of the Act.” The correct terminology for those facilities is “rural health clinics.” Accordingly, we are revising the regulatory text to correctly reference these entities in § 423.120(a)(2) by removing the phrase “rural health centers” and adding in its place “rural health clinics.”

#### b. Adequate Access to Home Infusion Pharmacies (§ 423.120(a)(4))

[If you choose to comment on issues in this section, please include the caption “ADEQUATE ACCESS TO HOME INFUSION PHARMACIES” at the beginning of your comments.]

We are proposing to codify in regulation, at § 423.120(a)(4) (70 FR 4537), guidance that we have already issued with regard to access to home

infusion pharmacies by Part D sponsors. This codification would ensure that the regulations provide specificity to our requirement that Part D enrollees receive adequate access to Part D-covered home infusion therapy. In addition, we propose one change to the regulations, on which we invite comments. This modification would require that Part D sponsors provide covered home infusion drugs within 24 hours of discharge from an acute setting.

In the January 28, 2005 final rule, we used our authority under section 1860D–4(b)(1)(C) of the Act to require Part D plans to provide adequate access to home infusion pharmacies. Given coverage of home infusion drugs under Part D, we did not believe it was an option for Part D plans not to include at least some home infusion pharmacies in their networks in order to provide enrollees with meaningful access to those drugs. As we stated in the preamble to the final rule (70 FR 4250), we were particularly concerned in regard to prescription drug plans which, unlike other Part D plans options, do not benefit from reduced medical costs associated with home infusion and may therefore have little incentive to contract with home infusion pharmacies. Therefore, we added a provision to our final regulations at § 423.120(a)(4) which requires Part D plans to demonstrate to us that they provide adequate access to home infusion pharmacies consistent with CMS operational guidance to Part D plans. In the preamble to our final rule, we also set forth our expectation that Part D plans would demonstrate adequate access based in part on the number of enrollees in their service areas and the geographic distribution and capacity of home infusion pharmacies in those service areas.

As we have gained experience with the Part D program, the need to clarify our expectations with regard to the provision of Part D-covered home infusion drugs became necessary. To this end, we issued a clarification of our expectations regarding adequate access to home infusion pharmacies to Part D plans on March 10, 2006. ([http://www.cms.hhs.gov/PrescriptionDrugCovContra/downloads/HomeInfusionReminder\\_03.10.06.pdf](http://www.cms.hhs.gov/PrescriptionDrugCovContra/downloads/HomeInfusionReminder_03.10.06.pdf).) That policy memorandum clarified that, while we do not expect Part D plans to provide or pay for supplies, equipment, or the professional services needed for home infusion therapy, we do expect Part D sponsors' contracted pharmacy networks to deliver home infused drugs in a form that can be administered in a clinically appropriate fashion.

In addition, we clarified that home infusion networks must have contracted pharmacies capable of providing infusible Part D drugs for both short term acute care (for example, IV antibiotics) and long term chronic care (for example, alpha<sup>1</sup> protease inhibitor) therapies. While the same network pharmacy does not necessarily need to be capable of providing the full range of home infusion Part D drugs, the home infusion network, in the aggregate, must have a sufficient number of pharmacies capable of providing the full range of home infusion Part D drugs to ensure enrollees have adequate access to medically necessary home infusion therapies when needed.

In addition, we clarified that Part D plans must require their contracted network pharmacies that deliver home infusion drugs to ensure that the necessary professional services and ancillary supplies required for home infusion therapy are in place before dispensing home infusion drugs. In addition, we believe that plans must require the delivery of home infusion drugs within a reasonable time period based on these assurances. We note that, generally, facility discharge planners, in collaboration with a patient's physician, are responsible for ensuring that the components needed to safely administer a drug at home are present upon a patient's discharge. However, we expect the Part D plan's in-network contracted pharmacy vendors—particularly those that do not supply the necessary ancillary services (which are not a Medicare Part D benefit)—to receive assurances that another entity, such as a home health entity, can arrange for the provision of these services. We further clarified that we consider the action of obtaining assurances a minimum quality assurance requirement on Part D plans under § 423.153(c).

With respect to the timely delivery of home infusion drugs under Part D, we invite comments on the specification of a reasonable timeframe for delivery. In our ongoing discussions with home infusion providers we have learned that best practices involve the availability of infusion services upon discharge from a hospital either by the next required dose or within twenty-four hours of the discharge. Consequently, we are proposing a requirement that Part D plan sponsors provide covered home infusion drugs within 24 hours of discharge from an acute setting. We note that home infusion therapy may serve as a vehicle to promote early hospital discharge. Given that the need for home infusion therapy is often of an urgent nature, we believe that delivery of home infusion drugs should occur within 24

hours, provided that all necessary assurances have been received by the Part D plan sponsor that all ancillary services and professional services have been arranged.

Accordingly, in order to codify our previous guidance, we are proposing to revise § 423.120(a)(4) to expressly require that a Part D plan's contracted pharmacy network provide adequate access to home infusion pharmacies through a contracted pharmacy network that, at a minimum: (1) Is capable of delivering home infused drugs in a form that can be administered in a clinically appropriate fashion; (2) is capable of providing infusible Part D drugs for both short-term acute care and long-term chronic care therapies; and (3) ensures that the professional services and ancillary supplies necessary for home infusion therapy are in place before dispensing home infusion drugs. In addition, we propose to add a new requirement that a Part D plan's contracted pharmacy network also provide delivery of home infusion drugs within 24 hours. These proposed changes would codify our existing operational policies and impose a new requirement that Part D plans provide adequate access to home infusion therapy through their contracted pharmacy networks within 24 hours.

*C. Subpart F—Submission of Bids and Monthly Beneficiary Premiums: Plan Approval—Timing of Payments*  
(§ 423.293(a))

We are making a technical correction to § 423.293(a) (70 FR 4546) to reflect the statutory requirement that all the provisions of section 1854(d) of the Act apply in the same manner as they apply under Part C of Title XVIII of the Act. Section 1860D–13(c)(1) of the Act states that, with two exceptions not particularly relevant to this discussion, the provisions of “section 1854(d) shall apply to PDP sponsors and premiums (and any late enrollment penalty) under this part in the same manner as they apply to MA organizations and beneficiary premiums under part C, except that any reference to a Trust Fund is deemed for this purpose a reference to the Medicare Prescription Drug Account.” Section 1854(d)(1) of the Act requires an organization to permit the payment of both basic and supplemental premiums on a monthly basis. This concept is reflected in the Part C regulations at § 422.262(e). In accordance with the statutory mandate, we have already required plans to permit beneficiaries to pay their premiums on a monthly basis. We are now making a technical correction to § 423.293(a) to cite both § 422.262(f) and

§ 422.262(e). This change reflects both our current policy as well as the statutory requirement.

*D. Subpart G—Payments to Part D Plan Sponsors for Qualified Prescription Drug Coverage*

1. Definitions and Terminology  
(§ 423.308)

a. Administrative Costs (§ 423.308)

[If you choose to comment on issues in this section, please include the caption “ADMINISTRATIVE COSTS” at the beginning of your comments.]

The statute requires CMS to exclude administrative costs from the calculation of gross covered prescription drug costs and allowable risk corridor costs. However, administrative costs are not defined in either the statute or the January 28, 2005 final rule. Therefore, to explain this term and clarify which costs are included in administrative costs, we are adding a definition for the term “administrative costs”. In the definition, we define “administrative costs” as the Part D sponsor's costs other than those incurred to purchase or reimburse the purchase of Part D drugs under the Part D plan. Included in the definition of administrative costs are costs incurred by Part D plans that exceed the price charged by a dispensing entity for covered Part D drugs. For example, the profit retained by a PBM that negotiates prices with pharmacies on behalf of a Part D sponsor is considered an administrative cost and not a drug cost.

The policy refines our interpretation of the statutory and regulatory definitions of “allowable reinsurance costs” and “allowable risk corridor costs,” which in both cases exclude any administrative costs of the sponsor. By statute, “allowable reinsurance costs” are a subset of “gross covered prescription drug costs,” and Congress specifically defined these gross costs as “not including administrative costs.” (See sections 1860D–15(b)(2) and 1860D–15(b)(3) of the Act.) Similarly, Congress defined “allowable risk corridor costs” as “not including administrative costs.” (See section 1860D–15(e)(1)(B) of the Act.) In the January 28, 2005 final rule, we adopted these definitions. (70 FR 4547.) We interpret administrative costs to include any profit or loss incurred by an intermediary contracting organization (for example, a pharmacy benefit manager (PBM)) as a result of lock-in pricing. Therefore, this profit or loss must not be included in the reinsurance and risk corridor payments made by the government, as these payments exclude administrative fees. Thus, the Ingredient

Cost, Dispensing Fee, Sales Tax, Gross Drug Cost below the Out of Pocket Threshold, and Gross Drug Cost above the Out of Pocket Threshold fields would need to reflect the final amount ultimately received by the pharmacy at the point of sale.

b. Gross Covered Prescription Drug Costs (§ 423.308)

[If you choose to comment on issues in this section, please include the caption “GROSS COVERED PRESCRIPTION DRUG COSTS” at the beginning of your comments.]

Part D sponsors are required to report drug costs to CMS for the purposes of reconciliation and risk sharing. We are required by statute to calculate reinsurance payments using “allowable reinsurance costs,” a subset of “gross covered prescription drug costs,” which Congress specifically defined as “not including administrative costs.” (See sections 1860D–15(b)(2) and 1860D–15(b)(3) of the Act.) Risk sharing payments are calculated using “allowable risk corridor costs,” which are also defined as “not including administrative costs.” (See section 1860D–15(e)(1)(B) of the Act.)

There have been several questions regarding the appropriate drug costs to report, particularly when a Part D sponsor has contracted with a PBM. The January 28, 2005 final rule defines “gross covered prescription drug costs” as “those actually paid costs incurred under a Part D plan, excluding administrative costs \* \* \* [equal to:] (1) All reimbursement paid by a Part D sponsor to a pharmacy (or other intermediary) \* \* \* plus (2) All amounts paid under the Part D plan by or on behalf of an enrollee (such as the deductible, coinsurance, cost sharing, or amounts between the initial coverage limit and the out-of-pocket threshold) in order to obtain drugs covered under the Part D plan.” (70 FR 4547)

The January 28, 2005 final rule definition of “gross covered prescription drug costs” specifically recognizes that reimbursement may be paid by a Part D sponsor “to a pharmacy (or other intermediary).” (70 FR 4547) Many interpreted the term “intermediary” to mean PBM (rather than agent). Using this definition, many plan sponsors reported the prices they negotiated with their PBMs, rather than the prices that were agreed upon as the amount to be received by the pharmacies.

We propose rectifying these conflicting definitions to require the plan sponsor to include the profit or loss retained or incurred by a PBM as part of lock-in pricing to be part of the administrative costs of the plan sponsor.

This would require the amount ultimately received by the pharmacy (minus any point-of-sale price concessions) to be used in calculating cost-sharing for plan years 2009 and beyond. Specifically, we propose amending the definition of “gross covered prescription drug costs” to eliminate the parenthetical “or other intermediary” to require that all plan sponsors report the amount ultimately received by the pharmacy, other dispensing provider, or agent (as opposed to the amount paid to an intermediary contracting organization that does not serve as an agent, such as a PBM). We propose that the amount ultimately received by the pharmacy or other dispensing provider (whether directly or indirectly) for the particular drug will be the basis for— (1) calculating beneficiary cost sharing; (2) accumulating gross covered drug costs; (3) reporting drug costs on the Prescription Drug Event (PDE) records, and (4) developing bids submitted to CMS.

Similarly, we propose clarifying our definition of “allowable risk corridor costs” so that it is clear that these costs are only based upon the amounts received directly by the pharmacy or other dispensing provider. This is because we would consider any profit (or loss) earned by a PBM or other entity negotiating contracts with pharmacies to constitute an administrative cost, and therefore would be exempt from the definition of allowable risk corridor costs, as well as gross covered prescription drug costs. Thus, for example, if a Part D sponsor pays a PBM a certain amount for a particular drug, and then the PBM negotiates a different price with the pharmacy, any differential retained or lost by the PBM would be considered administrative, and could not be reported as part of drug costs.

We propose revising the definitions of “gross covered prescription drug costs” and “allowable risk corridor costs” to establish that the amount received by the dispensing pharmacy or other dispensing provider (whether directly or through an intermediary contracting organization) rather than just the amount paid by the Part D sponsor is the basis for drug cost that must be reported to CMS and used as the basis to calculate beneficiary cost sharing. Accordingly, we are revising § 423.308 to incorporate these changes.

We also propose amending the definition of “gross covered prescription drug costs” and “allowable risk corridor costs” to ensure that when entities other than pharmacies dispense Part D drugs and receive payment for Part D drugs,

these expenditures are also reflected in gross drug costs and allowable reinsurance costs, as well as allowable risk corridor costs. For instance, reimbursement for a vaccine that must be administered in a physician’s office, payments made to other Part D plans due to reconciliation, and reimbursement made to a third party payer for COB error are all legitimate drug costs that have been incurred through the payments indicated. In some cases, a Part D plan, other than the plan in which the beneficiary is correctly enrolled, may pay for a prescription drug on the beneficiary’s behalf (because of an erroneous belief that the beneficiary was actually enrolled in its plan). In these cases, when the enrollment error is corrected, the beneficiary’s true plan generally will reconcile payments with the original payer. The drug costs paid by Part D plans (as well as by the beneficiary) under these reconciliation processes reflect drug costs incurred by the plan’s enrollees that a payer other than the correct Part D plan of record paid as primary. As drug costs paid for Part D covered drugs under Part D plans, these costs are included in the calculations of reinsurance costs and risk corridor costs. Therefore, we have amended the definition of “gross covered prescription drug costs” and “allowable risk corridor costs” in § 423.308 to include all these drug costs.

We also propose amending the definition of “gross covered prescription drug costs” to ensure that when a beneficiary is paying 100 percent cost sharing (for example, in any applicable deductible or coverage gap) and the beneficiary obtains a covered Part D drug at a network pharmacy for a lower price than the plan’s negotiated price, the beneficiary’s out-of-pocket costs are counted toward both incurred costs (TrOOP) and total drug spending. This is consistent with guidance released via Q&A 7944 (issued May 9, 2006 [http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std\\_alp.php?p\\_sid=gIVVcxhi](http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std_alp.php?p_sid=gIVVcxhi).) For example, if an enrollee in any applicable coverage gap or deductible phase of the Part D benefit is able to obtain a better cash price for a covered Part D drug at a network pharmacy than the plan offers via its negotiated price, and the enrollee takes advantage of the special cash price or discount being offered to all pharmacy customers or, alternatively, by using a discount card, the enrollee may purchase that covered Part D drug without using the Part D benefit or a supplemental card. If that purchase price is lower than the Part D

plan’s negotiated price, it will count toward TrOOP and total drug spend balances, provided the Part D plan finds out about the purchase. This means that the enrollee must take responsibility for submitting the appropriate documentation to the enrollee’s Part D plan, consistent with plan-established processes and instructions for submitting that information, in order to have that amount aggregated to the beneficiary’s TrOOP and total drug spend balances.

