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5–20–09
Vol. 74 No. 96

Wednesday
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Pages 23605–23788

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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 9, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741-6008

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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.

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Presidential Documents

Title 3—

The President

Proclamation 8381 of May 15, 2009

National Safe Boating Week, 2009

By the President of the United States of America

A Proclamation

Each year, millions of Americans take to our Nation's waterways for recreational boating. Whether paddling down a rushing river or cruising on a serene lake, boaters are attracted to the incomparable feeling of being out on the water. They also are drawn by opportunities to exercise, appreciate nature, enjoy quiet solitude, or relax with family and friends.

Unfortunately, accidents can occur as Americans participate in this popular pastime. Many serious incidents are preventable, and during National Safe Boating Week, I ask Americans to learn more about how to enjoy our Nation's waters safely and responsibly.

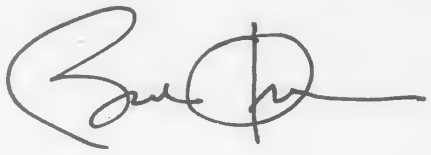
Simple steps can greatly reduce the chances of an accident. In preparation for the boating season, Americans can take boating safety courses and get a free vessel safety check. These steps can help prevent problems before they happen and prepare boaters for problems that may occur while on the water. Boaters should also wear a Coast Guard-approved life jacket and never boat under the influence of drugs or alcohol. These critical precautions can save lives and help ensure a fulfilling experience.

Each year during this week, the United States Coast Guard partners with organizations to educate and inform the public about safe boating. I join them in calling upon Americans to protect themselves and others while boating.

Recognizing the importance of safe boating practices, the Congress, by joint resolution approved June 4, 1958 (36 U.S.C. 131), as amended, has authorized and requested the President to annually proclaim the 7-day period prior to Memorial Day weekend as "National Safe Boating Week."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 16 through May 22, 2009, as National Safe Boating Week. I encourage all Americans to join in observing this occasion by learning more about boating safety and committing themselves to safe practices on the water.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.



[FR Doc. E9–11919
Filed 5–19–09; 8:45 am]
Billing code 3195–W9–P

Presidential Documents

Proclamation 8382 of May 15, 2009

Small Business Week, 2009

By the President of the United States of America

A Proclamation

The entrepreneurial spirit lies at the core of our Nation's economy and identity. If Americans with good ideas can work hard, put their plan to the test, and succeed, the American economy will continue to create jobs and lead the world in innovation and productivity. During National Small Business Week, we honor the entrepreneurs and small business owners who are the engine of our economy. Their ingenuity and hard work are critical to our Nation's prosperity.

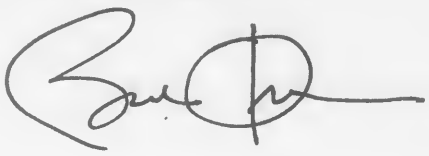
Small businesses are the lifeblood of cities and towns across the country. Over the last decade, small businesses created 70 percent of new jobs, and they are responsible for half of all jobs in the private sector. They also help enhance the lives of our citizens by improving our quality of life and creating personal wealth. Small businesses will lead the way to prosperity, particularly in today's challenging economic environment.

My Administration is committed to economic policies that encourage enterprise and make America the best place in the world to do business. To support the free flow of credit, I have worked to increase loan guarantees, reduce borrowing fees, quicken loan processing, and unlock the secondary markets that support small business lending, among other measures. I also support tax policies that promote investment in small businesses, as well as health care reform that will help these businesses provide more workers with quality health care services.

Our Nation's success depends on America's small businesses and entrepreneurs. Their contributions are necessary to rebuild our economy so that it once again offers the opportunity to succeed to all who seek it. This week we thank small business owners, entrepreneurs, and employees for helping America achieve that promise.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 17 through May 23, 2009, as National Small Business Week. I call upon Government officials, industry leaders, and advocates across the Nation to encourage our citizens to celebrate the achievements of small business owners and encourage the creation of new businesses.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.



[FR Doc. E9–11920
Filed 5–19–09; 8:45 am]
Billing code 3195–W9–P

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. APHIS–2007–0161]

RIN 0579–AC69

Importation of Longan From Taiwan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to allow the importation of commercial shipments of fresh longan with stems from Taiwan into the United States. As a condition of entry, the longan will be subject to cold treatment and special port-of-arrival inspection procedures for certain quarantine pests. In addition, the fruit will have to be accompanied by a phytosanitary certificate stating that the fruit was inspected and found to be free of certain quarantine pests, and the individual cartons or boxes in which the longan are shipped will be stamped or printed with a statement prohibiting their importation into or distribution in the State of Florida. This action will allow for the importation of commercial shipments of fresh longan with stems from Taiwan into the United States while continuing to provide protection against the introduction of quarantine pests into the United States.

DATES: *Effective Date:* June 19, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Belano, Branch Chief, Regulations, Permits, and Manuals; Risk Management and Plants for Planting Policy, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart–Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–48, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

On November 7, 2008, we published in the **Federal Register** (73 FR 66200–66205, Docket No. APHIS–2007–0161) a proposal [1] to amend the regulations by allowing the importation of commercial shipments of fresh longan with stems from Taiwan into the United States. As a condition of entry, the longan would be subject to cold treatment and special port-of-arrival inspection procedures for certain quarantine pests. In addition, the fruit would have to be accompanied by a phytosanitary certificate stating that the fruit was inspected and found to be free of certain pests, and the individual cartons or boxes in which the longan are shipped would have to be stamped or printed with a statement prohibiting their importation into or distribution in the State of Florida. We proposed this action to allow for the importation of commercial shipments of fresh longan with stems from Taiwan into the United States while continuing to protect against the introduction of quarantine pests into the United States.

We solicited comments concerning our proposal for 60 days ending January 6, 2009. We received two comments by that date. They were from a research entomologist and from a private citizen. They are discussed below by topic.

One commenter stated that longan is not a host for the litchi rust mite (*Aceria litchi*), and that the mite should be removed from the list of pests of longan in the pest risk assessment. The commenter provided a reference to a scientific article that supported this statement. The commenter further stated that because longan is not a host of the litchi rust mite, we should not include in the final rule the prohibition against their importation and distribution into Florida, which we proposed to protect that State's commercial litchi and longan production from the litchi rust mite.

We have reviewed the article the commenter cited as well as other peer-reviewed scientific publications on the litchi rust mite and pests of longan. The majority of these materials indicate that longan may not be a major host of the litchi rust mite, but can be a minor host or a host under certain conditions. Furthermore, in its request to export longan to the United States, the Taiwanese Government included the mite in its list of pests associated with longan in Taiwan and reported it to have major economic significance. For these reasons, we continue to treat longan as a host for the litchi rust mite, and this final rule includes a prohibition against the importation or distribution of longan from Taiwan into Florida.

One commenter stated that, because Hawaii is also a longan-producing State, longan imported from Taiwan should be subject to the same distribution restrictions for Hawaii as we proposed to establish for Florida.

The importation or distribution of longan from Taiwan into Florida is prohibited to protect against the introduction of the litchi rust mite. This is consistent with other import programs in which shipments of litchis and longan from areas where litchi rust mite exists are prohibited from importation or distribution into Florida. However, the litchi rust mite is already established in Hawaii, so there is no additional plant health benefit to prohibiting the importation or distribution of longan from Taiwan into Hawaii. We are making no changes to the proposed rule in response to this comment.

One commenter expressed concern that domestic growers could suffer economically as a result of competition with cheaper imported longan.

Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), we have the authority to prohibit or restrict the importation of plants and plant products only when necessary to prevent the introduction into or dissemination of plant pests or noxious weeds within the United States. We do not have the authority to restrict imports solely on the grounds of potential economic effects on domestic entities that could result from increased imports. We did, however, prepare an

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0161.*

economic analysis of the potential economic effects of the rule, as required by the Regulatory Flexibility Act. Our analysis for this final rule is presented in the paragraphs that follow. Based on that analysis, we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

After conducting an initial regulatory flexibility analysis for the proposed rule, APHIS has determined that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The following is a factual basis for this determination. No significant public comments were received in response to the initial regulatory flexibility analysis.

Since publication of the proposed rule, APHIS has obtained updated data on the production of fresh longan in the United States. The United States is not a major producer of longan. Latest estimates indicate that the United States annually produces around 5 million pounds of longan in California, Hawaii, and Florida, with most production occurring in south Florida.[2]

In California, longan is considered an experimental crop that is rarely available to consumers.[3] Although there are some private gardens in southern California that grow longan, reportedly less than 25 acres are planted for commercial production.[4]

In 2007, 75 Hawaiian farms harvested 160 acres of longan yielding 263,000 pounds valued at $784,000.[5] It is estimated that 99 percent of the fruit is sold fresh, 40 percent of which is irradiated and shipped to mainland metropolitan areas such as Chicago, IL, and San Francisco, CA. Hawaii's remaining longan is sold within that State at resort hotels, farmers' markets, and in Honolulu's Chinatown.[6]

In 1996, 91 percent of Florida's longan production was located in Miami-Dade County.[7] Revenue reports from 1998, the most recent revenue data available on Florida's longan production, show that 275 acres of longan yielded a value of $8.9 million.[8] These data imply average revenue per acre of over $32,300, which is many times larger than the average revenue per acre, $4,900, for Hawaii's longan producers. Assuming that not more than 300,000 pounds of longan are produced in California and Hawaii, then at least 94 percent (4,700,000 pounds) of U.S. longan production takes place in Florida. While Florida does not report the destination of longan leaving Miami-Dade County, principal demand for the longan as a minor tropical fruit is geographically limited, with most of the crop sold on the local fresh market.[9] Although U.S. production of longan has increased over the past 5 years, there is still limited demand for this fruit.[10]

Major foreign producers of fresh longan include China, Thailand, and Taiwan. Both China and Thailand are allowed to export fresh longan fruit to the United States, excluding Florida. In 2007, China's production was around 2.8 billion pounds of longan, 3.1 million pounds of which was exported fresh to the United States.[11] Thailand's production was around 1.1 billion pounds [12] and exports totaled 354 million pounds to China, Indonesia, Hong Kong, Singapore, and the Philippines. Since the publication of final rule allowing the importation of fruit from Thailand (72 FR 34163–34176, published June 21, 2007, effective July 23, 2007, Docket No. APHIS–2006–0040), PPQ has reported 164 shipments with a total of 326,383 boxes of fresh longan imported into the United States from Thailand between November 2007 and March 2009.

Taiwan is a major producer of longan. In 2002, Taiwan produced over 242 million pounds, on over 29,000 acres.[13] The Taiwanese Government estimates that annual fresh longan exports to the United States will total around 397,000 pounds, a quantity equivalent to about 13 percent of U.S. longan imports from China and about 8 percent of U.S. production. Fresh longan fruit with stems is currently admissible from other countries besides China and Thailand, including the Bahamas, Bermuda, Dominican Republic, Haiti, and Jamaica.

While longan imports from Taiwan will compete with U.S.-produced longan, we expect that they will also compete with and substitute for longan imports from other countries, especially China, as well as help meet the expanding U.S. demand for exotic fruits. Displacement of other imports and an expanding market will moderate adverse effects of this rule for U.S. producers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows fresh longan with stems to be imported into the United States from Taiwan. State and local laws and regulations regarding fresh longan imported under this rule will be preempted while the fruit is in foreign commerce. Fresh longan are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

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[2] University of Florida Institute of Food and Agricultural Sciences Extension. "Importation of Tropical Fruits from Thailand." E. Evans and S. Nalampang. August 2008. *http://edis.ifas.ufl.edu/document_fe719.*

[3] Ventura County Cooperative Extension. University of California, Agriculture and Natural Resources. "Longan". *http://ceventura.ucdavis.edu/Agriculture265/Longan.htm 2009.*

[4] Mark Gaskell, University of California cooperative extension advisor for San Luis Obispo and Santa Barbara counties, personal communication. March 4, 2008.

[5] USDA, National Agricultural Statistics Service. "Hawaii Specialty Fruits." August 2008. *http://www.nass.usda.gov/Statistics_by_State/Hawaii/Publications/Fruits_and_Nuts/tropfrt.pdf.*

[6] Love, Ken. West Hawaii Director for the Hawaii Tropical Growers Association, personal communication, April 15, 2008.

[7] University of Florida, IFAS Extension. "Florida Crop/Pest Management Profile: Lychee and Longan." Mark Mossler and O. Norman Nesheim. March 2002. *http://edis.ifas.ufl.edu/pdffiles/PI/PI05000.pdf.*

[8] Florida Agricultural Market Research Center, IFAS. Miami-Dade Agricultural Land Retention Study. Economic Issues Vol 3. p. 4. April 2002. *http://www.agmarketing.ifas.ufl.edu/dlfiles/DadeAgLandRetentionAppendixVolumeB.pdf.*

[9] Florida Department of Agriculture and Consumer Services. Charles H. Bronson. Florida Agriculture Statistical Directory. *http://www.florida-agriculture.com/pubs/pubform/pdf/Florida_Agricultural_Statistical_Directory.pdf pg. 29.* May 19, 2008.

[10] University of Florida IFAS Extension. "Importation of Tropical Fruits from Thailand." Edward Evans and Sikavas Nalampang. August 2008. *http://edis.ifas.ufl.edu/document_fe719.*

[11] USDA Foreign Agricultural Service. "GAIN Report. Tropical Fruit in China 2008." May 28, 2008. *http://www.fas.usda.gov/gainfiles/200805/146294773.pdf.*

[12] Office of Agricultural Economics. Agricultural Statistics of Thailand. Table 61, Longan. *http://www.oae.go.th/statistic/yearbook50/section5/sec5table61.pdf.*

[13] Yen, C.R. "Longan Production in Taiwan." ACTA Agriculture vol: Jan 2005, no. 665 p. 61–66.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0351.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR parts 305 and 319 as follows:

PART 305—PHYTOSANITARY TREATMENTS

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 305.2, the table in paragraph (h)(2)(i) is amended by adding, in alphabetical order, under Taiwan, a new entry for longan to read as follows:

§ 305.2 Approved treatments.

* * * * *

(h) * * *

(2) * * *

(i) * * *

Location	Commodity	Pest	Treatment schedule
*	*	*	*
Taiwan:			
*	*	*	*
	Longan	*Bactrocera dorsalis, B. cucurbitae, Conopomorpha sinensis.*	CT T107–h.
*	*	*	*

* * * * *

■ 3. In § 305.16, the table is amended by revising the entries for treatment schedules T107–h and T107–j to read as follows:

§ 305.16 Cold treatment schedules.

Treatment schedule	Temperature (°F)	Exposure period
*	*	*
T107–h	33.8 or below	17 days
	34.5 or below	20 days.
T107–j	33.8 or below	15 days.
	34.5 or below	18 days.
*	*	*

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

■ 4. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 5. Section 319.56–13 is amended as follows:

■ a. In paragraph (a), in the table, by adding, in alphabetical order, under Taiwan, a new entry for longan to read as set forth below.

■ b. By adding a new paragraph (b)(5)(xvii) to read as set forth below.

■ c. By revising the OMB citation at the end of the section to read as set forth below.

§ 319.56–13 Fruits and vegetables allowed importation subject to specified conditions.

(a) * * *

Country/locality of origin	Common name	Botanical name	Plant part(s)	Additional requirements
*	*	*	*	*
Taiwan:				
*	*	*	*	*
	Longan	*Dimocarpus longan*	Fruit and stems	(b)(2)(v), (b)(3), (b)(5)(xv), (b)(5)(xvii).
*	*	*	*	*

* * * * *

(b) * * *

(5) * * *

(xvii) Must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the exporting country of origin with an additional declaration stating that the fruit is free of *Conogethes punctiferalis, Cryptophlebia ombrodelta,* and *Rhipiphorothrips cruentatus.*

(Approved by the Office of Management and Budget under control numbers 0579–0049, 0579–0236, 0579–0264, 0579–0316, and 0579–0351)

Done in Washington, DC, this 14th day of May 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–11735 Filed 5–19–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM404; Special Conditions No. 25–382–SC]

Special Conditions: Boeing Model 757 Series Airplanes; Seats with Non-Traditional, Large, Non-Metallic Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 757 series airplanes. These airplanes, as modified by Northwest Airspace Technologies, Inc., will have a novel or unusual design feature associated with seats that include non-traditional, large, non-metallic panels that would affect survivability during a post-crash fire event. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 11, 2009. We must receive your comments by July 6, 2009.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM404, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM404. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: John Shelden, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2785; facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION:

Future Requests for Installation of Seats With Non-Traditional, Large, Non-Metallic Panels

The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus return to service of the affected aircraft. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

We anticipate that seats with non-traditional, large, non-metallic panels will be installed in other makes and models of airplanes. We have made the determination to require special conditions for all applications requesting the installation of seats with non-traditional, large, non-metallic panels until the airworthiness requirements can be revised to address this issue. Having the same standards across the range of airplane makes and models will ensure consistent ruling for the aviation industry.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On March 6, 2008, Northwest Airspace Technologies, Inc. (NAT), 2210 Hewitt Avenue, Suite 300, Everett, WA 98201, applied for a supplemental type certificate for installing seats that include non-traditional, large, non-metallic panels in a Boeing Model 757 series airplane. The Boeing Model 757 series airplanes, currently approved under Type Certificate No. A2NM, are swept-wing, conventional-tail, twin-engine, turbofan-powered, single-aisle, medium-sized, transport-category airplanes.

The applicable regulations to airplanes currently approved under

Type Certificate No. A2NM do not require seats to meet the more stringent flammability standards required of large, non-metallic panels in the cabin interior. At the time the applicable rules were written, seats were designed with a metal frame covered by fabric, not with large, non-metallic panels. Seats also met the then-recently adopted standards for flammability of seat cushions. With the seat design being mostly fabric and metal, their contribution to a fire in the cabin had been minimized and was not considered a threat. For these reasons, seats did not need to be tested to heat-release and smoke-emission requirements.

Seat designs have now evolved to occasionally include non-traditional, large, non-metallic panels. Taken in total, the surface area of these panels is on the same order as the sidewall and overhead-stowage-bin interior panels. To provide the level of passenger protection intended by the airworthiness standards, these non-traditional, large, non-metallic panels in the cabin must meet the standards of Title 14 Code of Federal Regulations (CFR), part 25, Appendix F, parts IV and V, heat-release and smoke-emission requirements.

Type Certification Basis

Under the provisions of 14 CFR 21.101, NAT must show that the Boeing Model 757 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A2NM are as follows:

- For Model 757–200 airplanes: Part 25, as amended by Amendment 25–1 through Amendment 25–45. In addition, an equivalent safety finding exists with respect to § 25.853(c), Compartment interiors.
- For Model 757–300 airplanes: part 25, as amended by Amendment 25–1 through Amendment 25–85 with the exception listed: § 25.853(d)(3), Compartment interiors, at Amendment 25–72.

In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25) do not contain adequate or appropriate safety standards for the Boeing Model 757 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 757 series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in §§ 11.19 and 11.38, and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Boeing Model 757 series airplanes will incorporate the following novel or unusual design feature: These models offer interior arrangements that include passenger seats that incorporate non-traditional, large, non-metallic panels in lieu of the traditional metal frame covered by fabric. The flammability properties of these panels have been shown to significantly affect the survivability of the cabin in the case of fire. These seats are considered a novel design for transport category airplanes that include Amendment 25–61 and Amendment 25–66 in the certification basis, and were not considered when those airworthiness standards were established.

The existing regulations do not provide adequate or appropriate safety standards for seat designs that incorporate non-traditional, large, non-metallic panels in their designs. To provide a level of safety that is equivalent to that afforded to the balance of the cabin, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement § 25.853. The requirements contained in these special conditions consist of applying the identical test conditions, required of all other large panels in the cabin, to seats with non-traditional, large, non-metallic panels.

A non-traditional, large, non-metallic panel, in this case, is defined as a panel with exposed-surface areas greater than 1.5 square feet installed per seat place. The panel may consist of either a single component or multiple components in a concentrated area. Examples of parts of the seat where these non-traditional panels are installed include, but are not limited to: seat backs, bottoms and leg/foot rests, kick panels, back shells, credenzas, and associated furniture. Examples of traditional exempted parts of the seat include: arm caps, armrest close-outs such as end bays and armrest-styled center consoles, food trays, video monitors, and shrouds.

Clarification of "Exposed"

"Exposed" is considered to include panels that are directly exposed to the passenger cabin in the traditional sense, and panels that are enveloped, such as by a dress cover. Traditional fabrics or leathers currently used on seats are excluded from these special conditions. These materials must still comply with § 25.853(a) and § 25.853(c) if used as a covering for a seat cushion, or § 25.853(a) if installed elsewhere on the seat. Non-traditional, large, non-metallic panels covered with traditional fabrics or leathers will be tested without their coverings or covering attachments.

Discussion

In the early 1980s, the FAA conducted extensive research on the effects of post-crash flammability in the passenger cabin. As a result of this research and service experience, we adopted new standards for interior surfaces associated with large surface-area parts. Specifically, the rules require measurement of heat release and smoke emission (part 25, Appendix F, parts IV and V) for the affected parts. Heat release has been shown to have a direct correlation with post-crash fire-survival time. Materials that comply with the standards (*i.e.*, § 25.853 entitled "Compartment interiors" as amended by Amendment 25–61 and Amendment 25–66) extend survival time by approximately 2 minutes over materials that do not comply.

At the time these standards were written, the potential application of the requirements of heat release and smoke emission to seats was explored. The seat frame itself was not a concern because it was primarily made of aluminum and included only small amounts of non-metallic materials. We determined that the overall effect of these materials on survivability was negligible, whether or not the food trays met the heat-release and smoke-emission requirements. The requirements therefore did not address seats. The preambles to both the Notice of Proposed Rule Making (NPRM), Notice No. 85–10 (50 FR 15038, April 16, 1985), and the Final Rule at

Amendment 25–61 (51 FR 26206, July 21, 1986), specifically note that seats were excluded "because the recently-adopted standards for flammability of seat cushions will greatly inhibit involvement of the seats."

Subsequently, the Final Rule at Amendment 25–83 (60 FR 6615, March 6, 1995) clarified the definition of minimum panel size: "It is not possible to cite a specific size that will apply in all installations; however, as a general rule, components with exposed-surface areas of one square foot or less may be considered small enough that they do not have to meet the new standards. Components with exposed-surface areas greater than two square feet may be considered large enough that they do have to meet the new standards. Those with exposed-surface areas greater than one square foot, but less than two square feet, must be considered in conjunction with the areas of the cabin in which they are installed before a determination could be made."

On October 17, 1997, the FAA issued Policy Memorandum 97–112–39, *Guidance for Flammability Testing of Seat/Console Installations,* (*http://rgl.faa.gov*). That memo was issued when it became clear that seat designs were evolving to include large, non-metallic panels with surface areas that would impact survivability during a cabin-fire event, comparable to partitions or galleys. The memo noted that large-surface-area panels must comply with heat-release and smoke-emission requirements, even if they were attached to a seat. If the FAA had not issued such policy, seat designs could have been viewed as a loophole to the airworthiness standards that would result in an unacceptable decrease in survivability during a cabin-fire event.

In October 2004, we focused attention on the appropriate flammability standards for passenger seats that incorporated non-traditional, large, non-metallic panels in lieu of the traditional fabric-covered metal. The Seattle Aircraft Certification Office and Transport Standards Staff reviewed this design and determined that it represented the kind and quantity of material that should be required to pass the heat-release and smoke-emissions requirements. We have determined that special conditions would be issued to apply the standards defined in § 25.853(d) to seats designed with large, non-metallic panels.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 757 series airplanes. It is not our intent, however, to require seats with large, non-metallic panels to meet § 25.853, Appendix F, parts IV and V, if they are installed in cabins of airplanes that otherwise are not required to meet these standards. Because the heat-release and smoke-emission testing requirements of § 25.853 per Appendix F, parts IV and V, are not part of the type-certification basis of the Model 757, these special conditions are only applicable if the Model 757 series airplanes are in 14 CFR part 121 operations. Section 121.312 requires compliance with the heat-release and smoke-emission testing requirements of § 25.853, for certain airplanes, irrespective of the type-certification bases of those airplanes. For Model 757 series airplanes, these are the airplanes that would be affected by these special conditions. Should NAT apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A2NM to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the return-to-service date for the Boeing Model 757 series airplane, modified by NAT, is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Boeing Model 757 series airplanes modified by NAT.

1. Except as provided in paragraph 3 of these special conditions, compliance with Title 14 CFR part 25, Appendix F, parts IV and V, heat release and smoke emission, is required for seats that incorporate non-traditional, large, non-metallic panels that may either be a single component or multiple components in a concentrated area in their design.

2. The applicant may designate up to and including 1.5 square feet of non-traditional, non-metallic panel material per seat place that does not have to comply with special condition (1), above. A triple-seat assembly may have a total of 4.5 square feet excluded on any portion of the assembly (e.g., outboard-seat place 1 square foot; middle, 1 square foot; and inboard, 2.5 square feet).

3. Seats do not have to meet the test requirements of Title 14 CFR part 25, Appendix F, parts IV and V, when installed in compartments that are not otherwise required to meet these requirements. Examples include:

a. Airplanes with passenger capacities of 19 or less,

b. Airplanes that do not have § 25.853, Amendment 25–61 or later, in their certification basis and do not need to comply with the requirements of 14 CFR 121.312, and

c. Airplanes exempted from § 25.853, Amendment 25–61 or later.

Issued in Renton, Washington, on May 11, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–11723 Filed 5–19–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0462; Directorate Identifier 2009–NM–063–AD; Amendment 39–15913; AD 2009–11–03]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model 382, 382B, 382E, 382F, and 382G Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Lockheed Model 382, 382B, 382E, 382F, and 382G series airplanes. This AD requires an inspection to identify discrepant barrel nuts in the upper wing joint, engine truss, and rear beam pylon support; and replacement of any discrepant barrel nut with a new barrel nut, if necessary. This AD results from

a report of severe cracking of multiple barrel nuts in the wing station (WS) 220 upper wing joint found during scheduled maintenance. We are issuing this AD to prevent cracking of the barrel nuts in the upper wing joint, engine truss, and rear beam pylon support, which could result in reduced structural integrity of the affected part and consequent detachment of the wing or engine from the airplane.

DATES: This AD is effective June 4, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 4, 2009.

We must receive comments on this AD by July 20, 2009.

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

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

For service information identified in this AD, contact Lockheed Continued Airworthiness Project Office, Attention Airworthiness, 86 South Cobb Drive, Marietta, Georgia 30063–0567; telephone 770–494–5444; fax 770–494–5445; e-mail *ams.portal@lmco.com*; Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html*.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6131; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

We received a report of severe cracking of multiple barrel nuts in the wing station (WS) 220 upper wing joint found during scheduled maintenance. Deformed thread locking barrel nuts having a certain part number were identified as having greater potential for cracking during routine service. The affected nut might also be installed at the quick engine change (QEC) lower attachment to the truss mount and at the outer wing station (OWS) 330 rear beam pylon attach fitting. This condition, if not corrected, could result in reduced structural integrity of the affected part and consequent detachment of the wing or engine from the airplane.

Relevant Service Information

We reviewed Lockheed Alert Service Bulletin A382–57–91, Revision 1, dated March 25, 2009. The service bulletin describes procedures for an inspection to identify discrepant barrel nuts (with deformed thread locking, impression stamp "K," no impression stamp, or cracking) in the upper wing joint, engine truss, and rear beam pylon support; and replacement of any discrepant barrel nut with a new barrel nut, if necessary.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the AD and the Service Information."

Differences Between the AD and the Service Information

Although the Accomplishment Instructions of Lockheed Alert Service Bulletin A382–57–91, Revision 1, dated March 25, 2009, specify that operators may contact the manufacturer for disposition of certain repair conditions, this AD would require operators to repair those conditions using a method approved by the FAA.

The Accomplishment Instructions of Lockheed Alert Service Bulletin A382–57–91, Revision 1, dated March 25, 2009, recommend inspecting to identify discrepant barrel nuts before further flight, but we have determined that this compliance time would not give operators enough time to inspect all affected airplanes. In developing an appropriate compliance time for this AD, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (1 work-hour). In light of all these factors, we find that a 30-day compliance time represents an appropriate time for affected airplanes to continue to operate without compromising safety. These differences have been coordinated with the manufacturer.

FAA's Justification and Determination of the Effective Date

Because of our requirement to promote safe flight of civil aircraft and thus the critical need to prevent cracking of certain barrel nuts which could result in reduced structural integrity of the affected part and consequent detachment of the wing or engine, and the short compliance time involved with this action, this AD must be issued immediately.

Because an unsafe condition exists that requires the immediate adoption of this AD, we find that notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0462; Directorate Identifier 2009–NM–063–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

Aviation Programs," describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–11–03 Lockheed: Amendment 39–15913. Docket No. FAA–2009–0462; Directorate Identifier 2009–NM–063–AD.

Effective Date

(a) This airworthiness directive (AD) is effective June 4, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Lockheed Model 382, 382B, 382E, 382F, and 382G series airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Unsafe Condition

(e) This AD results from a report of severe cracking of multiple barrel nuts in the wing station (WS) 220 upper wing joint found during scheduled maintenance. We are issuing this AD to prevent cracking of the barrel nuts in the upper wing joint, engine truss, and rear beam pylon support, which could result in reduced structural integrity of the affected part and consequent detachment of the wing or engine from the airplane.

Compliance

(f) 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/Replacement if Necessary

(g) Within 30 days after the effective date of this AD: Do a general visual inspection to identify discrepant barrel nuts in the upper wing joint, engine truss, and rear beam pylon support, in accordance with the Accomplishment Instructions of Lockheed Alert Service Bulletin A382–57–91, Revision 1, dated March 25, 2009. Except as provided by paragraph (h) of this AD, if any discrepant barrel nut is found, before further flight, replace the barrel nut with a new barrel nut in accordance with the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Exception to Corrective Action Instructions

(h) If any discrepant barrel nut is found during the inspection required by this AD, and Lockheed Alert Service Bulletin A382–57–91, Revision 1, dated March 25, 2009, specifies contacting Lockheed for appropriate action: Before further flight, replace the discrepant barrel nut using a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Credit for Actions Done Using Previous Service Information

(i) Actions done before the effective date of this AD in accordance with Lockheed Alert Service Bulletin A382–57–91, dated March 6, 2009, are acceptable for compliance with the corresponding requirements of this AD.

Reporting Not Required

(j) Although Lockheed Alert Service Bulletin A382–57–91, Revision 1, dated March 25, 2009, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Parts Installation

(k) As of the time specified in paragraph (k)(1) or (k)(2) of this AD, as applicable, no person may install, on any airplane, a barrel nut in the upper wing joint, engine truss, and rear beam pylon support unless the barrel nut has been modified in accordance with the Accomplishment Instructions of Lockheed Alert Service Bulletin A382–57–91, Revision 1, dated March 25, 2009.

(1) For unmarked barrel nuts with a deformed thread locking style: As of 30 days after the effective date of this AD.

(2) For all other discrepant barrel nuts: As of the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Atlanta ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, Atlanta ACO, FAA, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6131; fax (770) 703–6097.

(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 principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(m) You must use Lockheed Alert Service Bulletin A382–57–91, Revision 1, dated March 25, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Lockheed Continued Airworthiness Project Office, Attention Airworthiness, 86 South Cobb Drive, Marietta, Georgia 30063–0567; telephone 770–494–5444; fax 770–494–5445; e-mail *ams.portal@lmco.com*; Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html*.

(3) You may review copies of the service information at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 7, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–11590 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0035; Directorate Identifier 2008–NM–096–AD; Amendment 39–15909; AD 2009–10–13]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Model 340A (SAAB/SF340A) and SAAB 340B Airplanes

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

ACTION: Final rule.

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

Field experiences have revealed cracks in the frames and closing angle on the forward engine cowl door * * *.

In case of a damaged frame and/or closing angle, the forward engine cowl door can loosen during flight and depart from the aircraft.

* * * * *

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

DATES: This AD becomes effective June 24, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 24, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 17, 2009 (74 FR 7384). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Field experiences have revealed cracks in the frames and closing angle on the forward engine cowl door NS STA [nacelle station] 203 and 250.

In case of a damaged frame and/or closing angle, the forward engine cowl door can loosen during flight and depart from the aircraft.

This AD is issued to require a detailed inspection to find out if there are any cracks [or deformations or wear damage] in the frames and/or the closing angles. The inspection is on four points on each of the forward engine cowl doors.

The corrective action depends on if the crack, deformation, or wear damage is within or outside certain defined limits, and includes doing a repair either in accordance with the specified service information, or contacting Saab for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 141 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $22,560, or $160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–10–13 Saab AB, Saab Aerosystems: Amendment 39–15909. Docket No. FAA–2009–0035; Directorate Identifier 2008–NM–096–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 24, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Saab AB, Saab Aerosystems Model 340A (SAAB/SF340A) airplanes, serial numbers (S/Ns) 004 through 159 inclusive, and Model SAAB 340B airplanes, S/Ns 160 through 459 inclusive; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 71: Powerplant.

Reason

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

Field experiences have revealed cracks in the frames and closing angle on the forward engine cowl door NS STA [nacelle station] 203 and 250.

In case of a damaged frame and/or closing angle, the forward engine cowl door can loosen during flight and depart from the aircraft.

This AD is issued to require a detailed inspection to find out if there are any cracks [or deformations or wear damage] in the frames and/or the closing angles. The inspection is on four points on each of the forward engine cowl doors.

The corrective action depends on if the crack, deformation, or wear damage is within or outside certain defined limits, and includes doing a repair either in accordance with the specified service information, or contacting Saab for repair instructions and doing the repair.

Actions and Compliance

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

(1) Within 1,000 flight hours after the effective date of this AD, do a detailed inspection for cracking, deformation, or wear damage of the frame and closing angle on the forward engine cowl door, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–71–060, dated February 8, 2008.

(2) If any crack, deformation, or wear damage is found during the inspection required by paragraph (f)(1) of this AD, before further flight, do all applicable corrective actions in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–71–060, dated February 8, 2008.

(3) Submit a report of the findings of the inspection required by paragraph (f)(1) of this AD to Saab at the address specified in Saab Service Bulletin 340–71–060, dated February 8, 2008. Submit the report at the applicable time specified in paragraph (f)(3)(i) or (f)(3)(ii) of this AD. The report must include the information specified in the "Inspection Result Formula" form in the service bulletin.

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

(ii) If the inspection was accomplished before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2008–0069, dated April 11, 2008; and Saab Service Bulletin 340–71–060, dated February 8, 2008; for related information.

Material Incorporated by Reference

(i) You must use Saab Service Bulletin 340–71–060, dated February 8, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Saab Aircraft AB, SAAB Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; e-mail *saab2000.techsupport@saabgroup.com*; Internet *http://www.saabgroup.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on May 6, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–11279 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0450; Directorate Identifier 2008–NM–182–AD; Amendment 39–15908; AD 2009–10–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to certain Boeing Model 747 airplanes. The existing AD currently requires modifying the inflation systems of the upper deck escape slides; single-piece off-wing escape ramps/slides; two-piece off-wing escape slides; and door 1, 2, 4, and 5 escape slides/rafts; as applicable. This AD expands the applicability to include an additional airplane. This AD results from a report of 30- to 60-second delays in the inflation of escape slides/rafts. We are issuing this AD to prevent actuation delays in the inflation systems of the escape slides/rafts, which could result in delayed or failed deployment of escape slides/rafts during emergency evacuation of an airplane.

DATES: This AD becomes effective June 4, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 4, 2009.

On September 13, 2005 (70 FR 46067, August 9, 2005), the Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 747–25–3279, Revision 1, dated July 11, 2002; and Boeing Service Bulletin 747–25–3232, dated July 6, 2000.