The applicability of beneficiary out-of-pocket expenditures made outside the Part D benefit to TrOOP and total drug spend also extends to any nominal copayments assessed by patient assistance programs (PAPs) that provide assistance with covered Part D drug costs to Part D enrollees outside the Part D benefit. Consistent with guidance provided via Q&A 7942 ([http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std\\_alp.php?p\\_sid=gIVVcxhi](http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std_alp.php?p_sid=gIVVcxhi)), operating outside the Part D benefit does not preclude a PAP sponsor from requiring its enrollees (including those enrolled in a Part D plan) from paying a nominal copayment when they fill a prescription for a covered Part D drug for which they provide assistance. We note that any copayments assessed by PAPs operating outside the Part D benefit should be nominal, since only nominal beneficiary cost-sharing is consistent with the concept of operating outside Part D. Moreover, given that copayments are typically assessed for purposes of minimizing drug overutilization, the assessment of anything but nominal cost-sharing by PAPs is seemingly inconsistent with the mission of a charitable organization structured to provide assistance with prescription drug costs to low-income patients.

Although PAP payments made for covered Part D drugs outside the Part D benefit do not count toward enrollees’ TrOOP or total drug spend balances, nominal PAP copayment amounts paid by affected Part D enrollees can be aggregated to their TrOOP and total drug spend balances, provided the enrollees submit the appropriate documentation to their plan consistent with plan-established processes and instructions for submitting the information. The definition of “gross covered prescription drug costs” has been revised to include these drug costs and to reflect this sub-regulatory guidance.

## 2. Payment Appeals (§ 423.350(b))

In the January 28, 2005 final rule, we made a technical error in § 423.350(b). (70 FR 4550) In this paragraph, we inadvertently used the phrase “notice of

the adverse determination” when we said that the request for reconsideration for a payment determination must be filed within 15 days from the date of the notice of the adverse determination. The term “notice of the adverse determination” is a term that was inadvertently copied here from a fee-for-service policy, and is not relevant here. We are revising the regulation text to instead cite to the notice of final payment for risk adjustment, reinsurance, low-income cost sharing subsidies, or risk-sharing payments under §§ 423.343(b), 423.343(c), 423.343(d) or 423.336, respectively.

*E. Subpart I—Organization Compliance With State Law and Preemption by Federal Law—Waiver of Certain Requirements To Expand Choice (§ 423.410)*

In accordance with section 1860D–12(c)(2)(B) of the Act, which describes the special waivers available for the 2006 and 2007 plan years, we are revising section 423.410(d) of the January 28, 2005 final rule (70 FR 4551). We believe that the statute requires only a substantially complete (rather than a fully complete) application to have been submitted to the applicable state in order for an applicant to be granted the special waiver for 2006 and 2007. Therefore, we are correcting the regulatory language to require that an applicant submit a substantially completed application to the state, in order for the applicant to be eligible for the § 423.410(d) waiver.

*F. Subpart J—Coordination of Part D Plans With Other Prescription Drug Coverage*

*1. Application of Part D Rules to Certain Part D Plans On and After January 1, 2006 (§ 423.458).*

Application of Part D Rules to Certain Part D Plans On and After January 1, 2006 (§ 423.458).

We are revising the regulation text of § 423.458(d)(2)(ii), because we inadvertently omitted a reference to section 1894 of the Act in describing the statutory authorization for the benefits offered by a Program for All Inclusive Care For the Elderly (PACE) organization (70 FR 4552). Under § 423.458(d)(2)(ii), a PACE organization may request a waiver of a Part D requirement if the waiver would improve the coordination of benefits between Part D and the benefits offered by the PACE organization. As provided in section 1860D–21(f)(1) of the Act, Part D provisions will apply to PACE organizations electing to offer qualified prescription drug coverage in a manner

that is similar to the manner in which those provisions apply to an MA–PD local plan. In addition, section 1860D–21(f) provides that a PACE organization may be deemed to be an MA–PD local plan. Section 1860D–21(f) of the Act specifically refers to “a PACE program under section 1894.” As published in § 423.458(d)(2)(ii), we reference only section 1934 of the Act when describing benefits provided by PACE organizations. In fact, PACE operates under both the Medicare and Medicaid statutes, and all descriptions of PACE benefits should refer to both sections 1894 and 1934 of the Act. We are therefore revising § 423.458(d)(2)(ii) so that it refers to benefits offered by a PACE organization under both sections 1894 and 1934 of the Act.

*2. Coordination of Benefits With Rural Health Clinics (§ 423.464)*

*a. Coordination of Benefits With Rural Health Clinics*

In § 423.464(f)(1)(vii), we made a technical error by inadvertently referring to rural health clinics as rural health centers (70 FR 4553). In fact, our intent was to reference facilities described in section 1861(aa)(2) of the Act, and the correct terminology for those facilities is rural health clinics. Accordingly, we are correcting the reference to these entities in § 423.464(f)(1)(vii) by removing the phrase rural health centers and adding in its place rural health clinics.

*b. Coordination of Benefits With Part D Plans and Other Payers*

[If you choose to comment on issues in this section, please include the caption “COORDINATION OF BENEFITS WITH PART D PLANS AND OTHER PAYERS” at the beginning of your comments.]

We are codifying in § 423.464(f) guidance we have already issued to Part D sponsors addressing coordination of benefits requirements in cases that involve another Part D plan that is not the correct Part D plan of record or another payer that has incorrectly paid as primary for a covered Part D drug for an enrolled beneficiary. These revisions to § 423.464(f) reflect our historic policy that Part D plans must effectively coordinate benefits with other entities providing prescription drug coverage.

In accordance with sections 1860D–24(a)(1) and (b) of the Act, § 423.464(a) of the regulations extends the coordination of benefits requirements in section 1860D–23 of the Act applicable to Part D plans vis-à-vis State Pharmaceutical Assistance Programs (SPAPs) to other entities providing

prescription drug coverage. As provided in § 423.464(f)(1), these entities include Medicaid (including a plan operating under a waiver under section 1115 of the Act), group health plans, the Federal Employees Health Benefits Program (FEHBP), military coverage (including TRICARE), the Indian Health Service, Federally qualified health centers, rural health clinics, and other health benefit plans or programs that provide coverage or financial assistance for the purchase or provision of Part D drugs on behalf of Part D eligible individuals as CMS specifies. Consistent with section 1860D–23(a)(2) of the Act, § 423.464(a) specifies that the elements to be coordinated with entities providing prescription drug coverage include enrollment file sharing, the processing of claims (including electronic processing), claims payment, claims reconciliation reports, application of incurred costs, and other administrative processes and requirements we specify.

A number of issues associated with the implementation of Part D (including the presence of multiple payers, payer order, and retroactive eligibility) have created challenges for Part D plans in coordinating benefits with other entities providing prescription drug coverage. Since the publication of the January 28, 2005 Medicare Prescription Drug benefit final rule, we have developed, in cooperation with industry stakeholders, additional processes and requirements to address these challenges to Part D plan coordination of benefits.

Because of program start-up issues in 2006, lags in the information available to pharmacies at the point-of-sale regarding which Part D plan to bill may have resulted in the pharmacies’ having access to outdated or incomplete information. Because pharmacies generally relied in good faith on this information, in some cases the wrong payer paid for a prescription. Given the volume of drug claims that pharmacies would need to re-adjudicate as a result of incorrect Part D enrollment information available at the point-of-sale, re-adjudication would have imposed a significant administrative and financial burden on pharmacies. Therefore, payer-to-payer reconciliation procedures were developed by CMS and a workgroup of industry representatives, including industry trade groups, Part D plans, and pharmacies to mitigate the administrative and financial burden involved with re-adjudication of claims.

This payer-to-payer process was designed initially to be a temporary measure during Part D’s start-up phase. However, because many beneficiaries have the opportunity (through special election periods) to change their Part D

plan enrollment during the coverage year, there continues to be lag time associated with enrollment and information systems updates. Therefore, the Part D plan from which a beneficiary has transferred may make payment for covered prescription drug costs incurred after the effective date of the beneficiary's enrollment in the new Part D plan of record. As a result, while CMS continues to explore the plan-to-plan reconciliation and reimbursement procedures, we are requiring that plans continue to use the special prescription drug event submission and reimbursement processes established in 2006 as part of the plan-to-plan reconciliation process. In this proposed rule, we are merely codifying the already-existing procedures. (It is important to note that an essential element of the plan-to-plan reconciliation process as designed precludes plan use of claim denials or edits in the transition period. That is, the process's design reflects the consensus of Part D plans that it is necessary to prevent disclosure of proprietary pricing information by masking the NDC coding.)

In addition, unforeseeable future events may create further need for processes to reconcile payments when a payer other than the correct Part D plan of record pays as primary for a covered Part D drug for an enrolled beneficiary. These other reconciliation processes may be developed by CMS to accomplish payment reconciliation without involving pharmacy reversal and re-adjudication of claims or the public release of a payer's proprietary information, such as negotiated rates.

Therefore we are proposing to clarify § 423.464(f)(1) to state that included among the entities providing other prescription drug coverage with which Part D plans must coordinate are other Part D plans. Although Part D plans are already obligated to coordinate with group health plans, as provided in § 423.464(f)(1)(ii), we believe this revision formalizes our implicit recognition of other Part D plans as other entities providing prescription drug coverage with which a beneficiary's correct Part D plan of record must coordinate.

We also are clarifying § 423.464(f) to clearly specify additional elements of Part D plans' coordination of benefits requirements in order to address the reconciliation issues detailed in the preceding discussion. Section 1860D-23(a)(2)(F) of the Act gives the Secretary the discretion to identify other administrative processes that may be included in the required elements for coordination of benefits by Part D plans.

Consistent with this authority, we propose revising § 423.464(f) to add a fifth paragraph that clarifies that Part D plans coordinate benefits with other Part D plans through the reconciliation process we have developed for 2006, which involves making payments to other Part D plans on the basis of the covered plan-paid and low-income cost-sharing subsidy amounts reported to them by CMS with respect to transferred enrollees. Payments made by the Part D plans as part of this reconciliation process would be made without regard to the plan's formulary or drug utilization review edits.

In addition, we propose modifying § 423.464(f) by adding a sixth paragraph that would require Part D sponsors to coordinate benefits on a timely basis with other third parties and use CMS-developed reconciliation processes, when established, in situations in which a payer other than the correct Part D plan of record pays for covered Part D drug costs as a primary payer. This was the case in 2006 with respect to the State-to-Plan Reconciliation Project in which some States made drug payments for dual eligible beneficiaries and low-income subsidy entitled beneficiaries enrolled in Part D and were subsequently reimbursed by CMS through a special demonstration authority. Processes similar to those employed in 2006 may need to be developed by CMS in lieu of requesting pharmacy claims reversals and re-adjudications or the public release of a payer's proprietary information (such as negotiated prices).

The proposed changes described in this portion of this proposed rule would not change current coordination benefits policy. Rather, they would codify existing operational processes and reflect our historic policy that Part D plans must effectively coordinate benefits with entities providing other prescription drug coverage. We seek comment on our proposals regarding the plan-to-plan coordination process and CMS-developed reconciliation process.

#### *G. Subpart K—Application Procedures and Contracts With Part D Plan Sponsors*

##### **1. General Provisions (§ 423.504)**

###### **a. Submission of Bids**

In § 423.504, we inadvertently made reference to § 423.265(a)(1) rather than § 423.265 (70 FR 4555). Section 423.265(a) gives only the most narrow and rudimentary of information concerning the bidding process; that is, that an applicant may submit a bid to become a Part D plan sponsor. In fact, our intent was to cite in its entirety the

much broader list found under § 423.265 (Submission of bids and related information) that provides comprehensive and essential information for a Part D Plan sponsor to successfully contract with CMS (70 FR 4544). Accordingly, we are correcting the reference found under § 423.504(a) to cite all of § 423.265.

##### **2. Contract Provisions (§ 423.505)**

In § 423.505(h)(1), we are correcting the citation for the False Claims Act, from 32 U.S.C. 3729 *et seq.*, to 31 U.S.C. 3729 *et seq.* (70 FR 4556).

##### **3. Failure To Comply With the Dissemination of Information Requirements Grounds for Contract Termination (§ 423.509(a)(9))**

In § 423.509(a)(9), we indicate that CMS may terminate a plan's contract if the plan substantially fails to comply with the Part D marketing requirements (70 FR 4559). This provision cites the marketing requirements at § 423.128, which is an incorrect citation. Section 423.128 deals with the dissemination of Part D plan information, not with plans' marketing requirements, *per se*. Therefore, we are revising the regulation text, consistent with our original intent, to reflect that a plan contract may be terminated if a plan sponsor substantially fails to comply with the marketing requirements in § 423.50 or the dissemination of Part D plan information requirements in § 423.128.

#### *H. Subpart M—Grievances, Coverage Determinations, and Appeals*

##### **1. Definitions (§ 423.560)**

###### **a. Appointed Representative**

We are revising the regulation text of § 423.560 by making a technical change to the definition of "appointed representative." (70 FR 4562) In the Medicare Prescription Drug Benefit final rule, we inadvertently omitted language indicating that an enrollee's appointed representative may request a grievance on the enrollee's behalf. Current policy as reflected in Chapter 18 of the Prescription Drug Plan Manual permits an enrollee's appointed representative to request a grievance, obtain a coverage determination, or deal with any of the levels of the appeals process on the enrollee's behalf. We are codifying this already existing policy by amending the regulation text. The definition for appointed representative will state: "Appointed representative means an individual either appointed by an enrollee or authorized under State or other applicable law to act on behalf of the enrollee in filing a grievance, obtaining a coverage determination, or

in dealing with any of the levels of the appeals process. Unless otherwise stated in this subpart, the appointed representative has all of the rights and responsibilities of an enrollee in filing a grievance, obtaining a coverage determination, or in dealing with any of the levels of the appeals process, subject to the rules described in part 422, subpart M of this chapter.”

#### b. Projected Value

In addition, we are making a technical change to the definition of “projected value” in § 423.560 because it is not consistent with the definition of projected value provided on page 4360 of the preamble and in the regulation text at § 423.610(b). (70 FR 4568) The definition of “projected value” in § 423.560 includes “future charges that will be incurred within 12 months from the date the request for coverage determination or exception is received by the plan” as part of the projected value formula. However, the projected value formulas on page 4360 of the preamble to the final rule and § 423.610(b) of the regulations include “any costs the enrollee could incur based on the number of refills prescribed for the drug(s) in dispute during the plan year.” Our policy regarding how to calculate projected value is consistent with the definition of projected value provided on page 4360 of the preamble to the final rule and in the regulation text at § 423.610(b). Therefore, we are revising the definition of projected value in § 423.560 to state: “Projected value of a Part D drug or drugs includes any costs the enrollee could incur based on the number of refills prescribed for the drug(s) in dispute during the plan year. Projected value includes enrollee co-payments, all expenditures incurred after an enrollee’s expenditures exceed the initial coverage limit, and expenditures paid by other entities.”

#### 2. Expediting Certain Coverage Determinations (§ 423.570)

We are amending the regulation text of § 423.570(d)(3) because we inadvertently omitted language indicating who is entitled to receive written notice of a plan sponsor’s denial of a request to expedite a coverage determination. (70 FR 4564) Our policy requires a plan sponsor to send written notice to the enrollee when it denies a request to expedite a coverage determination. We believe the regulation text of § 423.570(d)(3) must be revised to accurately reflect our policy. Accordingly, we propose to codify in the regulation text of § 423.570(d)(3) the requirement that

when a Part D sponsor denies a request to expedite a coverage determination, it must “subsequently deliver to the enrollee, within 3 calendar days, equivalent written notice.”

#### 3. Expediting Certain Redeterminations (§ 423.584)

We are revising the regulation text of § 423.584(b) because we inadvertently omitted regulatory language regarding the procedures for filing and withdrawing a request for an expedited redetermination. (70 FR 4566) Sections 423.582(b), (c), and (d) explain the process for filing and withdrawing a request for a standard redetermination. These procedures also apply to requests for expedited redeterminations. We are revising the regulation text of § 423.584(b) to accurately reflect our policy that the provisions in § 423.582(b), (c), and (d) would also apply to § 423.584(b). We are revising § 423.584(b) by adding “(3) The provisions set forth in § 423.582(b), (c), and (d) also apply to expedited redeterminations.”

#### 4. Right to an ALJ Hearing (§ 423.610)

We are revising the regulation text of § 423.610(c)(2) due to typographical errors. (70 FR 4568) The three requirements listed under § 423.610(c)(2) should have been numbered with (i), (ii), and (iii). We are revising § 423.610(c)(2) to reflect appropriate numeration. It will now read as follows: “Multiple enrollees. Two or more appeals may be aggregated by multiple enrollees to meet the amount in controversy for an ALJ hearing if—(1) the appeals have previously been reconsidered by an IRE; (2) the request for ALJ hearing lists all of the appeals to be aggregated and each aggregated appeal meets the filing requirement specified in § 423.612(b); and (3) the ALJ determines that the appeals the enrollees seek to aggregate involve the same prescription drug.”

#### I. Subpart P—Premiums and Cost-Sharing Subsidies for Low-Income Individuals

##### 1. Premium Subsidy Amount (§ 423.780)

###### a. Low-Income Benchmark Premium Amount

Section 1860D–14 of the Act requires CMS to subsidize the monthly beneficiary premium and cost-sharing amounts incurred under Part D by Part D eligible individuals with income and resources below certain thresholds. Our rules mirror the statute’s structure, which divides low-income subsidy eligible individuals into two different groups, based on income and resources:

(1) Full subsidy eligible individuals; and (2) other low-income subsidy eligible individuals. The different groups are entitled to different amounts of premium assistance and reductions in cost sharing.

Since the Part D benefit has become operational, we have become aware that certain sections of part 423 subpart P need to be corrected to accurately reflect the statutory language. Specifically, there is an error in § 423.780(b). (70 FR 4574) As written, this section states that the premium subsidy amount is based upon the lesser of the plan’s premium or the low-income benchmark premium amount. The low-income benchmark premium amount, as defined in the statute at section 1860D–14 of the Act, specifically describes how to calculate the low-income subsidy for regions with only one PDP sponsor. At section 1860D–14(b)(2)(A)(i) of the Act, the statute indicates that “\* \* \* the term \* \* \* ‘low-income benchmark premium amount’ means, with respect to a PDP region in which all prescription drug plans are offered by the same PDP sponsor, the weighted average of the amounts described in subparagraph (B)(i) for such plans.” However, while the final regulation described the low-income benchmark premium amount calculation for regions with multiple drug plan sponsors, it did not describe the methodology for determining the low-income benchmark premium amount in a region with any number of MA–PD plans, but with only one PDP sponsor (although the preamble to the final rule did). We are correcting this error to comport with the statute and our intent as outlined in the preamble by adding a new subparagraph (A) to § 423.780(b)(2)(i). The new text will make clear that when there is only one PDP sponsor in the region, the low income benchmark weighted average includes only the premiums of basic PDPs in the area. The weighted average does not count the premium amounts of PDP plans offering supplemental coverage or MA–PD plans. This is in contrast to the weighted average calculated when there are multiple PDP sponsors. In that situation, the benchmark calculation includes not just the premiums of basic PDPs; it also includes the portion of a premium attributable to basic coverage, when a PDP offers both basic and supplemental coverage. In addition, for multiple-PDP regions, the benchmark would also include the amount charged for Part D coverage by MA–PD plans. We note that in 2006, all PDP regions included multiple PDP sponsors.

We also are revising § 423.780(b)(2)(ii). We want to make

clear that in multiple-PDP sponsor regions, the MA–PDs included in the weighted average are coordinated care plans.

b. Premiums Subsidy for Late Enrollment Penalty

We need to correct an omission related to the subsidy of the late enrollment penalty for other low-income subsidy individuals in the regulation text at § 423.780(e). In this paragraph, we inadvertently omitted a provision from the statute at section 1860D–14(a)(2)(A) of the Act, which requires a late enrollment penalty subsidy for other low-income subsidy eligible individuals. This subsidy is based on a linear sliding scale, with a higher subsidy available to individuals with incomes at or below 135 percent of the FPL (but who do not meet the asset requirements of a full subsidy eligible individual), and the lowest level subsidy available to individuals with incomes below 150 percent of the FPL. Specifically, section 1860D–14(a)(2)(A) of the Act reads, “(2) OTHER INDIVIDUALS WITH INCOME BELOW 150 PERCENT OF POVERTY LINE.—In the case of a subsidy eligible individual who is not described in paragraph (1), the individual is entitled under this section to the following: (A) SLIDING SCALE PREMIUM SUBSIDY.—An income-related premium subsidy determined on a linear sliding scale ranging from 100 percent of the amount described in paragraph (1)(A) for individuals with incomes at or below

135 percent of such level to 0 percent of such amount for individuals with incomes at 150 percent of such level.” (emphasis added). The “amount described in paragraph (1)(A)” encompasses the subsidy for the late enrollment penalty.

The current regulation does not include this sliding scale calculation. The regulation only cites the subsidy for the late enrollment penalty as something which is available only to full subsidy eligible individuals. Accordingly, we are proposing to revise § 423.780(e) to accurately reflect the statute. The sliding scale for the late enrollment penalty subsidy will be calculated based on the linear sliding scale for the premium subsidy, which is described in paragraph (d) of the regulation. Beneficiaries with incomes on the sliding scale will receive a late enrollment penalty subsidy that will be equal to a percentage of the late enrollment penalty subsidy for full subsidy individuals, based on the same 5 percent increment scale that applies for the premium subsidy in paragraph (d) (that is, 135, 140, 145 and 150 percent of FPL).

For the first 60 months the penalty is imposed, full subsidy individuals receive a late enrollment penalty subsidy equal to only 80 percent of the penalty amount. Therefore, the sliding scale premium subsidy percentages for each income level in paragraph (d) must be multiplied by 80 percent to arrive at the percentage of the late enrollment penalty that is subsidized for each

income level for the first 60 months. For example, for individuals with incomes greater than 135 percent, but at or below 140 percent of the FPL applicable to the family size, the late enrollment penalty subsidy will be equal to 60 percent of the late enrollment penalty for the first 60 months during which the penalty is imposed. Sixty percent is equal to 75 percent (the percentage of the premium subsidized for individuals with incomes greater than 135 percent, but at or below 140 percent of the FPL applicable to the family size in accordance with paragraph (d)(2)) multiplied by 80 percent (which, as stated, will be the amount of the late enrollment penalty that will be subsidized for full subsidy eligible individuals for the first 60 months during which the penalty is imposed on them, as described in paragraph (e)).

After the first 60 months the penalty is imposed, the sliding scale premium subsidy percentages for each income level in paragraph (d) will be multiplied by 100 percent, as 100 percent of the late enrollment penalty will be subsidized for full subsidy eligible individuals after the first 60 months. As stated, the resulting percentages will be the percent of the late enrollment penalty that will be subsidized and can therefore be multiplied by the individual’s late enrollment penalty to give the subsidy. The below table illustrates the penalty subsidy available to other low income subsidy individuals.

| Income level              | Percent of penalty subsidized during the first 60 months individual is subject to penalty | Percent of penalty subsidized after the first 60 months individual is subject to penalty |
|---------------------------|-------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| ≤135% FPL .....           | 80                                                                                        | 100                                                                                      |
| >135% and ≤140% FPL ..... | 60                                                                                        | 75                                                                                       |
| >140% and ≤145% FPL ..... | 40                                                                                        | 50                                                                                       |
| >145% and <150% FPL ..... | 20                                                                                        | 25                                                                                       |
| ≥150% FPL .....           | 0                                                                                         | 0                                                                                        |

J. Subpart R—Payments to Sponsors of Retiree Prescription Drug Plans

1. Requirements for Qualified Retiree Prescription Drug Plans (§ 423.884)

a. Application Timing

[If you choose to comment on issues in this section, please include the caption “APPLICATION TIMING” at the beginning of your comments.]

The enactment of Title I of the MMA provides sponsors of retiree prescription drug plans with multiple options for providing drug coverage to their retirees who are Medicare beneficiaries. One of

these is section 1860D–22(a) of the Act, which permits the sponsor of a qualified retiree prescription drug plan to receive a subsidy with respect to certain allowable prescription drug costs incurred by qualifying covered retirees, who must be eligible for, but not enrolled in, Part D. This is referred to in the regulations as the Retiree Drug Subsidy (RDS).

In implementing the statute, the regulations at § 423.884(c) outline the application requirements for the Retiree Drug Subsidy. (70 FR 4577) Section 423.884(c)(5)(i) requires a plan sponsor to file an application for the subsidy by

no later than 90 days before the beginning of its plan year, unless an extension is requested and granted (for example, the deadline for 2007 calendar year plans under the regulation would be October 2, 2006). Upon further review of this requirement, we believe that an end-of-month deadline would be administratively simpler for both plan sponsors and CMS to track. For example, for the 2006 calendar year, the initial deadline for the RDS applications, as established in the regulation, was September 30, 2005, which is actually 92 days before the

start of the plan year. In order to establish an appropriate application date for each contract year, we can announce the date in published guidance in advance to allow stakeholders sufficient time to do the necessary preparation and filing. Accordingly, we are proposing to replace the 90 day requirement with the phrase “by a date specified by CMS in published guidance” in this provision of the final rule to allow us the discretion to specify an end-of-month deadline in the future through guidance. This will also give CMS the flexibility to take into account operational systems changes in determining the Retiree Drug Subsidy application deadline, while providing adequate advance notice to plan sponsors and their advisers.

#### b. Data Match

[If you choose to comment on issues in this section, please include the caption “DATA MATCH” at the beginning of your comments.]

In order to properly administer the Retiree Drug Subsidy program, we must compare the retiree data that a plan sponsor submits to CMS records to ensure that sponsors are not claiming the subsidy for individuals that are enrolled in a Part D plan and are therefore not qualifying covered retirees. In § 423.884(c)(7)(i), we specifically referenced the Medicare Beneficiary Database (MBD) as the system of record for the data match. (70 FR 4578) While the MBD is currently the system by which the retirees’ status is verified, we also may use other systems of record for purposes of the data match.

Accordingly, we propose to modify our language to be more suitable by substituting a general reference to “CMS database(s)” for the “Medicare Beneficiary Database (MBD)” in the regulation text at § 423.884(c)(7)(i).

#### c. Actuarial Equivalence (§ 423.884)

##### (1) Medicare Supplemental Adjustment

Section 1860D–22(a)(2)(A) of the Act requires that a plan sponsor provide an attestation that its plan is actuarially equivalent to Medicare standard prescription drug coverage in order to claim RDS. Section 423.884(d)(5) sets forth a two-prong test for determining the actuarial value of the defined standard prescription drug coverage under Part D against which the actuarial value of the retiree coverage is measured. (70 FR 4578) The actuarial equivalence test includes a “gross test” and a “net test.” Section 423.884(d)(5)(iii)(B)(2) states that the net test includes a “Medicare supplemental adjustment” which allows a plan

sponsor that provides supplemental coverage for its retirees that elect Part D coverage to reflect the impact of the supplemental coverage on the net value of Part D coverage. Supplemental coverage for this purpose means drug coverage over and above Part D coverage for those retirees that enroll in Part D coverage. Our intent, which we clarified in operational guidance to plan sponsors, was that a sponsor must actually provide supplemental employer-provided retiree drug coverage in order to qualify for the Medicare supplemental adjustment. (See CMS Guidance on the Actuarial Equivalence Standard for the Retiree Drug Subsidy (April 7, 2005) available at <http://www.cms.hhs.gov/employerretireedrugsubsid>.) In accordance with our existing guidance, we are therefore revising § 423.884(d)(5)(iii)(B)(2) to indicate that plan sponsors must actually provide supplemental drug coverage for their retirees that elect Part D in order to do the adjustment to the net value of Part D in the actuarial equivalence test. We view this revision as merely incorporating previously issued guidance, and not as a new policy proposal.

##### (2) Non-Calendar Year Plans

[If you choose to comment on issues in this section, please include the caption “NON-CALENDAR YEAR PLANS” at the beginning of your comments.]

Sec. 1860D–22(a)(2)(A) of the Act requires a plan sponsor to provide an attestation that its plan is actuarially equivalent to the Medicare defined standard prescription drug coverage in order to claim RDS. As explained above, our regulation at § 423.884(d)(5) sets forth a two-prong test for actuarial equivalence. The actuarial equivalence test requires that the value of the plan sponsor’s retiree drug coverage be compared to the hypothetical value of the Medicare defined standard prescription drug coverage had the sponsor’s Part D eligible individuals taken that coverage.