We must receive any comments on this AD by July 20, 2009.

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

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

For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; telephone 206–544–9990; fax 206–766–5682; e-mail *DDCS@boeing.com;* Internet *https://www.myboeingfleet.com.* For Goodrich service information identified in this AD, contact Goodrich Corporation, Aircraft Interior Products, ATTN: Technical Publications, 3414 South Fifth Street, Phoenix, Arizona 85040; telephone 602–243–2270; e-mail *george.yribarren@goodrich.com;* Internet *http://www.goodrich.com/TechPubs.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Andrew Guion, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6428; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On July 29, 2005, we issued AD 2005–16–06, amendment 39–14211 (70 FR 46067, August 9, 2005). That AD applies to certain Boeing Model 747 airplanes. That AD requires modifying the inflation systems of the upper deck escape slides; single-piece off-wing escape ramps/slides; two-piece off-wing escape slides; and door 1, 2, 4, and 5 escape slides/rafts as applicable. That AD resulted from a report of 30- to 60-second delays in the inflation of escape slides/rafts. The actions specified in that AD are intended to prevent actuation delays in the inflation systems of the escape slides/rafts, which could result in delayed or failed deployment of escape slides/rafts during emergency evacuation of an airplane.

Actions Since AD Was Issued

Since we issued that AD, we have been advised that one additional airplane may be subject to the identified unsafe condition.

Relevant Service Information

AD 2005–16–06 referred to Boeing Service Bulletin 747–25–3279, Revision 1, dated July 11, 2002, as the appropriate source of service information for the modification required by paragraph (f) of that AD. Since we issued that AD, Boeing has revised that service bulletin. Revision 4, dated December 11, 2008, provides the same procedures as those specified in Revision 1, but adds airplane RG162 to the effectivity.

FAA's Determination and Requirements of this AD

We are issuing this AD because the unsafe condition described previously is likely to exist or develop on other products of the(se) same type design(s) that could be registered in the United States in the future. This AD retains the requirements of the AD 2005–16–06. This AD supersedes AD 2005–16–06 to add one airplane.

Since the added airplane is not on the U.S. Register, notice and opportunity for public comment before issuing this AD are unnecessary.

Differences Between the AD and Service Information

Although Boeing Service Bulletin 747–25–3279, Revision 1, dated July 11, 2002; Boeing Service Bulletin 747–25–3279, Revision 4, dated December 11, 2008; and Boeing Service Bulletin 747–25–3232, dated July 6, 2000; recommend accomplishing the modification at "the next scheduled evacuation system overhaul," we have determined that this imprecise compliance time does not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modifications. In light of all of these factors, we find a compliance time of 36 months for completing the actions to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This compliance time has been coordinated with the manufacturer.

Change to Existing AD

This AD retains all requirements of AD 2005–16–06. Since AD 2005–16–06 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2005–16–06	Corresponding requirement in this AD
paragraph (e)	paragraph (f).
paragraph (f)	paragraph (g).
paragraph (g)	paragraph (h).
paragraph (h)	paragraph (i).
paragraph (i)	paragraph (j).

Costs of Compliance

The newly added airplane is not on the U.S. Register; therefore, it is not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if that affected airplane is imported and placed on the U.S. Register in the future. For that airplane, the costs to comply with this AD would be the same as the costs provided in the existing AD which are restated below, with a revised average labor rate of $80 per work hour.

ESTIMATED COSTS OF AD 2005–16–06

Model	Work hours	Parts costs	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
747–100, –100B, –100B SUD, –200B, and –200C series airplanes, identified as Group 1 in Boeing Service Bulletin 747–25–3279.	12	$34,832 (2 each: doors 1, 2, 4, 5, upper deck, and two-piece off-wing).	$35,792	53	$1,896,976
747–200B and –300 series airplanes, identified as Group 2 in Boeing Service Bulletin 747–25–3279.	8	$26,368 (2 each: doors 1, 2, 4, and 5).	27,008	4	108,032
747–200B series airplanes, identified as Group 3 in Boeing Service Bulletin 747–25–3279.	10	$30,600 (2 each: doors 1, 2, 4, 5, and two-piece off-wing).	31,400	1	31,400
747–100, –100B, –100B SUD, –200B, 747SP, and 747SR series airplanes, identified as Group 4 in Boeing Service Bulletin 747–25–3279.	10	$30,600 (2 each: doors 1, 2, 4, and 5, and upper deck).	31,400	17	533,800
747–200F and –400F series airplanes, identified as Group 5 in Boeing Service Bulletin 747–25–3279.	2	$4,232 (2 upper deck doors)	4,392	32	140,544
747–200B series airplanes, identified as Group 6 in Boeing Service Bulletin 747–25–3279.	2	$4,232 (2 two-piece off-wing doors).	4,392	0	0
747–400 and –400D series airplanes, identified in Boeing Service Bulletin 747–25–3232.	2	$8,250 (2 single-piece off-wing doors).	8,410	59	496,190
747–200B series airplanes, identified as Group 4 in Boeing Service Bulletin 747–25–3279 and also identified in Boeing Service Bulletin 747–25–3232.	10	$30,600 (2 each: doors 1, 2, 4, 5, upper deck, and single-piece off-wing).	31,400	3	94,200

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0450; Directorate Identifier 2008–NM–182–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

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 the 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 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 part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14211 (70 FR 46067, August 9, 2005) and adding the following new AD:

2009–10–12 Boeing: Docket No. FAA–2009–0450; Directorate Identifier 2008–NM–182–AD; Amendment 39–15908.

Effective Date

(a) This AD becomes effective June 4, 2009.

Affected ADs

(b) This AD supersedes AD 2005–16–06.

Applicability

(c) This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category.

TABLE 1—APPLICABILITY

Boeing—	As identified in—
Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400F, 747SP, and 747SR series airplanes.	Boeing Service Bulletin 747–25–3279, Revision 4, dated December 11, 2008.
Model 747–200B, –200C, –300, –400, and –400D series airplanes	Boeing Service Bulletin 747–25–3232, dated July 6, 2000.

Subject

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

Unsafe Condition

(e) This AD results from a report of 30- to 60-second delays in the inflation of escape slides/rafts. We are issuing this AD to prevent actuation delays in the inflation systems of the escape slides/rafts, which could result in delayed or failed deployment of escape slides/rafts during emergency evacuation of an airplane.

Compliance

(f) 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 2005–16–06

Modification for Upper Deck, Two-Piece Off-Wing, and Door 1, 2, 4, and 5 Slides and Slide/Rafts

(g) For Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400F, 747SP, and 747SR series airplanes identified in Boeing Service Bulletin 747–25–3279, Revision 1, dated July 11, 2002: Within 36 months after September 13, 2005 (the effective date of AD 2005–16–06), do the actions specified in paragraphs (g)(1) and (g)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 747–25–3279, Revision 1, dated July 11, 2002; or Revision 4, dated December 11, 2008. After the effective date of this AD, only Revision 4 of Boeing Service Bulletin 747–25–3279 can be used to accomplish the requirements of this paragraph.

(1) Modify the inflation systems of the upper deck and two-piece off-wing escape slides.

(2) Modify the inflation systems of the door 1, 2, 4, and 5 escape slides/rafts, as applicable.

Note 1: Boeing Service Bulletins 747–25–3279, Revision 1, dated July 11, 2002, and 747–25–3279, Revision 4, dated December 11, 2008; refer to Goodrich Service Bulletin 4A3037–25–327, dated November 30, 2001; Goodrich Service Bulletin 4A3056–25–331, dated December 21, 2001; and Goodrich Service Bulletin 4A3221–25–332, dated December 21, 2001; as additional sources of service information for doing the modifications.

Modification for Single-Piece Off-Wing Ramp/Slides

(h) For Model 747–200B, –200C, –300, –400, and –400D series airplanes identified in Boeing Service Bulletin 747–25–3232, dated July 6, 2000: Within 36 months after September 13, 2005, modify the inflation system of the single-piece off-wing escape ramps/slides, in accordance with Boeing Service Bulletin 747–25–3232, dated July 6, 2000.

Note 2: Boeing Service Bulletin 747–25–3232, dated July 6, 2000, refers to Goodrich Service Bulletin 4A3416–25–305, Revision 2, dated October 15, 2001, as an additional source of service information for doing the modification.

Parts Installation

(i) For airplanes identified in paragraph (g) or (h) of this AD: As of September 13, 2005, unless the regulator assembly of the inflation system has been modified in accordance with paragraph (g) or (h) of this AD, as applicable, no person may install on any airplane a regulator assembly with any of the following part numbers (P/Ns): P/N 4A3047, –2, –3, –4, –5, –8, –9, or –10; P/N 4A3194–1, –2, –3, or –4; or P/N 4A3474–3.

Credit for Previous Service Bulletin

(j) Actions done before September 13, 2005, in accordance with Boeing Service Bulletin 747–25–3279, dated May 16, 2002, are acceptable for compliance with the corresponding requirements of paragraph (g) of this AD.

New Requirements of This AD

Modification for Upper Deck, Two-Piece Off-Wing, and Door 1, 2, 4, and 5 Slides and Slide/Rafts

(k) For Model 747SP airplane with the variable number RG162: Within 36 months after the effective date of this AD, do the actions specified in paragraphs (k)(1) and (k)(2) of this AD, in accordance with Boeing Service Bulletin 747–25–3279, Revision 4, dated December 11, 2008.

(1) Modify the inflation systems of the upper deck and two-piece off-wing escape slides.

(2) Modify the inflation systems of the door 1, 2, 4, and 5 escape slides/rafts.

Actions Accomplished According to Previous Issue of Service Bulletin

(l) Actions accomplished before the effective date of this AD according to Boeing Service Bulletin 747–25–3279, Revision 2, dated July 26, 2006; or Revision 3, dated January 18, 2007; are considered acceptable for compliance with the corresponding actions specified in paragraph (g) of this AD.

(m) Actions accomplished before the effective date of this AD according to Boeing Service Bulletin 747–25–3279, dated May 16, 2002; Revision 1, dated July 11, 2002; Revision 2, dated July 26, 2006; or Revision 3, dated January 18, 2007; are considered acceptable for compliance with the corresponding actions specified in paragraph (k) of this AD.

Parts Installation for RG162

(n) For Model 747SP airplane with the variable number RG162: As of the effective date of this AD, unless the regulator assembly of the inflation system has been modified in accordance with paragraph (k) of this AD, no person may install on that airplane a regulator assembly with any of the following part numbers (P/Ns): P/N 4A3047, –2, –3, –4, –5, –8, –9, or –10; P/N 4A3194–1, –2, –3, or –4; or P/N 4A3474–3.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Andrew Guion, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6428; fax (425) 917–6590.

(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 principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) AMOCs approved previously in accordance with AD 2005–16–06 are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

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

TABLE 2—ALL MATERIAL INCORPORATED BY REFERENCE

Boeing Service Bulletin—	Revision—	Dated—
747–25–3232	Original	July 6, 2000.
747–25–3279	1	July 11, 2002.
747–25–3279	4	December 11, 2008.

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained in Table 3 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 3—NEW MATERIAL INCORPORATED BY REFERENCE

Boeing Service Bulletin—	Revision—	Dated—
747–25–3279	4	December 11, 2008.

(2) The Director of the Federal Register previously approved the incorporation by reference of the service information contained in Table 4 of this AD on September 13, 2005 (70 FR 46067, August 9, 2005).

TABLE 4—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Boeing Service Bulletin—	Revision—	Dated—
747–25–3232	Original	July 6, 2000.
747–25–3279	1	July 11, 2002.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*. For Goodrich service information identified in this AD, contact Goodrich Corporation, Aircraft Interior Products, ATTN: Technical Publications, 3414 South Fifth Street, Phoenix, Arizona 85040; telephone 602–243–2270; e-mail *george.yribarren@goodrich.com*; Internet *http://www.goodrich.com/TechPubs*.

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on May 6, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–11284 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0449; Directorate Identifier 2008–NM–034–AD; Amendment 39–15907; AD 2009–10–11]

RIN 2120–AA64

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

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results

from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> Based on some recent in-service findings for fluid ingress and/or inner skin disbond damage on rudders which could result in reduced structural integrity of the rudder, AIRBUS decided to introduce some further structural inspections to specific rudder areas[.]
>
> * * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective June 4, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 4, 2009.

We must receive comments on this AD by June 19, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0012, dated January 14, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Based on some recent in-service findings for fluid ingress and/or inner skin disbond damage on rudders which could result in reduced structural integrity of the rudder, AIRBUS decided to introduce some further structural inspections to specific rudder areas:
>
> —A special detailed one time structural inspection to specific rudder areas to ensure earlier detection of damage at the inspected areas,
>
> —A repetitive specific ultrasonic inspection along the complete rudder panel front and bottom edges (complete z-profile area along the spar and the bottom rib) to detect any damage in this area.
>
> The aim of this Airworthiness Directive (AD) is to render mandatory this additional inspection program in order to maintain the structural integrity of the rudder.

The special detailed one-time structural inspection consists of doing a thermography or x-ray inspection and an ultrasonic inspection to detect damage of the rudders at the rudder hoisting points and trailing edge screw areas. The corrective actions depend on the findings and the extent of the damage found, and include doing the repair or contacting Airbus and following their repair instructions.

The repetitive ultrasonic inspection along the complete rudder panel front and bottom edges (complete z-profile area along the spar and the bottom rib) to detect damage also includes doing related investigative and corrective actions. The related investigative action is a thermography inspection for inner skin disbond damage and fluid ingress on the rudder. The corrective actions depend on the findings and the extent of the damage found, and may include venting the core (a temporary repair), and contacting Airbus and following their repair instructions for a permanent repair.

The compliance time for the corrective actions for the special detailed one-time structural inspection ranges between "before further flight" and 4,500 flight cycles, depending on the damage finding. The compliance time for the corrective actions for the repetitive ultrasonic inspections ranges between "before further flight" and 2,500 flight cycles, depending on the damage finding and whether the temporary repair is done. The repetitive interval for the ultrasonic inspections is 5,000 flight cycles, except after doing the temporary repair, in which case the interval is 500 flight cycles until a permanent repair is done, after which time the interval is 5,000 flight cycles.

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

Relevant Service Information

Airbus has issued the following service bulletins:

- Airbus Mandatory Service Bulletin A330–55–3037, including Appendix 01, dated October 11, 2007;
- Airbus Mandatory Service Bulletin A330–55–3038, dated November 7, 2007;
- Airbus Mandatory Service Bulletin A340–55–4033, including Appendix 01, dated October 11, 2007; and
- Airbus Mandatory Service Bulletin A340–55–4034, dated November 7, 2007.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

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

We might also have required different actions in this AD from those in the

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

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0449; Directorate Identifier 2008–NM–034–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–10–11 Airbus: Amendment 39–15907. Docket No. FAA–2009–0449; Directorate Identifier 2008–NM–034–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 4, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–300, A340–200, and A340–300 series airplanes, certificated in any category, all serial numbers, on which a carbon fiber-reinforced plastic (CFRP) rudder part number (PN) A55471500 series is fitted.

Subject

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

Reason

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

Based on some recent in-service findings for fluid ingress and/or inner skin disbond damage on rudders which could result in reduced structural integrity of the rudder, AIRBUS decided to introduce some further structural inspections to specific rudder areas[.]

Actions and Compliance

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

(1) Within 500 flight cycles or 6 months after the effective date of this AD, whichever occurs first: Perform a special detailed one-time inspection to detect damage in the areas of the rudder hoisting points and trailing edge screw, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3037, dated October 11, 2007; or Airbus Mandatory Service Bulletin A340–55–4033, dated October 11, 2007; as applicable. Do all applicable corrective actions at the times specified in and in accordance with Airbus Mandatory Service Bulletin A330–55–3037, dated October 11, 2007; or Airbus Mandatory Service Bulletin A340–55–4033, dated October 11, 2007; as applicable.

(2) Submit a report of the findings of the inspection required by paragraph (f)(1) of this AD to Airbus in accordance with the instructions of Appendix 01 of Airbus Mandatory Service Bulletin A330–55–3037, dated October 11, 2007; or Airbus Mandatory Service Bulletin A340–55–4033, dated October 11, 2007; as applicable; at the applicable time specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(3) Within 500 flight cycles or 6 months after the effective date of this AD, whichever occurs first: Perform a special detailed inspection along the rudder z-profile to detect inner skin disbond damage, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3038, dated November 7, 2007; or Airbus Mandatory Service Bulletin A340–55–4034, dated November 7, 2007; as applicable. Do all applicable related investigative and corrective actions at the times specified in and in accordance with Airbus Mandatory Service Bulletin A330–55–3038, dated November 7, 2007; or Airbus Mandatory Service Bulletin A340–55–4034, dated November 7, 2007; as applicable.

(4) Submit a report of the findings of the inspection required by paragraph (f)(3) of this AD to Airbus in accordance with the instructions of Airbus Mandatory Service Bulletin A330–55–3038, dated November 7, 2007; or Airbus Mandatory Service Bulletin A340–55–4034, dated November 7, 2007; as applicable; at the applicable time specified in paragraph (f)(4)(i) or (f)(4)(ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(5) As of the effective date of this AD, no person may install a part number (P/N) A55471500 series rudder on an aircraft as a

replacement part, unless it has been inspected and, as applicable, repaired in accordance with the instructions of Airbus Mandatory Service Bulletin A330–55–3037, dated October 11, 2007, or Airbus Mandatory Service Bulletin A340–55–4033, dated October 11, 2007; and Airbus Mandatory Service Bulletin A330–55–3038, dated November 7, 2007, or Airbus Mandatory Service Bulletin A340–55–4034, dated November 7, 2007.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0012, dated January 14, 2008; and the service bulletins listed in Table 1 of this AD; for related information.

TABLE 1—SERVICE BULLETINS

Airbus Mandatory Service Bulletin—	Dated—
A330–55–3037	October 11, 2007.
A330–55–3038	November 7, 2007.
A340–55–4033	October 11, 2007.
A340–55–4034	November 7, 2007.

Material Incorporated by Reference

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

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

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com*.

(3) You may review copies of the service information that is incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Document	Date
Airbus Mandatory Service Bulletin A330–55–3037, excluding Appendix 01	October 11, 2007.
Airbus Mandatory Service Bulletin A330–55–3038, including Appendix 01	November 7, 2007.
Airbus Mandatory Service Bulletin A340–55–4033, excluding Appendix 01	October 11, 2007.
Airbus Mandatory Service Bulletin A340–55–4034, including Appendix 01	November 7, 2007.

Issued in Renton, Washington, on May 6, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–11283 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0114; Directorate Identifier 2009–NE–03–AD; Amendment 39–15910; AD 2009–10–14]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Steel Hub Turbine Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Hartzell Propeller Inc. steel hub turbine propellers, with any counterweight slug attachment bolts, part number (P/N) B–3386–14H, LFC manufacturing lot 224, installed. This AD requires identifying and removing all counterweight slug attachment bolts, P/N B–3386–14H, LFC manufacturing lot 224, from service and installing serviceable bolts. This AD results from two reports of failure of the bolts that attach the propeller blade counterweight slug, and separation of the counterweight slug which led to propeller vibration and damage to the propeller spinner. We are issuing this AD to prevent separation of the

propeller blade counterweight slug, which could lead to injury and damage to the airplane.

DATES: This AD becomes effective June 4, 2009. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 4, 2009.

We must receive any comments on this AD by July 20, 2009.

ADDRESSES: Use one of the following addresses to comment on this AD:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Docket Management Facility, Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Tim Smyth, Senior Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; e-mail: *timothy.smyth@faa.gov*; telephone (847) 294–8110; fax (847) 294–7132.

SUPPLEMENTARY INFORMATION: In October 2008, we became aware of two reports of failure of the bolts that attach the propeller blade counterweight slug, and separation of the counterweight slug which led to propeller vibration and damage to the propeller spinner. Investigation by Hartzell Propeller Inc. revealed that the bolts failed due to a bolt manufacturing defect. Hartzell Propeller Inc. determined that the bolts in LFC manufacturing lot 224, are suspect for having this defect. This condition, if not corrected, could result in separation of the propeller blade counterweight slug, which could lead to injury and damage to the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of Hartzell Propeller Inc. Alert Service Bulletin (ASB) No. HC–ASB–61–313, Revision 2, dated March 27, 2009. That ASB lists the affected Hartzell Propeller Inc. steel hub turbine propeller models and describes procedures for identifying and removing all counterweight slug attachment bolts, P/N B–3386–14H, LFC manufacturing lot 224, from service, and installing serviceable bolts.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Hartzell Propeller Inc. steel hub turbine propellers of the same type design. For that reason, we are issuing this AD to prevent separation of the propeller blade counterweight slug, which could lead to injury and damage to the airplane. This AD requires identifying and removing all counterweight slug attachment bolts, P/N B–3386–14H, LFC manufacturing lot 224, from service, within the next 50 flight hours after the effective date of the AD, and installing serviceable bolts. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. FAA–2009–0114; Directorate Identifier 2009–NE–03–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

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

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 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–10–14 Hartzell Propeller Inc.: Amendment 39–15910. Docket No. FAA–2009–0114; Directorate Identifier 2009–NE–03–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 4, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Hartzell Propeller Inc. steel hub turbine propellers listed in Table 1 of this AD, with any counterweight slug attachment bolts, part number (P/N) B–3386–14H, LFC manufacturing lot 224, installed. These propellers are installed on, but not limited to, the airplanes listed in Table 1 of this AD.

TABLE 1—PROPELLER MODELS APPLICABILITY

Propeller model	Airplane manufacturer	Airplane model
HC–B3TN–5K	AERO COMMANDER	680T, 680V, 681.
HC–B3TN–5DL, –5FL, –5NL	AERO COMMANDER	690(A, B, C), 695A.
HC–A3MVF–7B	AEROSPACE TECHNOLOGIES	N22B, N24A, N22S, N22C.
HC–A3VF–7, –7B	AEROSPACE TECHNOLOGIES	N22B, N24A, N22S, N22C.
HC–B5MP–3A, –3C	AIR TRACTOR	AT–502A.
HC–B5MP–3C	AIR TRACTOR	AT–503, 602.
HC–B5MA–3D(T)	AIR TRACTOR	AT–802.
HC–B5MP–3F	AIR TRACTOR	AT–802.
HC–B5MA–5A	ANTONOV	AN–38.
HC–B3TN–5V	AYRES	S–2R.
HC–B4TN–5NL, –5PL	AYRES	S–2R(–1340), –G(5, 6, 10), –R3S, –R1820, –T(6, 11, 15, 34, 45, 65).
HC–B5MP–3C	AYRES	S–2R(HG)–T65.
HC–B3TN–3AE	AYRES	S–2R–T( ).
HC–B3TN–5K	BAE (JETSTREAM)	137.
HC–B4MP–3A	BEECH	1900C.
HC–B4MP–3B	BEECH	300, 300LW.
HC–B3TF–7A	BEECH	A36, A36TC.
HC–B4MP–3C	BEECH	B300, B300C.
HC–B4MN–5AL	CASA	C–212–CC, –CF.
HC–B3TF–7A	CESSNA	206.
HC–B3TF–7	CESSNA	402.
HC–B3MN–3	CESSNA	208, 208A, 208B.
HC–B3TN–3AEY, –3AF	CESSNA	208, 208A, 208B.
HC–B3TF–7A	CESSNA	P210N.
HC–B3TN–3AEY	DE HAVILLAND CANADA	DHC–3.
HC–B4TN–5NL	DE HAVILLAND CANADA	DHC–3.
HC–B5MA–3M	DE HAVILLAND CANADA	DHC–4.
HC–B4TN–5ML	DORNIER	DO228–100, –101, –200, –201, –202, –212.
HC–B4TN–5L	DORNIER	DO228–200, –201, –202, –212.
HC–B5MA–3(J, M, C)	DOUGLAS	DC–3C.
HC–B5MA–2	EMBRAER	EMB–314.
HC–B4TN–5EL, –5HL, –5KL	FAIRCHILD AIRCRAFT	SA–226T(B).
HC–B3TF–7, –7A	FLUG & FAHRZEUGWERKE AG	AS202/32TP.
HC–B3TF–7A	FUJI	KM–2D (T–5).
HC–B5MP–5	GRUMMAN	S–2.
HC–B5MA–5H	GRUMMAN	S–2F3AT.
HC–3BTF–7A	MAULE	M–7–420, MX(T)–7–420.
HC–B4TN–5DL, –5GL, –5JL	MITSUBISHI	MU–2B–25A, –26A, –30, –35A, –36A, –40 (MU–2P), –60 (MU–2N).
HC–B5MP–3(A)	NORD	262 FRAKES.
HC–B5MP–3C	NORMAN AEROPLANE	NAC 6–65.
HC–B5MP–3D	POLISH AVIATION (MIELEC)	M–28, –28B.
HC–B5MP–3G	POLISH AVIATION (MIELEC)	M–28B.
HC–B3TN–5U	PZL MIELEC	M18.
HC–B4TN–5NL	PZL MIELEC	M18.
HC–B5MP–5BL	PZL MIELEC	M18.
HC–B5MP–3C	PZL MIELEC	M18, M18A, M18B.
HC–B4MN–5B	ROCKWELL	OV–10 (LEFT SIDE).
HC–B4MN–5BL	ROCKWELL	OV–10 (RIGHT SIDE).
HC–B5MP–3A	SHORT BROTHERS	SD3–30.
HC–B5MP–3C	SHORT BROTHERS	SD3–60–200, SD3–SHERPA–200.
HC–B3TF–7A	SIAI MARCHETTI (AERMACCHI)	F.260C, D.
HC–B3TF–7A	SIAI MARCHETTI (AERMACCHI)	SM–1019.
HC–B3TF–7A	SIAI MARCHETTI (VULCANAIR)	SF600 CANGURO.

TABLE 1—PROPELLER MODELS APPLICABILITY—Continued

Propeller model	Airplane manufacturer	Airplane model
HC–B5MP–3(F)	THRUSH AIRCRAFT	S–2R–T660.
HC–B3TN–5FL, –5NL	TWIN COMMANDER	690A, 690B, 690C.
HC–B3TF–7A	VALMET	L–90TP.
HC–B3TF–7A	VULCANAIR (PARTENAVIA)	AP68TP–300, –600.

Unsafe Condition

(d) This AD results from two reports of failure of the bolts that attach the propeller blade counterweight slug, and separation of the counterweight slug which led to propeller vibration and damage to the propeller spinner. Investigation by Hartzell Propeller Inc. revealed that the bolts failed due to a bolt manufacturing defect. We are issuing this AD to prevent separation of the propeller blade counterweight slug, which could lead to injury and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within 50 flight hours after the effective date of this AD, unless the actions have already been done.

Identification and Removal of All Propeller Blade Counterweight Slug Bolts, P/N B–3386–14H, LFC Manufacturing Lot 224, From Service, and Installation of Serviceable Bolts

(f) Identify and remove all propeller blade counterweight slug bolts, P/N B–3386–14H, LFC manufacturing lot 224, from service, and install serviceable bolts.

(g) Use paragraphs 3.A.(1) through 3.A.(4)(b)5 of the Accomplishment Instructions of Hartzell Propeller Inc. ASB No. HC–ASB–61–313, Revision 2, dated March 27, 2009, to do the identification, removals from service, and installations.

Definition

(h) For the purpose of this AD, a serviceable propeller blade counterweight slug bolt is a P/N B–3386–14H bolt with an LFC manufacturing lot other than lot 224.

Alternative Methods of Compliance

(i) The Manager, Chicago Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Contact Tim Smyth, Senior Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; e-mail: *timothy.smyth@faa.gov;* telephone (847) 294–8110; fax (847) 294–7132, for more information about this AD.

Material Incorporated by Reference

(k) You must use Hartzell Propeller Inc. ASB No. HC–ASB–61–313, Revision 2, dated March 27, 2009, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; 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 Burlington, Massachusetts, on May 8, 2009.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–11518 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2009–0228]

Drawbridge Operating Regulations; Back Bay of Biloxi, Biloxi, MS

AGENCY: Coast Guard, DHS.

ACTION: Notice canceling temporary deviation from regulations.

SUMMARY: The Coast Guard is canceling the temporary deviation concerning the operation of the I–110 bascule span bridge across the Back Bay of Biloxi, mile 3.0, in Biloxi, Harrison County, Mississippi. The deviation allowed the bridge to remain closed to navigation for two (2) two-hour periods daily to facilitate the movement of vehicular traffic.

DATES: The temporary deviation published on April 13, 2009 (74 FR 16781) is cancelled as of May 20, 2009.

ADDRESSES: The docket for this cancelled deviation is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0228 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 671–2128.

Background and Purpose

On April 13, 2009, we published a temporary deviation entitled "Drawbridge Operating Regulations; Back Bay of Biloxi, Biloxi, Mississippi" in the **Federal Register** (74 FR 16781). The temporary deviation concerned allowing the I–110 bridge across the Back Bay of Biloxi, mile 3.0, in Biloxi, Harrison County, Mississippi to remain closed to navigation for two (2) two-hour periods daily to facilitate the movement of vehicular traffic. This deviation from the operating regulations was authorized under 33 CFR 117.35.

Cancellation

The deviation was established to facilitate the flow of increased vehicular traffic on the I–110 bridge caused by the allision to the Popps Ferry Rd. bridge. The Popps Ferry Rd. bridge was damaged in an allision on March 20, 2009 when two sections of the roadway were destroyed. The bridge was returned to service on April 25, 2009, thus reducing the vehicular traffic on the I–110 bridge during the morning and afternoon rush hours.

Dated: April 29, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9–11689 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2009–0337]

Drawbridge Operating Regulations; Inner Harbor Navigation Canal, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 46 (St. Claude Avenue) bridge across the Inner Harbor Navigation Canal, mile 0.5 (GIWW mile 6.2 East of Harvey Lock) in New Orleans, Orleans Parish, Louisiana. This deviation provides for the bridge to remain closed to navigation for approximately 36 consecutive hours within two 42 hour windows of opportunity to conduct scheduled maintenance to the drawbridge.

DATES: This deviation is effective from 6 a.m. on Saturday, May 23, 2009 until 11:59 p.m. on Sunday, May 24, 2009, and from 6 a.m. on Saturday, May 30, 2009 until 11:59 p.m. on Sunday, May 31, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0337 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0337 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. The material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have question on this deviation call David Frank, Bridge Administration Branch, telephone (504) 671–2128. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Board of Commissioners of the Port of New Orleans has requested a temporary deviation in order to perform maintenance on the lakeside operating strut guide of the bridge. These repairs are necessary for the continued operation of the bridge. This deviation allows the draw of the St. Claude Avenue, bascule bridge across the Inner Harbor Navigation Canal, mile 0.5 (GIWW mile 6.2 East of Harvey Lock), to remain closed to navigation for 36 consecutive hours between 6 a.m. on May 23, 2009 and 11:59 p.m. on Sunday, May 24, 2009. Work on the bridge will begin at 6 a.m. on May 23, 2009 unless a deep draft vessel requires a bridge opening during the morning hours. If a deep draft vessel needs a bridge opening, the work may be postponed for up to six hours.

The bascule bridge has a vertical clearance of 1 foot above high water in the closed-to-navigation position. Navigation on the waterway consists mainly of tugs with tows and some ships. The bridge normally opens for navigation an average of eight times during the deviation period. In accordance with 33 CFR 117.458(a), the draw of the bridge shall open on signal; except that, from 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:45 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels. Normally, the draw is required to open at any time for a vessel in distress. However, the bridge will not be able to open for emergencies during the closure period. No alternate routes are available.

If for any reason, the work cannot be accomplished on May 23, 2009, the work will be postponed for one week and the same schedule will be used beginning at 6 a.m. on Saturday, May 30, 2009 until 11:59 p.m. on Sunday, May 31, 2009.

The Coast Guard has coordinated the closure with waterway users, industry, and other Coast Guard units. These dates and this schedule were chosen so as to minimize the significant effects on vessel traffic.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 29, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9–11690 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0293]

Drawbridge Operation Regulation; Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Venetian Causeway Bridge (East) across the Miami Beach Channel (Biscayne Bay), mile 0.0 at Miami, FL. The deviation is necessary to perform rehabilitation work on the bridge. This deviation allows the bridge to not open to vessel traffic from May 1 through June 20, 2009, except for emergency response vessels.

DATES: This deviation is effective from May 1, 2009 until June 20, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0293 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0293 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Michael Lieberum, Bridge Branch, Seventh Coast Guard District, telephone 305–415–6744, e-mail *Michael.b.lieberum@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: This deviation was requested by the contractor, Kiewit Construction, on behalf of the bridge owner, Miami-Dade County, in order to complete rehabilitation and painting of the Venetian Causeway Bridge (East) across Miami Beach Channel (Biscayne Bay), Miami, FL. The bridge has a vertical clearance of 5 feet in the closed position and a horizontal clearance of 57 feet.

The work will require a waterway closure from May 1 through June 20, 2009, for the safety of the workers. From May 1 through May 30, 2009, this bridge will also be closed to vehicle traffic. The normal operating schedule for the bridge is in 33 CFR 117.269, which states that the draw shall open on signal, except that from 7 a.m. to 7 p.m., Monday through Friday, except Federal holidays, the bridge need only open on the hour and half-hour. This deviation is effective until June 20, 2009.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 1, 2009.

P.J. Brown,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. E9–11691 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0265]

RIN 1625–AA00

Safety Zone; Sea World Memorial Day Fireworks; Mission Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone, upon the navigable waters of Mission Bay in support of the Sea World Memorial Day Fireworks. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8 p.m. on May 23, 2009 to 10 p.m. on May 25, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0265 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0265 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail, Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7262, e-mail *Shane.E.Jakcson@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect and delay would be contrary to the public interest.

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** because delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the public's safety.

Background and Purpose

Sea World is sponsoring the Sea World Memorial Day Fireworks, which will include a fireworks presentation from a barge in Mission Bay. The safety zone will be a 600 foot radius around the barge in approximate position 32°46′03″ N, 117°13′11″ W. This temporary safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway.

Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from 8 p.m. to 10 p.m. on May 23, 2009 through May 25, 2009. The limits of the safety zone will be a 600 foot radius around the barge in approximate position 32°46′03″ N, 117°13′11″ W. The safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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 proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

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 will not have a significant economic impact on a substantial number of small entities.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can pass safely around the safety zone. Before the effective period, the coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the safety zone is enforced.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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 1–888–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 may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, 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 this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone around a fireworks barge. An environmental analysis checklist and a categorical exclusion determination are 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, 3306, 3703; 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 new temporary zone § 165.T11–185 to read as follows:

§ 165.T11–185 Safety zone; Sea World Memorial Day Fireworks; Mission Bay, San Diego, California.

(a) *Location.* The limits of the safety zone will include a 600-foot radius around the barge in approximate position 32°46′03″ N, 117°13′11″ W.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 10 p.m.

on May 23, 2009 through May 25, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Command Center. The Command Center may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: May 12, 2009.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E9–11692 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2008–0786; FRL–8907–3]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a request submitted by the Minnesota Pollution Control Agency (MPCA) on October 9, 2008, to revise the Minnesota State Implementation Plan (SIP) for particulate matter less than 10 microns (PM_{10}). The approval revises the Minnesota SIP by updating information regarding the steel mini-mill facility located at 1678 Red Rock Road, St. Paul, Minnesota. The approval acknowledges the change of ownership and operation of the source from North Star Steel Company to Gerdau Ameristeel US Inc. The revision also amends the SIP by removing the Administrative Order issued to North Star Steel Company, and replacing the SIP conditions from the Administrative Order and placing those SIP requirements in a joint Title I/Title V document for Gerdau Ameristeel US, Inc. These revisions will not result in an increase in PM_{10} emissions because no emission limits were increased.