Sections 423.884(d)(5)(iii)(C) and (D) state that the valuation of the Medicare defined standard prescription drug coverage for this purpose is based on the initial coverage limit, cost sharing amounts, and out-of-pocket threshold in effect at the start of the plan year. However, the attestation must be submitted to CMS no later than 60 days after the publication of the Part D coverage limits for the upcoming calendar year; otherwise, the valuation must be based on the initial coverage limit, cost sharing amounts, and out-of-

pocket threshold for the upcoming plan year. The intent of this 60 day provision is to prevent actuaries from having to redo calculations for non-calendar year plans that were based on the current calendar year initial coverage limit, cost sharing amounts, and out-of-pocket threshold when, after doing their calculations, but before the RDS application is submitted, we publish the Part D coverage limits for the upcoming calendar year.

Actuaries of plan sponsors have indicated to us that they believe they should have the flexibility for non-calendar year plans to use the Part D initial coverage limit, cost-sharing amounts, and out-of-pocket-threshold for the upcoming plan year, provided it does not impact their ability to meet the application deadline. We agree that actuaries should have this flexibility, and so we are proposing to amend the § 423.884(d)(5)(iii)(C) to permit a non-calendar year plan’s actuary to use either the current or subsequent year’s Part D cost limits when the attestation is submitted within 60 days of the publication of the following year’s cost limits. We also propose to make corresponding changes to § 423.884(d)(5)(iii)(C).

##### (3) Benefit Options

Employment-based retiree health coverage often has different plan design features or benefit options that apply to specific groups of retirees. Section 423.882 defines a benefit option as a particular benefit design, category of benefits, or cost sharing arrangement offered within a group health plan. Section 423.884(d)(5)(iv) states that a plan with more than one benefit option must pass the gross test separately on a disaggregated basis for each option, but that it may pass the net test on an aggregated or disaggregated basis. As we have indicated in subsequent guidance, our intent was that a plan sponsor should also have the option of aggregating a subset of the benefit options in a plan for the actuarial equivalence net test in addition to aggregating all of the options or evaluating each option individually. (See CMS Guidance on the Actuarial Equivalence Standard for the Retiree Drug Subsidy (April 7, 2005); available at [www.cms.hhs.gov/employerretireedrugsubsid](http://www.cms.hhs.gov/employerretireedrugsubsid).) If the sponsor combines two or more benefit options, the sponsor may not claim the subsidy for those benefit options excluded from the net value calculation, even if those options meet the gross test. We are amending the final rule to reflect this clarification of our intent, which reflects policy that has been applied

consistently since the rule was published.

#### (4) Submission of Actuarial Attestation Upon Material Change

Section 1860D–22(a)(2)(A) of the Act requires that a plan sponsor submit an actuarial attestation annually or at another time as the Secretary may require. Section 423.884(d)(6)(ii) requires submission of an attestation no later than 90 days before the implementation of a material change to the coverage. While the term “material change” can be construed broadly to include any change to the value of a sponsor’s plan, we have issued guidance indicating that a resubmission is not necessary when a plan remains actuarially equivalent and no benefit options are being added. In this preamble we are also reiterating this interpretation: We would not require submission of an attestation under § 423.884(d)(6)(ii) where a plan sponsor still meets the actuarial equivalence test after the change, and there are no benefit options being added.

#### K. Subpart S—Special Rules for States—Eligibility

##### 1. General Payment Provisions—Coordination With Medicare Prescription Drug Benefits (§ 423.906)

Section 1935(d) of the Act contains specific provisions regarding Medicaid coordination with Medicare prescription drug benefits. In the case of a full benefit dual eligible individual, Federal Financial Participation in State Medicaid expenditures is not available for Medicaid covered drugs that could be covered under Part D or for cost sharing related to these drugs. We are correcting § 423.906(b) and (c) to make clear that, in accordance with the statutory requirement in section 1935(d)(2) of the Act, only drugs specifically excluded from the definition of Part D drugs may be covered by medical assistance.

Currently, §§ 423.906(b) and (c) includes the word “covered.” (70 FR 4583) Since our regulatory definition of “Covered Part D drugs” excludes drugs that are not on a plan’s formulary, States may have interpreted the regulation to allow States to provide additional medical assistance for coverage of drugs not on a Part D plan’s formulary. The effect of these changes is to make clear that Federal financial participation is not available to States for coverage of drugs that would be Part D covered drugs except that they are not on a plan’s formulary. We are also adding a definition of “non-covered drugs” to the § 423.902.

##### 2. States’ Contribution to Drug Benefit Costs Assumed by Medicare (§ 423.910)

Section 1935(b) of the Act, as amended by the MMA, requires States and the District of Columbia to be responsible for making monthly payments to the Federal government beginning in January 2006 to defray a portion of the Medicare drug expenditures for full benefit dual eligible individuals. The statute further defines full benefit dual eligible individuals to mean “for a State for a month an individual who has coverage for the month for covered part D drugs under a prescription drug plan under part D of title XVIII, or under an MA–PD plan under part C of such title.

\* \* \*”. In the January 28, 2005 final rule, we explained the calculation of the monthly State phased-down contributions. The calculation of the monthly state contribution is dependent upon the state’s reporting of the total number of full-benefit dual eligible individuals for the State in the applicable month. States are required, in accordance with the § 423.910(d), to submit an electronic file, in a manner specified by CMS, identifying each full benefit dual eligible individual enrolled in the State Medicaid program for each month. For States that do not submit an acceptable file by the end of the month, the phased down State contribution for that month is based on data deemed appropriate by CMS.

In § 423.910(b)(1) of the Medicare Prescription Drug Benefit final rule, we made a typographical error. (70 FR 4584) Section 423.910(b)(1) specified that “[f]or States that do not meet the *quarterly* reporting requirement for the monthly enrollment reporting, \* \* \*”. The text should have read “For States that do not meet the *monthly* reporting requirement for the monthly enrollment reporting, \* \* \*”, since there is no State quarterly reporting requirement referred to in either the statute or regulation when calculating the phased-down State contribution. Accordingly, we are revising the text consistent with the statute.

#### III. Collection of Information Requirements

This document does not impose additional information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

#### IV. Regulatory Impact Analysis

##### A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. With exception of the statutory change addressing the payment of vaccine administration under Part D beginning in 2008 for covered Part D vaccines, the impact of the policy supporting the clarifications in this proposed rule were addressed as part of a prior final rule and do not require further analysis. Specifically, a full regulatory impact analysis was performed for the January 28, 2005 final rule (70 FR 4454) implementing the Part D provisions of the MMA. As we explain below, many of the provisions in this proposed rule are simply clarifications of that final rule.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). Because of the addition of vaccine administration under Part D beginning in FY 2008, this rule meets the threshold to be economically significant; and is consequently a major rule. The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million or less to \$29 million in any 1 year. Individuals and States are not included in the definition of a small entity.

As stated previously the addition of vaccine administration under Part D is estimated to have a net impact to the fiscal year (FY) 2008 budget in the amount of \$100 million. Since the relevant monetary threshold has been exceeded, the RFA requires us to conduct a regulatory flexibility analysis

in regard to the implementation of vaccine administration under Part D. Given the nature of immunization in the U.S. market and its relation to the Part D benefit, we believe only two small business areas merit discussion, retail pharmacy and physicians in private practice.

The Small Business Administration (SBA) considers pharmacies with firm revenues of less than \$6 million to be small businesses. The 2002 Business Census (the latest available detailed data) indicates that there were about 19,488 firms operating about 40,152 retail pharmacies and drug store establishments (NAICS code 44611). Of these firms, 17,332 had revenues under \$5 million and operated a total of 19,488 establishments. Because more than 89 percent of retail pharmacy firms are small businesses (as defined by the SBA size standards), we expect that the inclusion of vaccine administration within the statutory definition of a covered Part D drug will have some effect on a substantial number of small retail pharmacies. However, we estimate that overall the revenue effect on the retail pharmacy industry, including small pharmacies, will be positive. In those states that permit pharmacists to administer vaccinations (currently 44 of 50 states), we anticipate Medicare beneficiaries will consider receiving immunization of Part D vaccines in a pharmacy setting, given the real-time nature of the Part D benefit and the pharmacy's ability to bill the Part D Sponsor without the beneficiary having to pay upfront for the vaccine and its administration, as he or she might in the physician's office. Over the past few years the number of beneficiaries seeking to obtain immunizations from pharmacies has continued to increase. We expect this trend to continue, when, beginning in 2008, in-network pharmacies will be able to seek compensation for the administration of Part D vaccines under the Part D program. While there may be some additional cost for pharmacist time in administering vaccines, these should be more than offset by the reimbursement of administration fees. Finally, a pharmacy could negotiate not to administer vaccine administration services and continue to participate in the Part D program, if it believed that the costs of providing vaccinations outweighed any potential benefits.

Almost all physicians in private practice (or the practices of which they are members) are small businesses, and, therefore, small entities because their annual revenues do not meet the Small Business Administration's threshold for "small" physician practices. We expect,

since a substantial number of vaccinations continue in the physician office setting, that physicians will benefit from the inclusion of vaccine administration in the statutory definition of a covered Part D drug because the administering physician will have a new source of reimbursement of Part D vaccine administration fees. We do not expect there will be any additional costs to the physicians practice.

With the respect to the other changes in the proposed rule, the definitions of negotiated prices, gross covered drug costs, and allowable risk corridor costs will not have a significant impact on small businesses, such as small pharmacies. Instead, they will primarily impact which drug costs are reported to CMS and how plans calculate beneficiary cost sharing. Moreover, they will require minimal if any changes in health plan, PBM and pharmacy operational systems. Even with these proposed changes in beneficiary cost sharing, health plans will still be required to ensure that pharmacies receive their contracted rate. If there were any additional costs due to the change in beneficiary costs, health plans would account for them in their bids.

The other technical corrections and substantive clarifications are not expected to affect small businesses in a significant manner, if at all. For example, although the substantive clarification relating to the delivery of home infusion medications may slightly increase the cost of delivering these medications for some plan sponsors because it may cost more for plan sponsors that do not currently have timeframe delivery provisions in their contracts with home infusion pharmacies, any increase will be accounted for in plan sponsors' bids. However, this increase is expected to be minimal, and is not expected to affect all plan sponsors. As for home infusion pharmacies themselves, the requirement to meet performance timeframes should also have no cost impact. Our ongoing communications with the home infusion industry revealed that these timeframes were already an industry standard. Thus, incorporation of these new requirements does not place any new burdens on the pharmacy cost structure, as home infusion pharmacies have already been meeting these performance standards in advance of our rulemaking.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the standards

of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Because prescription drugs including Part D vaccines, are dispensed in hospitals to Medicare outpatients, this final rule could have an effect on small rural hospitals who decide to offer Part D vaccines. Since a number of rural hospitals offer vaccine administration on an outpatient basis, they too will benefit by being able to collect a Part D vaccine administration fee. Rural hospitals should already have the systems in place to handle, store and administer vaccines and consequently small rural hospitals should only benefit from the availability of this new administration fee and should not incur new costs as a result of this proposed rule.

The additional clarification and proposed revisions related to the Medicare Part D drug benefit, which is the voluntary outpatient prescription drug benefit, not regulations relating to any drug benefit under Part A. Therefore these additional proposals do not affect small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$120 million. Many of the proposed changes are either corrections in the regulations to make the regulations comply with the statute, or the proposed changes are merely the formal proclamation of existing policies that are in line with the statute and do not cross the \$120 million dollar threshold. For example, one clarification, which brings the regulation in line with the statute, that will prohibit States from covering Part D drugs for recipients of Medicaid may save States the money they would have otherwise spent on these drugs, if they had chosen to cover the drugs at issue. Because the statute only allows States to cover excluded drugs, as opposed to noncovered drugs, and we expect that most States complied with the statute, as opposed to the Part D regulation, we do not believe that this clarification will significantly affect States. Therefore we do not expect that it will affect State, local, or tribal governments.

As stated previously, many of the proposed changes are either corrections in the regulations to make the regulations comply with the statute, or the proposed changes are merely the

formal proclamation of existing policies that are in line with the statute. Although there may be added costs to plan sponsors with the broadening of the definition of Part D drug to include “[s]upplies required to deliver insulin by inhalation[.]” plan sponsors are aware that new drugs and supplies become available on the market constantly and they account for these changes in their bids. Furthermore, only plan sponsors that choose to cover inhaled insulin will be affected. The expected costs to the private sector will be less than the \$120 million threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments,

preempts State law, or otherwise has Federalism implications. The proposed changes and technical clarifications will not have a substantial effect on State or local governments. For example, a clarification concerning timing of state reporting for the purposes of calculating State phase-down contributions is not expected to affect State governments, because monthly reporting is consistent with the statute. Although there is a provision in this proposal that relates to waivers of State plan licensure, there are no anticipated Federalism implications because the clarification to the applicable regulation makes the regulation comply with the existing statute.

## B. Anticipated Effects

### 1. Effects on Health Plans, and Pharmacy Benefit Managers (PBM)

Part D plans will incur costs in implementing the reimbursement of Part D vaccine administration fees, this is a new benefit passed by Congress in the Tax Relief and Health Care Act of 2006. However, since Congress defined the Part D vaccine administration fee as a Part D drug cost, the impact will be no different than any other new drug entering the market. Part D Plans will consider Part D vaccine administration as part of their overall benefit and resulting bid. We estimate a net cost for FY 2008 which considers the offset associated with beneficiary cost sharing and the direct Federal subsidy and risk sharing, to be \$100 million.

## ACCOUNTING STATEMENT.—CLASSIFICATION OF ESTIMATED EXPENDITURES, FY 2008

[In millions]

| Category                             | Transfers                           |
|--------------------------------------|-------------------------------------|
| Annualized Monetized Transfers ..... | \$100.                              |
| From Whom To Whom? .....             | Federal Government To Part D Plans. |

Our other revisions to the regulation, such as the proposed plan-to-plan reconciliation, we believe, merely reflect already existing policy. Nevertheless, even if this requirement were a new standard, we believe that all parties involved in the reconciliation would benefit, because the reconciliation process will involve fewer tasks than if pharmacies were required to reverse and re-adjudicate claims.

With respect to the proposed changes that will impact which drug costs are reported to CMS and how Part D plans calculate beneficiary cost sharing, we believe that the impact on pharmacies will be minimal, as the total compensation received by pharmacies should remain unaffected. The proposed changes may, however, require a small number of Part D sponsors to renegotiate their contracts with their PBMs to account for system changes to reflect the appropriate beneficiary cost sharing. We believe that most PBMs will be unaffected by the proposed changes in the drug costs reported and beneficiary cost sharing. Thus, the expected financial impact of these proposed changes on PBMs is minimal.

We do not believe the inclusion of inhaled insulin supplies or the substantive clarification relating to the delivery of home infusion medications will place any additional costs onto Part D plans. We estimate the gross costs of

inhaled insulin for FY 2008 will be \$10 million. The approval of inhaled insulin onto the U.S. market has been anticipated for years and should have been considered into the Part D Sponsor's bid. As discussed earlier, the proposed home infusion delivery standard appears to be an existing standard that plans should be accustomed and consequently would not increase their costs in providing the benefit.

### C. Alternatives Considered

We considered not proposing the regulation to address our policy clarifications and technical changes. However, we believed in order to ensure public awareness of our policies, as well as to avoid potential confusion regarding them, that we should codify our clarifications as well as make certain technical corrections to the January 28, 2005 final rule. In addition, we believe it is important to propose a few new clarifications for Part D plans as a result of our experience in implementing Part D. Finally, we believe it is important to acknowledge in this proposed rule changes made by the Congress to the statutory definition of a covered Part D drug.

### D. Conclusion

Given that the cost of implementing vaccine administration under Part D is expected to exceed the \$100 million threshold in FY 2008, we have

performed an economic impact analysis on those entities potentially involved in providing Part D vaccine administration. Our analysis showed that entities such as physicians and pharmacies are situated to benefit from this change in 2008, whereas other entities such as Part D Sponsors will experience no or little difference in costs as a result of implementation.

As for other technical corrections and substantive clarifications contained in this proposed rule, as stated earlier, a full analysis was performed for the final regulations implementing the Part D provisions of Medicare Prescription Drug Improvement and Modernization Act of 2003, and for the reasons cited, we believe these additional proposals either do not require further analysis or are in practice today and, as such, are not economically significant.

## V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

**List of Subjects****42 CFR Part 423**

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

**PART 423—MEDICARE PROGRAM; MEDICARE PRESCRIPTION DRUG PROGRAM**

1. The authority citation for part 423 continues to read as follows:

**Authority:** Secs. 1102, 1860D–1 through 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, and 1395hh).

**Subpart B—Eligibility and Enrollment**

2. Section 423.50 is amended by revising paragraph (f)(1)(v) to read as follows:

**§ 423.50 Approval of marketing materials and enrollment forms.**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(v) Use providers, provider groups, or pharmacies to distribute printed information comparing the benefits of different Part D plans unless providers, provider groups or pharmacies accept and display materials from all Part D plan sponsors with which the providers, provider groups or pharmacies contract.

\* \* \* \* \*

3. Section § 423.56 is amended by revising paragraph (b)(6) to read as follows:

**§ 423.56 Procedures to determine and document creditable status of prescription drug coverage.**

\* \* \* \* \*

(b) \* \* \*

(6) Coverage under a Medicare supplemental policy (Medigap policy) as defined at 42 CFR 403.205.

\* \* \* \* \*

**Subpart C—Benefits and Beneficiary Protections**

4. Section 423.100 is amended by—

A. Revising the definition of “contracted pharmacy network.”

B. Revising the definition of “negotiated prices.”

C. Revising the definition of “part D drug.”

The revisions read as follows:

**§ 423.100 Definitions.**

\* \* \* \* \*

*Contracted pharmacy network* means licensed pharmacies, including retail, mail-order, and institutional pharmacies, under contract with a Part D sponsor to provide covered Part D drugs at negotiated prices to Part D enrollees.

\* \* \* \* \*

*Negotiated prices* means prices for covered Part D drugs that—

(1) The Part D sponsor (or other intermediary contracting organization) and the network dispensing pharmacy or other network dispensing provider have negotiated as the amount such network entity will receive, in total, for a particular drug;

(2) Are reduced by those discounts, direct or indirect subsidies, rebates, other price concessions, and direct or indirect remuneration that the Part D sponsor has elected to pass through to Part D enrollees at the point of sale; and

(3) Includes any dispensing fees.

\* \* \* \* \*

*Part D drug* means—

(1) Unless excluded under paragraph (2) of this definition, any of the following if used for a medically accepted indication (as defined in section 1927(k)(6) of the Act):

(i) A drug that may be dispensed only upon a prescription and that is described in sections 1927(k)(2)(A)(i) through (iii) of the Act.

(ii) A biological product described in sections 1927(k)(2)(B)(i) through (iii) of the Act.

(iii) Insulin described in section 1927(k)(2)(C) of the Act.

(iv) Medical supplies associated with the injection of insulin, including syringes, needles, alcohol swabs, and gauze.

(v) A vaccine licensed under section 351 of the Public Health Service Act.

(vi) Supplies that are directly associated with delivering insulin into the body through inhalation, such as the inhalation chamber used to deliver the insulin.

(2) Does not include—

(i) Drugs for which payment as so prescribed and dispensed or administered to an individual is available for that individual under Part A or Part B (even though a deductible may apply, or even though the individual is eligible for coverage under Part A or Part B but has declined to enroll in Part A or Part B); and

(ii) Drugs or classes of drugs, or their medical uses, which may be excluded from coverage or otherwise restricted under Medicaid under sections

1927(d)(2) or (d)(3) of the Act, except for smoking cessation agents.

\* \* \* \* \*

5. Section 423.120 is amended by revising paragraphs (a)(2) and (a)(4) to read as follows:

**§ 423.120 Access to covered Part D drugs.**

(a) \* \* \*

(2) *Applicability of some non-retail pharmacies to standards for convenient access.* Part D plans may count I/T/U pharmacies and pharmacies operated by Federally Qualified Health Centers and Rural Health Clinics toward the standards for convenient access to network pharmacies in paragraph (a)(1) of this section.

\* \* \* \* \*

(4) *Access to home infusion pharmacies.* A Part D plan's contracted pharmacy network must provide adequate access to home infusion pharmacies consistent with CMS guidelines and instructions. A Part D plan must ensure that such network pharmacies, at a minimum—

(i) Are capable of delivering home infused drugs in a form that can be administered in a clinically appropriate fashion;

(ii) Are capable of providing infusible Part D drugs for both short-term acute care and long-term chronic care therapies;

(iii) Ensure that the professional services and ancillary supplies necessary for home infusion therapy are in place before dispensing Part D home infusion drugs; and

(iv) Provide delivery of home infusion drugs within at least 24 hours of discharge from an acute setting.

\* \* \* \* \*

**Subpart F—Submission of Bids and Monthly Beneficiary Premiums: Plan Approval**

6. Section 423.293 is amended by revising paragraph (a) to read as follows:

**§ 423.293 Collection of monthly beneficiary premium.**

(a) *General rule.* Part D sponsors must charge enrollees a consolidated monthly Part D premium equal to the sum of the Part D monthly premium for basic prescription drug coverage (if any) and the premium for supplemental coverage (if any and if the beneficiary has enrolled in such supplemental coverage). Part D sponsors must permit payment of monthly Part D premiums (if any) under the timing of payments established in 422.262(e) of this chapter. Part D sponsors must also permit each enrollee, at the enrollee's option, to make payment of premiums (if any)

under this part to the sponsor using any of the methods listed in § 422.262(f) of this chapter.

\* \* \* \* \*

#### **Subpart G—Payments to Part D Plan Sponsors for Qualified Prescription Drug Coverage**

7. Section 423.308 is amended by—  
A. Adding the definition of “administrative costs.”

B. Revising the definition of “allowable risk corridor costs.”

C. Revising the definition of “gross covered prescription drug costs.”

The addition and revisions read as follows:

#### **§ 423.308 Definitions and terminology.**

\* \* \* \* \*

*Administrative costs* means costs incurred by a Part D sponsor in complying with the requirements of this Part for a coverage year and that are not drug costs incurred to purchase or reimburse the purchase of Part D drugs. Administrative costs include sponsor costs that exceed the amount paid by or on behalf of the Part D sponsor to a pharmacy or other entity that is the final dispenser of the drug for the provision of a covered Part D drug under the plan. When an intermediary acts on behalf of a Part D sponsor to negotiate prices with dispensing entities such as pharmacies, any profit retained by the intermediary contracting organization as a result of such negotiation (through discounts, manufacturer rebates, or other direct or indirect price concessions) is considered an administrative cost to the Part D sponsor and not a drug cost.

\* \* \* \* \*

*Allowable risk corridor costs* means the subset of actually paid costs for Part D drugs (not including administrative costs, but including dispensing fees) that are attributable to basic prescription drug coverage only and that are incurred and actually paid by the Part D sponsor to—

(1) A dispensing pharmacy or other dispensing provider (whether directly or through an intermediary contracting organization) under the Part D plan;

(2) The parties listed in § 423.464(f)(1) with whom the Part D sponsor must coordinate benefits, including other Part D plans, as the result of any reconciliation process developed by CMS under § 423.464; or

(3) An enrollee (or third party paying on behalf of the enrollee) to indemnify the enrollee when the reimbursement is associated with obtaining drugs under the Part D plan.

Costs must be based upon imposition of the maximum amount of copayments

permitted under § 423.782. The costs for any Part D plan offering enhanced alternative coverage must be adjusted not only to exclude any costs attributable to benefits beyond basic prescription drug coverage, but also to exclude any prescription drug coverage costs determined to be attributable to increased utilization over standard prescription drug coverage as the result of the insurance effect of enhanced alternative coverage in accordance with CMS guidelines on actuarial valuation.

\* \* \* \* \*

*Gross covered prescription drug costs* mean those actually paid costs incurred under a Part D plan to purchase or reimburse the purchase of Part D drugs, excluding administrative costs, but including dispensing fees, during the coverage year. They equal—

(1) The share of negotiated prices (as defined by § 423.100 of this chapter) actually paid by the Part D plan that is received as reimbursement by the pharmacy or other dispensing entity, reimbursement paid to indemnify an enrollee when the reimbursement is associated with an enrollee obtaining covered Part D drugs under the Part D plan, or payments made by the Part D sponsor to other parties listed in § 423.464(f)(1) with whom the Part D sponsor must coordinate benefits, including other Part D plans, as the result of any reconciliation process developed by CMS under § 423.464 of this chapter; plus

(2) All amounts paid under the Part D plan by or on behalf of an enrollee (such as the deductible, coinsurance, cost sharing, or amounts between the initial coverage limit and the out-of-pocket threshold) in order to obtain covered Part D drugs that are covered under the Part D plan. If an enrollee who is paying 100 percent cost sharing (as a result of paying a deductible or because the enrollee is between the initial coverage limit and the out-of-pocket threshold) obtains a covered Part D drug at a lower cost than is available under the Part D plan, such cost-sharing will be considered an amount paid under the plan by or on behalf of an enrollee under the previous sentence of this definition, if the enrollee's costs are incurred costs as defined under § 423.100 of this chapter and documentation of the incurred costs has been submitted to the Part D plan consistent with plan processes and instructions for the submission of such information. These costs are determined regardless of whether the coverage under the plan exceeds basic prescription drug coverage.

\* \* \* \* \*

8. In § 423.350 paragraph (b)(1) is revised to read as follows:

#### **§ 423.350 Payment appeals**

(b) \* \* \*

(1) *Time for filing a request.* The request for reconsideration must be filed within 15 days from the date of the final payment. For purposes of this paragraph, the date of final payment is: for risk adjustment, the date of the final reconciled payment under § 423.343(b); for reinsurance, the date of the final reconciled payment under § 423.343(c); for low-income cost sharing subsidies, the date of the final reconciled payment under § 423.343(d); or for risk-sharing payments, the date of the final payments under § 423.336.

#### **Subpart I—Organizational Compliance With State Law and Preemption by Federal Law**

9. Section 423.410 is amended by revising paragraph (d) to read as follows:

#### **§ 423.410 Waiver of certain requirements to expand choice.**

\* \* \* \* \*

(d) Special waiver for plan years beginning before January 1, 2008. For plan years beginning before January 1, 2008, if the State has a prescription drug plan or PDP sponsor licensing process in effect, CMS grants a waiver upon a demonstration that an applicant to become a PDP sponsor has submitted a substantially completed application for licensure to the State.

\* \* \* \* \*

#### **Subpart J—Coordination of Part D Plans With Other Prescription Drug Coverage**

10. Section 423.458 is amended by revising paragraph (d)(2)(ii) to read as follows—

#### **§ 423.458 Application of Part D rules to certain Part D plans on and after January 1, 2006.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) A waiver of a requirement under this part otherwise applicable to cost plans or PACE organizations, if such waiver improves coordination of benefits provided by the cost plan under section 1876 of the Act, or by the PACE organization under section 1894 and 1934 of the Act, with the benefits under Part D.

11. Section 423.464 is amended by—  
(A) Revising paragraph (f)(1)(vii), and (f)(1)(viii).

(B) Adding new paragraphs (f)(1)(ix) and (f)(5).

The revision and additions read as follows:

**§ 423.464 Coordination of benefits with other providers of prescription drug coverage.**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(vii) *Rural health clinics.* Rural health clinics as defined under section 1861(aa)(2) of the Act.

(viii) *Other Part D plans.*

(ix) *Other prescription drug coverage.* Other health benefit plans or programs that provide coverage or financial assistance for the purchase or provision of Part D drugs on behalf of Part D eligible individuals as CMS may specify.

\* \* \* \* \*

(5) *Plan-to-plan liability.* In the process of coordinating benefits between Part D plans when a Part D plan from which a beneficiary has transferred has incorrectly made payment for covered prescription drug costs incurred after the effective date of the Part D enrollee's enrollment in the new Part D plan of record, the new Part D plan of record must make the reconciling payments based on amounts reported to it by CMS without regard to the Part D plan's own formulary or drug utilization review edits.

(6) *Use of other reconciliation processes.* In the process of coordinating benefits between the correct Part D plan of record and another entity providing prescription drug coverage when that entity has incorrectly paid as primary payer for a covered Part D drug on behalf of a Part D enrollee, the correct Part D plan of record must achieve timely reconciliation through working directly with the other entity that incorrectly paid as primary payer, unless CMS has established reconciliation processes for payment reconciliation, rather than requesting pharmacy claims reversal and re-adjudication.

**Subpart K—Application Procedures and Contracts With Part D Sponsors**

12. Section 423.504 is amended by revising paragraph (a) to read as follows:

**§ 423.504 General provisions.**

(a) *General rule.* Subject to the provisions at § 423.265 concerning submission of bids, to enroll beneficiaries in any Part D drug plan it offers and be paid on behalf of Part D eligible individuals enrolled in those plans, a Part D plan sponsor must enter into a contract with CMS. The contract may cover more than one Part D plan.