DATES: This direct final rule will be effective July 20, 2009, unless EPA receives adverse comments by June 19, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0786, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2008–0786. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *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 Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@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:

I. General Information

A. Does this Action Apply to Me?

This action applies only to the Gerdau Ameristeel US, Inc. (Gerdau) steel mini-mill facility located at 1678 Red Rock Road, St. Paul, Minnesota (Ramsey County).

B. Has Public Notice been Provided?

Minnesota published a public notice of the revisions to the SIP on July 25, 2008. The comment period began on July 26, 2008, and ended on August 25, 2008. In the public notice, Minnesota stated it would hold a public hearing if one were requested during the comment period. This follows the alternative public participation process EPA approved on June 5, 2006 (71 FR 32274). For limited types of SIP revisions that the public has shown little interest in, a public hearing is not automatically required. Because no one requested a public hearing, Minnesota did not hold a public hearing.

C. What is the Background to this Action?

Gerdau owns and operates a steel mini-mill formerly owned and operated by North Star Steel Company. The mill receives recycled automobile bodies, tin cans from refuse-derived fuel recycling operations, recycled white goods, and other grades of scrap steel. These materials are shredded in a hammer mill and the shredded steel is separated from the non-ferrous materials. The scrap steel is refined and converted into a large number of steel alloys in an electric arc furnace (EAF) and ladle refining station (LRS). The molten steel is cast into billets by a continuous casting machine. The billets are sold as such or reheated in a reheat furnace and hot-rolled into various structural shapes in a rolling mill.

Gerdau is planning to make some physical changes at the steel mini-mill, generally, to update the facility. The changes at the facility will include: (1) Replacing the current additive silos with new lime additive silos, (2) replacing the current conveyor system with a new pneumatic system transferring the lime from the silos to the EAF, (3) the addition of lime injection ports on the EAF, and (4) removal of the fluff landfill and slag crushing operation (no longer in operation).

The State provided a modeling analysis of the effect of the above-mentioned changes at the facility on local PM_{10} concentrations. Below in section III, a more detailed discussion of the modeling analysis and its results can be found.

II. What Revision did the State Request Be Incorporated into the SIP?

The State has requested that EPA approve as a revision to the Minnesota SIP: (1) A change in the ownership of the source from North Star Steel Company to Gerdau Ameristeel US, Inc., (2) the replacement of the SIP conditions from the Administrative Order with the SIP conditions in the joint Title I/Title V document for Gerdau, and (3) the removal of the Administrative Order issued to North Star Steel Company.

A. What Prior SIP Actions are Pertinent to this Action?

The Gerdau mini-mill steel facility, previously owned and operated by North Star Steel Company, was found to be a culpable source in the Red Rock Road area's nonattainment plan for the PM_{10} National Ambient Air Quality Standard (NAAQS). However, the area currently meets the NAAQS for PM_{10}, and was officially redesignated as attainment on September 24, 2002.

The facility has been subject to an Administrative Order (Third Amended Findings and Order) as part of Minnesota's SIP for attaining the PM_{10} NAAQS. The Administrative Order (Order) to control PM_{10} emissions was issued on April 22, 1993, and was approved into the SIP on February 15, 1994 (59 FR 7218). MPCA subsequently amended the Order: Amendment One was approved on June 13, 1995 (60 FR 31088) and Amendment Two on February 8, 1999 (64 FR 5936).

B. What are Title I Conditions and Joint Title I/Title V Documents?

SIP control measures were contained in permits issued to culpable sources in Minnesota until 1990 when EPA determined that limits in State-issued permits are not Federally enforceable because the permits expire. Minnesota then issued permanent Administrative Orders to culpable sources in nonattainment areas from 1991 to February of 1996.

Minnesota's consolidated permitting regulations, approved into its SIP on May 2, 1995 (60 FR 21447), include the term "Title I condition" which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent. A "Title I condition" is defined as "any condition based on source-specific determination of ambient impacts imposed for the purposes of achieving or maintaining attainment with the national ambient air quality standard and which was part of the State implementation plan approved by EPA or submitted to the EPA pending approval under section 110 of the act. * * *" The rule also states that "Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit." Further, "any title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit."

Minnesota has initiated using joint Title I/Title V documents as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in joint Title I/Title V documents submitted by MPCA are cited as "Title I conditions," therefore ensuring that SIP requirements remain permanent and enforceable. EPA reviewed the State's procedure for using joint Title I/Title V documents to implement site-specific SIP requirements and found it to be acceptable under both Titles I and V of the Clean Air Act (CAA) (July 3, 1997 letter from David Kee, EPA, to Michael J. Sandusky, MPCA). Further, a June 15, 2006, letter from EPA to MPCA clarifies procedures to transfer requirements from Administrative Orders to joint Title I/Title V documents.

III. What is EPA's Analysis of the State Submission?

In late 2004, the steel mini-mill facility formerly owned and operated by North Star Steel Company was purchased by Gerdau. Gerdau operates the facility in an area that currently meets the NAAQS for PM_{10}. Pursuant to paragraph VI.D. of the Administrative Order previously issued to North Star Steel Company, Gerdau's facility is subject to all of the same requirements of the Administrative Order for attaining the NAAQS for PM_{10}. The requirements of the Order have been incorporated into a joint Title I/Title V document as non-expiring Title I conditions.

In order to replace the Administrative Order, MPCA has placed all the conditions necessary for maintaining the NAAQS for PM_{10}, including those from the Administrative Order, in Air Permit No. 12300055–004. The permit serves as a joint Title I/Title V document to be incorporated into Minnesota's SIP, replacing the conditions from the Administrative Order. The SIP requirements in the joint Title I/Title V document submitted by MPCA are designated as "Title I Condition: SIP for PM_{10} NAAQS" making it clear that the term is part of the SIP's source-specific requirements.

The SIP revision does not include any increases in PM_{10} emission limits but, because some of the changes being made

to the facility may affect the release and dispersion of PM_{10} emissions, Gerdau performed an air quality analysis to address the facility's impact on the PM_{10} NAAQS. The facility was modeled with the AERMOD air dispersion model using the urban option and five years of meteorological data from Minneapolis. Gerdau modeled only the impact of its own facility and added a background concentration provided by MPCA. The background concentrations were 28 micrograms/cubic meter ($\mu g/m^3$) for the annual PM_{10} averaging time and 70 $\mu g/m^3$ for the 24-hour-averaging time. There is a PM_{10} monitor very close to the Gerdau facility, which is likely to capture PM_{10} emissions from Gerdau and its neighbors. From 2000 to 2006, that monitor recorded 24-hour values which averaged about 35 $\mu g/m^3$, half the magnitude of the background value used in the modeling. The monitor did not record any exceedances of the PM_{10} standards during this period.

The following table shows the maximum annual and high, sixth high 24-hour PM_{10} levels from the modeling of Gerdau's facility.

TABLE—MAXIMUM MODELED PM_{10} CONCENTRATION, PRE- AND POST-MODIFICATION

Averaging time	Current operating scenario		Post-modification operating scenario	
	Max PM_{10} concentration Gerdau	Max PM_{10} concentration Gerdau + background	Max PM_{10} concentration Gerdau	Max PM_{10} concentration Gerdau + background
Annual	13.75	41:75	12.44	40.44
24-hour	63.70	133.70	62.24	132.24

The modeling results show that Gerdau's contribution to the ambient PM_{10} concentrations will decrease from the current operations to the post-modification scenario. A full modeled attainment demonstration was performed for Gerdau's surrounding area in 1996. There have been only limited changes to the other nearby sources since then, and the existing SIP is expected to remain protective of the PM_{10} NAAQS. Since Gerdau's modifications will decrease PM_{10} impacts in the area, Gerdau's SIP revision will strengthen the existing PM_{10} SIP.

IV. What Action is EPA Taking?

EPA is approving a revision to Minnesota's SIP changing the ownership of the steel mini-mill from North Star Steel Company to Gerdau Ameristeel US, Inc., and incorporating into the SIP those provisions in the joint Title I/Title V document No. 12300055–004 labeled as "Title I Condition: SIP for PM_{10} NAAQS." EPA is also removing the Administrative Order issued to North Star Steel Company from the SIP. These revisions will not result in an increase in PM_{10} emissions because no emission limits were increased.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective July 20, 2009 without further notice unless we receive relevant adverse written comments by June 19, 2009. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective July 20, 2009.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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 action 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 20, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Lead, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 5, 2009.

Walter W. Kovalick Jr,

Acting Regional Administrator, Region 5.

■ 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 Y—Minnesota

■ 2. In § 52.1220 the table in paragraph (d) is amended by removing the entry for "North Star Steel Co." and adding in alphabetical order an entry for "Gerdau Ameristeel US, Inc." to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MINNESOTA SOURCE-SPECIFIC PERMITS

Name of source	Permit No.	State effective date	EPA approval date	Comments
* * *	*	*	*	*
Gerdau Ameristeel US, Inc	12300055–004	09/10/08	05/20/09, [Insert page number where the document begins].	Only conditions cited as "Title I condition: SIP for PM_{10} NAAQS."
* * *	*	*	*	*

[FR Doc. E9–11638 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2009–0101; FRL–8417–3]

Bacillus thuringiensis Cry1A.105 protein; Time Limited Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an 18-month exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Cry1A.105 protein in or on the food and feed commodities cotton seed, cotton seed oil, cotton seed meal, cotton hay, cotton hulls, cotton forage and cotton gin byproducts when used as a plant-incorporated protectant. Monsanto Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting a time-limited exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis* Cry1A.105 protein in or on the food and feed commodities cotton seed, cotton seed oil, cotton seed meal, cotton hay, cotton hulls, cotton forage and cotton gin byproducts. This tolerance exemption expires and is revoked on November 22, 2010.

DATES: This regulation is effective May 20, 2009. Objections and requests for hearings must be received on or before July 20, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0101. All documents in the docket are listed in the docket index available 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–308–8263; e-mail address: *greenway.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially

affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 174 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0101 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 20, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES.** Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0101, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 4, 2009 (74 FR 9395) (FRL–8403–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 9F7521) by Monsanto Company, 800 North Lindbergh Blvd., St. Louis, MO 63167. The petition requested that 40 CFR part 174 be amended by establishing a time-limited exemption from the requirement of a tolerance for residues of the plant-incorporated protectant *Bacillus thuringiensis* Cry1A.105 protein, in or on the food and feed commodities cotton seed, cotton seed oil, cotton seed meal, cotton hay, cotton hulls, cotton forage and cotton gin byproducts. This notice included a summary of the petition prepared by the petitioner Monsanto Company. This petition was submitted to deal with a small amount—less than an acre—of an unauthorized, genetically-engineered cotton variety containing an unregistered plant-incorporated protectant—the Cry1A.105 protein—that was inadvertently harvested along with 54 acres of a commercially-available, genetically engineered cotton variety. (*http://www.epa.gov/pesticides/biopesticides/pips/btcotton_statement.html*). In response to EPA's notice announcing the filing of this petition, one comment was received from an anonymous person. The commenter said there should be zero toxic chemical residue left on any product and was especially concerned about cancer risk from this chemical residue. The commenter did not provide, however, any information in support of his/her position or point out what assessment parameter needed closer examination for cancer risk. The Agency understands the commenter's concerns about the potential effects of this particular plant-incorporated protectant to humans and the environment. Pursuant to its authority under the FFDCA, EPA conducted a comprehensive assessment of Cry1A.105 protein, including a review of the data submitted to justify the existing tolerance exemption for Cry1A.105 protein in corn (73 FR 40756, FRL–8369–3) (40 CFR 174.502). The information for the corn tolerance exemption includes an acute oral toxicity test on Cry1A.105 protein, as well as data demonstrating that Cry1A.105 protein is rapidly degraded by gastric fluid *in vitro*, is not glycosylated, does not have amino acid sequence similarities to known toxins or allergens, and is present at low levels in the tissues expressing the plant-incorporated protectant. Since the *Bacillus thuringiensis* Cry1A.105 protein expressed in cotton that is the subject of this action has only four amino acid differences compared to that expressed in corn, the Agency also examined data specific to the cotton-expressed Cry1A.105 protein. This cotton-specific data was an amino acid sequence comparison to known toxins and allergens (MRID 477322–01). Based on the data from corn, which are also applicable for Cry1A.105 protein in cotton, as well as the cotton-specific data, the Agency has concluded that, for the 18-month time period for which this tolerance exemption is sought, there is a reasonable certainty that no harm will result from dietary exposure to residues of *Bacillus thuringiensis* Cry1A.105 protein in or on the food and feed commodities cotton seed, cotton seed oil, cotton seed meal, cotton hay, cotton hulls, cotton forage and cotton gin byproducts when used as a plant-incorporated protectant. Thus, under the standard in FFDCA section 408(b)(2), a time-limited, 18–month tolerance exemption is appropriate.

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

reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.* * *" Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider "available information concerning the cumulative effects of a particular pesticide's residues " and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Mammalian toxicity and allergenicity assessment. Monsanto Company previously submitted, and the Agency previously evaluated, acute oral toxicity data that demonstrate the lack of mammalian toxicity at high levels of exposure to the pure Cry1A.105 protein. Since the study was done with pure Cry1A.105 protein, this study can be used to address the toxicity of the Cry1A.105 protein not only in corn, but also in cotton. These data demonstrate the safety of the protein at a level well above maximum possible exposure levels that are reasonably anticipated in cotton using submitted Cry1A.105 expression values for corn and other similar Cry proteins expressed in cotton. Basing this conclusion on acute oral toxicity data without requiring further toxicity testing and residue data is similar to the Agency position regarding toxicity testing and the residue data requirement for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived (See 40 CFR 158.2130). For microbial products, further toxicity testing and residue data are triggered by significant adverse acute effects in studies (such as the mouse oral toxicity study) to verify the observed adverse effects and clarify the source of those effects (Tiers II and III).

The acute oral toxicity study in mice used for the corn tolerance determination (MRID 466946–03) indicated that pure Cry1A.105 protein is non-toxic to humans. The oral LD_{50} for mice was greater than 2,072 milligrams/kilogram of bodyweight (mg/kg bw). This dose level is above 2,000 mg/kg, which is above the limit dose (*i.e.*, the highest dose used in acute toxicity testing).

When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, R.D., et al., "Toxicological Considerations for Protein Components of Biological Pesticide Products," *Regulatory Toxicology and Pharmacology* 15, 3–9 (1992)). Therefore, since no acute effects were shown to be caused by Cry1A.105, even at relatively high dose levels, the Cry1A.105 protein is not considered toxic. Further, amino acid sequence comparisons between the Cry1A.105 protein and known toxic proteins in protein databases showed no similarities that would raise a safety concern. In addition, the Cry1A.105 protein was shown to be substantially degraded by heat when examined by immunoassay. This instability to heat would also lessen the potential dietary exposure to intact Cry1A.105 protein in cooked or processed foods. These biochemical features along with the lack of adverse results in the acute oral toxicity test support the conclusion that, for the 18–month time period for which this tolerance exemption is sought, there is a reasonable certainty no harm from toxicity will result from dietary exposure to residues of Cry1A.105 protein in or on the identified cotton commodities.

Since Cry1A.105 is a protein, allergenic potential was also considered. Currently, no definitive tests for determining the allergenic potential of novel proteins exist. Therefore, EPA uses a weight-of-evidence approach where the following factors are considered: Source of the trait; amino acid sequence comparison with known allergens; and biochemical properties of the protein, including *in vitro* digestibility in simulated gastric fluid (SGF) and glycosylation. This approach is consistent with the approach outlined in the Annex to the Codex Alimentarius "Guideline for the Conduct of Food Safety Assessment of Foods Derived from Recombinant-DNA Plants." The allergenicity assessment for corn is equally applicable for the Cry1A.105 protein as expressed in cotton since it is based on characteristics of the protein itself regardless of the plant expressing it. The allergenicity assessment for Cry1A.105 protein in cotton follows:

1. *Source of the trait. Bacillus thuringiensis* is not considered to be a source of allergenic proteins.

2. *Amino acid sequence.* A comparison of the amino acid sequence of Cry1A.105 with known allergens showed no overall sequence similarity (35% identity over 80 amino acids) or identity at the level of eight contiguous amino acid residues, indicating a lack of potential linear epitopes found in known food allergens.

3. *Digestibility.* The Cry1A.105 protein was digested within 30 seconds in simulated gastric fluid containing pepsin. The rapid degradation of Cry1A.105 in the gastric environment suggests little possible exposure to intact protein in the intestinal lumen where sensitization to food allergens occurs.

4. *Glycosylation.* Cry1A.105 expressed in corn was shown not to be glycosylated and no glycosylation motifs were present in the cotton variant Cry1A.105.

5. *Conclusion.* Considering all of the available information, EPA has concluded that the potential for Cry1A.105 to be a food allergen is minimal.

The information on the safety of pure Cry1A.105 protein is more than adequate to address possible exposures to Cry1A.105 protein in or on cotton crops.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to

other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for residues of the plant-incorporated protectant, and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the plant-incorporated protectant is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. In addition, even if exposure can occur through inhalation, the potential for Cry1A.105 to be an allergen is low, as discussed in Unit III above. Although the allergenicity assessment focuses on the potential to be a food allergen, the data (comparing amino acid sequence similarity to allergens, including aeroallergens) also indicate a low potential for Cry1A.105 to be an inhalation allergen. Exposure via residential or lawn use to infants and children is also not expected because the use sites for the Cry1A.105 protein are agricultural. Oral exposure, at very low levels, may occur from ingestion of processed cotton products and, theoretically, drinking water. However, oral toxicity testing showed no adverse effects.

Food. The data submitted and cited regarding potential health effects for the Cry1A.105 protein includes information on the pure protein and the Cry1A.105 protein expressed in cotton, as well as the acute oral toxicity study, amino acid sequence comparisons to known allergens and toxins, and *in vitro* digestibility of the pure Cry1A.105 protein. The results of these studies were used to evaluate human risk, and the validity, completeness, and reliability of the available data from the studies were also considered.

Adequate information was submitted to show that the Cry1A.105 test material derived from microbial culture was biochemically and functionally equivalent to the protein produced by the plant-incorporated protectant in the plant. Microbially produced Cry1A.105 protein was used in the studies so that sufficient material for testing was available.

The acute oral toxicity data submitted support the prediction that the Cry1A.105 protein would be non-toxic to humans. As mentioned above in Unit III, when proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, R.D., et al., "Toxicological Considerations for Protein Components of Biological Pesticide Products," *Regulatory Toxicology and Pharmacology* 15, 3–9 (1992)). Since no treatment-related adverse effects were shown to be caused by the Cry1A.105 protein, even at relatively high dose levels (*e.g.*, 2,072 mg/kg body weight), the Cry1A.105 protein is not considered toxic. (See Unit III above for a fuller discussion of the basis for this conclusion.)

Residue chemistry data were not required for a human health effects assessment of the subject plant-incorporated protectant because of the lack of mammalian toxicity. Nonetheless, data submitted demonstrated low levels of the Cry1A.105 protein in corn tissues (5–7 ppm in grain, 20–570 ppm in forage or leaf tissue) and in cotton seed for similar Cry proteins (2–45 ppm in cotton seed), indicating a low potential for dietary exposure.

Since Cry1A.105 is a protein, potential allergenicity is also considered as part of the toxicity assessment. Considering that Cry1A.105 protein (1) originates from a non-allergenic source, (2) has no sequence similarities with known allergens, (3) is not glycosylated in corn and the cotton variant does not have glycosylation motifs, and (4) is rapidly digested in simulated gastric fluid, EPA has concluded that the potential for Cry1A.105 protein to be a food allergen is minimal.

The genetic material necessary for the production of the plant-incorporated protectant active ingredient include the nucleic acids (DNA, RNA) that encode these proteins and regulatory regions. The genetic material (DNA, RNA) necessary for the production of the Cry1A.105 protein has been exempted from the requirement of a tolerance under 40 CFR 174.507—Nucleic acids that are part of a plant-incorporated protectant; exemption from the requirement of a tolerance.

B. Other Non-Occupational Exposure

Dermal and inhalation exposure. Exposure via the skin or inhalation is not likely since the plant-incorporated protectant is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. In addition, even if exposure can occur through inhalation, the potential for Cry1A.105 protein to be an allergen is minimal, as discussed above in Unit III. Although the allergenicity assessment focuses on the potential to be a food allergen, the data also indicate a low potential for Cry1A.105 to be an inhalation allergen.

V. Cumulative Effects

Pursuant to FFDCA section 408(b)(2)(D)(v), EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity from the plant-incorporated protectant, we conclude that there are no cumulative effects for the Cry1A.105 protein.

VI. Determination of Safety for U.S. Population, Infants and Children

FDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) also provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children.

Neither available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers including infants and children) nor safety factors that are generally recognized as appropriate for the use of animal experimentation data were evaluated. The lack of mammalian toxicity at high levels of exposure to the Cry1A.105 protein, as well as the minimal potential to be a food allergen, demonstrate the safety of the product at levels well above possible maximum exposure levels anticipated.

Based on all the available information, the Agency finds that there is no toxicity associated with the Cry1A.105 protein. Thus, there are no threshold effects of concern and, as a result, the Agency has concluded that the additional tenfold margin of safety for infants and children is unnecessary in this instance. Further, the considerations of consumption patterns, special susceptibility, and cumulative effects do not apply.

VII. Other Considerations

A. Endocrine Disruptors

The pesticidal active ingredient is a protein, derived from a source that is not known to exert an influence on the endocrine system. Therefore, the Agency is not requiring information on

the endocrine effects of the plant-incorporated protectant at this time.

B. Analytical Method(s)

A Polymerase Chain Reaction (PCR) method for the detection and (in the context of a tolerance exemption) measurement of the *Bacillus thuringiensis* Cry1A.105 protein in cotton has been submitted (MRID 477497–01).

C. Codex Maximum Residue Level

No Codex maximum residue level exists for the plant-incorporated protectant *Bacillus thuringiensis* Cry1A.105 protein.

VIII. Conclusions

There is a reasonable certainty that, during the 18-month time period during which this tolerance exemption will be effective, no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of the Cry1A.105 protein in or on all food and feed commodities of cotton seed, cotton seed oil, cotton seed meal, cotton hay, cotton hulls, cotton forage and cotton gin byproducts when the Cry1A.105 protein is used as a plant-incorporated protectant in such food and feed commodities of cotton in accordance with good agricultural practices. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed, nor is there any indication of allergenicity potential for the plant-incorporated protectant.

IX. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

X. Congressional Review Act

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

List of Subjects in 40 CFR Part 174

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

Dated: May 13, 2009.

W. Michael McDavit,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 174.502 is revised to read as follows:

§ 174.502 *Bacillus thuringiensis* Cry1A.105 protein; exemption from the requirement of a tolerance.

(a) Residues of *Bacillus thuringiensis* Cry1A.105 protein in or on the food and feed commodities of corn; corn, field, flour; corn, field, forage; corn, field, grain; corn, field, grits; corn, field, meal; corn, field, refined oil; corn, field, stover; corn, sweet, forage; corn, sweet, kernel plus cob with husk removed; corn, sweet, stover; corn, pop, grain and corn, pop, stover are exempt from the requirement of a tolerance when the *Bacillus thuringiensis* Cry1A.105 protein is used as a plant-incorporated protectant in these food and feed corn commodities.

(b) A time-limited exemption from the requirement of a tolerance is established for residues of *Bacillus thuringiensis* Cry1A.105 protein in or on the food and feed commodities of cotton; cotton, forage; cotton, gin byproducts; cotton, hay; cotton, hulls; cotton, meal; cotton, refined oil; and cotton, undelinted seed when the *Bacillus thuringiensis* Cry1A.105 protein is used as a plant-incorporated protectant in these food and feed cotton commodities. The exemption from the requirement of a tolerance expires and is revoked on November 22, 2010.

[FR Doc. E9–11759 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0275; FRL–8412–6]

Iodosulfuron-methyl-sodium; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of iodosulfuron-methyl-sodium in or on wheat, forage; wheat, grain; wheat, hay; and wheat, straw. Bayer Cropscience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 20, 2009. Objections and requests for hearings must be received on or before July 20, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0275. All documents in the docket are listed in the docket index available 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Hope Johnson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5410; e-mail address: *johnson.hope@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0275 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before July 20, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2009–0275, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of July 9, 2008 (73 FR 39289) (FRL–8371–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F6299) by Bayer Cropscience, 2 Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.580 be amended by establishing tolerances for residues of the herbicide iodosulfuron-methyl-sodium, methyl 4-iodo-2-[3-(4-methoxy-6-methyl-1,3,5 triazin-2-yl) ureidosulfonyl] benzoate, sodium salt, in or on wheat, grain at 0.02 parts per million (ppm); wheat, forage at 0.06 ppm; wheat, straw at 0.05 ppm; and wheat, hay at 0.05 ppm. That notice referenced a summary of the petition prepared by Bayer Cropscience, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has concluded that 40 CFR 180.580 can be amended by establishing tolerances for residues of the herbicide iodosulfuron-methyl sodium, methyl 4-iodo-2-[3-(4-methoxy-6-methyl-1,3,5 triazin-2-yl) ureidosulfonyl] benzoate, sodium salt, in or on wheat, grain at 0.02 ppm; wheat, straw at 0.05 ppm; wheat, hay at 0.05ppm; and wheat, forage at 0.10 ppm

instead of the petitioned for 0.06 ppm for wheat, forage. The reason for this change is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of iodosulfuron-methyl-sodium on wheat, forage at 0.06 ppm; wheat, grain at 0.02 ppm; wheat, hay at 0.05 ppm; and wheat, straw at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by iodosulfuron-methyl-sodium as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document *Iodosulfuron-Methyl-Sodium; Human-Health Risk Assessment for Proposed Section 3 New Use on Wheat*, page 37 in docket ID number EPA–HQ–OPP–2009–0275.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

Iodosulfuron-methyl-sodium was assessed in a complete battery of subchronic (mice and rats), chronic (mice, rats, and dogs), carcinogenicity (mice and rats), developmental (rat and rabbit) and reproductive (rat) toxicity studies. In general high doses typically in the range of greater than 300 mg/kg/day were required to cause systemic toxicity characterized as decreases in body weight, body weight gain, hepatotoxicity in mice and/or dogs and gross and histopathological changes in the hematopoietic system in dogs. Developmental toxicity was seen only at the limit dose in the rats, no developmental toxicity was seen in the rabbit, and no reproductive toxicity was seen in the rat.

Hematopoietic-related toxicity was only seen in female dogs in both the subchronic and chronic toxicity studies. The hematopoietic system involved in the production of blood includes primarily the bone marrow, spleen, and lymph nodes. In both the subchronic and chronic studies, microscopic pathology of the bone marrow and spleen were seen at approximately (50 m/k/day; LOAEL). The NOAEL was 8 mg/kg/day.

The toxicity profile of iodosulfuron-methyl-sodium indicates that the dog to be the most sensitive species with the effects on the hematopoietic system being the most sensitive endpoint. The NOAEL (approximately 8 mg/kg/day) based on the most sensitive endpoint is used for assessing risk to intermediate (oral, dermal and inhalation routes) and chronic (oral, dermal and inhalation routes) durations resulting from exposure to iodosulfuron-methyl-sodium.

A summary of the toxicological endpoints for iodosulfuron-methyl-sodium used for human risk assessment can be found at *http://www.regulations.gov* in document *Iodosulfuron-Methyl-Sodium; Human-Health Risk Assessment for Proposed Section 3 New Use on Wheat*, page 13 in docket ID number EPA–HQ–OPP–2009–0275.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to iodosulfuron-methyl-sodium, EPA considered exposure under the petitioned-for tolerances as well as all existing iodosulfuron-methyl-sodium tolerances in (40 CFR 180.580). EPA assessed dietary exposures from iodosulfuron-methyl-sodium in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA), 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA used tolerance level residues and 100% crop treated

information to complete the acute dietary exposure assessment. Drinking water values were incorporated directly into the assessment.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA, 1994–1996 and 1998 CSFII. As to residue levels in food, EPA used tolerance level residues and 100% crop treated information to complete the chronic dietary exposure assessment. Drinking water values were incorporated directly into the assessment.

iii. *Cancer.* The Agency determined that iodosulfuron-methyl-sodium was "not likely to be a human carcinogen" with regards to its potential as a human carcinogen. This decision was based on the lack of evidence for carcinogenicity in mice and rats. Iodosulfuron-methyl-sodium was negative for mutagenicity in various assays. Furthermore, registered sulfonyl urea compounds (structurally similar compounds) have been found to be non-carcinogenic. Based on this weight-of-evidence, an exposure assessment to evaluate cancer risk for iodosulfuron-methyl-sodium was not necessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue or PCT information in the dietary assessment for iodosulfuron-methyl-sodium. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for iodosulfuron-methyl-sodium in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of iodosulfuron-methyl-sodium. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the First Index Reservoir Screening Tool (FIRST), Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of iodosulfuron-methyl-sodium for acute exposures are estimated to be 0.60 parts per billion (ppb) for surface water and 0.00004 ppb for ground water. For chronic exposures for non-cancer assessments are estimated to be 0.067 ppb for surface water and 0.00004 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 0.60 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 0.067 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Iodosulfuron-methyl-sodium is currently registered for the following uses that could result in residential exposures: Ornamental turf. EPA assessed residential exposure using the following assumptions: As the ornamental turf use is labeled "intended for professional use," and therefore is not available for direct residential use, a residential handler assessment was not conducted. All applications for the turf use are to be performed by professional (commercial) applicators. The ornamental turf product is intended for use on ornamental turfgrass on golf courses, sports fields, commercial lawns, cemeteries, parks, campsites, recreational areas, home lawns, roadsides, school grounds and sodfarms. Based on this use pattern, short and intermediate term risk was assessed.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found iodosulfuron-methyl-sodium to share a common mechanism of toxicity with any other substances, and iodosulfuron-methyl-sodium does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that iodosulfuron-methyl-sodium does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is qualitative evidence of increased susceptibility based on the rat developmental study where delayed ossification was observed in the fetuses of dams that exhibited minimal maternal toxicity (salivation). Similarly, there is qualitative and quantitative evidence of increased susceptibility based on the multi-generation rat reproduction study where no parental systemic effects were observed at the highest dose tested (HDT) and offspring toxicity was observed at a lower dose. Susceptibility was not observed in the developmental toxicity study in the rabbit.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for iodosulfuron-methyl-sodium is complete, except for the requirements for an immunotoxicity, acute, and subchronic neurotoxicity studies. The existing data are sufficient for endpoint selection for exposure/risk assessment scenarios and for evaluation of the requirements under FQPA. EPA has determined that an additional uncertainty factor is not required to account for potential neurotoxicity or immunotoxicity. The reasons for this determination are described as follows:

a. The toxicity database for iodosulfuron-methyl-sodium is complete, except for immunotoxicity testing. EPA began requiring functional immunotoxicity testing of all food and non-food use pesticides on December 26, 2007. Since this requirement went into effect well after the tolerance petition was submitted, these studies are not yet available for iodosulfuron-methyl-sodium.

In the absence of specific immunotoxicity studies, EPA has evaluated the available iodosulfuron-methyl-sodium toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. In the case of iodosulfuron-methyl-sodium, the available data do not indicate a concern for potential immunotoxicity. No treatment-related changes were seen in hematology parameters, organ weights (thymus, spleen), gross necropsy (enlarged lymph nodes) or histopathology (spleen, thymus, lymph nodes) when tested up to and including the limit dose (1000 mg/kg/day) in mice or rats. Marginal effects, manifested as histopathological changes in the bone marrow and spleen, were seen in female dogs. Minimal to moderate hyperplasia of the hematopoietic cells was seen in the one female. No treatment-related changes were seen in male dogs. The subcapsular congestion in the spleen is a common finding and is probably related to the means of euthanasia since barbiturates can cause the splenic musculature to relax and often leads to blood filled spleens. Therefore, the lesions of the spleen are not evidence of immunotoxicity. In the absence of corroborative changes in any hematology parameters, weights of thymus, spleen and lymph nodes, or histopathological changes in the thymus and lymph nodes in the dogs, the changes observed are considered hematopoietic, not immunotoxic. Therefore an additional uncertainty factor is not needed to account for potential immunotoxicity.

b. Acute and subchronic neurotoxicity testing is also required as a result of changes made to pesticide data requirements in December 2007. Although acute and subchronic neurotoxicity testing has not yet been submitted, iodosulfuron-methyl-sodium does not belong to a class chemical that would be expected to be neurotoxic. There is no evidence of neurotoxicity in the data base in any species at any dose level. In the 90-day dietary studies with mice and rats, there were no signs indicative of neurotoxicity when tested at the limit dose (1000 mg/kg/day). In both species, the LOAEL was based on decreases in body weight and/or body weight gain. These findings indicate that the prospective neurotoxicity studies will have to be tested at the Limit Dose and even with the enhanced evaluation of neurotoxic parameters; these studies will not yield a lower dose for risk assessment. Therefore, a database uncertainty factor is not required.

ii. While there is qualitative evidence of increased susceptibility based on the rat developmental study, the developmental toxicity manifested as delayed ossification (which are variations not malformations) were seen only at the limit dose in the presence of maternal toxicity, and with a clear NOAEL for the effect of concern. Susceptibility was not observed in the developmental toxicity study in the rabbit. Additionally no parental systemic effects were observed at the limit dose and offspring toxicity was observed at a lower dose (34.2 mg/kg/day; manifested as decreased pup viability on post-natal day (PND) 0 and 4) in the multi-generation rat reproduction study. In spite of the lack of parental toxicity, there was a well characterized NOAEL/LOAEL for offspring toxicity; the developmental NOAEL is used for the acute dietary risk assessment; and the NOAEL (7.3 mg/kg/day) used for the chronic dietary risk assessment is approximately 47-fold lower than the offspring NOAEL (346 mg/kg/day). Therefore, there is low concern for increased susceptibility for iodosulfuron-methyl-sodium and no additional uncertainty factor is needed.

iii. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to iodosulfuron-methyl-sodium in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by iodosulfuron-methyl-sodium.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to iodosulfuron-methyl-sodium will occupy <1.0 % of the aPAD for (all infants (<1 year old)) the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to iodosulfuron-methyl-sodium from food and water will utilize 3.1% of the cPAD for (children 3–5 years old) the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of iodosulfuron-methyl-sodium is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Iodosulfuron-methyl-sodium is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to iodosulfuron-methyl-sodium.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs of 110,000 for children 3–5 years old and 420,000 for adults 20–49 years old.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Iodosulfuron-methyl-sodium is currently registered for use that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure to iodosulfuron-methyl-sodium through food and water with intermediate-term exposures for iodosulfuron-methyl-sodium.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures aggregated result in aggregate MOEs of 21,000 for children 3–5 years old, and 84,000 for adults 20–49 years old.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence for carcinogenicity in mice and rats, iodosulfuron-methyl-sodium is not expected to pose a cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to iodosulfuron-methyl-sodium residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography using mass spectrometric detection (LC/MS/MS) and by high performance liquid chromatography with ultra violet detection (HPLC/UV)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are no Codex MRLs for residues of iodosulfuron-methyl-sodium, and no Mexican MRLs have been established. Canadian MRLs have been established for certain residues of iodosulfuron-methyl-sodium; however, no MRLs have been established for wheat commodities at this time.

C. Revisions to Petitioned-For Tolerances

Review of available field trial data indicate that the proposed tolerance for wheat, forage (0.06 ppm) is too low; a tolerance of 0.10 ppm is appropriate based on the maximum residue limit (MRL) observed in/on forage.