\* \* \* \* \*

13. Section 423.505 is amended by revising paragraph (h)(1) to read as follows:

**§ 423.505 Contract provisions.**

\* \* \* \* \*

(h) \* \* \*

(1) Federal laws and regulations designed to prevent fraud, waste, and abuse, including, but not limited to applicable provisions of Federal criminal law, the False Claims Act (31 U.S.C. §§ 3729 et seq.), and the anti-kickback statute (section 1128B(b) of the Act).

\* \* \* \* \*

14. Section 423.509 is amended by revising paragraph (a)(9) to read as follows:

**§ 423.509 Termination of contract by CMS.**

(a) \* \* \*

(9) Substantially fails to comply with the marketing requirements in § 423.50, or the information dissemination requirements of § 423.128.

\* \* \* \* \*

**Subpart M—Grievances, Coverage Determinations, and Appeals**

15. Section 423.560 is amended by A. Revising the definition for “Appointed representative.”

B. Revising the definition for “Projected Value.”

**§ 423.560 Definitions.**

\* \* \* \* \*

*Appointed representative* means an individual either appointed by an enrollee or authorized under State or other applicable law to act on behalf of the enrollee in filing a grievance, obtaining a coverage determination, or in dealing with any of the levels of the appeals process. Unless otherwise stated in this subpart, the appointed representative has all of the rights and responsibilities of an enrollee in filing a grievance, obtaining a coverage determination, or in dealing with any of the levels of the appeals process, subject to the rules described in part 422, subpart M of this chapter.

\* \* \* \* \*

*Projected value* of a Part D drug or drugs includes any costs the enrollee could incur based on the number of refills prescribed for the drug(s) in dispute during the plan year. Projected value includes enrollee co-payments, all expenditures incurred after an enrollee's expenditures exceed the initial coverage limit, and expenditures paid by other entities.

\* \* \* \* \*

16. Section 423.570 is amended by revising paragraph (d)(3) to read as follows:

**§ 423.570 Expediting certain coverage determinations.**

\* \* \* \* \*

(d) \* \* \*

(3) Subsequently deliver to the enrollee, within 3 calendar days, equivalent written notice.

\* \* \* \* \*

17. Section § 423.584 is amended by adding a new paragraph (b)(3) as to read as follows:

**§ 423.584 Expediting certain redeterminations.**

\* \* \* \* \*

(b) \* \* \*

(3) The provisions set forth in § 423.582(b), (c), and (d) also apply to expedited redeterminations.

\* \* \* \* \*

18. Section § 423.610 is amended by revising paragraph (c)(2) to read as follows:

**§ 423.610 Right to an ALJ hearing.**

\* \* \* \* \*

(c) \* \* \*

(2) *Multiple enrollees.* Two or more appeals may be aggregated by multiple enrollees to meet the amount in controversy for an ALJ hearing if—

(i) The appeals have previously been reconsidered by an IRE;

(ii) The request for ALJ hearing lists all of the appeals to be aggregated and each aggregated appeal meets the filing requirement specified in § 423.612(b); and

(iii) The ALJ determines that the appeals the enrollees seek to aggregate involve the same prescription drug.

**Subpart P—Premiums and Cost Sharing Subsidies for Low-Income Individuals**

19. Section 423.780 is amended by—

A. Revising paragraph (b)(1) introductory text, (b)(1)(i), (b)(1)(ii), and (b)(2)(i).

B. Revising paragraph (e).

The revisions read as follows:

**§ 423.780 Premium subsidy.**

\* \* \* \* \*

(b) \* \* \*

(1) The premium subsidy amount is equal to the lesser of—

(i) Under the Part D plan selected by the beneficiary, the portion of the monthly beneficiary premium attributable to basic coverage (for enrollees in PDPs) or the portion of the MA monthly prescription drug beneficiary premium attributable to basic prescription drug coverage (for enrollees in MA-PD plans) or

(ii) The greater of the low-income benchmark premium amount (determined under paragraph (b)(2) of

this section) for the region in which the subsidy eligible individual resides or the lowest monthly beneficiary premium for a PDP that offers basic prescription drug coverage in the region.

(2) \* \* \*

(i) The low-income benchmark premium amount for a PDP region equals either—

(A) The weighted average of the monthly beneficiary premiums for all basic prescription drug plans (if all PDPs in the region are offered by the same PDP sponsor), with the weight for each basic PDP equal to a percentage, the numerator being equal to the number of Part D eligible individuals enrolled in the plan in the reference month (as defined in § 422.258(c)(1) of this chapter) and the denominator equal to the total number of Part D eligible individuals enrolled in all basic PDPs in the PDP region in the reference month.

(B) The weighted average of the premiums described in paragraph (b)(2)(ii) of this section (if the PDPs in the region are offered by more than one PDP sponsor). The average is weighted using a percentage for each PDP, as well as for each MA–PD that is described in § 422.4(a)(1) of this chapter. Such percentage is calculated using a numerator equal to the number of Part D eligible individuals enrolled in each such plan in the reference month (as defined in § 422.258(c)(1) of this chapter) and the denominator equal to the total number of Part D eligible individuals enrolled in all such PDPs and MA–PD plans in the reference month.

\* \* \* \* \*

(e) *Premium subsidy for late enrollment penalty.* (1) Amount of premium subsidy for late enrollment penalty. Full subsidy eligible individuals who are subject to late enrollment penalties under § 423.46 are entitled to an additional premium subsidy equal to 80 percent of the late enrollment penalty for the first 60 months during which the penalty is imposed and 100 percent of their late enrollment penalty thereafter.

(2) Other low-income subsidy eligible individuals— sliding scale premium subsidy for late enrollment penalty. Other low-income subsidy eligible individuals are entitled to a premium subsidy based on a linear sliding scale as follows:

(i) For individuals with income at or below 135 percent of the FPL applicable to the family size, a premium subsidy equal to 80 percent of the late enrollment for the first 60 months during which the penalty is imposed and 100 percent of their late enrollment penalty thereafter.

(ii) For individuals with income greater than 135 percent but at or below 140 percent of the FPL applicable to the family size, a premium subsidy equal to 60 percent of the late enrollment penalty for the first 60 months during which the penalty is imposed and 75 percent of their late enrollment penalty thereafter.

(iii) For individuals with income greater than 140 percent but at or below 145 percent of the FPL applicable to the family size, a premium subsidy equal to 40 percent of the late enrollment penalty for the first 60 months during which the penalty is imposed and 50 percent of their late enrollment penalty thereafter.

(iv) For individuals with income greater than 145 percent but below 150 percent of the FPL applicable to the family size, a premium subsidy equal to 20 percent of the late enrollment penalty for the first 60 months during which the penalty is imposed and 25 percent of their late enrollment penalty thereafter.

#### Subpart R—Payments to Sponsors of Retiree Prescription Drug Plans

20. Section § 423.884 is amended by—

- A. Revising paragraph (c)(5)(i).
- B. Revising paragraph (c)(7)(i).
- C. Revising paragraph (d)(5)(iii)(B)(2).
- D. Revising paragraphs (d)(5)(iii)(C) and (D).

E. Revising the last sentence of paragraph (d)(5)(iv).

The affected paragraphs are revised to read as follows:

#### § 423.884 Requirements for qualified retiree prescription drug plans.

\* \* \* \* \*

(c) \* \* \*

(5) Timing. (i) General rule. An application for a given plan year must be submitted prior to the beginning of the plan year by a date specified by CMS in published guidance, unless a request for an extension has been filed and approved under procedures set forth in such guidance.

\* \* \* \* \*

(7) \* \* \*

(i) Matches the names and identifying information for the individuals submitted as qualifying covered retirees with a CMS database(s) to determine which retirees are Part D eligible individuals who are not enrolled in a Part D plan.

\* \* \* \* \*

(d) \* \* \*

(5) \* \* \*

(iii) \* \* \*

(B) \* \* \*

(2) An amount calculated to reflect the impact on the value of defined

standard prescription drug coverage of supplemental coverage actually provided by the sponsor. Sponsors may use other actuarial approaches specified by CMS as an alternative to the actuarial valuation specified in this paragraph (d)(5)(iii)(B)(2).

(C) The valuation of defined standard prescription drug coverage for a given plan year is based on the initial coverage limit, cost-sharing amounts, and out-of-pocket threshold for defined standard prescription drug coverage under Part D in effect either at the start of the plan year or that is announced for the upcoming calendar year. In order to use the coverage limits in effect at the beginning of the plan year, the attestation must be submitted to CMS no later than 60 days after the publication of the Part D coverage limits for the upcoming calendar year; otherwise, the valuation is based on the upcoming year's initial coverage limit, cost-sharing amounts, and out-of-pocket threshold for defined standard prescription drug coverage under Part D.

(D) Example: If a sponsor's retiree prescription drug plan operates under a plan year that ends March 30, the sponsor has a choice of basing the attestation for the year April 1, 2007–March 30, 2008 on either: the initial coverage limit, cost-sharing amounts, and out-of-pocket threshold amounts that apply to defined standard prescription drug coverage under Part D in calendar year 2007, or the amounts announced for calendar year 2008. However, in order to use the amounts applicable in calendar year 2007, the sponsor must submit the attestation within 60 days after the publication of the Part D coverage limits for 2008. If the attestation is submitted more than 60 days after the 2008 coverage limits have been published, the 2008 coverage limits would apply.

(iv) \* \* \* For the assurance required under paragraph (d)(1)(ii) of this section, the assurance may be provided either separately for each benefit option for which the sponsor provided assurances under paragraph (d)(1)(i) of this section, or in the aggregate for all benefit options (or for a subset of the benefit options).

\* \* \* \* \*

#### Subpart S—Special Rules for States-Eligibility Determinations for Subsidies and General Payment Provisions

21. Section 423.902 is amended by adding the definition of “non-covered drugs” in alphabetical order to read as follows:

**§ 423.902 Definitions.**

\* \* \* \* \*

*Non-covered drugs* are those drugs specifically excluded from the definition of Part D drug, which may be excluded from coverage or otherwise restricted under Medicaid under sections 1927(d)(2) or (d)(3) of the Act, except for smoking cessation agents.

\* \* \* \* \*

22. Section 423.906 is amended by—  
A. Revising paragraphs (b)(1) and (2).  
B. Revising paragraph (c).

The revisions read as follows:

**§ 423.906 General payment provisions.**

\* \* \* \* \*

(b) \* \* \*

(1) Part D drugs; or

(2) Any cost-sharing obligations under Part D relating to Part D drugs.

\* \* \* \* \*

(c) *Non-covered drugs*. States may elect to provide coverage for outpatient drugs other than Part D drugs in the same manner as provided for non-full benefit dual eligible individuals or through an arrangement with a prescription drug plan or a MA-PD plan.

23. Section 423.910 is amended by revising paragraph (b)(1) introductory text to read as follows:

**§ 423.910 Requirements.**

(b) \* \* \*

(1) Calculation of payment. The State contribution payment is calculated by CMS on a monthly basis, as indicated in the following chart. For States that do not meet the monthly reporting requirement for the monthly enrollment reporting, the State contribution

payment is calculated using a methodology determined by CMS.

\* \* \* \* \*

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 27, 2006.

**Mark B. McClellan,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: November 14, 2006.

**Michael O. Leavitt,**

*Secretary.*

**Editorial Note:** This document was received by the **Federal Register** on May 21, 2007.

[FR Doc. 07–2577 Filed 5–21–07; 4:20 pm]

**BILLING CODE 4120-01-P**



# Federal Register

---

**Friday,  
May 25, 2007**

---

## **Part III**

## **The President**

---

**Presidential Determination No. 2007–19 of  
May 10, 2007—Unexpected Urgent  
Refugee and Migration Needs Related to  
Somalia, Sudan, Chad, Other Parts of  
Africa, and the West Bank and Gaza**



---

# Presidential Documents

---

Title 3—

Presidential Determination No. 2007–19 of May 10, 2007

The President

## Unexpected Urgent Refugee and Migration Needs Related to Somalia, Sudan, Chad, Other Parts of Africa, and the West Bank and Gaza

### Memorandum for the Secretary of State

By the authority vested in me by the Constitution and the laws of the United States, including sections 2 and 4(a)(1) of the Migration and Refugee Assistance Act of 1962 (the “Act”), as amended (22 U.S.C. 2601 and 2603) and section 301 of title 3, United States Code:

(1) I hereby determine, pursuant to section 2(c)(1) of the Act, that it is important to the national interest to furnish assistance under the Act, in an amount not to exceed \$29.5 million from the United States Emergency Refugee and Migration Assistance Fund, for the purpose of meeting unexpected and urgent refugee and migration needs, including by contributions to international, governmental, and non-governmental organizations and payment of administrative expenses of the Bureau of Population, Refugees, and Migration of the Department of State, related to: (a) humanitarian needs resulting from conflicts in Somalia, Sudan, and Chad, (b) breaks in the food pipeline for refugees in Africa, and in the West Bank and Gaza; and

(2) the functions of the President in relation to this memorandum under section 2(d) of the Act, and of establishing terms and conditions under section 2(c)(1) of the Act, are assigned to you, and you may further assign such functions to any of your subordinates.

You are authorized and directed to publish this memorandum in the **Federal Register**.

A handwritten signature in black ink, appearing to read "George W. Bush", is positioned in the upper right quadrant of the page.

THE WHITE HOUSE,  
*Washington, May 10, 2007.*

[FR Doc. 07-2654

Filed 5-24-07; 9:10 am]

Billing code 4710-10-P

# Reader Aids

## Federal Register

Vol. 72, No. 101

Friday, May 25, 2007

### CUSTOMER SERVICE AND INFORMATION

#### Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000****Laws** **741-6000**

#### Presidential Documents

Executive orders and proclamations **741-6000****The United States Government Manual** **741-6000**

#### Other Services

Electronic and on-line services (voice) **741-6020**Privacy Act Compilation **741-6064**Public Laws Update Service (numbers, dates, etc.) **741-6043**TTY for the deaf-and-hard-of-hearing **741-6086**

### ELECTRONIC RESEARCH

#### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: <http://www.gpoaccess.gov/nara/index.html>Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: [http://www.archives.gov/federal\\_register](http://www.archives.gov/federal_register)

#### E-mail

**FEDREGTOC-L** (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.To join or leave, go to <http://listserv.access.gpo.gov> and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings)*; then follow the instructions.**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.**FEDREGTOC-L** and **PENS** are mailing lists only. We cannot respond to specific inquiries.**Reference questions.** Send questions and comments about the Federal Register system to: [fedreg.info@nara.gov](mailto:fedreg.info@nara.gov)

The Federal Register staff cannot interpret specific documents or regulations.