V. Conclusion

Therefore, tolerances are established for residues of iodosulfuron-methyl-sodium, methyl 4-iodo-2-[3-(4-methoxy-6-methyl-1,3,5 triazin-2-yl) ureidosulfonyl] benzoate, sodium salt, in or on wheat, forage at 0.10 ppm; wheat, grain at 0.02 parts per million (ppm); wheat, hay at 0.05 ppm; and wheat, straw at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 11, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.580 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.580 Iodosulfuron-methyl-sodium; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * * * *	
Wheat, forage	0.10
Wheat, grain	0.02
Wheat, hay	0.05

Commodity	Parts per million
Wheat, straw	0.05

* * * * *

[FR Doc. E9–11633 Filed 5–19–09; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R06–RCRA–2008–0757; FRL–8905–4]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

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

DATES: This final authorization will become effective on July 20, 2009 unless the EPA receives adverse written comment by June 19, 2009. If the EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

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

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

2. *E-mail: patterson.alima@epa.gov.*

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

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

Instructions: Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. You can view and copy Louisiana's application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884–2178, phone number (225) 219–3559 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

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

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur.

Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

B. What Decisions Have We Made in This Rule?

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

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

The effect of this decision is that a facility in Louisiana subject to RCRA will now have to comply with the

authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Louisiana has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions after notice to and consultation with the State.

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

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

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

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

If the EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. For What Has Louisiana Previously Been Authorized?

The State of Louisiana initially received final authorization on February 7, 1985, (50 FR 3348), to implement its base Hazardous Waste Management Program. We granted authorization for changes to their program on November 28, 1989 (54 FR 48889) effective January 29, 1990; August 26, 1991 (56 FR 41958) effective August 26, 1991; November 7, 1994 (59 FR 55368) effective January 23, 1995; December 23, 1994 (59 FR 66200) effective March 8, 1995; there were technical corrections made on January 23, 1995 (60 FR 4380), effective January 23, 1995; and another technical correction was made on April 11, 1995 (60 FR 18360) effective April 11, 1995; October 17, 1995 (60 FR 53704) effective January 2, 1996; March 28, 1996 (61 FR 13777) effective June 11, 1996; December 29, 1997 (62 FR 67572) effective March 16, 1998; October 23, 1998 (63 FR 56830) effective December 22, 1998; August 25, 1999 (64 FR 46302) effective October 25, 1999; September 2, 1999 (64 FR 48099) effective November 1, 1999; February 28, 2000 (65 FR 10411) effective April 28, 2000; January 2, 2001 (66 FR 23) effective March 5, 2001; December 9, 2003 (68 FR 68526) effective February 9, 2004, June 10, 2005 (70 FR 33852) effective August 9, 2005; November 13, 2006 (71 FR 66116) effective January 12, 2007 and August 16, 2007 (72 FR 45905) effective October 15, 2007. On November 13, 2008, Louisiana applied for approval of its program revisions for RCRA Clusters XVI and XVII including Checklist 208(Methods Innovation Rule and SW–846 Final Update IIIB). In this application, Louisiana is seeking approval for RCRA Checklists 208 and 211 through 215 in accordance with 40 CFR 271.21(b)(3).

Since 1979, through the Environmental Affairs Act, Act 449 enabled the Office of Environmental Affairs within the Louisiana Department of Natural Resources, as well as, the Environmental Control Commission to conduct an effective program designed to regulate those who generate, transport, treat, store, dispose or recycle hazardous waste. During the 1983 Regular Session of the Louisiana Legislature, Act 97 was adopted, which amended and reenacted La. R. S. 30:1051 *et seq.* as the Environmental Quality Act, renaming the Environmental Affairs Act (Act 1938 of 1979). This Act created Louisiana Department of Environmental Quality (LDEQ), including provisions for new offices within this new Department of Environmental Quality. Act 97 also transferred the duties and responsibilities previously delegated to the Department of Natural Resources, Office of Environmental Affairs, to the new Department. The LDEQ has lead agency jurisdictional authority for administering the Resource Recovery and Conservation Act (RCRA) Subtitle C program in Louisiana. Also, the LDEQ is designated to facilitate communication between the EPA and the State. During the 1999 Regular Session of Louisiana Legislature Act 303 revised the La. R.S. 30:2011 *et. seq.* allowing LDEQ to reengineer the Department to perform more efficiently and to meet its strategic goals.

It is the intention of the State, through this application, to demonstrate its equivalence and consistency with the federal statutory tests, which are outlined in the United States Environmental Protection Agency regulatory requirements under 40 CFR part 271, subpart A, for final authorization. The submittal of this application is in keeping with the spirit and intent of RCRA, which provides equivalent States the opportunity to apply for final authorization to operate all aspects of their hazardous waste management programs in lieu of the Federal government. The Louisiana Environmental Quality Act authorizes the State's program, Subtitle II of Title 30 of the Louisiana Revised Statutes. With this application Louisiana is applying for authorization for specific areas of the State regulations identified as requiring authorization and the listed Checklists are: 208, 211, 212, 213, 214 and 215 will allow the State to implement the equivalent RCRA Subtitle C portion of the program. The State has also added electronics as additional waste to the State's RCRA authorized Universal Waste regulations. The State did not adopt all Federal regulations in Checklist 213 because some of the Federal regulations are the Performance Track program. However, the State has its own Regulatory Innovations Program that parallels the Federal Performance Track program (see LAC 33:I Chapter 37).

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

On November 13, 2008, Louisiana submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Louisiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final

authorization. Therefore, we grant the State of Louisiana Final authorization for the following changes: The State of Louisiana's program revisions consist of regulations which specifically govern RCRA Clusters XVI through XVII including Checklist 208 as documented below:

Description of Federal requirement (include checklist #, if relevant)	Federal Register date and page (and/or RCRA statutory authority)	Analogous state authority
1. Methods Innovation Rule and SW–846 Final Update IIIB. (Checklist 208).	70 FR 34538–34592 June 14, 2005.	Louisiana Revised Statutes (LRS) 30: Section 2001 *et seq.*, with specific cites of 2174, 2175, and 2180 effective December 31, 2004; Louisiana Environmental Regulatory Code, Part V. Subpart 1 Hazardous Waste and Hazardous Materials Sections 105.I.4, 110, 110A–B, 110.B.2–3, 110.B.8, 110.B.4, 110.B.9, 110.B.1, 100.B.6–7, 110.B.10, 110.C, 110.C.1–3, 110.C.3.a–z, 100.C.3.aa, 110.D, 110.D.1–2, 110.E, 110.E.1–2, 110.F, 110.F.1–2, 110.G, 110.G.1–2, 105.M.3.a.i, Definition of Hazardous waste 109.2.d, 4903.B.1, 4903.C.1, 4903.C.2, 4901.B.3.b.ii.(c).(i)–(ii), 4909.D.7, 4999. Appendix D, 4999. Appendix B, 4999. Appendix A, 1901.A, 2515.C, 1711.C.1.b, 1711.C.1.d, 1711.C.1.d.i–ii, 1711.D.1.c, 1711.F, 1741.D.2, 3005.G. Table 2, 4431.A.1, 4507.C, 1711.C.1.b, 1711.C.1.d, 1711.C.d.i–ii, 1711.D.1.c, 1711.F, 1741.D.2, 1703, 4727.A.3.b.iii, 4727.A.3.c, 4727.A.c.i–v, 4727.A.3.c.i–ii, 4727.B.3.b.iii, 4727.B.3.c, 4727.B.3.c.i–v, 4727.B.3.c.i–ii, 4727.C.3.a, 3001.D.1.b, 3005.B.1, 3013.A, 3025.B.1, 3025.B.2.a, 3025.B.2.a. Note, 3099. Appendix 1 (IBR), 2223.B, 2299. Table 2, Footnote 7, 2299. Table 7, Footnote 4, 4999. Appendix C, 529.C.1.c–d, 535.A.2.b.ii, 3115.B.1.c–d, 537.B.2.ii.(a)–(b), 4003.B.1.b, 4033.C, 4047.C and 4067.C, as amended and effective June 2008.
2. Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures ("Headworks exemptions"). (Checklist 211).	70 FR 57769–57785 October 4, 2005.	Louisiana Revised Statutes (LRS) 30: Section 2001 *et seq.*, with specific cites of 2174, 2175, and 2180 effective December 31, 2004; Louisiana Environmental Regulatory Code, Part V. Subpart 1 Hazardous Waste and Hazardous Materials Sections 109. Hazardous Waste.2.c.i–ii, Hazardous Waste.2.c.iv–vii, as amended and effective June 2008.
3. NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II). (Checklist 212).	70 FR 59402–59579 October 12, 2005.	Louisiana Revised Statutes (LRS) 30: Section 2001 *et seq.*, with specific cites of 2174, 2175, and 2180 effective December 31, 2004; Louisiana Environmental Regulatory Code, Part V. Subpart 1 Hazardous Waste and Hazardous Materials Sections 110.A, 110.C.1, 3105.B.1, 3105.B.3, 4513.B.1, 3001.B.1, 3001.B.3, 3001.B.3.a–c, 3001.B.4, 110.A, 110.C, 110.C.1, 303.R, 303.R.1–9, 529.F, 535.G and G.1–3, 530.D.3, 536.E.3, 311.F, 321.C.10.a–c, 321.C.11.a, 321.C.11.a.i–iii, 321.C.11.b, 321.C.11.c, 322.L.10, 3115.E, 537.D and D.1–3, 2001.A.1–2, 2001.B.1–2, 2001.C, and 2001.C.1–2, as amended and effective June 2008.
4. Burden Reduction Initiative. (Checklist 213).	71 FR 16862–16915 April 4, 2006.	Louisiana Revised Statutes (LRS) 30: Section 2001 *et seq.*, with specific cites of 2174, 2175, and 2180 effective December 31, 2004; Louisiana Environmental Regulatory Code, Part V. Subpart 1 Hazardous Waste and Hazardous Materials Sections LAC 33:V.105.O.2.b.ii, 105.O.2.b.iii–vii, 105.D.1.i.iii.(e) 105.D.6.i, 1509.B.4, 1515.A.5, 1513.B.2, 1513.F.9, 1529.B, 1529.B.1, 1529.B.5, 1529.B.9, 1529.B.11, 1529.B.12, 1529.B.21, 1529.B.22, 3317.D, 3317.G.2–3, 3319.F–G, 3321.G, 3513.E.5, 3517.A, 3527.A, 3707.I, 3711.I, 3715.E, 2109.A, 1903.A, 1903.B.5.b, 1905.A–B, 1907.A.1, 1907.A.2, 1907.I.2.b, 1911.B–C, 1911.C.1–2, 1911.D, 1911.E–F and G, 1913.F, 2303.C, 2719.B, 2515.A, 2515.A, 2515.B–E, 2515.D, 2515.D.1–2, 3111.A.2, 3119.D, 2605.C.2, 2803.A–C, 2805.B, 2805.H, 2807.A, 1737.B.1–2, 1737.D, 1739.A, 4701.A, 4703.C.2, 4319 reference to 1515.A.5, 4341 reference to 1513.B.1, 1513.F.9 and 10, 4357.B, 4357.B.1–2, 4357.B.8–10, 4357.B.17, 4367.C.1, 4367.C.3, 4373.F, 4373.I, 4383.E.5, 4387.A, 3527.A, 4403.H, 4407.H, 4411.E, 2109.A, 4433.A, 4433.B.5.b, 4435.A–B, 4437.A.1–2, 4437.I.2, 4440.A, 4440.B, 4440.B.1–3, 4440.C–E, 4441.F, 4438.C, 4438.D, 4462.A, 4452, 4452.A, 4472.A, 4489.E, 4512.A, 4498.A, 4507.A–B, 4507.F, 4507.F.1, 2803.A–C, 2805.B, 2805.H, 2807.A, 1737.B.1–2, 1737.D, 1739.A, 4701.A, 4703.C.2, 3005.H, 3007.D, 3007.K, 2245.A, 2245.B, 2247.E, 2246.A, 2246.D, 519.A, 523.A, 532.A.3.o, and 322.O, as amended and effective June 2008.

Description of Federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
5. Corrections to Errors in the Code of Federal Regulations. (Checklist 214).	71 FR 40254–40280 July 14, 2006.	Louisiana Revised Statutes (LRS) 30: Section 2001 *et seq.*, with specific cites of 2174, 2175, and 2180 effective December 31, 2004; Louisiana Environmental Regulatory Code, Part V. Subpart 1 Hazardous Waste and Hazardous Materials Sections 109. Incompatible Waste, 109. Personnel or Facility Personnel, 3813. Universal Waste, 109. Used Oil, 105.M.1.a, 105.M.4.b, 105.L.1–2, 109. Solid Waste.3.a.i, 109. Hazardous Waste.2.a, 105.D.1.t.v, 105.D.2.f.ii, 105.D.2.g, 105.D.2.g.iv, 105.D.2.g.vi, 105.D.2.j, 105.D.5.b.vi, 105.D.5.c.i, 4105.A.2.a–d, 4105.D, 4903.B.3, 4903.B.3.a–b, 4903.B.b.i–iv, 4903.B.4, 4903.B.4.a–d, 4903. Notes 1–4, 4903.E.2, 4901.B. Table 1, 4901.C. Table 2, K107 entry, 4901.C. Table 2, K069 entry, 4901.E, 4901.E Comment, 4901.E. Table 3, 4901.F, 4901.F. Comment, 4901.F. Table 4, 4901. Table 7, 4901.D.1.a.iii.(d), 4901.G. Table 6, 3105. 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6. Cathode Ray Tubes Rule. (Checklist 215).	71 FR 42928–42949 July 28, 2006.	Louisiana Revised Statutes (LRS) 30: Section 2001 *et seq.*, with specific cites of 2174, 2175, and 2180 effective December 31, 2004; Louisiana Environmental Regulatory Code, Part V. Subpart 1 Hazardous Waste and Hazardous Materials Sections 109. Cathode Ray Tube or CRT, 109. CRT Collector, 109. CRT Glass Manufacturer, 109. CRT Processing, 105.D.1.v.i, 105.D.1.v.ii–iii, 105.D.1.v.iv, 4909, 4911, 4913 and 4915, as amended and effective June 2008.

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

The State of Louisiana's regulations has some more stringent regulations at LAC 105.I.4, which requires public notice to make changes in regulations. For the State to incorporate by reference (IBR) the Federal regulations, there must be public notice with appropriate volume, revisions and date of publication to allow for public comment to the IBR language. The more stringent State regulations when it comes to design, assessment, and operating requirements of a facility can also be found at: LAC 33:V3711.I, LAC 33.V.3715.E, LAC 33:V.1903.A, LAC 33:V.1907.I.2.b, LAC 33:V.1913.F, LAC 33:V.2803.A, LAC 33:V.2803.C, LAC 33:V.2805.B, LAC 33:V.2805.H, LAC 33:V.2807.A, LAC 33:V.4387.A, LAC 33:V.3527.A, LAC 33:V.4407.H, LAC 33:V.4411.E, LAC 33V.4433.A, LAC 33:V.4433.B.5.b, LAC 33:V523.A, 33:V.4435.A, LAC 33 V.4435.B, LAC 33:V.4437.I.2, LAC 33:V.4441.F, LAC 33:V.4489.E, LAC 33:V.2803.B, and LAC 33:V.532.A.3.o. The Federal regulations allows a certified qualified Professional Engineer to attest the results of the evaluation. However, the State allows certification by an independent, qualified Professional Engineer to attest to the results of the evaluation. There are no broader in scope provisions in this authorization document.

I. Who Handles Permits After the Authorization Takes Effect?

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

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

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

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

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

L. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective July 20, 2009.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indians—lands,

Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

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

Dated: April 30, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E9–11747 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MB Docket No. 08–253; FCC 09–36]

Replacement Digital Television Translator Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: With this *Report and Order*, and after seeking public comment, the Federal Communications Commission creates a new "replacement" digital television translator service to permit full-service television stations to continue to provide service to viewers within their analog coverage areas who have lost service as a result of those stations' digital transition. Replacement digital translators can be licensed solely on digital television channels 2 through 51 and with secondary frequency status. Unlike other television translator licenses, the replacement digital television translator license will be associated with the full-service station's main license and will have the same four letter call sign as its associated main station. As a result, a replacement digital television translator license may not be separately assigned or transferred and will be renewed or assigned along with the full-service station's main license. Almost all other rules associated with television translator stations are applied to replacement digital television translators.

DATES: This final rule is effective June 19, 2009, except for § 74.787(a)(5)(i) which contains information collection requirements that have not been approved by the Office of Management and Budget ("OMB"). The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, *Shan.Maher@fcc.gov* of the Media Bureau, Video Division, (202) 418–1600. For additional information concerning the information collection requirement contained in this *Report and Order*, contact the Office of Managing Director ("OMD"), Performance Evaluation & Records Management ("PERM"), Cathy Williams, *Cathy.Williams@fcc.gov*, at 202–418–2918.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, FCC 09–36, adopted on May 8, 2008, and released on May 8, 2009. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. It may also be purchased from the Commission's duplicating contractor at Portals II , 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor's Web site: *http://www.bcpiweb.com*; or by calling (800) 378–3160, facsimile (202) 488–5563, or e-mail *FCC@BCPIWEB.com*. The document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) Additionally, the complete item is available on the Federal Communications Web site at *http://www.fcc.gov*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This *Report and Order* adopts a revised information collection requirement subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104–13 (44 U.S.C. 3501 through 3520) pertaining to DTV transition related issues. Specifically, this *Report and Order* will allow full-service stations seeking to use the new replacement digital television translator service to submit specified attachments to FCC Form 346 when applying for a construction permit.[1] OMB has consented to review the requirement under the emergency processing rules.[2] We believe there is good cause for requesting emergency PRA approval from OMB due to the statutory digital television transition deadline of June 12, 2009.[3]

In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S,C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Synopsis

Creation of New, Replacement Digital Television Translator Service

Based upon the record, we adopt our proposal to create a new, "replacement" digital television translator service to enable full-service television stations to continue to provide service to viewers in loss areas inside their protected analog service contour created as a result of their transition to digital operations. Although we are sympathetic to the desires of the low power television community to provide new and expanded low power digital service, we continue to believe that we must place a priority on the facilitation of the full-service television digital transition and the avoidance of the loss of service that may result from the transition.[4] We also conclude that the licensing of replacement digital television translators must take precedence over the licensing of new digital translators and low power television stations. We do not believe

[1] OMB Control Number 3060–1086 will be revised to include the information collection requirement.

[2] 5 CFR 1320.13.

[3] Due to the short time frame provided for the Commission to act on the new replacement digital low power television translator service, we requested and received OMB approval to waive **Federal Register** notice for this emergency request under the PRA. *See* 5 CFR 1320.13(d).

[4] *See generally* Digital Television and Public Safety Act of 2005 ("DTV Act"), which is Title III of the Deficit Reduction Act of 2005, Public Law 109–171, 120 Stat. 4 (2006), codified at 47 U.S.C. 309(j)(14) and 337(e), as amended by DTV Delay Act, Public Law 111–4, 123 Stat. 112 (2009) (establishing June 12, 2009 as a new hard deadline for the end of analog transmissions by full-power stations); 47 U.S.C. 309 Note (directing the Commission to "take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009; and (2) to require by February 18, 2009, * * * all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive)."); *id.* at 336 Note (requiring the Commission to assign paired digital television channels "to further promote the orderly transition to digital television"), 336(b) (expressing Congressional interest in the transition from analog to digital television and reading, in pertinent part, "[i]n prescribing the regulations required by subsection (a), the Commission shall * * * (5) prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.").

that this approach will unduly diminish new low power digital service opportunities because we will shortly announce a near-term date upon which we will begin accepting applications pursuant to the first-come, first-serve licensing scheme for new digital translators and low power television stations originally envisioned in our 2004 LPTV digital order.[5] This action will create opportunities for new and expanded digital low power television service.

The rules we adopt today will limit the service areas of replacement translators to only those areas where an existing full-service television station is able to demonstrate a loss in service as a result of its transition to digital and *de minimis* extension areas where necessary to provide service to loss areas. With service limited to only those areas that were previously served by a full-service station, and with licenses associated with the full-service station license so that they cannot be separately assigned or transferred, it is not likely that replacement translators will have a substantial impact on other uses of this spectrum. Furthermore, we seek to provide full-service stations with the flexibility to employ the technical means they find most feasible to replace service to potential loss areas. While we therefore will not adopt a requirement that stations demonstrate that all other technical solutions are infeasible before authorizing a replacement translator, we do encourage stations to consider other, potentially more spectrally efficient solutions such as maximization and DTS.

As we stated in the *NPRM*, consistent with the *Unlicensed Operation in the TV Bands* decision,[6] unlicensed devices must continue to fully protect replacement digital television translators in order to ensure that full-power post-transition digital television stations can deliver uninterrupted service to their entire pre-transition analog service area through the use of this service. Furthermore, we find that the importance of providing broadcasters flexibility to replace lost service with translator service outweighs concerns about impinging on the use of unlicensed white space devices in such a limited number of areas.

Licensing of Replacement Digital Television Translators on Channels 2–51

We adopt our tentative conclusion that replacement digital television translators should be licensed only for digital operation. We also conclude that we should forego licensing replacement translators on channels 60–69 in order to prevent possible interference to public safety entities and to avoid the potential for immediate displacement of critical replacement translator facilities.

Contrary to our tentative conclusion, we will not license replacement translators on television channels 52–59.[7] Based upon the record developed in this proceeding, we conclude that the use of channels 52–59 for the new fill-in translator service would not be appropriate. Although we have previously allowed for the licensing of digital LPTV and TV translator facilities on channels 52–59 in conjunction with the digital low power television transition,[8] we recognize the concerns of the 700 MHz wireless entities that oppose allowing new replacement translators to be licensed on channels 52–59. We also find that it is unlikely that television stations would seek a replacement translator on an out-of-core channel only to later be displaced by a primary wireless licensee. None of the applications we have received for replacement translators have proposed channels 52–59. Therefore, it does not appear that prohibiting the use of channels 52–59 for new replacement translators will diminish the opportunities for full-power stations to replace lost analog service. Therefore, we shall limit replacement translators to only in-core channels 2–51.

Processing Priority

We adopt our tentative conclusion that applications for replacement digital television translators will have processing priority over applications filed by other low power television and TV translator stations, except displacement applications (with which they would have co-equal priority). Thus, replacement translator applications and low-power displacement applications will be processed on a first-come, first-served basis, and the earlier filed application will prevail. By contrast, a replacement translator application will receive priority over non-displacement low-power and translator applications even if the latter are first-filed. Applications for replacement translator stations, however, must provide the requisite interference protection to authorized analog and digital low power television, and TV translator facilities. We further clarify that applications filed for full-service television and Class A television stations will continue to have processing priority over applications for replacement digital television translators.

It is a Commission priority to expeditiously assist full-service television stations both to transition to digital broadcasting and to digitally replicate their pre-transition analog service areas by the DTV statutory deadline.[9] We envision that replacement digital television translators will be a tool that full-service stations can use to successfully provide digital television service to their entire pre-transition analog service areas. We conclude that applications for replacement translators must be given processing priority to ensure that stations are quickly able to obtain the necessary authorization to begin constructing their replacement facility. Low power television and TV translator stations are not currently required to convert to digital broadcast by a congressionally mandated date and therefore do not require the expedited processing needed for replacement translators.[10] We find that displaced low power television and television translator applicants, however, warrant co-equal priority because their viewers have lost television service that they are accustomed to receiving, and we seek to assist all television stations to maintain their existing analog service coverage through the digital transition.

[5] *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19354, para. 71 (2004) (*"Digital Low Power Report and Order"*).

[6] *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations*, MB Docket No. 08–253, Notice of Proposed Rulemaking, 23 FCC Rcd 18534, para. 6 (2008) (*"NPRM"*). *See Unlicensed Operation in the TV Broadcast Bands*, ET Docket No. 04–186, Second Report and Order and Memorandum Opinion and Order, FCC 08–260, November 14, 2008 (*"Unlicensed Operation in the TV Broadcast Bands"*).

[7] Channels 60–69, 746–806 MHz, have been reallocated to Public Safety Entities upon completion of the digital television transition. *Reallocation of Television Channels 60–69, the 746–806 MHz Band*, Report and Order, 12 FCC Rcd 22953 (1997).

[8] *See Digital Low Power Report and Order*, 19 FCC Rcd at 19354, para. 71.

[9] *See supra* n.4.

[10] 47 U.S.C. 309(j)(14) and 337(e). The Commission previously determined that it has discretion under 47 U.S.C. 336(f)(4) to set the date by which analog operations of stations in the low power and translator service must cease. *Digital Low Power Report and Order*, 19 FCC Rcd at 19336, para. 12. The Commission opted not to establish a fixed termination date for the low power digital television transition until it resolved the issues concerning the transition of full-power television stations. *Id.* at 19336 para. 19.

Eligibility

We also adopt our tentative conclusion that eligibility for the replacement digital television translator service be limited to only those full-service television stations [11] that can demonstrate that a portion [12] of their analog service areas will not be served by their full, post-transition digital facilities and that the proposed replacement digital television translator service will be used for that purpose. We adopt this requirement because only full-service television stations are required to transition to digital broadcast by June 12, 2009, and the Commission's priority is to expeditiously assist full-service stations to maintain their analog service areas through the digital transition. Furthermore, the goal of this new service is digital replication of full-power analog television service areas, not their expansion.

Service Area

We adopt our tentative conclusion to limit the service area of the replacement translator to post-transition full-service stations' analog loss areas.[13] All applicants for the replacement digital television translator service must submit an engineering study that depicts both the full-service station's analog service area, as well as its post-transition digital facility which does not serve that station's entire analog service area and therefore demonstrates an analog loss area. The purpose of replacement digital television translators is to provide service to analog loss areas, not to expand full-service post-transition stations' service areas. However, we recognize that it may be impossible for some post-transition full-service stations to site translators that replace analog loss areas without also slightly expanding their analog service areas. Therefore, as outlined below, we adopt our proposal and allow full-service stations seeking replacement digital television translators to propose a *de minimis* expansion of their analog service areas upon a showing that it is necessary [14] to replace service in their post-transition analog loss areas.

In addition, we adopt our conclusion that "analog service area" be defined "as the existing, authorized, protected service area actually served by the analog signal prior to analog termination for the [DTV] transition, consistent with our approach in the DTS proceeding." [15] We adopt this definition because the purpose of this new service is to provide digital television service to post-transition analog loss areas. Replacement digital television translators are intended to serve digital full-service stations' analog loss areas. This new service is not intended for digital full-service stations to use in proposed digital service areas, where analog service did not formerly exist. Traditional, lower priority translators can be used to improve service in these areas.

We believe that some post-transition full-service stations should be allowed a *de minimis* expansion of their analog service areas, in order to properly engineer their replacement translators. We find that *de minimis* expansion is necessary and unavoidable due to the nature of certain analog loss areas and therefore should be permitted in such circumstances upon a suitable showing. The Commission will determine the *de minimis* threshold on a case-by-case basis, consistent with our approach in the DTS proceeding,[16] that which is necessary to provide service to loss areas.

Licensing of Replacement Digital Television Translator Stations Associated With Main Station License

We conclude that, unlike other television translator licenses, the license for replacement digital television translators will be associated with the full-service station's main license.[17] Therefore, the replacement digital translator license may not be separately assigned or transferred and will be renewed or assigned along with the full-service station's main license. We believe that such a measure is necessary to ensure that the replacement translator service is limited to only those situations where a station seeks to restore service to a loss area and the license is used for that purpose. This measure will also prevent a replacement translator from being converted to an LPTV station, thus defeating its purpose.

Given our decision that replacement translator stations shall be associated with the full-service station's main license, we will not adopt our proposal in the *NPRM* that stations seeking a replacement digital television translator be required to submit a completed FCC Form 346 and pay the requisite $675.00 filing fee for a new station, but rather will treat applications for replacement translators like those for auxiliary facilities. Thus, applications for replacement translators will be filed on FCC Form 346, will be treated as a minor change application, and there will be no filing fee.

Secondary Frequency Use Status

We adopt our tentative conclusion that replacement digital television translator stations be licensed with "secondary" frequency use status. These stations will not be permitted to cause interference to, and must accept interference from, full-service television stations, certain land mobile radio operations and other primary services. We clarify that replacement translator stations are subject to the interference protections to land mobile station operations in the 470–512 MHz band set forth in the rules.[18]

Other Translator Rules Apply

In order to facilitate the application and licensing of replacement translators, except as specified herein,[19] we will apply the rules associated with television translator stations to the replacement digital television translator service, including the rules concerning power limits,[20] out-of-channel emission limits,[21] unattended operation,[22] and time of operation.[23] Although mutually exclusive applications for replacement translators are unlikely, given the limited service area of these translators, if mutually exclusive applications are received, they will be resolved through the Commission's part 1 and part 73 competitive bidding rules and procedures.[24] Mutually exclusive applicants for replacement translators stations will be permitted a limited

[11] "Full-service television stations," as used in the context of this Report and Order, is defined as any operating full-service television station, including full-service stations that are operating under special temporary authority ("STA") to maintain existing service.

[12] We did not intend in the *NPRM* to imply that a minimum or maximum amount of analog loss area is required for a full-service post-transition digital station to apply for the replacement digital television translator service. Rather, any full-service post-transition digital station has the flexibility to serve any size analog loss area as long as the station is otherwise able to comply with the other technical requirements adopted in this proceeding.

[13] *NPRM*, 23 FCC Rcd at 18536, para. 7.

[14] In this context, a showing of "necessary" requires that the post-transition full-service digital television station demonstrate, through an engineering exhibit, that it is not possible to site a replacement digital television translator without "*de minimis*" expansion of the station's analog service area.

[15] *NPRM*, 23 FCC Rcd at 18535, para. 5, ft. note 5 (citing *DTS Repart and Order*, 23 FCC Rcd 16745, para. 28).

[16] *DTS Repart and Order*, 23 FCC Rcd 16750, para. 33.

[17] *See* 47 CFR 73.3540(e).

[18] *See* 47 CFR 74.709.

[19] *See supra* paras. *Secondary Frequency Use Status*, *Other Translatar Rules Apply*, and *Call Signs*.

[20] *See* 47 CFR 74.735.

[21] *See* 47 CFR 74.736.

[22] *See* 47 CFR 74.734.

[23] *See* 47 CFR 74.763.

[24] *See* 47 CFR 1.2100 *et seq.* & 73.5000 *et seq.*

period of time to resolve their mutual exclusivity through settlement or engineering solutions.[25]

Call Signs

After consideration of the comments received, we will not adopt our proposal to assign the same type of call sign to replacement translators that is assigned to all other digital translator stations. In the 2004 *Digital Low Power Report and Order*, we determined that digital translators should receive a unique call sign such as "K20AA–D."[26] We made this determination to prevent confusion with other call sign combinations as well as possible technical problems.[27] We believe, however, that in regards to replacement digital television translators, the associated costs to stations and technical problems outweigh any benefit that would be received by assigning replacement translators a separate call sign. To eliminate these burdens and avoid technical problems, we will not adopt our proposal and instead will assign to replacement translators the same four letter call sign as their associated full-service station.

Construction Period

Although we expect full-service stations to quickly construct their replacement digital television translator facilities, we will not adopt our original proposal and require that replacement digital television translators be constructed within six months. We now believe that such a requirement would unfairly disadvantage certain licensees and would actually be counterproductive. Affording stations building replacement translators a full three-year period for completion of construction is necessary to ensure the successful implementation of this new service and will not undermine our desire that replacement translators be quickly constructed. We conclude that stations do not need a shortened construction period to motivate expedited construction of replacement digital translators. Stations that voluntarily seek authority to build a replacement digital translator would not likely do so absent an intent to construct. Moreover, forcing licensees to construct in a much abbreviated period could discourage them from applying in the first instance, a result clearly contrary to our purpose. We are also persuaded that the benefits of the replacement translator service established herein will be obtained even if some interruption of service occurs because a broadcaster is unable to complete construction and initiate service within the first six months.

Other Issues

Certain engineering firms raised issues that were not addressed in the *NPRM*. We find that these issues are beyond the scope of this proceeding or are being addressed in other proceedings. Therefore, we shall not address them in this proceeding.

Final Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended ("RFA")[28] an Initial Regulatory Flexibility Analysis ("IRFA") was included in the Notice of Proposed Rulemaking in this proceeding.[29] Written public comments were requested on the IRFA. This presents Final Regulatory Flexibility Analysis.[30]

Need for and Objectives of the Rules

This Report and Order ("*R&O*") establishes a new "replacement" digital television translator service that will allow full-service television stations to obtain new digital translators to maintain existing service.

The *R&O* concludes that replacement translators will be licensed only for digital operation and only on channels 2–51 and not for out-of-core channels 52–59 and 60–69.

The *R&O* concludes that applications for replacement translators will be given licensing priority over all other low power television and TV translator applications except displacement applications (for which they will have co-equal priority). The *R&O* concludes that the eligibility for such service will be limited to only those full-service television stations that can demonstrate that a portion of their analog service area will not be served by their full, post-transition digital facilities and for translators to be used for that purpose. The *R&O* concludes that the service area of the replacement translator will be limited to only a demonstrated loss area but that a replacement translator should be permitted to expand slightly a full-service station's post-transition, digital service area. Finally, the *R&O* concludes that replacement digital television translator stations will be licensed with "secondary" frequency use status.

The *R&O* concludes that, unlike other television translator licenses, the license for the replacement translator will be associated with the full power station's main license. Therefore, the replacement translator license may not be separately assigned or transferred and will be renewed or assigned along with the full-service station's main license. The *R&O* concludes that most of the other rules associated with television translator stations will apply to the new replacement translator service including those rules concerning the filing of applications, processing of applications, power limits, out-of-channel emission limits, unattended operation, and time of operation. The *R&O* concludes that replacement translators will not be assigned a separate call sign but rather will have the same call sign as their associated full-service station. Finally, the *R&O* concludes that the construction period for replacement translators will be the standard three-year period that is provided for other low power television digital facilities.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

TCA, Inc. ("TCA") argued that the IRFA "shows that very little consideration was made towards the many wireless license holders that could be affected." TCA maintains that the *NPRM* "calls for small wireless entities to incur additional costs by hiring counsel, monitoring Commission filings, and obtaining technical assistance to prove interference from a translator station." TCA concludes that this "additional and unnecessary expense is an unacceptable burden for a small company to bear." TCA is concerned with the Commission's proposal to require that replacement digital translators proposed for out-of-core channels 52–59 to be subject to the requirements previously adopted by the Commission for proposed facilities on these channels. Specifically, applicants for a digital translator on channels 52–59 must demonstrate that no in-core channel is available and must notify wireless entities on the affected channel(s) of their filing. The Commission decided to not allow replacement translators on channels 52–59, thus TCA's concerns are moot.

[25] *See* 47 CFR 73.5002(c).

[26] *See Digital Low Power Report and Order*, 19 FCC Rcd at 19396, para. 197.

[27] *Id.*

[28] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Public Law 104–121, Title II, 110 Stat. 847 (1996).

[29] *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations, MB Docket No. 08–253*, Notice of Proposed Rulemaking, 23 FCC Rcd 18534 (2008) ("*NPRM*").

[30] *See* 5 U.S.C. 604.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rule.[31] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small government jurisdiction."[32] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[33] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[34]

Television Broadcasting. The SBA defines a television broadcasting station as a small business if such station has no more than $14 million in annual receipts.[35] Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."[36] According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations[37] (or approximately 72 percent) have revenues of $13.5 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[38] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission has estimated the number of licensed NCE television stations to be 380.[39] The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

Class A TV, LPTV, and TV translator stations. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $14 million in annual receipts.[40]

Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, 4,518 licensed TV translators and 11 TV booster stations.[41] Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than $13 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The *R&O* adopts one new reporting requirement. Full-service stations seeking a new replacement digital television translator station must submit a showing with their FCC Form 346 that they have a loss area as a result of their transition to digital and that the proposed replacement translator will serve the loss area. The new reporting requirement will not differently affect small entities.

Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe "the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[42]

The Commission is aware that some full service television stations operate with limited budgets. Accordingly, every effort was taken to propose rules that impose the least possible burden on all licensees, including smaller licensed entities. Existing rules, forms and procedures will be used to implement this new service thereby reducing the burden on small entities.

[31] *Id.* at 604(a)(3).

[32] 5 U.S.C. 601(6).

[33] *Id.* at 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. 601(3).

[34] 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

[35] *See* 13 CFR 121.201, NAICS Code 515120 (adopted Oct. 2002).

[36] NAICS Code 515120. This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS Code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

[37] Although we are using BIA's estimate for purposes of this revenue comparison, the Commission has estimated the number of licensed commercial television stations to be 1,374. See News Release, "Broadcast Station Totals as of December 31, 2006" (dated Jan. 26, 2007); see *http://www.fcc.gov/mb/audio/totals/bt061231.html.*

[38] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 CFR 121.103(a)(1).

[39] Broadcast Stations Total as of December 31, 2006.

[40] *See* 13 CFR 121.201, NAICS Code 515120.

[41] *See* News Release, "Broadcast Station Totals as of December 31, 2006" (dated Jan. 26, 2007); *http://www.fcc.gov/mb/audio/totals/bt061231.html.*

[42] U.S.C. 604(a)(5).

The *R&O* concludes that replacement translators will be licensed only for digital operation and should be licensed on only channels 2–51 and not for out-of-core channels 52–59 and 60–69. Alternatively, the Commission could have allowed stations to file for analog facilities but the digital transition for full power stations is closely approaching thus making the need for further analog service unnecessary. Further, the Commission could have allowed for replacement translators to be filed on channels 52–59 and 60–69, but it is likely that these stations would very quickly be displaced by wireless and public safety entities and small entities would waste their resources and time having to find a new channel for their proposed facility.

The *R&O* further concludes that applications for replacement translators shall be given licensing priority over all other low power television and TV translator applications except displacement applications (for which they would have co-equal priority). The Commission could have proposed allowing no such priority, but this alternative was not considered because it would result in many more mutually exclusive filings and delay the implementation of this valuable service. The *R&O* also concludes that the Commission should limit the eligibility for such service to only those full-service television stations that can demonstrate that a portion of their analog service area will not be served by their full, post-transition digital facilities and for translators to be used for that purpose. Alternatively, the Commission could have allowed all interested parties to file for new translators, however such approach was not considered because it would also result in numerous mutually exclusive filings and would greatly delay implementation of this needed service. The *R&O* further concludes that the service area of the replacement translator should be limited to only a demonstrated loss area and seeks comment on whether a replacement translator should be permitted to expand slightly a full-service station's post-transition, digital service area. Once again, the Commission could have allowed stations to file for expansion of their existing service areas but such an alternative was not seriously considered because it could result in the use of valuable spectrum that the Commission seeks to preserve for other uses such as new digital low power service. Finally, the *R&O* concludes that replacement digital television translator stations will be licensed with "secondary" frequency use status. The Commission could have proposed that replacement translators be licensed on a primary frequency use basis, but this alternative was not proposed because it would result in numerous interference and licensing problems and could disrupt the full-power digital transition.

The *R&O* concludes that, unlike other television translator licenses, the license for the replacement translator should be associated with the full power station's main license. Therefore, the replacement translator license may not be separately assigned or transferred and will be renewed or assigned along with the full-service station's main license. Alternatively, the Commission could have proposed that the replacement translator license be separate from the main station's license however this approach was not seriously considered because it could result in licenses being sold or modified to serve areas outside of the loss area, would undermine the purpose of this new service. The *R&O* also concludes that most of the other rules associated with television translator stations would apply to the new replacement translator service including those rules concerning the filing of applications, processing of applications, power limits, out-of-channel emission limits, unattended operation, and time of operation. The alternative could have been to design all new rules for this service, but that alternative was not considered as it would adversely impact stations ability to quickly implement these new translators. The *R&O* concluded that replacement translators not be assigned a separate call sign, as the record demonstrated that assigning a separate call sign would be costly and cause technical problems. The *R&O* adopts a three-year construction period for replacement translators finding that the proposed shorter construction period in the NPRM would unfairly affect certain licensees and be counterproductive.

Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

None.

Report to Congress

The Commission will send a copy of the *R&O*, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[43] In addition, the Commission will send a copy of the *R&O*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *R&O* and FRFA (or summaries thereof) will be published in the **Federal Register**.[44]

List of Subjects in 47 CFR Part 74

Television, Television broadcasting, Low power television.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 74 as follows:

PART 74—EXPERIMENTAL RADIO AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 1. The authority for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

§ 74.787 [Amended]

■ 2. Section 74.787 is amended by adding paragraph (a)(5) to read as follows:

§ 74.787 Digital licensing.

(a) * * *

(5) *Application for replacement digital television translator.* (i) An application for a replacement digital television translator may be filed at any time. A license for a replacement digital television translator will be issued only to a television broadcast station licensee that demonstrates in its application that a portion of the station's pre-transition analog service area will not be served by its full, post-transition digital facilities and that the proposed translator will be used to provide service to the area where service has been lost." Replacement digital television translators may operate on channels 2–51. Applications for replacement digital television translator shall be given processing priority over all other low power television and TV translator applications except displacement applications (with which they shall have co-equal priority) as set forth in 47 CFR 73.3572(a)(4)(ii). The service area of the replacement translator shall be limited to only a demonstrated loss area within the full-service station's pre-transition analog service area. "Analog service area" is defined as the existing, authorized, protected service area actually served by the analog signal prior to analog termination for the DTV transition. An applicant for a replacement digital television translator

[43] *See* 5 U.S.C. 801(a)(1)(A). The Congressional Review Act is contained in Title II, sec. 251, of the CWAAA, *see* Public Law 104–121, Title II, sec. 251, 110 Stat. 868.

[44] *See* 5 U.S.C. 604(b).

may propose a *de minimis* expansion of its full-service pre-transition analog service area upon demonstrating that the expansion is necessary to replace its analog loss area. The license for the replacement digital television translator will be associated with the full power station's main license, will be assigned the same call sign, may not be separately assigned or transferred, and will be renewed with the full-service station's main license.

(ii) Each original construction permit for the construction of a replacement digital television translator station shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. The provisions of § 74.788(c) of this chapter shall apply for stations seeking additional time to complete construction of their replacement digital television translator station.

(iii) A public notice will specify the date upon which interested parties may begin to file applications for replacement digital television translators. Such applications shall be filed on FCC Form 346, shall be treated as an application for minor change and shall be accepted on a first-come, first-served basis. Mutually exclusive applications shall be resolved via the Commission's part 1 and broadcast competitive bidding rules, § 1.2100 *et seq.* and § 73.5000 *et seq.* of this chapter.

(iv) The following sections are applicable to replacement digital television translator stations:

§ 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.
§ 74.703 Interference.
§ 74.709 Land mobile station protection.
§ 74.734 Attended and unattended operation.
§ 74.735 Power Limitations.
§ 74. 751 Modification of transmission systems.
§ 74.763 Time of Operation.
§ 74.765 Posting of station and operator licenses.
§ 74.769 Copies of rules.
§ 74.780 Broadcast regulations applicable to translators, low power, and booster stations (except § 73.653—Operation of TV aural and visual transmitters and § 73.1201—Station identification).
§ 74.781 Station records.
§ 74.784 Rebroadcasts.
* * * * *

[FR Doc. E9–11730 Filed 5–15–09; 4:15 pm]

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DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1580

[Docket No. TSA–2006–26514; Amendment Nos. 1520–7, 1580–2]

RIN 1652–AA51

Rail Transportation Security

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Final rule; correcting amendments.

SUMMARY: This action contains minor technical corrections to the Rail Transportation Security final rule, which was published on November 26, 2008. That document incorrectly referenced certain paragraphs in various sections of 49 CFR part 1580 and included an incorrect telephone number for reporting significant security concerns to TSA. This document corrects the final regulations by revising these paragraph citations and providing the appropriate telephone number.

DATES: This correction is effective on May 20, 2009.

FOR FURTHER INFORMATION CONTACT: David H. Kasminoff, Office of Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6002; telephone (571) 227–3583; facsimile (571) 227–1378; e-mail *david.kasminoff@dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On November 26, 2008 (73 FR 72131), TSA issued a final rule to enhance the security of our Nation's rail transportation system. This rule established security requirements for freight railroad carriers; intercity, commuter, and short-haul passenger train service providers; rail transit systems; and rail operations at certain, fixed-site facilities that ship or receive specified hazardous materials by rail. As published, the regulatory text in the final rule contains several incorrect references to other provisions in the rule. First, the rule as published, in stating that §§ 1580.100, 1580.101, and 1580.105 apply to a freight railroad carrier hosting a passenger operation described in § 1580.1, incorrectly cites to nonexistent paragraph (d) in § 1580.1, instead of paragraph (a)(4). Second, § 1580.103(g), which requires each person described in paragraph (a) of that section to provide a telephone number for TSA to use to request location and shipping information, incorrectly refers to information required in paragraph (a)(4) of § 1580.103 instead of paragraph (c). Third, § 1580.103(g)(2), in stating that a covered person may not provide a telephone number that requires a call back (such as an answering service, answering machine, or beeper device) to meet the requirements of § 1580.103, incorrectly refers to paragraph (f) of that section instead of paragraph (g). Fourth, § 1580.107(a), in referencing the paragraph that contains an exception to the requirements imposed upon a rail hazardous materials shipper transferring to a rail car containing rail security-sensitive materials to a railroad carrier, incorrectly refers to paragraph (e) of § 1580.107 instead of paragraph (g). This final rule correction replaces the incorrect citations with the correct ones.

Finally, the telephone numbers provided in §§ 1580.105(b) and 1580.203(b) of the final rule for reporting significant security concerns to DHS have been changed. The new telephone number at the TSA Freedom Center designated to receive reports of significant security concerns is 1–866–615–5150. This final rule correction inserts the correct telephone number in the rule text.

List of Subjects in 49 CFR Part 1580

Hazardous materials transportation, Mass transportation, Rail hazardous materials receivers, Rail hazardous materials shippers, Rail transit systems, Railroad carriers, Railroad safety, Railroads, Reporting and recordkeeping requirements, Security measures.

II. Corrections to the Rule

■ Accordingly, 49 CFR part 1580 is corrected by making the following correcting amendments:

PART 1580—RAIL TRANSPORTATION SECURITY

■ 1. The authority citation for part 1580 continues to read as follows:

Authority: 49 U.S.C. 114.

■ 2. In § 1580.100, paragraph (a)(4) is correctly revised to read as follows:

§ 1580.100 Applicability.

(a) * * *

(4) Each freight railroad carrier hosting a passenger operation described in § 1580.1(a)(4) of this part.

* * * * *

■ 3. In § 1580.101, paragraph (a)(4) is correctly revised to read as follows:

§ 1580.101 Rail security coordinator.

(a) * * *

(4) Each freight railroad carrier hosting the passenger operations described in § 1580.1(a)(4) of this part.

* * * * *

■ 4. In § 1580.103, paragraphs (g) introductory text and (g)(2) are correctly revised to read as follows:

§ 1580.103 Location and shipping information for certain rail cars.

* * * * *

(g) *Telephone number.* Each person described in paragraph (a) of this section must provide a telephone number for use by TSA to request the information required in paragraph (c) of this section.

* * * * *

(2) A telephone number that requires a call back (such as an answering service, answering machine, or beeper device) does not meet the requirements of this paragraph.

* * * * *

■ 5. In § 1580.105, paragraphs (a)(4) and (b) are correctly revised to read as follows:

§ 1580.105 Reporting significant security concerns.

(a) * * *

(4) Each freight railroad carrier hosting a passenger operation described in § 1580.1(a)(4) of this part.

* * * * *

(b) Each person described in paragraph (a) of this section must immediately report potential threats and significant security concerns to DHS by telephoning the Freedom Center at 1–866–615–5150.

* * * * *

■ 6. In § 1580.107, paragraph (a) introductory text is correctly revised to read as follows:

§ 1580.107 Chain of custody and control requirements.

(a) *Within or outside of an HTUA, rail hazardous materials shipper transferring to carrier.* Except as provided in paragraph (g) of this section, at each location within or outside of an HTUA, a rail hazardous materials shipper transferring custody of a rail car containing one or more of the categories and quantities of rail security-sensitive materials to a freight railroad carrier must:

* * * * *

■ 7. In § 1580.103, paragraph (b) is correctly revised to read as follows:

§ 1580.203 Reporting significant security concerns.

* * * * *

(b) Each person described in paragraph (a) of this section must immediately report potential threats and significant security concerns to DHS by telephoning the Freedom Center at 1–866–615–5150.

* * * * *

Issued in Arlington, Virginia, on May 13, 2009.

Gale D. Rossides,

Acting Administrator.

[FR Doc. E9–11736 Filed 5–19–09; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XP29

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by American Fisheries Act Catcher Processors Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by American Fisheries Act (AFA) trawl catcher processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary as the 2009 Pacific cod directed fishing allowance for AFA trawl catcher processors in the BSAI has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 10, 2009, through 2400 hrs, A.l.t., December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Patty Britza, 907–586–7376.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 Pacific cod total allowable catch (TAC) allocated to AFA trawl catcher processors in the BSAI is 3,626 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2009 Pacific cod TAC allocated to AFA catcher processors in the BSAI will be taken as incidental catch in directed fisheries for other groundfish fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt and in accordance with § 679.20(d)(1)(iii), finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by AFA trawl catcher processors in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by AFA trawl catcher processors in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 12, 2009.

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

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: May 14, 2009.

Kristen C. Koch,

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

[FR Doc. E9–11770 Filed 5–19–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910091344–9056–02]

RIN 0648–XP23

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow–Water Species Fishery by Catcher Processors in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow–water species fishery for catcher processors subject to sideboard limits established under the Central Gulf of Alaska (GOA) Rockfish Program in the GOA. This action is necessary because the 2009 Pacific halibut prohibited species catch (PSC) sideboard limit specified for the shallow–water species fishery for catcher processors subject to sideboard limits established under the Central GOA Rockfish Program in the GOA is insufficient to support directed fishing for the shallow–water species fisheries.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 1, 2009, through 1200 hrs, A.l.t., July 31, 2009.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. processors in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 Pacific halibut PSC sideboard limit specified for the shallow–water species fishery for catcher processors subject to sideboard limits established under the Central GOA Rockfish Program in the GOA is 0 metric tons as established by § 679.82(d), the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009), and as posted as the Catcher Processor Sideboards at *http://www.fakr.noaa.gov/sustainablefisheries/goarat/default.htm*.

In accordance with § 679.82(d)(9)(i)(B), the Administrator, Alaska Region, NMFS, has determined that the 2009 Pacific halibut PSC sideboard limit specified for the shallow–water species fishery for catcher processors subject to sideboard limits established under the Central GOA Rockfish Program in the GOA is insufficient to support directed fishing for the shallow–water species fisheries. Consequently, in accordance with § 679.82(d)(9)(ii)(A), NMFS is prohibiting directed fishing for species that comprise the shallow–water species fishery for catcher processors subject to sideboard limits established under the Central GOA Rockfish Program in the GOA. The species and species groups that comprise the shallow–water species fishery for the sideboard limit are shallow–water flatfish and flathead sole.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. Notice and comment is unnecessary because there is no available halibut PSC sideboard limit and therefore the Regional Administrator has no discretion for any action other than to prohibit directed fishing.

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

This action is required by § 679.20 and § 679.82 and is exempt from review under Executive Order 12866.

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

Dated: May 14, 2009.

Kristen C. Koch,

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

[FR Doc. E9–11773 Filed 5–19–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910091344–9056–02]

RIN 0648–XP22

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish, Pacific Ocean Perch, and Pelagic Shelf Rockfish for Catcher Vessels Participating in the Limited Access Rockfish Fishery in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish for catcher vessels participating in the limited access rockfish fishery in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2009 total allowable catch (TAC) of northern rockfish, Pacific ocean perch, and pelagic shelf rockfish allocated to catcher vessels participating in the limited access rockfish fishery in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 1, 2009, through 2400 hrs, A.l.t., December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 rockfish TAC allocated as directed fishing allowances to catcher vessels participating in the limited access rockfish fishery in the Central Regulatory Area of the GOA are: 28

metric tons (mt) for Pacific ocean perch, 10 mt for northern rockfish, and 5 mt for pelagic shelf rockfish as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009), and as posted as the 2009 Rockfish Program Allocations at *http://www.fakr.noaa.gov/sustainablefisheries/goarat/default.htm.*

Consequently, in accordance with § 679.82(b)(6), the Administrator, Alaska Region, NMFS, deems it appropriate to not open directed fishing for northern rockfish, Pacific ocean perch, and pelagic shelf rockfish for catcher vessels participating in the limited access rockfish fishery in the Central Regulatory Area of the GOA because there are insufficient allocations to support a directed fishery.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. Notice and comment is unnecessary because there are insufficient allocations to support a directed fishery and therefore the Regional Administrator has no discretion for any action other than to prohibit directed fishing.

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

This action is required by § 679.20 and § 679.82 and is exempt from review under Executive Order 12866.

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

Dated: May 14, 2009.

Kristen C. Koch,

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

[FR Doc. E9–11776 Filed 5–19–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910091344–9056–02]

RIN 0648–XP21

Fisheries of the Exclusive Economic Zone Off Alaska; Deep–Water Species Fishery by Catcher Vessels in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep–water species fishery for catcher vessels subject to sideboard limits established under the Central Gulf of Alaska (GOA) Rockfish Program in the GOA. This action is necessary because the 2009 Pacific halibut prohibited species catch (PSC) sideboard limit specified for the deep–water species fishery for catcher vessels subject to sideboard limits established under the Central GOA Rockfish Program in the GOA is insufficient to support directed fishing for the deep–water species fisheries.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 1, 2009, through 1200 hrs, A.l.t., July 31, 2009.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 Pacific halibut PSC sideboard limit specified for the deep–water species fishery for catcher vessels subject to sideboard limits established under the Central GOA Rockfish Program in the GOA is 22 metric tons as established by § 679.82(d)(8)(i) and the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009), for the period 1200 hrs, A.l.t., July 1, 2009, through 1200 hrs, A.l.t., July 31, 2009.

In accordance with § 679.82(d)(9)(i)(B), the Administrator, Alaska Region, NMFS, has determined that the 2009 Pacific halibut PSC sideboard limit specified for the deep–water species fishery for catcher vessels subject to sideboard limits established under the Central GOA Rockfish Program in the GOA is insufficient to support directed fishing for the deep–water species fisheries. Consequently, in accordance with § 679.82(d)(9)(ii)(B), NMFS is prohibiting directed fishing for species that comprise the deep–water species fishery for catcher vessels subject to sideboard limits established under the Central GOA Rockfish Program in the GOA. The species and species groups that comprise the deep–water species fishery for the sideboard limit include deep–water flatfish, rex sole, and arrowtooth flounder.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. Notice and comment is unnecessary because there is insufficient halibut PSC sideboard limit to support a directed fishery and therefore the Regional Administrator has no discretion for any action other than to prohibit directed fishing.

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

This action is required by § 679.20 and § 679.82 and is exempt from review under Executive Order 12866.

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

Dated: May 14, 2009.

Kristen C. Koch,

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

[FR Doc. E9–11780 Filed 5–19–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 96
Wednesday, May 20, 2009

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC22

Common Crop Insurance Regulations; Florida Avocado Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to add regulations that provide insurance for Florida avocados. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions (Basic Provisions), which contain standard terms and conditions common to most crop programs. The intended effect of this action is to convert the Florida Avocado pilot crop insurance program to a permanent insurance program for the 2011 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business July 20, 2009, and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit comments, titled "Florida Avocado Crop Insurance Provisions," by any of the following methods:

- *By Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205.
- *By Express Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, 9240 Troost Avenue, Kansas City, MO 64131–3055.
- *E-mail: DirectorPDD@rma.usda.gov.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

A copy of each response will be available for public inspection from 7 a.m. to 4:30 p.m., CST, Monday through Friday except holidays at the above address.

FOR FURTHER INFORMATION CONTACT: Claire White, Economist, Product Management, Product Administration and Standards Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through March 31, 2012.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees, and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J, for the informal administrative review process of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC offered a pilot crop insurance program for Florida avocados beginning with the 1999 crop year. The pilot program is only available in Miami-Dade County, which, according to the 2002 Census of Agriculture, accounts for 98.6 percent of Florida's avocado acreage. The Florida Avocado pilot crop insurance program is an actual production history (APH) crop that protects against a loss in yield; and is available in coverage levels from 50 to 75 percent of the producer's average yield and up to 100 percent of the reference price. The pilot program permits optional units by type, *i.e.* by early and late varieties. Insured causes of loss for Florida avocados include adverse weather conditions; earthquake; fire, wildlife, insects and plant diseases unless the damage is due to insufficient or improper application of control measures; volcanic eruption; and failure of irrigation water supply if due to an insured cause. Indemnities are payable when the total yield from the harvested and appraised production is less than the production guarantee.

In the 2007 crop year, 97 producers with approximately 2,239 acres were insured under the Florida Avocado pilot crop insurance program. FCIC contracted with an independent firm to conduct an evaluation of the Florida Avocado pilot crop insurance program. The evaluation found the Florida Avocado pilot crop insurance program to be a valuable risk management tool for avocado producers. The evaluation identified the following: (1) An APH program is appropriate for this crop and meets avocado producers' risk management needs; (2) there is no evidence of waste, fraud, abuse, or program vulnerabilities; and (3) optional units based on early versus late varieties are a positive feature of the program and assist producers in managing their risk exposure. The evaluation recommended converting the Florida Avocado pilot crop insurance program to a permanent program. FCIC's Board of Directors approved the conversion of the pilot program to that of a permanent crop insurance program.

FCIC has revised certain provisions to be consistent with other Crop Provisions. FCIC also proposes to revise the following:

a. Section 1—FCIC proposes to remove the definition of "APH" because it is defined in the Basic Provisions.

FCIC also proposes to remove the definition of "buckhorning" and replace it with the definition of "buckhorn." The proposed definition will be consistent with the definition of "buckhorn" in the Florida Fruit Tree Pilot Crop Provisions, which provides insurance for avocado trees.

FCIC also proposes to add a definition of "type" because the term is used throughout the Crop Provisions and generally is considered as either late or early varieties of avocados.

b. Section 3—FCIC proposes to revise paragraph (a) to clarify if the Catastrophic Risk Protection (CAT) level of coverage is elected, then the CAT level of coverage will apply to all insured types of avocados in the county.

FCIC also proposes to revise paragraph (d). The current provision states if the producer fails to notify the approved insurance provider (AIP) of any circumstance set out in section 3(c), the producer's production guarantee will be reduced at any time the AIP becomes aware of the circumstance. The proposed provision states if the producer fails to notify the AIP of any circumstance set out in section 3(c), the producer's production guarantee will be reduced in accordance with the Special Provisions at any time the AIP becomes aware of the circumstance. Including the phrase "in accordance with the Special Provisions" allows the producer to be informed via the Special Provisions of the method by which the production guarantee will be reduced.

c. Section 6—FCIC proposes to revise paragraph (b). Currently, avocados are only insurable if produced on trees that have reached at least the fifth growing season after setout, unless there is a written agreement based on the acreage producing at least 50 bushels of avocados per acre in a previous year. FCIC proposes to revise the provision to insure avocados produced on trees that have reached at least the fourth growing season after setout and produced the minimum amount specified in the Special Provisions in at least one of the previous three crop years. Shortening the period following setout allows producers with good yields the ability to insure their crop sooner. Further, providing the minimum amount of production the tree must produce in order to be eligible for insurance on the Special Provisions allows the flexibility to specify different minimum production requirements for early and late varieties. Requiring the minimum production to be met in one of the previous three crop years allows only groves that are productive to be eligible for insurance.

d. Section 8—FCIC proposes to revise paragraph (a)(1) to make the provisions easier to read.

FCIC also proposes to redesignate paragraph (a)(2) as paragraph (a)(3) and add a new paragraph (a)(2). Paragraph (a)(1) states when coverage attaches for the year of application, but there is no provision specifying when coverage attaches for the crop years following the year of application. Paragraph (a)(2) is added to clarify this.

FCIC also proposes to revise newly redesignated paragraph (a)(3). The current provisions have fixed dates for the end of the insurance period for early and late avocados. FCIC proposes to allow the ability to provide different dates in the Special Provisions if agronomically appropriate.

e. Section 11—FCIC proposes to add a settlement of claim example.

FCIC intends to convert the Florida Avocado pilot crop insurance program to a permanent crop insurance program beginning with the 2011 crop year. To effectuate this, FCIC proposes to amend the Common Crop Insurance regulations (7 CFR part 457) by adding a new section § 457.173, Florida Avocado Crop Insurance Provisions. These provisions will replace and supersede the current unpublished provisions that provide insurance coverage for Florida avocados under a pilot program status.

List of Subjects in 7 CFR Part 457

Crop insurance, Florida Avocado, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR

part 457, Common Crop Insurance Regulations, for the 2011 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Section 457.173 is added to read as follows:

§ 457.173 Florida Avocado crop insurance provisions.

The Florida Avocado Crop Insurance Provisions for the 2011 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider.)

Both FCIC and reinsured policies:

Florida Avocado Crop Insurance Provisions.

1. Definitions

Bushel. A unit of measure equal to 55 pounds of avocados, unless otherwise specified in the Special Provisions.

Buckhorn. To prune any limb at a diameter of at least four inches.

Crop year. A period beginning with the date insurance attaches to the avocado crop and extending through the normal harvest time. The crop year is designated by the calendar year after insurance attaches.

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the fields for the purpose of picking all or a portion of the crop.

Harvest. Picking of the avocados from the trees or ground by hand or machine.

Pound. A unit of weight equal to sixteen ounces avoirdupois.

Set out. Transplanting a tree into the grove.

Type. Avocados that are either early varieties or late varieties.

2. Unit Division

Provisions in section 34 of the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established by type when provided for in the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one coverage level for all the avocados in the county insured under this policy unless the Special Provisions provide that you may select one coverage level for each avocado type designated in the Special Provisions. However, if you elect the catastrophic risk protection (CAT) level of coverage, the CAT level of coverage will be applicable to all insured types of avocados in the county.

(b) You may select only one price election for all the avocados in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each avocado type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must choose 100 percent of the maximum price election for all other types.

(c) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type if applicable:

(1) Any damage, removal of trees, trees that have been buckhorned, change in grove practices, or any other circumstance that may reduce the expected yield per acre to less than the yield upon which the production guarantee per acre is based, and the number of affected acres;

(2) The number of trees on insurable and uninsurable acreage;

(3) The age of the trees;

(4) Any acreage that is excluded under section 6 of these Crop Provisions; and

(5) For acreage interplanted with another crop:

(i) The age of the interplanted crop, and type if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your production guarantee per acre.

(d) We will reduce the yield used to establish your production guarantee as necessary, based on the effect of interplanting a perennial crop; removal of trees; trees that have been buckhorned; damage; or a change in practices on the yield potential of the insured crop. If you fail to notify us of any circumstance as set out in paragraph (c) of this section, we will reduce your production guarantee in accordance with the Special Provisions at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are the first November 30th after insurance attaches.

6. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the commercially-grown avocado types in the county listed in the Special Provisions for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That are grown for harvest as avocados; and

(3) That are grown on trees that, if inspected, are considered acceptable to us.

(b) In addition to the avocados not insurable in section 8 of the Basic Provisions, we do not insure any avocados produced on trees that have not reached the fourth growing season after setout and have not produced the minimum production per acre as specified in the Special Provisions in at least one of the previous three crop years.

7. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions that prohibits insurance attaching to a crop planted with another crop, avocados interplanted with another perennial crop are insurable unless we inspect the acreage and determine it does not meet the requirements of insurability contained in these Crop Provisions.

8. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) For the year of application, if you apply for coverage:

(i) On or before November 21st, coverage begins for the crop year on December 1 of the calendar year (You must provide any information we require so we may determine the condition of the grove to be insured.); or

(ii) After November 21 but prior to December 1, insurance will attach on the 10th day after your properly completed application, acreage and production reports are received in our local office, unless we inspect the

acreage during the 10 day period and determine that it does not meet the requirements for insurability contained in your policy (You must provide any information we require so we may determine the condition of the grove to be insured.).

(2) For continuous policies, coverage begins for the crop year on December 1 of the calendar year. Policy cancellation that results solely from transferring an existing policy to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) The calendar date for the end of the insurance period, unless otherwise specified in the Special Provisions, is:

(i) The first November 30th after insurance attaches for early varieties of avocados.

(ii) The second March 31st after insurance attaches for late varieties of avocados.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) If you acquire an insurable share in any insurable acreage of avocados after coverage begins, but on or before the acreage reporting date of any crop year, and if after inspection we consider the acreage acceptable, then insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any acreage of avocados on or before the acreage reporting date of any crop year, insurance will not be considered to have attached to, no premium will be due and no indemnity paid for, such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity or a similar form approved by us is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the grove;

(3) Wildlife, unless control measures have not been taken;

(4) Earthquake;

(5) Volcanic eruption;

(6) Failure of the irrigation water supply caused by an insured peril specified in section 9(a)(1) through (5) that occurs during the insurance period.

(7) Insects, but not damage due to insufficient or improper application of pest control measures; and

(8) Plant disease, but not due to insufficient or improper application of disease control measures.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) Theft; or

(2) Inability to market the avocados for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production, etc.

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(a) You must notify us at least 15 days before any production from any unit will be direct marketed.

(1) We will conduct a preharvest appraisal that will be used to determine your production. If damage occurs after the preharvest appraisal, and you can provide acceptable records to us that account for all production removed from the unit after our appraisal, we will conduct an additional appraisal that will be used to determine your production.

(2) Failure to give timely notice that production will be direct marketed will result in an appraised production to count of not less than the production guarantee per acre if such failure results in an inability to make an accurate appraisal.

(b) If you intend to claim an indemnity on any unit, you must notify us 15 days prior to the beginning of harvest or immediately if damage is discovered during harvest so that we may inspect the damaged production.

(1) You must not destroy the damaged crop until after we have given you written consent to do so.

(2) If you fail to meet the requirements of this subsection, and such failure results in our inability to inspect the damaged production, we may consider all such production to be undamaged and include it as production to count.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide production records:

(1) For any optional unit, we will combine all optional units for which acceptable production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election for each type if applicable;

(3) Totaling the results in section 11(b)(2);

(4) Multiplying the total production to be counted by type, if applicable (see subsection 11(c)), by the respective price election;

(5) Totaling the results in section 11(b)(4);

(6) Subtracting the results in section 11(b)(5) from the results in section 11(b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

For example:

You have a 100 percent share in 50 acres of early variety A in the unit, with a guarantee of 140 bushels per acre and a price election of $16.00 per bushel. You are only able to harvest 6,000 bushels due to an insured cause of loss. Your indemnity would be calculated as follows:

(1) 50 acres × 140 bushels = 7,000 bushel guarantee;

(2) 7,000 bushels × $16.00 price election = $112,000.00 value of guarantee;

(4) 6,000 bushels × $16.00 price election = $96,000.00 value of production to count;

(6) $112,000.00 − $96,000.00 = $16,000 loss; and

(7) $16,000 × 100 percent = $16,000 indemnity.

(c) The total production to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) That is direct marketed if you fail to meet the requirements contained in section 10 of these Crop Provisions;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production;

(iv) Potential production on insured acreage that you intend to abandon or

no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to adequately care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

Signed in Washington, DC, on May 12, 2009.

William J. Murphy,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. E9–11693 Filed 5–19–09; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0452; Directorate Identifier 2007–NM–326–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The existing AD currently requires a one-time inspection for scribe lines and cracks in the fuselage skin at certain lap joints, butt joints, external repair doublers, and other areas; and related investigative/corrective actions if necessary. This proposed AD would expand the area to be inspected and, for certain airplanes, require earlier inspections for certain inspection zones. This proposed AD results from additional detailed analysis of fuselage skin cracks adjacent to the skin lap joints on airplanes that had scribe lines; the analysis resulted in different inspection zones, thresholds and repetitive intervals, and airplane groupings. We are proposing this AD to prevent rapid decompression of the airplane due to fatigue cracks resulting from scribe lines on pressurized fuselage structure.

DATE: We must receive comments on this proposed AD by July 6, 2009.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0452; Directorate Identifier 2007–NM–326–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On March 20, 2006, we issued AD 2006–07–12, amendment 39–14539 (71 FR 16211, March 31, 2006), for all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That AD requires a one-time inspection for scribe lines and cracks in the fuselage skin at certain lap joints, butt joints, external repair doublers, and other areas; and related investigative/corrective actions if necessary. That AD resulted from reports of fuselage skin cracks adjacent to the skin lap joints on airplanes that had scribe lines. Scribe line damage can also occur at many other locations, including butt joints, external doublers, door scuff plates, the wing-to-body fairing, and areas of the fuselage where decals have been applied or removed. We issued that AD to prevent rapid decompression of the airplane due to fatigue cracks resulting from scribe lines on pressurized fuselage structure.

Related ADs

This proposed AD is similar to AD 2007–19–07, amendment 39–15198 (72 FR 60244, October 24, 2007), which applies to all Boeing Model 757–200, –200PF, and –200CB series airplanes. That AD requires inspections to detect scribe lines in the fuselage skin at certain lap joints, butt joints, external repair doublers, and other areas; and related investigative/corrective actions if necessary. Those actions resulted from reports of fuselage skin cracks adjacent to the skin lap joints on airplanes that had scribe lines.

Actions Since Existing AD Was Issued

AD 2006–07–12 cites Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004, as the appropriate source of service information for the scribe line inspection. Since we issued that AD, Boeing issued Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008. Revisions to the service bulletin were based on additional detailed analysis that indicated the need to inspect some affected areas of the skin. In addition, based on the additional analysis, the service bulletin establishes two new inspection zones, Zone 4 and Zone 5, with thresholds of 50,000 and 60,000 flight cycles, respectively, since first scribe opportunity. The revised service bulletin designated certain areas of fuselage skin into other inspection zones, and some of those areas might now require inspections earlier than required by the existing AD. These areas are to be inspected within 4,500 flight cycles from the effective date of the new AD or prior to the revised zonal threshold, whichever is later.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2006–07–12 and retain the requirements of the existing AD, require inspection of newly added Zones 4 and 5, reduce certain compliance thresholds, and require inspection results to be sent to Boeing.

In addition, we have moved the content of paragraph (p)(4) of AD 2006–07–12 (from its location under the "Alternative Methods of Compliance" heading) to new paragraph (w) in this NPRM. New paragraph (w) specifies that a repair plan approved by a Boeing Company Authorized Representative or Designated Engineering Representative is acceptable for compliance with certain repair requirements of the proposed AD (provided certain conditions have been met). The provisions in paragraph (w) are considered a different repair method—not an alternative method of compliance (AMOC), which can be issued only after an AD has been issued.

Differences Between Proposed AD and Service Bulletin

Boeing Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

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

Costs of Compliance

There are about 2,685 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs, including the costs for the new proposed inspection areas in Zones 4 and 5, for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS REQUIRED BY AD 2006–07–12

Zone	Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
1	Sealant removal	66	$80	$5,280	787	$4,155,360
	Inspection	4	80	320	787	251,840
2	Sealant removal	36	80	3,040	787	2,392,480
	Inspection	29	80	2,320	787	1,825,840
3	Sealant removal	88	80	7,040	787	5,540,480
	Inspection	38	80	3,040	787	2,392,480

ESTIMATED COSTS REQUIRED BY NEW ACTIONS OF THIS AD

Zone	Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
4	Sealant removal	15	$80	$1,200	787	$944,400
	Inspection	1	80	80	787	62,960
5	Sealant removal	31	80	2,480	787	1,951,760
	Inspection	2	80	160	787	125,920

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, Incorporation by reference, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14539 (71 FR 16211, March 31, 2006) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2009–0452; Directorate Identifier 2007–NM–326–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 6, 2009.