### FEDERAL REGISTER PAGES AND DATE, MAY

|                  |    |
|------------------|----|
| 23761-24176..... | 1  |
| 24177-24522..... | 2  |
| 24523-25188..... | 3  |
| 25189-25676..... | 4  |
| 25677-25944..... | 7  |
| 25945-26280..... | 8  |
| 26281-26532..... | 9  |
| 26533-26708..... | 10 |
| 26709-27052..... | 11 |
| 27053-27240..... | 14 |
| 27241-27406..... | 15 |
| 27407-27720..... | 16 |
| 27721-27948..... | 17 |
| 27949-28448..... | 18 |
| 28449-28582..... | 21 |
| 28583-28824..... | 22 |
| 28825-29054..... | 23 |
| 29055-29236..... | 24 |
| 29237-29428..... | 25 |

### CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

#### 2 CFR

2200.....28825

#### 3 CFR

##### Proclamations:

8133.....24173

8134.....24175

8135.....24177

8136.....25181

8137.....25183

8138.....25185

8139.....25187

8140.....26705

8141.....27240

8142.....27401

8143.....27403

8144.....27405

8145.....28445

8146.....29047

8147.....29049

8148.....29051

##### Executive Orders:

12866 (See 13432).....27717

13303 (See Notice of

May 18, 2007).....28581

13047 (See Notice of

May 17, 2007).....28447

13310 (See Notice of

May 17, 2007).....28447

13315 (See Notice of

May 18, 2007).....28581

13338 (See Notice of

May 8, 2007).....26707

13350 (See Notice of

May 18, 2007).....28581

13364 (See Notice of

May 18, 2007).....28581

13364 (See Notice of

May 18, 2007).....28581

13399 (See Notice of

May 8, 2007).....26707

13423 (See 13432).....27717

13431.....26709

13432.....27717

13433.....28441

13434.....28583

##### Administrative Orders:

##### Notices:

Notice of May 8,

2007.....26707

Notice of May 17,

2007.....28447

Notice of May 18,

2007.....28581

##### Presidential

##### Determinations:

No. 2007-17 of April

25, 2007.....26281

No. 2007-18 of May 9,

2007.....29053

No. 2007-19 of May

10, 2007.....29427

#### 5 CFR

Ch. LXIV.....26533

##### Proposed Rules:

315.....23772

752.....23772

#### 7 CFR

210.....24179

220.....24179

225.....24179

226.....24179

246.....24179

247.....24179

251.....24179

301.....27949, 28827

319.....26711

457.....24523, 29055

800.....27407

801.....27407

916.....25945

917.....25945

959.....25677

966.....24530

981.....29055

982.....23761

4279.....27241

##### Proposed Rules:

205.....27252

400.....27981

457.....28895

810.....23775

925.....24551

929.....23777

930.....24553

955.....25207

1000.....25986

1001.....25986

1005.....25986

1006.....25986

1007.....25986

1030.....25986

1032.....25986

1033.....25986

1124.....25986

1126.....25986

1131.....25986

1210.....26005

1485.....28901

1738.....26742

1924.....27470

1944.....27988

3551.....27988

#### 9 CFR

205.....25947

##### Proposed Rules:

1.....28902

149.....27656

160.....27656

161.....27656

|                             |                             |                              |                              |                              |
|-----------------------------|-----------------------------|------------------------------|------------------------------|------------------------------|
| 381.....26567               | <b>15 CFR</b>               | 705.....25194                | <b>28 CFR</b>                | 380.....24084                |
| <b>10 CFR</b>               | 730.....25194               | <b>Proposed Rules:</b>       | <b>Proposed Rules:</b>       | <b>38 CFR</b>                |
| 1.....28449                 | 736.....25194               | 16.....26037                 | 16.....26037                 | 2.....27246                  |
| 11.....27408                | 744.....25194               | <b>29 CFR</b>                | <b>29 CFR</b>                | <b>Proposed Rules:</b>       |
| 25.....27408                | 747.....25194               | 4022.....27243               | 4022.....27243               | 1.....25930                  |
| 72.....26535                | 754.....25194               | 4044.....27243               | 4044.....27243               | 5.....28770                  |
| <b>Proposed Rules:</b>      | 756.....25194               | <b>Proposed Rules:</b>       | <b>Proposed Rules:</b>       | 14.....25930                 |
| 1.....28455                 | 760.....25194               | 1910.....27771               | 1910.....27771               | 19.....25930                 |
| 26.....27766                | 766.....25194               | 1915.....27771               | 1915.....27771               | 20.....25930                 |
| 50.....28902                | 768.....25194               | 1917.....27771               | 1917.....27771               |                              |
| 51.....27068                | 770.....25194               | 1918.....27771               | 1918.....27771               | <b>39 CFR</b>                |
| 60.....27766                | 772.....25194, 25680        |                              |                              | 111.....26543, 29256         |
| 63.....27766                | 774.....25680               | <b>30 CFR</b>                | <b>30 CFR</b>                | <b>Proposed Rules:</b>       |
| 72.....26568                | 922.....29208               | 75.....28796                 | 75.....28796                 | 111.....28908, 29100         |
| 73.....27766                | <b>16 CFR</b>               | 202.....24448                | 202.....24448                | 3001.....29284               |
| 74.....27766                | 4.....28851                 | 203.....25197                | 203.....25197                | <b>40 CFR</b>                |
| 609.....27471               | <b>Proposed Rules:</b>      | 206.....24448                | 206.....24448                | 9.....24496, 26544           |
| <b>11 CFR</b>               | 24.....28906                | 210.....24448                | 210.....24448                | 35.....24496                 |
| <b>Proposed Rules:</b>      | 259.....26328               | 217.....24448                | 217.....24448                | 49.....25698                 |
| 106.....26569               | <b>17 CFR</b>               | 218.....24448                | 218.....24448                | 50.....28612                 |
| <b>12 CFR</b>               | 2.....29246                 | 250.....25197                | 250.....25197                | 51.....24060                 |
| 229.....27951               | <b>Proposed Rules:</b>      | 251.....25197                | 251.....25197                | 52.....24060, 25203, 25967,  |
| 509.....25948               | 240.....28908               | 260.....25197                | 260.....25197                | 25969, 25971, 25973, 25975,  |
| 585.....25948               | <b>18 CFR</b>               | 914.....28451                | 914.....28451                | 26718, 27056, 27060, 27247,  |
| <b>13 CFR</b>               | 292.....29056               | 935.....26291                | 935.....26291                | 27425, 27640, 27644, 27648,  |
| 120.....25189               | <b>Proposed Rules:</b>      | <b>Proposed Rules</b>        | <b>Proposed Rules</b>        | 27652, 27957, 28866, 29075,  |
| <b>14 CFR</b>               | 35.....23778                | 203.....28396                | 203.....28396                | 29269, 29273                 |
| 39.....23765, 25957, 25960, | <b>19 CFR</b>               | 260.....28396                | 260.....28396                | 60.....27437                 |
| 26283, 26285, 26538, 26711, | 10.....29247                | Ch. VII.....27069            | Ch. VII.....27069            | 61.....27437                 |
| 26714, 26716, 27721, 27723, | 123.....25965               | 946.....26329                | 946.....26329                | 62.....25978                 |
| 27725, 27730, 27953, 28587, | <b>20 CFR</b>               | 948.....27782                | 948.....27782                | 63.....25138, 25980, 27437   |
| 28589, 28591, 28593, 28594, | 404.....27424               | <b>31 CFR</b>                | <b>31 CFR</b>                | 70.....24060                 |
| 28597, 28827, 28830, 28832, | 416.....27424               | 593.....28855                | 593.....28855                | 71.....24060                 |
| 29237, 29239, 29241, 29245  | 498.....27425               | <b>32 CFR</b>                | <b>32 CFR</b>                | 80.....23900                 |
| 71.....23767, 23768, 25962, | 656.....27904               | 234.....29250                | 234.....29250                | 81.....25967, 26718, 27060,  |
| 25963, 26287, 27053, 27054, | <b>21 CFR</b>               | 635.....29063                | 635.....29063                | 27247, 27425, 27640, 27644,  |
| 27412, 27413, 27415, 27416, | 510.....24184, 26288, 27955 | <b>Proposed Rules:</b>       | <b>Proposed Rules:</b>       | 27648, 27652                 |
| 27417, 27418, 27420, 27421, | 520.....24185, 27733, 27955 | 216.....25713                | 216.....25713                | 112.....27443                |
| 29056                       | 522.....27733, 27734, 27956 | 571.....26576                | 571.....26576                | 174.....26300                |
| 97.....23769, 27241, 27422  | 529.....26289               | <b>33 CFR</b>                | <b>33 CFR</b>                | 180.....24188, 26304, 26310, |
| 121.....26540               | 866.....26290               | 100.....25202, 25685, 25966, | 100.....25202, 25685, 25966, | 26317, 26322, 27448, 27452,  |
| 135.....26540               | 1313.....28601              | 27735, 28607                 | 27735, 28607                 | 27456, 27460, 27463, 28868,  |
| 158.....28837               | 1308.....24532              | 117.....24534, 25203, 28609  | 117.....24534, 25203, 28609  | 28871, 28877, 28881          |
| 401.....27732               | <b>Proposed Rules:</b>      | 151.....27738                | 151.....27738                | 300.....29276                |
| 415.....27732               | 878.....26011               | 165.....23771, 24185, 24534, | 165.....23771, 24185, 24534, | 372.....26544                |
| 431.....27732               | <b>22 CFR</b>               | 25686, 25966, 26296, 26298,  | 25686, 25966, 26296, 26298,  | <b>Proposed Rules:</b>       |
| 435.....27732               | 126.....28602               | 27244, 27740, 28864, 29254   | 27244, 27740, 28864, 29254   | 51.....24472, 26202          |
| 440.....27732               | 303.....27055               | <b>Proposed Rules:</b>       | <b>Proposed Rules:</b>       | 52.....23783, 25241, 26040,  |
| 460.....27732               | <b>24 CFR</b>               | 100.....25214, 27499, 28631, | 100.....25214, 27499, 28631, | 26045, 26046, 26057, 26202,  |
| <b>Proposed Rules:</b>      | 3280.....27222              | 28634                        | 28634                        | 26581, 26759, 27265, 27787,  |
| 1.....25207                 | 3282.....27222              | 110.....29092, 29095         | 110.....29092, 29095         | 29101, 29287                 |
| 33.....25207                | 3288.....27222              | 117.....26038, 27264         | 117.....26038, 27264         | 60.....27178, 28098          |
| 39.....26008, 27489, 27491, | <b>Proposed Rules:</b>      | 165.....23779, 23781, 24196, | 165.....23779, 23781, 24196, | 62.....26069                 |
| 27493, 27497, 27766, 27768, | 203.....27048               | 25217, 25219, 25226, 25720,  | 25217, 25219, 25226, 25720,  | 63.....26069, 28098, 29287   |
| 28003, 28005, 28456, 28458, | 320.....25926               | 27070                        | 27070                        | 81.....23783, 26046, 26057,  |
| 28459, 29082, 29084, 29086, | 350.....25926               | <b>34 CFR</b>                | <b>34 CFR</b>                | 26581, 26759, 27265          |
| 29088, 29091, 29278, 29280, | 983.....24080               | <b>Proposed Rules:</b>       | <b>Proposed Rules:</b>       | 85.....28098                 |
| 29282                       | <b>26 CFR</b>               | 75.....29097                 | 75.....29097                 | 89.....28098                 |
| 71.....25712, 28622, 28623, | 1.....23771, 26542, 28604,  | 200.....25228                | 200.....25228                | 90.....28098                 |
| 28624, 28626, 28627, 28629, | 28854                       | 303.....26456, 28007         | 303.....26456, 28007         | 91.....28098                 |
| 28630                       | 602.....24678               | <b>36 CFR</b>                | <b>36 CFR</b>                | 93.....24472                 |
| 91.....28820                | <b>Proposed Rules:</b>      | 242.....25688                | 242.....25688                | 122.....26582                |
| 105.....28820               | 1.....24192, 26011, 26012,  | <b>Proposed Rules:</b>       | <b>Proposed Rules:</b>       | 131.....27789                |
| 217.....27770               | 26576, 26689                | 7.....27499                  | 7.....27499                  | 141.....24016                |
| 234.....27771               |                             | 261.....26578                | 261.....26578                | 152.....28911                |
| 241.....27770               |                             | 1193.....26580               | 1193.....26580               | 156.....28911                |
| 248.....27770               |                             | 1194.....26580               | 1194.....26580               | 167.....28911                |
| 250.....27770               |                             | <b>37 CFR</b>                | <b>37 CFR</b>                | 168.....28911                |
| 291.....27770               |                             | 6.....28610                  | 6.....28610                  | 169.....28911                |
| 298.....27770               |                             |                              |                              | 172.....28911                |
| 374a.....27770              |                             |                              |                              | 174.....28911                |

|           |       |
|-----------|-------|
| 1027..... | 28098 |
| 1045..... | 28098 |
| 1048..... | 28098 |
| 1051..... | 28098 |
| 1054..... | 28098 |
| 1060..... | 28098 |
| 1065..... | 28098 |
| 1068..... | 28098 |
| 1074..... | 28098 |

**41 CFR****Proposed Rules:**

|             |       |
|-------------|-------|
| 101-42..... | 25723 |
| 101-45..... | 25723 |
| 102-40..... | 25723 |

**42 CFR**

|          |       |
|----------|-------|
| 412..... | 26870 |
| 413..... | 26870 |

**Proposed Rules:**

|          |              |
|----------|--------------|
| 411..... | 24680        |
| 412..... | 24680, 26230 |
| 413..... | 24680, 25526 |
| 418..... | 24116        |
| 422..... | 29368        |
| 423..... | 29368, 29403 |
| 438..... | 28930        |
| 447..... | 28930        |
| 484..... | 25356, 26887 |
| 489..... | 24680        |

**43 CFR**

|           |       |
|-----------|-------|
| 3000..... | 24358 |
| 3200..... | 24358 |
| 3280..... | 24358 |

**Proposed Rules:**

|           |       |
|-----------|-------|
| 3130..... | 28636 |
|-----------|-------|

**44 CFR**

|         |              |
|---------|--------------|
| 65..... | 27741, 28613 |
| 67..... | 27752, 28617 |