Affected ADs

(b) This AD supersedes AD 2006–07–12.

Applicability

(c) This AD applies to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from reports of fuselage skin cracks adjacent to the skin lap joints on airplanes that had scribe lines. Scribe line damage can also occur at many other locations, including butt joints, external doublers, door scuff plates, the wing-to-body fairing, and areas of the fuselage where decals have been applied or removed. We are issuing this AD to prevent rapid decompression of the airplane due to fatigue cracks resulting from scribe lines on pressurized fuselage structure.

Compliance

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

Restatement of Requirements of AD 2006–07–12

Inspection

(g) Do a detailed inspection for scribe lines and cracks in the fuselage skin at certain lap joints, butt joints, external repair doublers, and other areas, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004, except as provided by paragraphs (h), (k), (l), (m), (n), and (o) of this AD. Except as required by paragraph (q) of this AD, do the actions at the time specified in paragraph 1.E., "Compliance," of the service bulletin, except as required by paragraph (j) of this AD. Acceptable inspection exemptions are described in paragraph 1.E.1. of Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004.

(1) If no scribe line is found, no further work is required by this paragraph.

(2) If any scribe line is found: Do all applicable investigative and corrective actions at the time specified in paragraph 1.E. of Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004, by doing all applicable actions specified in the service bulletin, except as required by paragraph (h) of this AD.

Note 1: A detailed inspection is defined in Note 10 of Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004, under paragraph 3.A., "General Information." Specific magnification requirements may be specified in the steps of the Work Instructions.

Exceptions to and Clarification of Service Bulletin 737–53A1262 Procedures

(h) Paragraph (g) of this AD requires accomplishment of Parts 1 through 11 of Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004. Parts 12 and 13 of the service bulletin may be accomplished, if applicable, to allow temporary return to service. This AD does not require accomplishment of Part 14 of the service bulletin, although the FAA-approved procedures described in Part 14 are acceptable for continued operation with scribe lines found before the applicable compliance time.

(i) If any scribe line or crack is found during any inspection required by paragraph (g) of this AD, and Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004, specifies to contact Boeing for appropriate action: Before further flight, inspect or repair scribe lines and repair cracks using a method approved in accordance with the procedures specified in paragraph (x) of this AD.

(j) Where Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004, specifies a compliance time after the issuance of the service bulletin, this AD requires compliance within the specified compliance time after May 5, 2006 (the effective date of AD 2006–07–12).

(k) Certain figures are incorrectly identified in Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004. The figure cited in Part 8, step 3, should be Figure 39, not Figure 38. The figure cited in Part 9, step 4, should be Figure 38, not Figure 39.

(l) If the operator's records show that the airplane has never been stripped and repainted under the dorsal fin fairing since delivery from Boeing, then this AD does not require inspections of the butt joint, lap joint, and repair, as specified in paragraph (g) of this AD, in the areas under the dorsal fin fairing.

(m) Figure 37 of Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004, defines "Restricted Zones" at door cutouts as the only affected structure. Paragraph (g) of this AD considers this area to also include Zone 1B.

(n) In Figure 1, sheets 2 and 3, of Boeing Service Bulletin 737–53A1262, dated December 9, 2004, the first condition for the initial compliance threshold for Areas B, C, and E is for areas where the cutout modification shown in Boeing Service Bulletin 737–53A1177 was accomplished. Paragraph (g) of this AD considers this condition to also include Zone 1B.

(o) In Figure 1, sheets 2 and 3, of Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004, the second condition for the initial compliance threshold for Areas B, C, and E is for areas where the cutout modification shown in Boeing Service Bulletin 737–53A1177 was not accomplished. Paragraph (g) of this AD considers this condition to apply only to Zone 1A.

Reporting Requirement

(p) For airplanes on which inspections have been done in accordance with Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004: At the applicable time specified in paragraph (p)(1) or (p)(2) of this AD, submit a report of positive findings of cracks found during the inspection required by paragraph (g) of this AD to the Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Alternatively, operators may submit reports to their Boeing field service representatives. The report shall contain, as a minimum, the following information: airplane serial number, flight cycles at time of discovery, location(s) and extent of positive crack findings. 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) If the inspection was done before May 5, 2006: Send the report within 30 days after May 5, 2006.

(2) If the inspection was done after May 5, 2006: Send the report within 30 days after the inspection is done.

New Requirements of This AD

Inspection

(q) As of the effective date of this AD, the actions for Zones 1, 2, and 3, as specified in paragraph (g) of this AD, must be done in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008, and at the applicable times specified in paragraph 1.E., "Compliance," of Revision 3 of the service bulletin, except as specified in paragraph (s) of this AD.

Note 2: Paragraph 1.E.5. of Boeing Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008, provides a grace period for airplanes that have exceeded the revised thresholds.

Inspection of Zones 4 and 5

(r) Do a detailed inspection for scribe lines and cracks in Zones 4 and 5 (adjacent to lap joints on skin panels that do not have bonded doublers), as specified in Boeing Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008. Except as provided by paragraph (s) of this AD, do the actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008, and at the applicable time specified in paragraph 1.E., "Compliance," of the service bulletin, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later.

(1) If no scribe line or crack is found: No further work is required by this paragraph.

(2) If any scribe line or crack is found: Do all applicable investigative and corrective actions at the time specified in paragraph 1.E. of Boeing Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008, by doing all applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008, except as required by paragraph (s)(1) of this AD.

Exceptions to Specifications of Boeing Alert Service Bulletin 737–53A1262, Revision 3, Dated October 16, 2008

(s) The following exceptions to Boeing Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008, apply to this AD:

(1) If any scribe line or crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008, specifies to contact Boeing for appropriate action: Before further flight, inspect or repair scribe lines and repair cracks using a method approved in accordance with the procedures specified in paragraph (x) of this AD.

(2) Where Boeing Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008, specifies a compliance time after the issuance of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(3) If the operator's records show that the airplane has never been stripped and repainted under the dorsal fin fairing since delivery from Boeing, then this AD does not require inspections of the butt joint, lap joint, and repair, as specified in paragraphs (g), (q), and (r) of this AD, in the areas under the dorsal fin fairing.

(4) For airplanes in Groups 3 and 29, as identified in Boeing Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008: At the applicable times specified in paragraphs (s)(4)(i), (s)(4)(ii), and (s)(4)(iii) of this AD, perform a detailed inspection for scribe lines and cracks on the main cargo door along the lower edge of the upper hinge, around external repairs, and around decals, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008, or using a method approved in accordance with the procedures specified in paragraph (x) of this AD. If no scribe line or crack is found, no further work is required by this paragraph. If any scribe line or crack is found, do all applicable related investigative and corrective actions at the time specified in paragraph 1.E. of Boeing Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008, by doing all applicable actions specified in the Accomplishment Instructions of the service bulletin, except as required by paragraphs (s)(1), (s)(2), and (s)(3) of this AD.

(i) For areas along the lower edge of the door hinge from BS 360 to BS 500, the initial compliance threshold is to be determined using Zone 1B.

(ii) For external repairs, the initial compliance threshold is to be determined using Zone 1B.

(iii) For decals, the initial compliance threshold is to be determined using Zone 2.

(5) For Group 11 airplanes, as specified in Boeing Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008: Stringer 20R between BS 727C and BS 727D+10 is in Zone 1B.

Actions Accomplished in Accordance With Previous Service Information

(t)(1) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–53A1262, dated December 9, 2004, are acceptable for compliance with the corresponding requirements of paragraph (q) of this AD.

(2) Actions accomplished before the effective date of this AD in accordance with the Boeing Service Bulletin 737–53A1262, Revision 1, dated March 1, 2007; or Revision 2, dated September 20, 2007; are acceptable for compliance with the corresponding requirements of paragraphs (g), (q), and (r) of this AD.

Clarification of Procedures in the Service Bulletin

(u) For airplanes on which inspections are done as of the effective date of this AD: This AD requires accomplishment of Parts 1 through 11, 15, and 16 of Boeing Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008. Parts 12 and 13 of Boeing Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008, may be accomplished, if applicable, to allow temporary return to service. This AD does not require accomplishment of Part 14 of Boeing Alert Service Bulletin 737–53A1262, Revision 3, dated October 16, 2008, although the FAA-approved procedures described in Part 14 are acceptable for continued operation with scribe lines found before the applicable compliance time.

Report

(v) For airplanes on which inspections are done in accordance with the service information identified in Table 1 of this AD: At the applicable time specified in paragraph (v)(1) or (v)(2) of this AD, submit a report of positive findings of cracks found during the inspections required by paragraphs (q), (r), and (s)(4) of this AD to the Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Alternatively, operators may submit reports to their Boeing field service representatives. The report must contain, as a minimum, the following information: airplane serial number, flight cycles at time of discovery, location(s) and extent of positive crack findings. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) For an inspection done before the effective date of this AD: Send the report within 30 days after the effective date of this AD.

(2) For an inspection done after the effective date of this AD: Send the report within 30 days after the inspection is done.

TABLE 1—SERVICE INFORMATION

Boeing service information	Revision	Date
Alert Service Bulletin 737–53A1262	3	October 16, 2008.
Service Bulletin 737–53A1262	1	March 1, 2007.
Service Bulletin 737–53A1262	2	September 20, 2007.

Repair Plan In Lieu of Required Inspections

(w) A repair plan approved by a Boeing Company Authorized Representative or Designated Engineering Representative before the effective date of this AD is acceptable for compliance with the requirements of paragraphs (g)(2), (i), (q), (r), (s)(1), and (s)(4) of this AD, provided the approval was documented via FAA Form 8110–3 or 8100–9, and identified scribe line damage in the title of the form.

Alternative Methods of Compliance (AMOCs)

(x)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19. Send information to ATTN: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

(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 principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(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 (AR) 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 approval must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, WA, on May 6, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–11707 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0464; Directorate Identifier 2008–NM–189–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

There have been several occurrences of cracked elevator trim tab balance weight attachment brackets. On one occasion, the elevator trim tab mass balance weight bracket separated from the aircraft. The loss of an elevator trim tab mass balance weight bracket has the potential to cause damage to an aircraft, or cause serious injury to personnel. * * *

* * * * *

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

DATES: We must receive comments on this proposed AD by June 19, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Short Brothers PLC, Airworthiness, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland; telephone +44(0)2890–462469; fax +44(0)2890–468444; e-mail *michael.mulholland@aero.bombardier.com*; Internet *http://www.bombardier.com*.

You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0464; Directorate Identifier 2008–NM–189–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On July 23, 2008, we issued AD 2008–16–09, amendment 39–15627 (73 FR 46543, August 11, 2008). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2008–16–09, Short Brothers advised that SD3–07–6011xA brackets manufactured in 2005 or later have a life limit of 28,800 flight hours, per Section 5–00–02 of the Short Brothers SD360 Aircraft Maintenance Manual (AMM), and as noted in Appendix 1 of Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007. In light of this, we have revised the existing AD to propose extending the life limit of any balance weight bracket from 1,750 flight hours to 28,800 flight hours. You may obtain further information by examining the MCAI in the AD docket.

In addition, we removed paragraphs (f) and (l)(1) of the existing AD from this proposed AD. Those paragraphs define the use of the term "service bulletin," as used in the AD.

Relevant Service Information

Shorts has issued Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 21 products of U.S. registry. We also estimate that it would take about 8 to 12 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $632 to $864 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $26,712 to $38,304, or $1,272 to $1,824 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15627 (73 FR 46543, August 11, 2008) and adding the following new AD:

Short Brothers PLC: Docket No. FAA–2009–0464; Directorate Identifier 2008–NM–189–AD.

Comments Due Date

(a) We must receive comments by June 19, 2009.

Affected ADs

(b) The proposed AD revises AD 2008–16–09, Amendment 39–15627.

Applicability

(c) This AD applies to all Shorts Model SD3–60 airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

Reason

(e) The mandatory continuing airworthiness information (MCAI) (*i.e.*, EASA Airworthiness Directive 2007–0107–E, dated April 18, 2007) states:

There have been several occurrences of cracked elevator trim tab balance weight attachment brackets. On one occasion, the elevator trim tab mass balance weight bracket separated from the aircraft. The loss of an elevator trim tab mass balance weight bracket has the potential to cause damage to an aircraft, or cause serious injury to personnel.

* * *

* * * * *

Compliance

(f) 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 2004–13–08, Amendment 39–13690

Initial Inspection

(g) Within 2 months after August 3, 2004 (the effective date of AD 2004–13–08, amendment 39–13690): Do a dye penetrant inspection for cracking in the welded joints of the balance weight brackets for the left and right elevator trim tabs, in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003; Shorts Service Bulletin SD360–55–20, Revision 1, dated June 20, 2005; or Shorts Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007.

Investigative and Corrective Actions if No Cracking Is Found

(h) If no cracking is found during the inspection required by paragraph (g) of this AD, do the actions required by paragraphs (h)(1) and (h)(2) of this AD at the applicable compliance times.

(1) Repeat the inspection required by paragraph (g) of this AD at intervals not to

exceed 4,800 flight hours until the bracket is replaced per paragraph (h)(2) or (i) of this AD.

(2) Prior to the accumulation of 28,800 total flight hours, or within 6 months after August 3, 2004, whichever occurs later: Replace any bracket that has not been replaced per paragraph (i) of this AD with a new bracket or with a serviceable bracket that has been inspected in accordance with paragraph (g) of this AD. Replace in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003; Shorts Service Bulletin SD360–55–20, Revision 1, dated June 20, 2005; or Shorts Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007. Replacement of the brackets constitutes terminating action for the repetitive inspections required by paragraph (h)(1) of this AD.

Corrective Actions if Any Cracking Is Found

(i) If any cracking is found during any inspection required by paragraph (g) or (h) of this AD: Before further flight, accomplish the applicable action in paragraph (i)(1) or (i)(2) of this AD in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003; Shorts Service Bulletin SD360–55–20, Revision 1, dated June 20, 2005; or Shorts Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007.

(1) For airplanes that have accumulated less than 28,800 flight hours and on which all cracking on brackets is less than 0.25 inch in length: Repair the affected bracket in accordance with Part B of the Accomplishment Instructions of Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003; Shorts Service Bulletin SD360–55–20, Revision 1, dated June 20, 2005; or Shorts Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007 (including the additional dye penetrant inspection of the repaired welded joint); and repeat the inspection required by paragraph (g) of this AD at intervals not to exceed 4,800 flight hours; or replace the bracket in accordance with paragraph (h)(2) of this AD. Replacement of the bracket constitutes terminating action for the repetitive inspections.

(2) For any airplane on which any cracking on a bracket is 0.25 inch in length or greater, and for any airplane that has accumulated 28,800 flight hours or more on which any cracking of any length is found on a bracket: Replace the affected bracket with a new bracket or with a serviceable bracket that has been inspected in accordance with paragraph (g) of this AD. Replacement of the bracket constitutes terminating action for the repetitive inspections required by paragraph (i)(1) of this AD.

Refitting

(j) Before further flight following any inspection per paragraph (g) or (h) of this AD; or before further flight following repair or replacement of a bracket per paragraph (h)(2) or (i) of this AD: Refit the balance weights, covers, and trim tabs, in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003; Shorts Service Bulletin SD360–55–20, Revision 1, dated June 20, 2005; or Shorts Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007. Where the Accomplishment Instructions of Short Brothers Service Bulletin SD360–55–20, dated June 26, 2003; Shorts Service Bulletin SD360–55–20, Revision 1, dated June 20, 2005; or Shorts Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007; specify to contact the manufacturer for disposition of certain conditions while refitting, obtain further disposition instructions from the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

Parts Installation

(k) As of August 3, 2004, no person may install on any airplane a balance weight bracket unless the welded joint has been inspected in accordance with paragraph (g) of this AD.

Restatement of Requirements of AD 2005–04–13, Amendment 39–13985

Return of Parts to Manufacturer Not Required

(l) Although the Accomplishment Instructions of Short Brothers Alert Service Bulletin SD360–55–A21, dated December 16, 2004; or Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007; specify to return subject parts to the manufacturer, this AD does not include that requirement.

Repetitive Inspections

(m) For airplanes equipped with balance weight brackets of the elevator trim tabs having part number SD3–07–6011xA, and having a serial number beginning with "X3" or "X4": Prior to the accumulation of 250 flight hours since installation of the subject balance weight bracket of the elevator trim tab, or within 30 flight hours after March 14, 2005 (the effective date of AD 2005–04–13), whichever is later, do a dye penetrant inspection for cracking of the balance weight brackets for the left and right elevator trim tabs, in accordance with Short Brothers Alert Service Bulletin SD360–55–A21, dated December 16, 2004; or Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007.

(1) For a balance weight bracket on which no cracking is found: Do paragraph (o) of this AD, and repeat the inspection thereafter at intervals not to exceed 250 flight hours until paragraph (m) of this AD is accomplished.

(2) For a balance weight bracket on which any cracking is found: Before further flight, replace the bracket with a new or reworked balance weight bracket that conforms to the approved design standard, in accordance with Short Brothers Alert Service Bulletin SD360–55–A21, dated December 16, 2004; or Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007; and do paragraph (o) of this AD.

Optional Terminating Action

(n) For airplanes equipped with balance weight brackets of the elevator trim tabs having part number SD3–07–6011xA, and having a serial number beginning with "X3" or "X4": Replacement of any subject balance weight bracket with a new or reworked balance weight bracket that conforms to the approved design standard, in accordance with the Accomplishment Instructions of Short Brothers Alert Service Bulletin SD360–55–A21, dated December 16, 2004; or Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007; constitutes terminating action for the repetitive inspections required by paragraph (m) of this AD for the replaced bracket.

Refitting

(o) For airplanes equipped with balance weight brackets of the elevator trim tabs having part number SD3–07–6011xA, and having a serial number beginning with "X3" or "X4:" Before further flight following any inspection or replacement of a bracket in accordance with paragraphs (m) and (n) of this AD: Refit the balance weights, covers, and trim tabs, in accordance with the Accomplishment Instructions of Short Brothers Alert Service Bulletin SD360–55–A21, dated December 16, 2004; or Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007. Where the Accomplishment Instructions of Short Brothers Alert Service Bulletin SD360–55–A21, dated December 16, 2004; or Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007; specify to contact the manufacturer for disposition of certain conditions while refitting, obtain further disposition instructions from the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

Parts Installation

(p) For all airplanes: As of March 14, 2005, no person may install, on any airplane subject to this AD, a balance weight bracket having part number SD3–07–6011xA, and having a serial number beginning with "X3" or "X4," unless the bracket is also marked "Rework batch number R–Bxxxxx" (where "xxxxx" is a number).

Restatement of Requirements of AD 2008–16–09, Amendment 39–15627, With Extended Repetitive Interval in Paragraph (q)(2)

Inspection(s) and Replacements

(q) For airplanes equipped with balance weight brackets of the elevator trim tabs having part number SD3–07–6011xA manufactured in the year 2003 or 2004, including reworked brackets, installed in accordance with paragraph (h)(2), (i)(2), or (n) of this AD, as applicable: Do the actions specified in paragraphs (q)(1) and (q)(2) of this AD in accordance with Parts A and B of the Accomplishment Instructions of Shorts Alert Service Bulletin SD360–55–A21, Revision 1, dated March 29, 2007.

(1) Within 30 flight hours after September 15, 2008 (the effective date of AD 2008–16–09) or within 250 flight hours since installation of the balance weight brackets of the elevator trim tabs or since the last inspection required by paragraph (g), (h)(1), (i)(1), or (m) of this AD, whichever occurs

later: Do a dye penetrant inspection to detect cracks of the balance weight brackets of the elevator trim tabs.

(i) If no crack is detected, repeat the dye penetrant inspection at intervals not to exceed 250 flight hours, until the replacement required by paragraph (q)(2) of this AD is done.

(ii) If any crack is detected, before further flight, do the replacement specified in paragraph (q)(2) of this AD.

(2) Before the accumulation of 1,750 flight hours since installation of the balance weight brackets of the elevator trim tabs, or within 180 days after September 15, 2008, whichever occurs later: Replace the balance weight brackets with new balance weight brackets manufactured in 2005 or later. Thereafter, replace any balance weight bracket with a new bracket manufactured in 2005 or later at intervals not to exceed the accumulation of 28,800 flight hours on that bracket. Accomplishment of the initial replacement ends the repetitive inspection requirements of this AD.

(r) For airplanes equipped with balance weight brackets of the elevator trim tabs having part number SD3–31–6213xB inspected in accordance with paragraph (g), (h)(1), or (i)(1) of this AD and retained or refitted following approved repair in accordance with paragraph (j) of this AD: Do the actions specified in paragraphs (r)(1) and (r)(2) of this AD in accordance with Parts A and B of the Accomplishment Instructions of Shorts Alert Service Bulletin SD360–55–20, Revision 2, dated March 29, 2007.

(1) Within 4,800 flight hours since last inspection, or within 180 days after September 15, 2008, whichever occurs later, and thereafter at intervals not to exceed 4,800 flight hours: Do a dye penetrant inspection to detect cracks of the balance weight brackets of the elevator trim tabs.

(i) If no crack is detected, repeat the dye penetrant inspection at intervals not to exceed 4,800 flight hours, until the replacement required by paragraph (r)(2) of this AD is done.

(ii) If any crack is detected, before further flight, do the replacement specified in paragraph (r)(2) of this AD.

(2) Before the accumulation of 28,800 flight hours since any balance weight bracket of the elevator trim tabs is new, or within 180 days after September 15, 2008, whichever occurs later: Replace the balance weight brackets with new balance weight brackets manufactured in 2005 or later. Thereafter, replace any balance weight bracket with a new bracket manufactured in 2005 or later at intervals not to exceed the accumulation of 28,800 flight hours on that bracket. Accomplishment of the initial replacement ends the repetitive inspection requirements of this AD.

Part Installation

(s) For all airplanes: As of September 15, 2008, no person may install, on any airplane, a balance weight bracket of the elevator trim tab manufactured earlier than 2005.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No Differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

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

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

Related Information

(u) Refer to MCAI EASA Airworthiness Directive 2007–0107–E, dated April 18, 2007, and the service bulletins identified in Table 1 of this AD for related information.

TABLE 1—RELATED SERVICE INFORMATION

Document	Revision	Date
Short Brothers Alert Service Bulletin SD360–55–A21	Original	December 16, 2004.
Short Brothers Service Bulletin SD360–55–20	Original	June 26, 2003.
Shorts Alert Service Bulletin SD360–55–A21	1	March 29, 2007.
Shorts Service Bulletin SD360–55–20	1	June 20, 2005.
Shorts Service Bulletin SD360–55–20	2	March 29, 2007.

Issued in Renton, WA, on May 11, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–11709 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0463; Directorate Identifier 2008–NM–065–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

A failure mode has been identified that can lead to loss of a nose wheel. Any combination of excessive wear and/or adverse tolerances on the axle inner cone, outer cone or wheel hub splined sleeve cones can result in the loss of the critical gap between the inner flange face of the wheel outer cone and the axle end face. If this gap is lost, it can result in the wheel having free play along the length of the axle. This condition, if not corrected, can result in breakage of the wheel nut lock plate leading to unscrewing of the wheel retention nut and

subsequent separation of the nose wheel from the landing gear axle.

* * * * *

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

DATES: We must receive comments on this proposed AD by June 19, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact BAE Systems Regional Aircraft, 13850 McLearen Road, Herndon, Virginia 20171; telephone 703–736–1080; e-mail *raebusiness@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0463; Directorate Identifier 2008–NM–065–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0036, dated February 22, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> A failure mode has been identified that can lead to loss of a nose wheel. Any combination of excessive wear and/or adverse tolerances on the axle inner cone, outer cone or wheel hub splined sleeve cones can result in the loss of the critical gap between the inner flange face of the wheel outer cone and the axle end face. If this gap is lost, it can result in the wheel having free play along the length of the axle. This condition, if not corrected, can result in breakage of the wheel nut lock plate leading to unscrewing of the wheel retention nut and subsequent separation of the nose wheel from the landing gear axle.
>
> For the reasons described above, this AD requires repetitive inspections of the nose landing gear to ensure that the wheels are correctly retained and, depending on findings, replacement of worn parts.

Required actions include inspecting the lock plate for damage (including excessive wear) and cracking, and replacing the lock plate with a new or serviceable part if any damage or cracking is found; inspecting the wheel nut for damage, and replacing any damaged nut with a new or serviceable part; and measuring the gap between the inner flange of the outer cone (at each of the three sections) and the end face of the axle to determine if parts are worn, and replacing worn parts with new or serviceable parts.

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

Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin J41–32–086, dated June 27, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 7 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,240, or $320 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII,

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2009–0463; Directorate Identifier 2008–NM–065–AD.

Comments Due Date

(a) We must receive comments by June 19, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model Jetstream 4101 airplanes, certificated in any category, all models, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

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

A failure mode has been identified that can lead to loss of a nose wheel. Any combination of excessive wear and/or adverse tolerances on the axle inner cone, outer cone or wheel hub splined sleeve cones can result in the loss of the critical gap between the inner flange face of the wheel outer cone and the axle end face. If this gap is lost, it can result in the wheel having free play along the length of the axle. This condition, if not corrected, can result in breakage of the wheel nut lock plate leading to unscrewing of the wheel retention nut and subsequent separation of the nose wheel from the landing gear axle.

For the reasons described above, this AD requires repetitive inspections of the nose landing gear to ensure that the wheels are correctly retained and, depending on findings, replacement of worn parts.

Required actions include inspecting the lock plate for damage (including excessive wear) and cracking, and replacing the lock plate with a new or serviceable part if any damage or cracking is found; inspecting the wheel nut for damage, and replacing any damaged nut with a new or serviceable part; and measuring the gap between the inner flange of the outer cone (at each of the three sections) and the end face of the axle to determine if parts are worn, and replacing worn parts with new or serviceable parts.

Actions and Compliance

(f) Unless already done, do the following actions for the left and right nose wheel attachments to the axle.

(1) Within 3 months after the effective date of this AD, inspect the lock plate for damage (including excessive wear) and cracking, inspect the wheel nut for damage, and measure the gap between the inner flange of the outer cone and the end face of the axle to determine if parts are worn, in accordance with paragraph 2.B. of BAE Systems (Operations) Limited Service Bulletin J41–32–086, dated June 27, 2007.

(2) If, during any inspection required by paragraph (f)(1) of this AD, any damage or cracking of the lock plate is found, before further flight, replace the lock plate with a new or serviceable part, in accordance with paragraph 2.B. of BAE Systems (Operations) Limited Service Bulletin J41–32–086, dated June 27, 2007.

(3) If, during any inspection required by paragraph (f)(1) of this AD, any damage of the wheel nut is found, before further flight, replace the wheel nut with a new or serviceable part, in accordance with paragraph 2.B. of BAE Systems (Operations) Limited Service Bulletin J41–32–086, dated June 27, 2007.

(4) If, during any measurement required by paragraph (f)(1) of this AD, the measured gap size is found to be less than 0.002 inch (0.05 mm), before further flight, replace any worn parts with new or serviceable parts, in accordance with paragraph 2.B. of BAE Systems (Operations) Limited Service Bulletin J41–32–086, dated June 27, 2007. Within 3,000 flight hours after doing the replacement, repeat the actions for the left and right nose wheel attachments to the axle that are required by paragraph (f)(1) of this AD.

(5) If, during any measurement required by paragraph (f)(1) of this AD, the measured gap size is equal to or more than 0.002 inch (0.05 mm), repeat the actions for the left and right nose wheel attachments to the axle that are required by paragraph (f)(1) of this AD thereafter at intervals not to exceed the value indicated in Table 1 of this AD, depending on the exact finding. If, during any repeat inspection, the finding has changed to another value (see Table 1), adjust the new interval accordingly.

TABLE 1—REPEAT INSPECTION INTERVALS

Measured gap size	Repeat inspection interval in flight hours
0.002 inch to 0.005 inch inclusive (0.05/0.13 mm).	500 flight hours.
Greater than 0.005 inch to less than or equal to 0.010 inch (0.13/0.25 mm).	1,000 flight hours.
Greater than 0.010 inch to less than or equal to 0.020 inch (0.25/0.51 mm).	2,000 flight hours.
Greater than 0.020 inch (0.51 mm).	3,000 flight hours.

Note 1: Replacement of parts does not constitute terminating action for the inspection requirements of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: Although BAE Systems (Operations) Limited Service Bulletin J41–32–086, dated June 27, 2007, does not specify an inspection following the replacement of the left and right nose wheel attachment to the axle for measurements less than 0.002 inch, paragraph (f)(4) of this AD requires an inspection within 3,000 flight hours after replacing the part.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, FAA, has the authority to approve

AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2008–0036, dated February 22, 2008; and BAE Systems (Operations) Limited Service Bulletin J41–32–086, dated June 27, 2007; for related information.

Issued in Renton, Washington, on May 7, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–11710 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–13–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1601, 1602, 1603, 1607, 1610, 1611, 1614, 1625, and 1690

RIN 3046–AA88

Amendment of Procedural and Administrative Regulations To Include the Genetic Information Nondiscrimination Act of 2008 (GINA)

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission ("EEOC" or "Commission") proposes to amend some of its existing regulations to include references to title II of the Genetic Information Nondiscrimination Act of 2008 ("GINA"), which prohibits employment discrimination based on genetic information.

DATES: Comments must be received on or before July 20, 2009.

ADDRESSES: Send written comments by mail to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE., Suite 6NE03F, Washington, DC 20507. Written comments of six or fewer pages may be faxed to the Executive Secretariat at (202) 663–4114. (There is no toll free FAX number.) Receipt of facsimile transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll free numbers.) Instead of sending written comments to EEOC, comments may be submitted to EEOC electronically on the Federal eRulemaking Portal: *http://www.regulations.gov*. After accessing this Web site, follow its instructions for submitting comments.

All comments received will be posted without change to *http://www.regulations.gov*, including any personal information you provide. Copies of the received comments also will be available for inspection in the EEOC Library by advance appointment only, from 9 a.m. to 5 p.m., Monday through Friday except legal holidays, from July 20, 2009 until the Commission publishes the rule in final form. Persons who schedule an appointment in the EEOC Library and need assistance to view the comments will be provided with appropriate aids upon request, such as readers or print magnifiers. To schedule an appointment to inspect the comments at the EEOC Library, contact the EEOC Library by calling (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll free numbers.)

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, (202) 663–4668, or Erin N. Norris, Senior Attorney, (202) 663–4876, Office of Legal Counsel, 131 M Street, NE., Washington, DC 20507. Copies of this rule are available in the following alternate formats: large print, braille, electronic computer disk, and audiotape. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–699–3362 (voice), 1–800–800–3302 (TTY), or 703–821–2098 (FAX—this is not a toll free number).

SUPPLEMENTARY INFORMATION: On May 21, 2008, President George W. Bush signed the Genetic Information Nondiscrimination Act of 2008 ("GINA") into law. Title II of GINA protects job applicants, current and former employees, labor union members, and apprentices and trainees from discrimination based on their genetic information. Title II of GINA's coverage corresponds with that of Title VII of the Civil Rights Act of 1964, as amended, covering employers with 15 or more employees, employment agencies, labor unions, and joint labor-management training programs, as well as federal sector employers. Title II will become effective on November 21, 2009. In a separate notice of proposed rulemaking, found at 74 FR 9056, EEOC issued proposed interpretive regulations under GINA. In the current rulemaking, EEOC is proposing to amend its procedural and administrative regulations to add references to GINA. In addition, EEOC is taking the opportunity to replace the outdated terms "handicap" and "handicaps" with the terms "disability" and "disabilities" throughout its regulations in Chapter XIV of Title 29 of the Code of Federal Regulations.

Regulatory Procedures

Executive Order 12866

The Commission has complied with the principles in section 1(b) of Executive Order 12866, Regulatory Planning and Review. This rule is not a "significant regulatory action" under section 3(f) of the Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Order.

Paperwork Reduction Act

This regulation contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because it only adds references and does not impose a burden on any business entities. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

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

Congressional Review Act

This action does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 29 CFR Parts 1601, 1602, 1603, 1607, 1610, 1611, 1614, 1625, and 1690

Administrative practice and procedure, Equal employment opportunity.

For the Commission.

Dated: May 12, 2009.

Stuart J. Ishimaru,

Acting Chairman.

Accordingly, it is proposed to amend 29 CFR parts 1601, 1602, 1603, 1607, 1610, 1611, 1614, 1625, and 1690 as follows:

PART 1601—PROCEDURAL REGULATIONS

1. The authority citation for part 1601 is revised to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117; 42 U.S.C. 2000ff to 2000ff–11.

2. Section 1601.1 is revised to read as follows:

§ 1601.1 Purpose.

The regulations set forth in this part contain the procedures established by the Equal Employment Opportunity Commission for carrying out its responsibilities in the administration and enforcement of title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and the Genetic Information Nondiscrimination Act of 2008. Section 107 of the Americans with Disabilities Act and section 207 of the Genetic Information Nondiscrimination Act incorporate the powers, remedies and procedures set forth in sections 705, 706, 707, 709 and 710 of the Civil Rights Act of 1964. Based on its experience in the enforcement of title VII, the Americans with Disabilities Act, and the Genetic Information Nondiscrimination Act, and upon its evaluation of suggestions and petitions for amendments submitted by interested persons, the Commission may from time to time amend and revise these procedures.

3. Section 1601.2 is revised to read as follows:

§ 1601.2 Terms Defined in Title VII of the Civil Rights Act, the Americans With Disabilities Act, and the Genetic Information Nondiscrimination Act.

The terms *person, employer, employment agency, labor organization, employee, commerce, industry affecting commerce, State* and *religion* as used in this part shall have the meanings set forth in section 701 of title VII of the Civil Rights Act of 1964. The term disability shall have the meaning set forth in section 3 of the Americans with Disabilities Act of 1990. The term *genetic information* shall have the meaning set forth in section 201 of the Genetic Information Nondiscrimination Act of 2008.

4. Section 1601.3 is amended by revising paragraph (a) to read as follows:

§ 1601.3 Other definitions.

(a) For the purposes of this part, the term *title VII* shall mean title VII of the Civil Rights Act of 1964; the term *ADA* shall mean the Americans with Disabilities Act of 1990; the term *GINA* shall mean the Genetic Information Nondiscrimination Act of 2008; the term *Commission* shall mean the Equal Employment Opportunity Commission or any of its designated representatives; *Washington Field Office* shall mean the Commission's primary non-Headquarters office serving the District of Columbia and surrounding Maryland and Virginia suburban counties and jurisdictions; the term *FEP agency* shall mean a State or local agency which the Commission has determined satisfies the criteria stated in section 706(c) of title VII; and the term *verified* shall mean sworn to or affirmed before a notary public, designated representative of the Commission, or other person duly authorized by law to administer oaths and take acknowledgements, or supported by an unsworn declaration in writing under penalty of perjury.

* * * * *

5. Section 1601.28 is amended as follows:

a. In paragraphs (a)(3) and (b)(1), remove the words "title VII or the ADA" and add in their place the words "title VII, the ADA, or GINA" wherever they appear;

b. Revise paragraph (e)(1) to read as follows:

§ 1601.28 Notice of right to sue: Procedure and authority.

* * * * *

(e) * * *

(1) Authorization to the aggrieved person to bring a civil action under title VII, the ADA, or GINA pursuant to section 706(f)(1) of title VII, section 107 of the ADA, or section 207 of GINA within 90 days from receipt of such authorization;

* * * * *

§§ 1601.6, 1601.7, 1601.10, 1601.11, 1601.13, 1601.18, 1601.21, 1601.22, 1601.24, 1601.25, 1601.26, 1601.30, 1601.70, and 1601.79 [Amended]

6. Remove the words "title VII or the ADA" and add in their place the words "title VII, the ADA, or GINA" wherever they appear in the following places:

a. § 1601.6(a);
b. § 1601.7(a);
c. § 1601.10;
d. § 1601.11(b);
e. § 1601.13(a)(3)(i), (a)(4)(i);
f. § 1601.18(a);
g. § 1601.21(a), (e)(2)(iii);
h. § 1601.22, third sentence;
i. § 1601.24(c);
j. § 1601.25;
k. § 1601.26(a);
l. § 1601.30(a);
m. § 1601.70(d);
n. § 1601.79.

§§ 1601.16, 1601.17, 1601.30, and 1601.34 [Amended]

7. Remove the words "title VII and the ADA" and add in their place the words "title VII, the ADA, and GINA" wherever they appear in the following places:

a. § 1601.16(a);
b. § 1601.17(a);
c. § 1601.30(a);
d. § 1601.34.

8. In the first sentence of § 1601.22 remove the words "the ADA or title VII" and add in their place the words "title VII, the ADA, or GINA" wherever they appear.

PART 1602—RECORDKEEPING AND REPORTING REQUIREMENTS UNDER TITLE VII, THE ADA, AND GINA

9. The authority citation for part 1602 is revised to read as follows:

Authority: 42 U.S.C. 2000e–8, 2000e–12; 44 U.S.C. 3501 *et seq.*; 42 U.S.C. 12117; 42 U.S.C. 2000ff–6.

10. The heading for part 1602 is revised to read as set forth above.

11. Section 1602.1 is revised to read as follows:

§ 1602.1 Purpose and scope.

Section 709 of title VII (42 U.S.C. 2000e), section 107 of the Americans with Disabilities Act (ADA) (42 U.S.C. 12117), and section 207(a) of the Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. 2000ff–6) require the Commission to establish regulations pursuant to which employers, labor organizations, joint labor-management committees, and employment agencies subject to those Acts shall make and

preserve certain records and shall furnish specified information to aid in the administration and enforcement of the Acts.

§§ 1602.11, 1602.12, 1602.19, 1602.26, 1602.37, 1602.45, and 1602.54 [Amended]

12. Remove the words "title VII or the ADA" and add in their place the words "title VII, the ADA, or GINA"; and remove the words "section 709(c) of title VII or section 107 of the ADA" and add in their place the words "section 709(c) of title VII, section 107 of the ADA, or section 207(a) of GINA" wherever they appear in the following places:

a. § 1602.11;
b. § 1602.12;
c. § 1602.19;
d. § 1602.26;
e. § 1602.37;
f. § 1602.45;
g. § 1602.54.

PART 1603—PROCEDURES FOR PREVIOUSLY EXEMPT STATE AND LOCAL GOVERNMENT EMPLOYEE COMPLAINTS OF EMPLOYMENT DISCRIMINATION UNDER SECTION 321 OF THE GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991

13. The authority citation for part 1603 is revised to read as follows:

Authority: 42 U.S.C. 2000e–16c; 42 U.S.C. 2000ff–6(b).

14. Section 1603.102(a) is revised to read as follows:

§ 1603.102 Filing a complaint.

(a) *Who may make a complaint.* Individuals referred to in § 1603.101 who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age, disability, or genetic information, or retaliated against for opposing any practice made unlawful by Federal laws protecting equal employment opportunity or for participating in any stage of administrative or judicial proceedings under Federal laws protecting equal employment opportunity may file a complaint not later than 180 days after the occurrence of the alleged discrimination.

* * * * *

PART 1607—UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)

15. The authority citation for part 1607 continues to read as follows:

Authority: Secs. 709 and 713, Civil Rights Act of 1964 (78 Stat. 265) as amended by the Equal Employment Opportunity Act of 1972 (Pub. L. 92–261); 42 U.S.C. 2000e–8, 2000e–12.

16. In § 1607.2(D), remove the word "handicap" and add in its place the word "disability."

PART 1610—AVAILABILITY OF RECORDS

17. The authority citation for part 1610 continues to read as follows:

Authority: 42 U.S.C. 2000e–12(a), 5 U.S.C. 552 as amended by Public Law 93–502, Public Law 99–570, and Public Law 105–231; for § 1610.15, non-search or copy portions are issued under 31 U.S.C. 9701.

18. Section 1610.7(a)(4) is revised to read as follows:

§ 1610.7 Where to make request; form.

(a) * * *

(4) Materials in office investigative files related to charges under: Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act (29 U.S.C. 206(d)); the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*); the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*); or the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff *et seq.*).

* * * * *

19. Section 1610.17(f) is revised to read as follows:

§ 1610.17 Exemptions.

* * * * *

(f) Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117) and Section 207(a) of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff–6) explicitly adopt the powers, remedies, and procedures set forth in sections 706 and 709 of title VII. Accordingly, the prohibitions on disclosure contained in sections 706 and 709 of title VII as outlined in paragraphs (b), (c), (d), and (e) of this section, apply with equal force to requests for information related to charges and executed statistical reporting forms filed with the Commission under the Americans with Disabilities Act or the Genetic Information Nondiscrimination Act.

* * * * *

PART 1611—PRIVACY ACT REGULATIONS

20. The authority citation for part 1611 continues to read as follows:

Authority: 5 U.S.C. 552a.

21. Section 1611.13 is amended by revising the introductory text, the first sentence of paragraph (a), and the first sentence of paragraph (c) to read as follows:

§ 1611.13 Specific Exemptions—Charge and complaint files.

Pursuant to subsection (k)(2) of the Act, 5 U.S.C. 552a(k)(2), systems EEOC–1 (Age and Equal Pay Act Discrimination Case Files), EEOC–3 (Title VII, Americans with Disabilities Act, and GINA Discrimination Case Files), EEOC–15 (Internal Harassment Inquiries) and EEOC/GOVT–1 (Equal Employment Opportunity Complaint Records and Appeal Records) are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act. The Commission has determined to exempt these systems from the above named provisions of the Privacy Act for the following reasons:

(a) The files in these systems contain information obtained by the Commission and other Federal agencies in the course of harassment inquiries, and investigations of charges and complaints that violations of Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Americans with Disabilities Act, the Rehabilitation Act, and the Genetic Information Nondiscrimination Act have occurred.

* * *

* * * * *

(c) Subject individuals of the files in EEOC–1 (Age and Equal Pay Act Discrimination Case Files), EEOC–3 (Title VII, Americans with Disabilities Act, and GINA Discrimination Case Files), and EEOC/GOVT–1 (Equal Employment Opportunity Complaint Records and Appeal Records) have been provided a means of access to their records by the Freedom of Information Act. * * *

* * * * *

PART 1614—FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY

22. The authority citation for part 1614 is revised to read as follows:

Authority: 29 U.S.C. 206(d), 633a, 791 and 794a; 42 U.S.C. 2000e–16 and 2000ff–6(e); E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; E.O. 11478, 3 CFR, 1969 Comp., p. 133; E.O. 12106, 3 CFR, 1978 Comp., p. 263; Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

23. Section 1614.101 is revised to read as follows:

§ 1614.101 General policy.

(a) It is the policy of the Government of the United States to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, age, disability, or genetic information and to

promote the full realization of equal employment opportunity through a continuing affirmative program in each agency.

(b) No person shall be subject to retaliation for opposing any practice made unlawful by title VII of the Civil Rights Act (title VII) (42 U.S.C. 2000e *et seq.*), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. 621 *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), the Rehabilitation Act (29 U.S.C. 791 *et seq.*), or the Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. 2000ff *et seq.*) or for participating in any stage of administrative or judicial proceedings under those statutes.

24. Section 1614.102(a)(4) is revised to read as follows:

§ 1614.102 Agency program.

(a) * * *

(4) Communicate the agency's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, national origin, age, disability, or genetic information, and solicit their recruitment assistance on a continuing basis;

* * * * *

25. Section 1614.103(a) is revised to read as follows:

§ 1614.103 Complaints of discrimination covered by this part.

(a) Individual and class complaints of employment discrimination and retaliation prohibited by title VII (discrimination on the basis of race, color, religion, sex and national origin), the ADEA (discrimination on the basis of age when the aggrieved individual is at least 40 years of age), the Rehabilitation Act (discrimination on the basis of disability), the Equal Pay Act (sex-based wage discrimination), or GINA (discrimination on the basis of genetic information) shall be processed in accordance with this part. Complaints alleging retaliation prohibited by these statutes are considered to be complaints of discrimination for purposes of this part.

* * * * *

26. Section 1614.105(a) is revised to read as follows:

§ 1614.105 Pre-complaint processing.

(a) Aggrieved persons who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age, disability, or genetic information must consult a Counselor prior to filing a complaint in order to try to informally resolve the matter.

* * * * *

27. Section 1614.204(a)(1) is revised to read as follows:

§ 1614.204 Class complaints.

(a) * * *

(1) A class is a group of employees, former employees or applicants for employment who, it is alleged, have been or are being adversely affected by an agency personnel management policy or practice that discriminates against the group on the basis of their race, color, religion, sex, national origin, age, disability, or genetic information.

* * * * *

28. Section 1614.302(a) is revised to read as follows:

§ 1614.302 Mixed case complaints.

(a) *Definitions*—(1) *Mixed case complaint.* A mixed case complaint is a complaint of employment discrimination filed with a federal agency based on race, color, religion, sex, national origin, age, disability, or genetic information related to or stemming from an action that can be appealed to the Merit Systems Protection Board (MSPB). The complaint may contain only an allegation of employment discrimination or it may contain additional allegations that the MSPB has jurisdiction to address.

(2) *Mixed case appeals.* A mixed case appeal is an appeal filed with the MSPB that alleges that an appealable agency action was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, disability, age, or genetic information.

* * * * *

29. Section 1614.304(b)(3) is revised to read as follows:

§ 1614.304 Contents of petition.

* * * * *

(b) * * *

(3) A statement of the reasons why the decision of the MSPB is alleged to be incorrect, in whole or in part, only with regard to issues of discrimination based on race, color, religion, sex, national origin, age, disability , or genetic information;

* * * * *

30. Section 1614.601 is amended as follows:

a. Remove the word "handicap" and add in its place the word "disability" wherever it appears in paragraphs (f) and (g);

b. Remove the word "handicaps" and add in its place the word "disabilities" wherever it appears in paragraph (f);

c. Remove the word "handicap(s)" and add in its place the word "disability" in paragraph (a).

31. Section 1614.702(j) is revised to read as follows:

§ 1614.702 Definitions.

* * * * *

(j) The term *basis of alleged discrimination* refers to the individual's protected status (*i.e.*, race, color, religion, reprisal, sex, national origin, Equal Pay Act, age, disability, or genetic information). Only those bases protected by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*, the Equal Pay Act of 1963, 29 U.S.C. 206(d), the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 621 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 *et seq.*, and the Genetic Information Nondiscrimination Act, 42 U.S.C. 2000ff *et seq.*, are covered by the Federal EEO process.

* * * * *

PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT

32. The authority citation for part 1625 continues to read as follows:

Authority: 81 Stat. 602; 29 U.S.C. 621, 5 U.S.C. 301, Secretary's Order No. 10–68; Secretary's Order No. 11–68; sec. 12, 29 U.S.C. 631, Pub. L. 99–592, 100 Stat. 3342; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

33. In § 1625.31(a), remove the word "handicapped" and add in its place the phrase "individuals with disabilities."

PART 1690—PROCEDURES ON INTERAGENCY COORDINATION OF EQUAL EMPLOYMENT OPPORTUNITY ISSUANCES

34. The authority citation for part 1690 continues to read as follows:

Authority: Sec. 715 of title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e–14); Reorganization Plan No. 1 of 1978, 43 FR 19807; E.O. 12067, 43 FR 28967.

35. In § 1690.102, remove the word "handicap" and add in its place the word "disability."

[FR Doc. E9–11560 Filed 5–19–09; 8:45 am]

BILLING CODE 6570–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2008–0786; FRL–8907–4]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request submitted by the Minnesota Pollution Control Agency (MPCA) on October 9, 2008, to revise the Minnesota State Implementation Plan (SIP) for particulate matter less than 10 microns (PM_{10}). The proposed approval revises the Minnesota SIP by updating information regarding the steel mini-mill facility located at 1678 Red Rock Road, St. Paul, Minnesota. It acknowledges the change of ownership and operation of the source from North Star Steel Company to Gerdau Ameristeel US, Inc. The revision also amends the SIP by removing the Administrative Order issued to North Star Steel Company, and replacing the SIP conditions from the Administrative Order and placing those SIP requirements in a joint Title I/Title V document for Gerdau Ameristeel US, Inc. These revisions will not result in an increase in PM_{10} emissions because no emission limits were increased.

DATES: Comments must be received on or before June 19, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0786, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. 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: Charles Hatten, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because EPA views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule.

EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: May 5, 2009.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. E9–11636 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2005–0161; FRL–8906–9]

RIN 2060–A081

Public Hearing for the RFS2 Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearing.

SUMMARY: The EPA is announcing a public hearing to be held for the proposed rule "Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program" (the proposed rule is hereinafter referred to as "RFS2"), which will be published separately in the **Federal Register**. The hearing will be held in Washington, DC on June 9, 2009.

In a separate notice of proposed rulemaking, EPA is proposing a regulation to implement changes to the Renewable Fuel Standard program as mandated by the Clean Air Act (as amended by Sections 201, 202, and 210 of the Energy Independence and Security Act of 2007). The revised statutory requirements specify the volumes of cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that must be used in transportation fuel each year, with the volumes increasing over time. The rule proposes regulations designed to ensure that refiners, blenders, and importers of gasoline and diesel would use enough renewable fuel each year so that the four volume requirements of the Energy Independence and Security Act would be met with renewable fuels that also meet the required lifecycle greenhouse gas emissions performance standards. The RFS2 proposed rule describes the standards that would apply to these parties and the renewable fuels that would qualify for compliance, and the proposed regulations make a number of changes to the current Renewable Fuel Standard program while retaining many elements of the compliance and trading system already in place. The signed notice of proposed rulemaking was posted on the EPA Web site prior to publication in the **Federal Register**, and contained the same public hearing date presented in this announcement.

DATES: The public hearing will be held on June 9, 2009 in Washington, DC. To register to testify at the hearing, notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** by June 1, 2009. Information regarding time of the hearing, as well as the Lifecycle Greenhouse Gas (GHG) workshop, is also listed below in **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The hearing will be held at the following location: Dupont Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036. Written comments on the proposed rule may also be submitted to EPA electronically, by mail, by facsimile, or through hand delivery/courier. Please refer to the notice of proposed rulemaking for the addresses and detailed instructions for submitting written comments.

When the proposed rule is published in the **Federal Register**, a complete set

of documents related to the proposal will be available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room 3334, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents are also available through the electronic docket system at *http://www.regulations.gov*. The EPA Web site for the rulemaking, which includes information about the public hearings and a copy of the signed proposal (which is essentially the same as the proposal that will be published) can be found at: *http://www.epa.gov/otaq/renewablefuels/index.htm*.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4131; fax number: (734) 214–4816; e-mail address: *macallister.julia@epa.gov*, or Assessment and Standards Division Hotline; telephone number (734) 214–4636; E-mail address: *asdinfo@epa.gov*.

SUPPLEMENTARY INFORMATION: The proposal for which EPA is holding the public hearing will be published separately in the **Federal Register**. A copy of the signed notice of proposed rulemaking, which is essentially the same as the proposal that will be published in the **Federal Register**, has been available since May 5, 2009, on the following Web site: *http://www.epa.gov/otaq/renewablefuels/index.htm*. The notice on the Web site contains the same public hearing date, addresses, and registration information presented in this announcement of public hearing.

Public Hearing: The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rule. The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments must be received by the last day of the comment period, as specified in the proposal of the RFS2 rule.

The public hearing will be held on June 9 in Washington, DC and will begin at 10 a.m. and end at 5 p.m., local time. To testify at the public hearing, please notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** by June 1, 2009.

Verbatim transcripts of the hearings and written statements will be included in the rulemaking docket.

Workshop: We will also hold a workshop on June 10–11, 2009 at the Dupont Hotel in Washington, DC to present details of our lifecycle GHG analysis. During this workshop, we intend to go through the lifecycle GHG analysis included in this proposal. The intent of this workshop is to help ensure a full understanding of our lifecycle analysis, the major issues identified and the options discussed. We expect that this workshop will help ensure that we receive submission of the most thoughtful and useful comments to this proposal and that the best methodology and assumptions are used for calculating GHG emissions impacts of fuels for the final rule. While this workshop will be held during the comment period, it is not intended to replace either the formal public hearing or the need to submit comments to the docket.

How Can I Get Copies of This Document, the Proposed Rule, and Other Related Information?

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0161. The EPA has also developed a Web site for the proposed RFS2 rule, including the notice of proposed rulemaking, at the address given above. Please refer to the notice of proposed rulemaking for detailed information on accessing information related to the proposal.

Dated: May 13, 2009.

Margo T. Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. E9–11644 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R06–RCRA–2008–0757; FRL–8905–5]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The State of Louisiana has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant Final authorization to the State of Louisiana. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATE: Send your written comments by June 19, 2009.

ADDRESSES: Send written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, (6PD–O), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Louisiana during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–6444; or Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70884–2178, phone number (225) 219–3559. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the immediate final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: April 30, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E9–11746 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 74, No. 96
Wednesday, May 20, 2009

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

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items covered include: (1) Introductions, (2) Approve Minutes, (3) Public Comment, (4) Discussion of National Forest Counties and Schools Coalition Annual Meeting-RAC Member Attendance, (5) Project Presentations for FY08 and FY09, (6) Project Voting by RAC Members, (7) General Discussion, (8) Next Agenda.

DATES: The meeting will be held on June 22, 2009, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals who wish to speak or propose agenda items send their names and proposals to Eduardo Olmedo, Designated Federal Official, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Matt Ellis, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95988. (530) 934–3316; e-mail *matthewellis@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee will file written statements with the Committee staff before or after the meeting. Public input sessions are provided and individuals who made written requests by June 15, 2009 have the opportunity to address the committee at those sessions.

Dated: May 12, 2009.

Eduardo Olmedo,

Designated Federal Official.

[FR Doc. E9–11612 Filed 5–19–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2010 Coverage Followup Telephone Operation.

Form Number(s): None.

OMB Control Number: 0607–0946.

Type of Request: Reinstatement, with change, of an expired collection.

Burden Hours: 1,335,000.

Number of Respondents: 8,010,000.

Average Hours per Response: Ten minutes.

Needs and Uses: The 2010 Coverage Foliowup (CFU) telephone operation will serve to clarify initial enumeration responses in an effort to improve within-household counts. Historically, the decennial census has been affected by undercounts that affect certain demographic groups (*e.g.* babies and minorities), and people in certain living situations, such as renters who move often, and people whose residences are complicated or ambiguous. In Census 2000, we learned that the census was affected by a much higher rate of erroneous enumeration (overcount) than had been anticipated. Erroneous enumerations were more likely to occur for certain demographic groups and in certain living situations (*e.g.* college students and nursing home residents).

Coverage interviews in the decennial censuses traditionally involve a second interview with the respondent to determine if changes should be made to their household roster as reported on their initial census return. The questions in the CFU interview attempt to determine if people were missed, and/or incorrectly counted. When a person is identified as potentially counted or omitted in error, the Census Bureau will then ask questions to establish the appropriate census residence of that person according to our residence rule in effect for the 2010 Census (the 2010 residence rule will be available pending approval).

The 2010 CFU telephone operation will be conducted using computer-assisted telephone interviews (CATI) in commercial call centers throughout the country from April 26, 2010 through August 13, 2010. Approximately 8,010,000 households will be selected for CFU, based on established criteria.

The Census Bureau will contact respondents using telephone numbers provided by respondents on the initial census questionnaire. The CATI instrument will be in both English and Spanish (interviewers will have job aids for the additional four languages—Chinese, Vietnamese, Korean, and Russian). The Census Bureau will not conduct field interviews during this operation, so when telephone interviews are unsuccessful, the case will be classified as a non-interview.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Section 141.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: May 14, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–11649 Filed 5–19–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) Wave 5 of the 2008 Panel

AGENCY: U.S. Census Bureau, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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)).

DATES: To ensure consideration, written comments must be submitted on or before July 20, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patrick J. Benton, Census Bureau, Room HQ–6H045, Washington, DC 20233–8400, (301) 763–4618.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP, which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years, with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or "waves" over the life of the panel. The survey is molded around a central "core" of laborforce and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on household members' participation in government programs as well as prior labor force patterns of household members. These supplemental questions are included with the core and are referred to as "topical modules."

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

The 2008 panel is currently scheduled for 4 years and will include 13 waves of interviewing beginning September 2008. Approximately 65,300 households were selected for the 2008 panel, of which 42,032 households were interviewed. We estimate that each household contains 2.1 people, yielding 88,267 person-level interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves will occur in the 2008 SIPP Panel during FY 2010. The total annual burden for 2008 Panel SIPP interviews would be 132,400 hours in FY 2010.

The topical modules for the 2008 Panel Wave 5 collect information about:

- Annual Income and Retirement Accounts.
- Taxes.
- Child Care.
- Work Schedule.

Wave 5 interviews will be conducted from January 1, 2010 through April 30, 2010.

A 10-minute reinterview of 3,100 people is conducted at each wave to ensure accuracy of responses. Reinterviews would require an additional 1,553 burden hours in FY 2010.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having a duration of 1 to 4 years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2008 panel, respondents are interviewed a total of 13 times (13 waves) at 4-month intervals, making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Control Number: 0607–0944.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular submission.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 88,267 people per wave.

Estimated Time per Response: 30 minutes per person on average.

Estimated Total Annual Burden Hours: 133,953.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 14, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–11660 Filed 5–19–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–882]

Refined Brown Aluminum Oxide from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 1, 2008, the Department of Commerce (the Department) published the preliminary results of the 2006–2007 administrative review of the antidumping duty order on refined brown aluminum oxide (RBAO) from the People's Republic of China (PRC). *See Refined Brown Aluminum Oxide from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 72767 (December 1, 2008) (*Preliminary Results*). We gave the interested parties an opportunity to comment on the *Preliminary Results*. After reviewing the interested parties' comments, we made changes to our calculations for the final results of the review. The final dumping margin for this review is listed in the "Final Results of Review" section below. The review covers one exporter, Qingdao Shunxingli Abrasives Co. Ltd. (Qingdao Shunxingli). The period of review (POR) is November 1, 2006 through October 31, 2007.

EFFECTIVE DATE: May 20, 2009.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Kate Johnson, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Results* on December 1, 2008. On January 22, 2009, the domestic producers Washington Mills, C + E Minerals, and Treibacher Schleifmittel Corp. (collectively, "domestic producers"), and the respondent Qingdao Shunxingli submitted case briefs. On January 29, 2009, the domestic producers and Qingdao Shunxingli submitted rebuttal briefs. At the request of the domestic producers, we held a public hearing on February 6, 2009.

Scope of the Order

The merchandise covered by this order is ground, pulverized or refined artificial corundum, also known as brown aluminum oxide or brown fused alumina, in grit size of 3/8 inch or less. Excluded from the scope of the order is crude artificial corundum in which particles with a diameter greater than 3/8 inch constitute at least 50 percent of the total weight of the entire batch. The scope includes brown artificial corundum in which particles with a diameter greater than 3/8 inch constitute less than 50 percent of the total weight of the batch. The merchandise under investigation is currently classifiable under subheadings 2818.10.20.00 and 2818.10.20.90 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

Analysis of Comments Received

All issues raised in the case briefs are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues which parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an appendix. The Issues and Decision Memorandum is a public document which is on file in the Central Records Unit in room 1117 in the main Department building, and is accessible on the web at *http://www.ia.ita.doc.gov/frn*.

The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made changes in the margin calculations for Qingdao Shunxgli. These changes are identified in the Issues and Decision Memorandum and discussed in the "Final Results Valuation Memorandum," dated concurrently with this notice.

Final Results of the Review

We determine that the following percentage weighted–average dumping margin exists for the period November 1, 2006, through October 31, 2007:

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Qingdao Shunxingli Abrasives Co. Ltd.	46.88

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash–Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of the administrative review for all shipments of RBAO from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Qingdao Shunxingli, the cash–deposit rate will be that established in the final results of review; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash–deposit rate will be the PRC–wide rate of 135.18 percent; and (4) for all non–PRC exporters of subject merchandise, the cash–deposit rate will be the rate applicable to the PRC exporter that supplied that non–PRC exporter. These deposit requirements shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a final reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply

with the regulations and the terms of an APO is a sanctionable violation.

This notice of final results is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 13, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix—Issues in Decision Memorandum

Comment 1: Valuation of Crude Brown Aluminum Oxide
Comment 2: Selection of Indian Financial Statements for Calculating Surrogate Value Ratios
Comment 3: Alleged Errors in Calculation of Surrogate Value Ratios

[FR Doc. E9–11761 Filed 5–19–09; 8:45 am]
BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL85

Notice of Availability of a Final Environmental Impact Statement/ Environmental Impact Report for the Proposed Replacement of the National Oceanic and Atmospheric Administration's Southwest Fisheries Science Center Located in La Jolla, CA

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

ACTION: Notice of Availability.

SUMMARY: In accordance with provisions of the National Environmental Policy Act of 1969 (NEPA), NOAA announces the availability of the joint Final EIS/EIR analyzing the environmental impacts of replacing the Southwest Fisheries Science Center (SWFSC). This Final EIS/EIR is prepared pursuant to NEPA to assess the environmental impacts of replacing the existing SWFSC buildings with a new facility located on campus of the Scripps Institution of Oceanography (SIO) within the University of California at San Diego (UCSD) campus in La Jolla, California. The Final EIS/EIR includes consideration of all comments received during the official comment period for the Draft EIS/EIR. The Final EIS/EIR has been distributed to interested parties and responsible government agencies.

DATES: Any written comments on the Final EIS/EIR must be postmarked or transmitted to the responsible official below by June 19, 2009.

FOR FURTHER INFORMATION CONTACT: Paul N. Doremus, Ph.D, NOAA, 301 713–3372 x180, or Anne Elston, Environmental Research Analyst, 333 Ravenswood Avenue, G 234, Menlo Park, CA 94025–3493, SRI International (650) 859–2693; e-mail *Anne.Elston@sri.com*. NOAA is not required to respond to comments received as a result of issuance of the Final EIS/EIR; however comments will be reviewed and considered for their impact on issuance of the Record of Decision (ROD).

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Services (NMFS) is responsible for the management, conservation, and protection of living marine resources within the U.S. Exclusive Economic Zone. The SWFSC in La Jolla, California, manages and conducts research involving Pacific fisheries and marine mammal research for the protection and management of these resources throughout Western Pacific and Antarctica. The existing SWFSC facility, built in 1964, is currently adjacent to a coastal bluff that is undergoing severe erosion and retreat. NOAA proposes to construct a new SWFSC building to replace its existing NMFS administrative and marine research facilities currently located in La Jolla, California. A minimum of two existing at-risk SWFSC structures would be removed and the property currently used by NOAA would be returned to UCSD for other appropriate uses.

NOAA is the lead Federal agency for implementation of the NEPA. The University of California is the lead agency under the CEQA. The existing and preferred sites for the SWFSC headquarters are at the UCSD campus. The NMFS, SIO and other marine research organizations conduct independent and joint research at the SWFSC and its salt water laboratory facilities.

The proposed action would require construction of a new facility to support SWFSC administrative and marine research operations. The preferred site will enable NMFS, SIO, and others to continue collaboration within a wide range of programmatic marine research disciplines.

Alternative actions analyzed in the Final EIS/EIR include:

- Bluff stabilization
- On-site redevelopment
- On- and near-site redevelopment
- Off-site development at SIO Deep Sea Drilling Site
- Off-site development at UCSD Hillside Neighborhood Site
- Leased office and research space
- Collocation of SWFSC with other existing NOAA facilities
- No Action

This joint Final EIS/EIR analyzes environmental impacts that may result from implementation of the proposed and alternative actions and identifies measures to avoid or reduce the intensity of environmental impacts.

Decision Process

The government decision as to how to proceed will be announced in a Record of Decision (ROD) to be issued no earlier than 30 days after publication of this NOA.

Dated: May 13, 2009.

William F. Broglie,

Chief Administrative Officer, National Oceanic and Atmospheric Administration.

[FR Doc. E9–11783 Filed 5–19–09; 8:45 am]
BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1621]

Grant of Authority for Subzone Status; Michelin North America, Inc. (Tire Warehousing and Distribution); San Bernardino, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Board of Harbor Commissioners of the Port of Long Beach, grantee of FTZ 50, has made application to the Board for authority to establish special-purpose subzone status at the tire and tire accessories warehousing and distribution facility of Michelin North America, Inc., located in San Bernardino, California (FTZ Docket 38–2008, filed 5/28/2008);

Whereas, notice inviting public comment has been given in the **Federal Register** (73 FR 31812, 6/4/2008); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to tire warehousing and distribution at the Michelin North America, Inc. facility located in San Bernardino, California (Subzone 50L), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 7th day of May 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest: Andrew McGilvray, Executive Secretary.

[FR Doc. E9–11762 Filed 5–19–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP33

Marine Mammals; File No. 14352

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Dr. Gregory Bossart, Georgia Aquarium, 225 Baker Street, NW, Atlanta, Georgia 30313, has applied in due form for a permit to conduct research on bottlenose dolphins (*Tursiops truncatus*).

DATES: Written, telefaxed, or e-mail comments must be received on or before June 19, 2009.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 14352 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521;

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 427–2521, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Kristy Beard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to conduct health assessments of bottlenose dolphins in Florida's Indian River Lagoon system by capturing, sampling, and releasing up to 40 dolphins per year. Females with calves less than one year old would not be captured. Captured dolphins would receive a complete clinical workup including: measurements, weight, photographs, sample collection, freeze brand, and ultrasound. All captured animals would receive a roto tag. Up to ten animals per year would also receive a VHF tag. An experienced veterinarian would be on site during captures and the dolphins' vital signs would be closely monitored. Processing would take about forty minutes. Individual dolphins would only be sampled once per year. Samples would be analyzed to examine a variety of health topics such as: infectious diseases, immune status, contaminant exposure, antibiotic resistance, and genetics. An additional 400 dolphins per year may be harassed during pre- and post-capture surveys. Specific goals of the research are to: (1) evaluate dolphin health from individual, population, and comparative perspectives, (2) apply classical and novel methods and diagnostic tools to detect and assess anthropogenic and environmental factors that affect dolphins, and (3) develop predictive models to evaluate conservation and management strategies. The permit would be valid for a period of five years.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 15, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–11782 Filed 5–19–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Submission of Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Environment, Safety and Health reporting requirements, OMB Control Number 1910–0300. This information collection request covers information necessary to exercise management oversight and control over Management and Operating (M&O) contractors of DOE's Government-Owned Contractor-Operated (GOCO) facilities, and offsite contractors. The contractor management oversight and control function concerns the ways in which DOE contractors provide goods and services for DOE organizations and activities in accordance with the terms of their contract; the applicable statutory, regulatory and mission support requirements of the Department; and regulations in the functional area covered in this request. The basic authority for these collections is the statute establishing the Department of Energy ("Department of Energy Organization Act," Pub. L. 95–91, of August 4, 1977).

DATES: Comments regarding this proposed information collection must be received on or before June 19, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of

time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503; and to Vincent Le, U.S. Department of Energy, Office of Health, Safety and Security, HS–1.22, 1000 Independence Ave SW., Washington, DC 20585–1290, (301) 903–4648. Or by fax at 301–903–6081 or by e-mail at *vinh.le@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information should be directed to Vincent Le, U.S. Department of Energy, Office of Health, Safety and Security, HS–1.22, 1000 Independence Ave SW., Washington, DC 20585–1290, (301) 903–4648. Or by fax at 301–903–6081, by e-mail at *vinh.le@hq.doe.gov,* or online at *http://www.hss.energy.gov/pra.html.*

SUPPLEMENTARY INFORMATION: This information collection request contains: *(1) Current OMB Control Number:* 1910–0300; *(2) Information Collection Request Title:* Environment, Safety and Health; *(3) Purpose:* This collection provides for DOE management oversight and control over its contractors ensuring that environment, safety and health resources and requirements are managed efficiently and effectively; *(4) Estimated Number of Respondents:* 2,612 (Previously reported was 2,469); *(5) Estimated Total Burden Hours:* 69,560 (Previously reported was 68,136); *(6) Number of Collections:* This information collection request contains nine information and/or recordkeeping requirements; *(7) Estimated Annual Cost Burden:* None (Previously reported was $12,741,432).

Statutory Authority: Department of Energy Organization Act, Public Law No. 95–91, 91 Stat. 565 (1977).

Issued in Washington, DC on May 11, 2009.

Lesley A. Gasperow,

Director, Office of Resource Management, Office of Health, Safety and Security.

[FR Doc. E9–11728 Filed 5–19–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Activities: Proposed Voluntary Collection for Reliability, Survivability, Resiliency (RSR) Project; Comment Request

AGENCY: Office of Electricity Delivery and Energy Reliability (OE), Infrastructure Security and Energy Restoration (ISER), Department of Energy.

ACTION: Agency Voluntary Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The Office of Electricity Delivery and Energy Reliability, Infrastructure Security and Energy Restoration is soliciting comments for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 on the proposed RSR Project's voluntary participation by industry in the collection of information to identify systemic problems and dependency issues impacting the energy sector's system-wide reliability, survivability and resiliency that will assist in pre-event planning. Comments are invited on: (a) Whether the proposed voluntary collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding the proposed information collection must be received on or before July 20, 2009. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Kenneth Friedman by fax at 202–586–2623 or by e-mail at *Kenneth.friedman@hq.doe.gov.* The mailing address is Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Kenneth Friedman may be reached by phone at 202–586–0379.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Kenneth Friedman at the address, e-mail and phone number listed above.

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.* New.

(2) *Voluntary Information Collection Request Title:* Reliability, Survivability, (RSR) project.

(3) *Type of Review:* New.

(4) *Purpose:* DOE's Office of Electricity Delivery and Energy Reliability and the Infrastructure Security and Energy Restoration Division have launched the RSR Project to support the goals for the Energy Sector Specific plan (SSP) to ensure a robust and resilient energy infrastructure in which continuity of business and service reliability are strengthened. In cooperation with energy sector industry and partners, the RSR Project will assist in identifying systemic problems and dependency issues that may impact system-wide reliability, survivability and resiliency within the energy sector. Categories of information will include operational issues from recent history, controls safeguarding assets, supply chain critical suppliers, evaluation of emergency response, mitigation of disruptions, consequence impact on business continuity and service, impact on local area, restoration and recovery tie. The collected data will generate reports for ISER that will support pre-event planning. Feedback will be provided to industry that addresses potential restoration concerns.

(5) *Respondents:* Energy Sector Industry voluriteers up to 1500 sites.

(6) *Estimated Number of Burden Hours:* 30,000 hours based on 20 hours maximum per site for a total of 1500 sites. There is no requirement for record keeping.

Statutory Authority: Department of Energy Organization Act (DOE Act), 42 U.S.C. 7101 *et seq.*, the Federal Power Act, 16 U.S.C. 792 *et seq.* Section 1016(e) of the USA Patriot Act of 2001 (42 U.S.C. 5195c). Homeland Security Presidential Directive/HSPD7.

Issued in Washington, DC on May 14, 2009.