**45 CFR**

|           |       |
|-----------|-------|
| 98.....   | 27972 |
| 2541..... | 28825 |
| 2542..... | 28825 |
| 2545..... | 28825 |

**Proposed Rules:**

|         |       |
|---------|-------|
| 5b..... | 29289 |
|---------|-------|

**46 CFR****Proposed Rules:**

|          |       |
|----------|-------|
| 2.....   | 28650 |
| 8.....   | 28650 |
| 189..... | 28650 |

**47 CFR**

|         |                     |
|---------|---------------------|
| 1.....  | 27688               |
| 15..... | 26554, 28889, 28894 |
| 20..... | 27688               |
| 27..... | 27688               |
| 73..... | 24190, 24191        |
| 90..... | 27688               |

**Proposed Rules:**

|         |              |
|---------|--------------|
| 1.....  | 24213, 27519 |
| 20..... | 27519        |
| 27..... | 24238        |
| 43..... | 27519        |
| 54..... | 28936        |
| 73..... | 26331, 26332 |

**48 CFR**

|            |              |
|------------|--------------|
| Ch. 1..... | 27364, 27397 |
| 1.....     | 27364        |

|           |       |
|-----------|-------|
| 2.....    | 27364 |
| 4.....    | 27364 |
| 7.....    | 27364 |
| 14.....   | 27364 |
| 15.....   | 27364 |
| 16.....   | 27364 |
| 17.....   | 27364 |
| 18.....   | 27364 |
| 19.....   | 27364 |
| 22.....   | 27364 |
| 28.....   | 27364 |
| 31.....   | 27364 |
| 32.....   | 27364 |
| 35.....   | 27364 |
| 37.....   | 27364 |
| 41.....   | 27364 |
| 42.....   | 27364 |
| 43.....   | 27364 |
| 44.....   | 27364 |
| 45.....   | 27364 |
| 46.....   | 27364 |
| 49.....   | 27364 |
| 51.....   | 27364 |
| 52.....   | 27364 |
| 53.....   | 27364 |
| 970.....  | 29077 |
| 1804..... | 26560 |
| 1852..... | 26560 |
| 3001..... | 24536 |
| 3002..... | 24536 |
| 3033..... | 24536 |

**Proposed Rules:**

|            |       |
|------------|-------|
| 12.....    | 24554 |
| 23.....    | 24554 |
| 42.....    | 24554 |
| 52.....    | 24554 |
| Ch. 2..... | 28654 |

|          |       |
|----------|-------|
| 207..... | 28662 |
| 215..... | 28663 |
| 232..... | 28663 |

**49 CFR**

|          |       |
|----------|-------|
| 107..... | 24536 |
| 171..... | 25162 |
| 172..... | 25162 |
| 173..... | 25162 |
| 175..... | 25162 |
| 176..... | 25162 |
| 531..... | 28619 |
| 571..... | 25484 |
| 585..... | 25484 |

**Proposed Rules:**

|          |              |
|----------|--------------|
| 195..... | 28008        |
| 571..... | 27535, 28939 |

**50 CFR**

|          |                            |
|----------|----------------------------|
| 100..... | 25688                      |
| 223..... | 26722                      |
| 622..... | 27251                      |
| 635..... | 26735                      |
| 648..... | 25709, 26325, 26563        |
| 660..... | 24539, 27064, 27759, 29208 |
| 665..... | 27065                      |
| 679..... | 27067, 27980, 28620        |

**Proposed Rules:**

|          |                     |
|----------|---------------------|
| 17.....  | 24253, 28016, 28664 |
| 648..... | 25735, 26770        |
| 660..... | 27276               |
| 665..... | 26771               |
| 679..... | 27798               |

**REMINDERS**

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

**RULES GOING INTO EFFECT MAY 25, 2007****COMMODITY FUTURES TRADING COMMISSION**

Official seal; permissible uses; published 5-25-07

**DEFENSE DEPARTMENT**

Conduct on Pentagon Reservation and Raven Rock Mountain Complex; administrative changes; published 5-25-07

**ENVIRONMENTAL PROTECTION AGENCY**

Hazardous waste program authorizations:  
New York; published 3-26-07

Superfund program:

National oil and hazardous substances contingency plan priorities list; published 5-25-07

**EXECUTIVE OFFICE OF THE PRESIDENT****Privacy and Civil Liberties Oversight Board**

Freedom of Information Act; implementation; published 4-10-07

**FEDERAL COMMUNICATIONS COMMISSION**

Radio frequency devices:

Analog-only TV equipment; labels or signs disclosing limitations after deadline for transition to digital television service  
Effective date; published 5-23-07

**HOMELAND SECURITY DEPARTMENT****Coast Guard**

Drawbridge operations:

New York; published 4-23-07

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Severn River and College Creek, Annapolis, MD; published 5-2-07

**TRANSPORTATION DEPARTMENT****Federal Aviation Administration**

Airworthiness directives:

Raytheon; published 4-20-07

**TREASURY DEPARTMENT**

Dominican Republic-Central America Free Trade Agreement:  
Preferential tariff treatment; retroactive application; published 5-25-07

**U.S. CUSTOMS AND BORDER PROTECTION**

Dominican Republic-Central America Free Trade Agreement:  
Preferential tariff treatment; retroactive application; published 5-25-07

**COMMENTS DUE NEXT WEEK****AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Cranberries grown in Massachusetts, et al.; comments due by 5-31-07; published 5-1-07 [FR E7-08233]

Grade standards:

Sweet cherries; comments due by 5-29-07; published 3-30-07 [FR 07-01537]

**AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Plant-related quarantine, domestic:  
Emerald ash borer; comments due by 6-1-07; published 4-2-07 [FR E7-06007]

**AGRICULTURE DEPARTMENT Forest Service**

National Forest System land and resource management planning:  
National Fire Plan; starting and negligently failing to maintain control of prescribed fires; prohibition; comments due by 6-1-07; published 4-2-07 [FR E7-05872]

**AGRICULTURE DEPARTMENT****Farm Service Agency**

Special programs:

Guaranteed farm loans—Interest paid on loss claims; number of days; clarification and simplification; comments due by 5-29-07; published 3-27-07 [FR E7-05511]

**COMMERCE DEPARTMENT****National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Northeastern United States fisheries—

Mid-Atlantic Fishery Management Council; hearings; correction; comments due by 5-27-07; published 5-7-07 [FR E7-08575]

Monkfish; comments due by 5-29-07; published 4-27-07 [FR E7-08117]

Yellowtail flounder; comments due by 5-29-07; published 5-11-07 [FR E7-09092]

West Coast States and Western Pacific fisheries—

West Coast salmon; comments due by 5-29-07; published 5-14-07 [FR E7-09223]

**COMMERCE DEPARTMENT Patent and Trademark Office**

Practice and procedure:

Representation of others before United States Patent and Trademark Office; changes; comments due by 5-29-07; published 2-28-07 [FR 07-00800]

**COMMODITY FUTURES TRADING COMMISSION**

Commodity Exchange Act:

Intermediaries registration; online annual review requirement; comments due by 5-29-07; published 4-26-07 [FR E7-08025]

Privacy of consumer financial information; model privacy form; comments due by 5-29-07; published 3-29-07 [FR 07-01476]

Privacy of consumer financial information; model privacy form

Correction; comments due by 5-29-07; published 4-5-07 [FR C7-01476]

**DEFENSE DEPARTMENT****Defense Acquisition Regulations System**

Acquisition regulations:

Contract files; closeout; comments due by 5-29-07; published 3-27-07 [FR E7-05473]

Free trade agreements—

Dominican Republic, Bulgaria and Romania; comments due by 5-29-07; published 3-27-07 [FR E7-05475]

**DEFENSE DEPARTMENT**

Federal Acquisition Regulation (FAR):

Tax delinquency; representations and

certifications; comments due by 5-29-07; published 3-30-07 [FR 07-01558]

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollutants, hazardous; national emission standards: Risk and technology review (Phase II, Group 2); comments due by 5-29-07; published 3-29-07 [FR E7-05805]

Air pollution control; new motor vehicles and engines: Compression-ignition marine engines at or above 30 liters per cylinder; emissions control; deadline change; comments due by 5-29-07; published 4-27-07 [FR E7-08103]

Air pollution control; recreational engines and vehicles:

All terrain vehicles; exhaust emission test procedures; comments due by 5-29-07; published 4-26-07 [FR 07-02068]

All terrain vehicles; temporary exhaust emission test procedure option; extension; comments due by 5-29-07; published 4-26-07 [FR 07-02069]

Air programs:

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users—

Transportation conformity; State and local requirements; comments due by 6-1-07; published 5-2-07 [FR E7-07770]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Kentucky; comments due by 5-29-07; published 4-27-07 [FR E7-08114]

Air quality implementation plans; approval and promulgation; various States:

Illinois; comments due by 5-30-07; published 4-30-07 [FR E7-08102]

Ohio; comments due by 5-29-07; published 4-27-07 [FR E7-07895]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Ohio; comments due by 5-31-07; published 5-1-07 [FR E7-08295]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:  
Fluopicolide; comments due by 5-29-07; published 3-28-07 [FR E7-05628]

**Toxic substances:**

Polychlorinated biphenyls; manufacturing (import) exemption; comments due by 5-30-07; published 4-30-07 [FR E7-08182]

Preliminary assessment information reporting and health and safety data reporting—

Voluntary High Production Challenge Program orphan chemicals, list; chemical substances withdrawn; comments due by 5-30-07; published 4-30-07 [FR 07-02104]

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Privacy of consumer financial information; model privacy form; comments due by 5-29-07; published 3-29-07 [FR 07-01476]

Privacy of consumer financial information; model privacy form

Correction; comments due by 5-29-07; published 4-5-07 [FR C7-01476]

**FEDERAL RESERVE SYSTEM**

Privacy of consumer financial information; model privacy form; comments due by 5-29-07; published 3-29-07 [FR 07-01476]

Privacy of consumer financial information; model privacy form

Correction; comments due by 5-29-07; published 4-5-07 [FR C7-01476]

**FEDERAL TRADE COMMISSION**

Privacy of consumer financial information; model privacy form; comments due by 5-29-07; published 3-29-07 [FR 07-01476]

Privacy of consumer financial information; model privacy form

Correction; comments due by 5-29-07; published 4-5-07 [FR C7-01476]

**GENERAL SERVICES ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Tax delinquency; representations and certifications; comments due by 5-29-07; published 3-30-07 [FR 07-01558]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Medical devices:

Anesthesiology devices—

Oxygen pressure regulators and oxygen conserving devices; comments due by 5-29-07; published 2-27-07 [FR E7-03253]

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Lower Colorado River, Laughlin, NV; comments due by 5-31-07; published 5-1-07 [FR E7-08317]

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Public and indian housing:

Indian Housing Block Grant Program; annual performance report due date extension; comments due by 5-29-07; published 3-29-07 [FR E7-05738]

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and threatened species:

Critical habitat designations—

Pecos sunflower; comments due by 5-29-07; published 3-27-07 [FR 07-01396]

Findings on petitions, etc.—

Siskiyou Mountains salamander and Scott Bar salamander; comments due by 5-29-07; published 3-29-07 [FR E7-05774]

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:

Ohio; comments due by 5-30-07; published 4-30-07 [FR E7-08171]

Texas; comments due by 5-30-07; published 4-30-07 [FR E7-08156]

**NATIONAL AERONAUTICS AND SPACE**

**ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Tax delinquency; representations and

certifications; comments due by 5-29-07; published 3-30-07 [FR 07-01558]

**NATIONAL CREDIT UNION ADMINISTRATION**

Privacy of consumer financial information; model privacy form; comments due by 5-29-07; published 3-29-07 [FR 07-01476]

Privacy of consumer financial information; model privacy form

Correction; comments due by 5-29-07; published 4-5-07 [FR C7-01476]

**SECURITIES AND EXCHANGE COMMISSION**

Privacy of consumer financial information; model privacy form; comments due by 5-29-07; published 3-29-07 [FR 07-01476]

Privacy of consumer financial information; model privacy form

Correction; comments due by 5-29-07; published 4-5-07 [FR C7-01476]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

AEROTECHNIC Vertriebs-u. Service GmbH; comments due by 5-29-07; published 4-26-07 [FR E7-07993]

Airbus; comments due by 5-29-07; published 4-26-07 [FR E7-07998]

Rolls-Royce Corp.; comments due by 5-29-07; published 3-29-07 [FR E7-05775]

Superior Air Parts, Inc.; comments due by 6-1-07; published 4-2-07 [FR E7-05915]

Airworthiness standards:

Special conditions—

Boeing Model 787-8 airplane; comments due by 5-29-07; published 4-12-07 [FR E7-06887]

Boeing Model 787-8 airplane; comments due by 5-29-07; published 4-13-07 [FR E7-07065]

Boeing Model 787-8 airplane; comments due by 5-31-07; published 4-16-07 [FR 07-01838]

Class E airspace; comments due by 5-31-07; published 5-16-07 [FR 07-02373]

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Fuel economy standards:

Passenger cars, 2007-2017 model years, and light trucks, 2010-2017 model years; CAFE product plan information request; comments due by 5-29-07; published 2-27-07 [FR 07-00878]

**TREASURY DEPARTMENT**

**Comptroller of the Currency**

Privacy of consumer financial information; model privacy form; comments due by 5-29-07; published 3-29-07 [FR 07-01476]

Privacy of consumer financial information; model privacy form

Correction; comments due by 5-29-07; published 4-5-07 [FR C7-01476]

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Income taxes:

Corporate reorganizations; additional distributions guidance; cross-reference; comments due by 5-30-07; published 3-1-07 [FR E7-03533]

**TREASURY DEPARTMENT**

**Thrift Supervision Office**

Privacy of consumer financial information; model privacy form; comments due by 5-29-07; published 3-29-07 [FR 07-01476]

Privacy of consumer financial information; model privacy form

Correction; comments due by 5-29-07; published 4-5-07 [FR C7-01476]

**LIST OF PUBLIC LAWS**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

**H.R. 1681 / P.L. 110-26**

The American National Red  
Cross Governance  
Modernization Act of 2007  
(May 11, 2007; 121 Stat. 103;  
8 pages)

**Last List May 10, 2007**

---

**Public Laws Electronic  
Notification Service  
(PENS)**

---

**PENS** is a free electronic mail  
notification service of newly

enacted public laws. To  
subscribe, go to [http://  
listserv.gsa.gov/archives/  
publaws-l.html](http://listserv.gsa.gov/archives/publaws-l.html)

**Note:** This service is strictly  
for E-mail notification of new  
laws. The text of laws is not  
available through this service.

**PENS** cannot respond to  
specific inquiries sent to this  
address.