William N. Bryan,

Deputy Assistant Secretary, Infrastructure Security & Energy Restoration.

[FR Doc. E9–11733 Filed 5–19–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, June 10, 2009, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *www.oakridge.doe.gov/em/ssab*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The main meeting presentation will be on the Consortium for Risk Evaluation with Stakeholder Participation.

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Pat Halsey at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Pat Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm*.

Issued at Washington, DC, on May 15, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–11731 Filed 5–19–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Advisory Committee

AGENCY: Department of Energy, Office of Nuclear Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Advisory Committee (NEAC). Federal Advisory Committee Act (Pub. L. No. 94–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, June 9, 2009, 8:30 a.m.–4:45 p.m.

Location: The meeting will be held at the L'Enfant Plaza Hotel at 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Kenneth Chuck Wade, Designated Federal Officer, U.S. Department of Energy, 19901 Germantown Rd.; Germantown, MD 20874; telephone (301) 903–6509; e-mail *Kenneth.wade@nuclear.energy.gov*.

SUPPLEMENTARY INFORMATION:

Background: The Nuclear Energy Advisory Committee (NEAC), formerly the Nuclear Energy Research Advisory Committee (NERAC), was established in 1998 by the U.S. Department of Energy (DOE) to provide expert advice on complex scientific, technical, and policy issues that arise in the planning, managing, and implementation of DOE's civilian nuclear energy research programs. The committee is composed of 10 individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to nuclear energy.

Purpose of the Meeting: To inform the committee of recent developments and current status of research programs and projects pursued by the Department of Energy's Office of Nuclear Energy and receive advice and comments in return from the committee.

Tentative Agenda: The meeting is expected to include presentations that cover such topics as the current status of University Programs, Pu-238 Report, and an overview of the Idaho National Laboratory's progress to achieving world class status. The agenda may change to accommodate committee business. For updates, one is directed the NEAC Web site: *http://www.ne.doe.gov/neac/neNeacMeetings.html*.

Public Participation: Individuals and representatives of organizations who would like to offer comments and suggestions may do so on the day of the meeting, Tuesday, June 9, 2009. Approximately fifteen minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed 5 minutes. Anyone who is not able to make the meeting or has had insufficient time to address the committee is invited to send a written statement to Kenneth Chuck Wade, U.S. Department of Energy, 1000 Independence Avenue, SW. Washington DC 20585, or e-mail *Kenneth.wade@nuclear.energy.gov*.

Minutes: The minutes of the meeting will be available by contacting Mr. Wade at the address above or on the Department of Energy, Office of Nuclear Energy Web site at *http://www.ne.doe.gov/neac/neNeacMeetings.html*.

Issued in Washington, DC, on May 14, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–11732 Filed 5–19–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 13, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–79–000.

Applicants: Capital Power Corporation, EPCOR Utilities Inc.

Description: Capital Power Corporation *et al.* submits application for authorization for Order under Section 203, request for confidential treatment, and request for blanket authorization, waivers.

Filed Date: 05/12/2009.

Accession Number: 20090513–0281.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 2, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER94–1188–045; ER98–1279–016; ER98–4540–014; ER99–1623–014.

Applicants: LG&E Energy Marketing Inc., Louisville Gas & Electric Company, Kentucky Utilities Company, Western Kentucky Energy Corporation.

Description: Supplemental Information of LG&E Energy Marketing Inc., *et al.*

Filed Date: 05/08/2009.

Accession Number: 20090508–5132.

Comment Date: 5 p.m. Eastern Time on Friday, May 29, 2009.

Docket Numbers: ER08–1113–005.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits proposed tariff language to comply with the FERC Order on Compliance issued on 3/6/09.

Filed Date: 05/12/2009.

Accession Number: 20090513–0194.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 2, 2009.

Docket Numbers: ER09–637–001.

Applicants: Carolina Power & Light Company.

Description: Progress Energy Carolinas, Inc. submits Third Revised Sheet 36 *et al.* to its FERC Electric Tariff, Fourth Revised Volume 3.

Filed Date: 04/29/2009.

Accession Number: 20090430–0321.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 20, 2009.

Docket Numbers: ER09–1117–000.

Applicants: NGP Blue Mountain I LLC.

Description: NGP Blue Mountain I LLC submits an application requesting that the FERC accept for filing Applicant's FERC Electric Tariff, Original Volume 1; to become effective 7/13/09 etc.

Filed Date: 05/12/2009.

Accession Number: 20090513–0193.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 2, 2009.

Docket Numbers: ER09–1121–000.

Applicants: PJM Interconnection LLC.

Description: PJM Interconnection, LLC submits amendments to Schedule 12 of the Amended and Restated Operating Agreement of PJM Interconnection, LLC to update the PJM member list.

Filed Date: 05/12/2009.

Accession Number: 20090513–0160.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 2, 2009.

Docket Numbers: ER09–1122–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits Small Generator Interconnection Agreement and a Service Agreement for Wholesale Distribution Service.

Filed Date: 05/12/2009.

Accession Number: 20090513–0159.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 2, 2009.

Docket Numbers: ER09–1126–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to provisions of their Energy and Operating Reserve Markets Tariff regarding Stored Energy Resources etc., effective 1/1/10.

Filed Date: 05/12/2009.

Accession Number: 20090513–0245.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 2, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–11667 Filed 5–19–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 12, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–97–003.

Applicants: Ecofin Holdings Limited.

Description: Request of Ecofin Holdings Limited for Amended Order under Section 203 of the Federal Power Act.

Filed Date: 04/27/2009.

Accession Number: 20090427–5166.

Comment Date: 5 p.m. Eastern Time on Monday, May 18, 2009.

Docket Numbers: EC09–78–000.

Applicants: Otter Tail Power Company, Cascade Investment, L.L.C.

Description: Joint Application of Cascade Investment, L.L.C. and Otter Tail Power Company for Authorization Under Section 203 of the Federal Power Act.

Filed Date: 05/07/2009.

Accession Number: 20090507–5031.

Comment Date: 5 p.m. Eastern Time on Thursday, May 28, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09–41–000.

Applicants: Conectiv Vineland Solar, LLC.

Description: Conectiv Vineland Solar, LLC submits notice of self certification of exempt wholesale generator status.

Filed Date: 05/06/2009.

Accession Number: 20090507–0216.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–1085–013.

Applicants: South Carolina Electric & Gas Company

Description: South Carolina Electric & Gas Company submits their responses to the Commission's 4/9/09 requests concerning an updated market power analysis in compliance with Order 697.

Filed Date: 05/07/2009.

Accession Number: 20090512–0027.

Comment Date: 5 p.m. Eastern Time on Thursday, May 28, 2009.

Docket Numbers: ER97–2846–013; ER99–2311–010.

Applicants: Florida Power Corporation; Carolina Power & Light Company.

Description: Carolina Power & Light Co *et al.* submits response to FERC data request re the supplemental Simultaneous Import Limitation study information for updated market power analysis.

Filed Date: 05/08/2009.

Accession Number: 20090512–0033.

Comment Date: 5 p.m. Eastern Time on Friday, May 29, 2009.

Docket Numbers: ER98–542–022.

Applicants: Central & South West Services, Inc.

Description: CSW Operating Companies submits revised tariff sheet to the market based rate tariff to reflect FERC's grant of authority for CSW to sell the energy imbalance service in the imbalance market administered by the Southwest Power Pool, Inc.

Filed Date: 05/06/2009.

Accession Number: 20090507–0213.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: ER99–2342–012.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits response to FERC's 4/9/09 additional information request re updated market power analyses.

Filed Date: 05/08/2009.

Accession Number: 20090512–0001.

Comment Date: 5 p.m. Eastern Time on Friday, May 29, 2009.

Docket Numbers: ER00–1712–011; ER00–1703–006; ER00–2186–006; ER01–1559–007; ER02–1327–008; ER02–1747–006; ER00–744–009; ER02–1749–006; ER02–2408–006; ER99–4503–008.

Applicants: PPL Electric Utilities Corporation, Lower Mount Bethel Energy, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, PPL University Park, LLC, PPL EnergyPlus, LLC, PPL Edgewood Energy, LLC, PPL Shoreham Energy, LLC, PPL Great Works, LLC, PPL Maine, LLC, PPL Wallingford Energy LLC.

Description: PPL Companies submits Fourth Revised Sheet 2 *et al.* to FERC Electric Tariff, First Revised Volume 5.

Filed Date: 05/08/2009.

Accession Number: 20090511–0105.

Comment Date: 5 p.m. Eastern Time on Friday, May 29, 2009.

Docket Numbers: ER06–615–050.

Applicants: California Independent System Operator Corporation.

Description: Informational Filing of Negotiated Default Energy Bids by California Independent System Operator Corporation.

Filed Date: 05/07/2009.

Accession Number: 20090507–5137.

Comment Date: 5 p.m. Eastern Time on Thursday, May 28, 2009.

Docket Numbers: ER06–738–019; ER02–537–022; ER03–983–018; ER06–739–019; ER07–501–018; ER07–758–014; ER08–649–011.

Applicants: Cogen Technologies Linden Venture, L.P.; Shady Hills Power Company, L.L.C.; Fox Energy Company, LLC; East Coast Power Linden Holding, LLC; Birchwood Power Partners, L.P.; Inland Empire Energy Center, L.L.C.; EFS Parlin Holdings LLC.

Description: Supplement to Notification of Non-Material Change in Status of East Coast Power Liden Holding, LLC, *et al.*

Filed Date: 05/06/2009.

Accession Number: 20090506–5107.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: ER07–188–005.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC provides information responding to FERC's 4/9/09 request for additional information pertaining to the Simultaneous Import Limitation study submitted with the updated market analysis.

Filed Date: 05/08/2009.

Accession Number: 20090512–0003.

Comment Date: 5 p.m. Eastern Time on Friday, May 29, 2009.

Docket Numbers: ER07–189–005, ER07–190–005, ER07–191–005, ER07–192–003.

Applicants: Duke Energy Indiana, Inc., Duke Energy Kentucky, Inc., Duke Energy Ohio, Inc.;

Description: Duke Energy Indiana, Inc. *et al.* submits Second Substitute Original Sheet 2 *et al.* to FERC Electric Tariff, Second Revised Volume 1 & First Revised Volume 1.

Filed Date: 05/07/2009.

Accession Number: 20090512–0013.

Comment Date: 5 p.m. Eastern Time on Thursday, May 28, 2009.

Docket Numbers: ER09–482–001.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Golden Spread Electric Cooperative, Inc. submits substitute amendments to Golden Spread Eighth Revised Rate Schedule FERC 35, a long-term, bilateral Replacement Energy Agreement etc.

Filed Date: 05/07/2009.

Accession Number: 20090508–0098.

Comment Date: 5 p.m. Eastern Time on Thursday, May 28, 2009.

Docket Numbers: ER09–660–001; ER09–660–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits response to Commission's letter dated 4/6/09 requesting additional information on, and requiring amendment of the Midwest ISO's 2/6/09 proposal etc.

Filed Date: 05/06/2009.

Accession Number: 20090508–0042.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: ER09–740–002.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits for acceptance Substitute Original Sheet 4 *et al.* to FERC's Rate Schedule 182 effective 5/24/09.

Filed Date: 05/11/2009.

Accession Number: 20090512–0037.

Comment Date: 5 p.m. Eastern Time on Monday, June 1, 2009.

Docket Numbers: ER09–797–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC's Response to the Commission's 5/4/09 request for clarification providing additional information & clarification re proposed changes to Schedule 1 of the Amended & Restated Operating Agreement.

Filed Date: 05/06/2009.

Accession Number: 20090506–4001.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: ER09–886–001.

Applicants: Conectiv Vineland Solar, LLC.

Description: Conectiv Vineland Solar, LLC submits Substitute Original Sheet No 2 of CVS proposed market based rate tariff.

Filed Date: 05/06/2009.

Accession Number: 20090507–0215.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: ER09–1025–001.

Applicants: New England Gas & Electric, Inc.

Description: New England Gas & Electric, Inc. submits a Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

Filed Date: 05/07/2009.

Accession Number: 20090508–0100.

Comment Date: 5 p.m. Eastern Time on Thursday, May 28, 2009.

Docket Numbers: ER09–1095–000.

Applicants: Vermont Electric Cooperative, Inc.

Description: Vermont Electric Cooperative, Inc. submits its 2009

transmission formula rate update to its charges produced by the formula rates applicable to the VEC-specific Local Service Schedules of the ISO New England Open Access Transmission etc.

Filed Date: 05/04/2009.

Accession Number: 20090505–0110.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 26, 2009.

Docket Numbers: ER09–1097–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits long term firm point to point transmission service agreement with Foresight Wind Energy, LLC and High Lonesome Mesa, LLC.

Filed Date: 05/05/2009.

Accession Number: 20090506–0171.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 26, 2009.

Docket Numbers: ER09–1098–000.

Applicants: DownEast Power Company, LLC.

Description: DownEast Power Company, LLC submits application for Market-Based Rate Authority.

Filed Date: 05/07/2009.

Accession Number: 20090508–0044.

Comment Date: 5 p.m. Eastern Time on Thursday, May 28, 2009.

Docket Numbers: ER09–1099–000.

Applicants: Empire Generating Co, LLC.

Description: Application of Empire Generating Co, LLC for order accepting initial tariff, waiving regulations, and granting blanket approvals, including Blanket Approval under 18 CFR Part 34 for all future issuances etc.

Filed Date: 05/08/2009.

Accession Number: 20090512–0015.

Comment Date: 5 p.m. Eastern Time on Friday, May 29, 2009.

Docket Numbers: ER09–1100–000.

Applicants: Baltimore Gas and Electric Company.

Description: Baltimore Gas and Electric Company, *et al.*, Electronic Informational Filing of 2009 Formula Rate Annual Update.

Filed Date: 05/04/2009.

Accession Number: 20090504–5109.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 26, 2009.

Docket Numbers: ER09–1101–000.

Applicants: Exelon Generation Company, LLC.

Description: Exelon Generation Company, LLC submits lease of transmission facilities between Exelon Generation and PECO Energy Company.

Filed Date: 05/06/2009.

Accession Number: 20090507–0214.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: ER09–1102–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits First Revised Service Agreement 1355 *et al.* to its FERC Electric Tariff, Fourth Revised Volume 1.

Filed Date: 05/06/2009.

Accession Number: 20090508–0055.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Docket Numbers: ER09–1103–000.

Applicants: Bangor Hydro-Electric Company.

Description: Bangor Hydro-Electric Company *et al.* submits Original Service Agreement 66 to FERC Electric Tariff 3—Section II—Open Access Transmission Tariff Schedule 21.

Filed Date: 05/08/2009.

Accession Number: 20090511–0101.

Comment Date: 5 p.m. Eastern Time on Friday, May 29, 2009.

Docket Numbers: ER09–1104–000; OA09–28–000.

Applicants: Story Wind, LLC.

Description: Story Wind, LLC submits jurisdictional service agreement (Shared Facilities Agreement).

Filed Date: 05/08/2009.

Accession Number: 20090511–0102.

Comment Date: 5 p.m. Eastern Time on Friday, May 29, 2009.

Docket Numbers: ER09–1105–000.

Applicants: PJM Interconnection, LLC.

Description: PJM submits executed Interconnection Construction Service Agreement with Exelon Generation Company *et al.*

Filed Date: 05/08/2009.

Accession Number: 20090511–0103.

Comment Date: 5 p.m. Eastern Time on Friday, May 29, 2009.

Docket Numbers: ER09–1109–000; ER09–1109–001; ER09–1110–000; ER09–1110–001; ER09–1111–000; ER09–1111–001; ER09–1112–000; ER09–1112–001; ER09–1113–000; ER09–1113–001; ER09–1114–000; ER09–1114–001; ER09–1115–000; ER09–1115–001; ER09–1116–000; ER09–1106–001; ER09–1107–000; ER09–1107–001; ER09–1108–000; ER09–1108–001.

Applicants: RRI Energy Coolwater, Inc; RRI Energy Electric Solutions, LLC; RRI Energy Ellwood, Inc.; RRI Energy Etiwanda, Inc.; RRI Energy Florida, LLC; RRI Energy Mandalay, Inc.; RRI Energy Mid-Atlantic Power Holdings, RRI Energy Ormond Beach, Inc.; RRI Energy Services, Inc.; RRI Energy Solutions East, LLC; RRI Energy Wholesale Generation, LLC.

Description: RRI Companies submits notices of succession to notify the Commission of the corporate name change of each of the RRI Companies effective as of 5/2/09 and a notice of non-material change in status.

Filed Date: 05/07/2009.

Accession Number: 20090511–0106.

Comment Date: 5 p.m. Eastern Time on Thursday, May 28, 2009.

Docket Numbers: ER09–1119–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submit Service Agreement for Wholesale Distribution Service and Interconnection between PG&E and City and County of San Francisco.

Filed Date: 05/11/2009.

Accession Number: 20090512–0038.

Comment Date: 5 p.m. Eastern Time on Monday, June 1, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–19–002.

Applicants: Ohio Valley Electric Corporation.

Description: Compliance Filing of Ohio Valley Electric Corporation.

Filed Date: 05/11/2009.

Accession Number: 20090511–5181.

Comment Date: 5 p.m. Eastern Time on Monday, June 1, 2009.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH09–17–000.

Applicants: Continental Energy Systems LLC.

Description: FERC–65A Exemption Notification and Notice of Material Change in Facts of Continental Energy Systems LLC.

Filed Date: 05/06/2009.

Accession Number: 20090506–5106.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 27, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–11668 Filed 5–19–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–OAR–2009–0221, EPA–R05–OAR–2009–0220; FRL–8907–2]

Adequacy Status of the Cleveland/Akron, Ohio and the Columbus, Ohio Submitted 8-Hour Ozone Redesignation and Maintenance Plans for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emission's budgets (MVEBs) for volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the Cleveland/Akron, Ohio area and the Columbus, Ohio area are adequate for use in transportation conformity determinations. Ohio submitted the Cleveland/Akron area budgets with an 8-hour ozone redesignation and maintenance plan on March 17, 2009. Ohio submitted the Columbus area budgets with an 8-hour ozone redesignation and maintenance plan on March 17, 2009. As a result of our finding, the Cleveland/Akron, Ohio area and the Columbus, Ohio area must use the MVEBs from the submitted 8-hour ozone maintenance plan for future transportation conformity determinations.

DATES: This finding is effective June 4, 2009.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Life Scientist, Criteria Pollutant Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *Maietta.anthony@epa.gov*.

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

Background

Today's notice is simply an announcement of a finding that we have already made. On March 30, 2009, EPA Region 5 sent a letter to the Ohio Environmental Protection Agency stating that the 2010 and 2020 MVEBs for the Cleveland/Akron area, and also for the Columbus area, which were submitted with the state's 8-hour ozone redesignation and maintenance plan, are adequate. Receipt of these MVEBs was announced on EPA's transportation conformity website, and no comments were submitted. The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*.

The adequate 2010 and 2020 MVEBs, in tons per day (tpd), for VOC and NO_X for the Cleveland/Akron area are as follows:

	2012 MVEB (tpd)	2020 MVEB (tpd)
VOC	46.64	31.48
NO_X	95.89	42.75

The adequate 2010 and 2020 MVEBs, in tons per day (tpd), for VOC and NO_X for the Columbus area are as follows:

	2012 MVEB (tpd)	2020 MVEB (tpd)
VOC	54.86	36.60
NO_X	91.64	46.61

Please note that the March 30, 2009, letter to the state had the budgets in the wrong columns and this has been corrected in this notice.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a State Implementation Plan (SIP) means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). We have described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004, preamble starting at 69 FR 40038, and we used the information in these resources while making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

The finding and the response to comments are available at EPA's transportation conformity web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 7, 2009.

Walter W. Kovalick Jr,

Acting Regional Administrator, Region 5.

[FR Doc. E9–11639 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0722; FRL–8412–8]

Amendments to Terminate Certain Pesticide Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the amendments to terminate certain uses, voluntarily requested by the registrants and accepted by the Agency, of certain pesticide products, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows an October 8, 2008, **Federal Register** Notice of Receipt of Requests from registrants to voluntarily amend their registrations of

certain pesticide products (73 FR 58958; FRL–8385–2). In the October 8, 2008, Notice, EPA indicated that it would issue an order implementing the cancellation and amendments to terminate certain uses, unless the Agency received substantive comments within the 30 day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests within this period. The Agency did not receive any comments on the notice except for comments pertaining to aldicarb. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested amendments to terminate certain pesticide product uses except for the uses of aldicarb on coffee, pecans, and tobacco. The product cancellation order for the chloroneb product, Demosan 65W (EPA Reg. No. 073782-00002), which was included in the October 8, 2008 notice will be included in a separate **Federal Register** notice. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective May 20, 2009.

FOR FURTHER INFORMATION CONTACT: Eric Olson, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8067; fax number: (703) 308–7070; e-mail address: *olson.eric@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0722. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

II. What Action is the Agency Taking?

This notice announces the amendments to terminate uses, as requested by registrants, of certain products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1.—PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES

Registration Number	Product Name	Active Ingredient	Delete from Use
000264-00330	Temik Brand 15G Aldicarb Pesticide	Aldicarb	Alfalfa grown for seed; Ornamentals; Sugarcane; Sorghum
000264-00426	Temik Brand 15g Aldicarb Pesticide For Sale And Use In Calif.	Aldicarb	Alfalfa grown for seed; Ornamentals; Sugarcane; Sorghum
000264-00729	Monitor 4	Methamidophos	Cotton
000264-00741	Monitor Technical	Methamidophos	Cotton
000264-00744	Monitor 60% Concentrate	Methamidophos	Cotton
000264-01020	Monitor 4 Spray	Methamidophos	Cotton
000264 AR-81-0044	Monitor 4	Methamidophos	Cotton
000264 AR-87-0007	Monitor 4	Methamidophos	Cotton
000264 CA-79-0188	Monitor 4	Methamidophos	Cotton
000264 MS-81-0014	Monitor 4	Methamidophos	Cotton
000264 MS-81-0055	Monitor 4	Methamidophos	Cotton

TABLE 1.—PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES—Continued

Registration Number	Product Name	Active Ingredient	Delete from Use
010330-00016	Ethylene Oxide 10% and Carbon Dioxide Sterilizing Gas	ETO	Basil
010330-00018	20% Ethylene Oxide and 80% Carbon Dioxide Sterilizing Gas	ETO	Basil
010330-00021	8.5% Ethylene Oxide and Carbon Dioxide Sterilizing Gas	ETO	Basil
036736-00002	Ethylene Oxide 100%	ETO	Basil
036736-00003	Sterilizing Gas 3	ETO	Basil
036736-00004	Sterilizing Gas 4	ETO	Basil
036736-00005	Sterilizing Gas 5	ETO	Basil
036736-00006	Sterilizing Gas 6	ETO	Basil
036736-00007	Sterilizing Gas 8	ETO	Basil
036736-00008	Ethylene Oxide – MUP	ETO	Basil
045728-00001	Thiram Technical	Thiram	Parks; Athletic Fields; Commercial Areas; Sod; Homeowner turf; Homeowner fungicide
045728-00021	Thiram 75WP Fruit, Vegetable and Turf Fungicide	Thiram	Parks; Athletic Fields; Commercial Areas; Sod; Homeowner turf; Homeowner fungicide
400-434	Thiram 480 DP	Thiram	Parks; Athletic Fields; Commercial Areas; Sod; Homeowner turf; Homeowner fungicide
062719-00391	Kerb 50-W Selective Herbicide	Pronamide	All residential uses
062719-00397	Kerb 50-W Herbicide in WSP	Pronamide	All residential uses
062719-00578	Kerb 3.3 SC	Pronamide	All residential uses
067470-00006	Ethylene Oxide	ETO	Basil
067470-00007	Ethylene Oxide 100 R	ETO	Basil

Table 2 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 of this unit.

TABLE 2.—REGISTRANTS OF AMENDED PRODUCTS

EPA Company Number	Company Name and Address
000264	Bayer Crop Science LP, 2 T.W., Alexander Drive, Research Triangle Park, NC 27709
010330	Praxair, Inc., 39 Old Ridgebury Road, Danbury CT, 06810-5113

TABLE 2.—REGISTRANTS OF AMENDED PRODUCTS—Continued

EPA Company Number	Company Name and Address
036736	Balchem Corporation, PO Box 600, New Hampton, NY 10958
400	Chemtura Corporation, 199 Benson Road, Middlebury CT, 06749
045728	Taminco Inc., 21320 Sweet Clover Place, Ashburn, VA 20147

TABLE 2.—REGISTRANTS OF AMENDED PRODUCTS—Continued

EPA Company Number	Company Name and Address
062719	Dow Agrosciences LLLC, 9330 Zionsville Rd 308/2e, Indianapolis, IN 462681054
067470	Honeywell – Specialty Chemicals NIC- 4, 101 Columbia Road, Morristown, NJ 07962-1139

III. Summary of Public Comments Received and Agency Response to Comments

On November 3, 2008, Bayer CropScience submitted a withdrawal of its request to voluntarily cancel the

registration of TEMIK 15G for use on coffee, pecans and tobacco. EPA received no comments pertaining to the other registrations in this notice in response to the October 8, 2008, **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellation and amendments to terminate certain uses.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested amendments to terminate uses of registrations identified in Table 1 of Unit II. Accordingly, the Agency orders that the product registrations identified in Table 1 of Unit II. are hereby amended to terminate the affected uses except for methamidophos products which will become effective September 30, 2009. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

V. 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.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this notice includes the following existing stocks provisions.

A. Methamidophos.

On April 7, 2002, EPA signed the Interim Reregistration Eligibility Decision (IRED) for methamidophos. That IRED specified risk mitigation measures including: "Implement a 5–year phase out of the use on cotton."

In accordance with the IRED, Bayer CropScience has submitted a request to voluntarily terminate all cotton uses of the methamidophos products listed above in Table 2 effective September 30, 2009. Provisions for the sale, disposition, and use of existing stocks of methamidophos products include the following: All sale or distribution by the registrant of existing stocks labeled for use on cotton is prohibited after September 30, 2009, unless that sale or distribution is solely for the purpose of facilitating disposal or export of the product. Existing stocks labeled for use on cotton may be sold and distributed by persons other than the registrant until July 31, 2010. Existing stocks labeled for use on cotton may be used until September 30, 2010, provided that such use complies with the EPA-approved label and labeling of the product.

B. Other Chemicals Addressed in this Order.

The cancellation order will allow persons other than the registrant to continue to sell and/or use existing stocks of canceled 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 canceled product. This order specifically prohibits any use of existing stocks that is not consistent with such previously approved labeling.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 7, 2009.

Richard P. Keigwin, Jr.,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9–11630 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2009–0270; FRL–8417–1]

Approval of Test Marketing Exemptions for Certain New Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME–08–01; TME–08–02; TME–08–03; TME–08–04; TME–08–05; TME–08–06; TME–08–07; TME–08–08; TME–08–09; TME–08–10; TME–08–11; TME–08–12; TME–08–13; TME–08–14; TME–08–15; TME–08–16; TME–08–17; TME–08–19; and TME–08–20. The test marketing conditions are described in each TME application and in this notice.

DATES: Approval of these TMEs is effective May 14, 2009.

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.*

For technical information contact: Adella Underdown, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9364; e-mail address: *underdown.adella@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME applications 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–2009–0270. All documents in the docket are listed in the docket 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 720.38 authorize EPA to exempt persons from premanufacture notifice (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human 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 TMEs listed in this notice. EPA has determined that test marketing these new chemical substances, under the conditions set out in each TME application and in this notice, will not present an unreasonable risk of injury to human health or the environment.

IV. What Restrictions Apply to these TMEs?

The test market time period, production volume, number of customers, and use must not exceed specifications in the applications and this notice. All other conditions and restrictions described in the applications and in this notice must also be met.

TME–08–0001.
Date of Receipt: November 19, 2007.
Notice of Receipt: January 23, 2008 (73 FR 3958) (FRL–8348–9).
Applicant: Cytec Industries, Inc.
Chemical: Phosphonium, methyltris (2–methlypropyl)-, salt with 4-methylbenzenesulfonic acid (1:1).
Use: (G) Process chemical for sulfur removal from diesel fuel chemical.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0002.
Date of Receipt: January 18, 2008.
Notice of Receipt: March 4, 2008 (73 FR 11632) (FRL–8353–6).
Applicant: Cytec Industries, Inc.
Chemical: (G) Modified polyamine.
Use: (G) Antiscalant.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0003.
Date of Receipt: January 18, 2008.
Notice of Receipt: March 4, 2008 (73 FR 11632) (FRL–8353–6).
Applicant: Cytec Industries, Inc.
Chemical: (G) Modified polyamine.
Use: (G) Antiscalant.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0004.
Date of Receipt: January 18, 2008.
Notice of Receipt: March 4, 2008 (73 FR 11632) (FRL–8353–6).
Applicant: Cytec Industries, Inc.
Chemical: (G) Modified polyamine.
Use: (G) Antiscalant.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0005.
Date of Receipt: January 22, 2008.
Notice of Receipt: March 4, 2008 (73 FR 11632) (FRL–8353–6).
Applicant: Cytec Industries, Inc.
Chemical: (G) Fatty acids, dimers, polymers with alkenoic acid, polyoxyalkylene and alkyl substituted triol.
Use: (G) Ink additive.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0006.
Date of Receipt: January 22, 2008.
Notice of Receipt: March 4, 2008 (73 FR 11632) (FRL–8353–6).
Applicant: Cytec Industries, Inc.
Chemical: (G) Acrylated aliphatic polyurethane.
Use: (G) Coatings resin.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0007.
Date of Receipt: February 22, 2008.
Notice of Receipt: April 23, 2008 (73 FR 21932) (FRL–8361–8).
Applicant: Cytec Industries, Inc.
Chemical: (G) Alkanoic acid ester, polymer with substituted alcohol and epoxy resin.
Use: (G) Coatings and inks.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0008.
Date of Receipt: February 22, 2008.
Notice of Receipt: April 23, 2008 (73 FR 21932) (FRL–8361–8).
Applicant: Cytec Industries, Inc.
Chemical: (G) Unsaturated polyester resin.
Use: (G) Binder for industrial coatings.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0009.
Date of Receipt: April 29, 2008.
Notice of Receipt: May 30, 2008 (73 FR 31108) (FRL–8366–7).
Applicant: CBI.
Chemical: (G) Reaction product of fatty acids and hydroxyl acids.
Use: (G) Colored coatings and related vehicles.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0010.
Date of Receipt: July 2, 2008.
Notice of Receipt: August 8, 2008 (73 FR 46263) (FRL–8377–2).
Applicant: Cytec Industries, Inc.
Chemical: (G) Poly (oxyalkylenediyl), maleate half-ester.
Use: (G) Site limited intermediate.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0011.
Date of Receipt: July 2, 2008.
Notice of Receipt: August 8, 2008 (73 FR 46263) (FRL–8377–2).
Applicant: Cytec Industries, Inc.
Chemical: (G) Poly (oxyalkylenediyl), maleate half-ester.
Use: (G) Site limited intermediate.
Production Volume: CBI.

Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0012.
Date of Receipt: July 2, 2008.
Notice of Receipt: August 8, 2008 (73 FR 46263) (FRL–8377–2).
Applicant: Cytec Industries, Inc.
Chemical: (G) Poly (oxyalkylenediyl), maleate half-ester.
Use: (G) Site limited intermediate.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0013.
Date of Receipt: July 2, 2008.
Notice of Receipt: August 8, 2008 (73 FR 46263) (FRL–8377–2).
Applicant: Cytec Industries, Inc.
Chemical: (G) Poly (oxyalkylenediyl), substituted maleate half-ester, metal salts.
Use: (G) Emulsifier.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0014.
Date of Receipt: July 2, 2008.
Notice of Receipt: August 8, 2008 (73 FR 46263) (FRL–8377–2).
Applicant: Cytec Industries, Inc.
Chemical: (G) Poly (oxyalkylenediyl), substituted maleate half-ester, metal salts.
Use: (G) Emulsifier.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0015.
Date of Receipt: July 2, 2008.
Notice of Receipt: August 8, 2008 (73 FR 46263) (FRL–8377–2).
Applicant: Cytec Industries, Inc.
Chemical: (G) Poly (oxyalkylenediyl), substituted maleate half-ester, metal salts].
Use: (G)Emulsifier.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0016.
Date of Receipt: July 7, 2008.
Notice of Receipt: August 8, 2008 (73 FR 46263) (FRL–8377–2).
Applicant: S.C. Johnson and Son, Inc.
Chemical: (G) Hydrolyzed cellulosic ether.
Use: Non-dispersive use.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0017.
Date of Receipt: July 25, 2008.
Notice of Receipt: August 20, 2008 (73 FR 49189) (FRL–8379–7).
Applicant: Cytec Industries, Inc.
Chemical: (G) Acrylated aliphatic polyurethane.
Use: (G) Coatings resin.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0019.
Date of Receipt: August 11, 2008.
Notice of Receipt: September 12, 2008 (73 FR 52996) (FRL–8381–5).
Applicant: Cytec Industries, Inc.
Chemical: (G) Poly (oxyalkylenediyl), substituted maleate half-ester, metal salts.
Use: (G) Emulsifier.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.
TME–08–0020.
Date of Receipt: August 29, 2008.
Notice of Receipt: October 6, 2008 (73 FR 58230) (FRL–8353–6).
Applicant: Cytec Industries, Inc.
Chemical: (G) Substituted carbomonocycles, polymer with substituted glycols and alkyldioic acid.
Use: (G) Resin for paints and coatings.
Production Volume: CBI.
Number of Customers: CBI.
Test Marketing Period: CBI days, commencing on first day of commercial manufacture.

The following additional restrictions apply to these TMEs. A bill of lading accompanying each shipment must state that the use of the substance 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 substance 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 substance.

V. What was EPA's Risk Assessment for these TMEs?

EPA identified no significant human health or environmental risks for these test market substances, due to either the low toxicity of each substance or low expected exposure. Therefore, the test market activities will not present an unreasonable risk of injury to human health or the environment. (Many of these TMEs were submitted per the TSCA New Chemicals Sustainable Futures Voluntary Pilot Project which is designed to develop low risk chemicals; see the **Federal Register** of December 11, 2002 (67 FR 76282) (FRL–7198–6).

VI. Can EPA Change Its Decision on these TMEs 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: May 14, 2009.

Greg Schweer,

Chief, New Chemicals Prenotice Branch, Office of Pollution Prevention and Toxics.

[FR Doc. E9–11743 Filed 5–19–09 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2009–0281; FRL–8413–1]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 23, 2009 through April 10, 2009, consists of the PMNs and TME, both pending or

expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. Premanufacturer Notices P09–87 thru P09–129 which covered the time period of December 2, 2008 through December 18, 2008 were inadvertaly left out of the **Federal Register** and are included in this notice.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before June 19, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0281, 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–2009–0281. 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–2009–0281. 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 or e-mail. The 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, 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. To access the electronic docket, go to *http://www.regulations.gov*, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the 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 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. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 23, 2009 through April 10, 2009, consists of the PMNs and TME, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs and TME, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit I. to access additional non-CBI information that may be available. Premanufacturer Notices P09–87 thru P09–129 which covered the time period of December 2, 2008 through December 18, 2008 were inadvertaly left out of the **Federal Register** and now are included in this notice.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 68 PREMANUFACTURE NOTICES RECEIVED FROM: 3/23/09 TO 4/10/09

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–09–0087	12/02/08	03/01/09	Momentive Performance Materials	(G) Catalyst complex for release coatings	(G) Vinyl silicone resin complex
P–09–0088	12/04/08	03/03/09	Momentive Performance Materials	(G) Release coating for polyethylene and polypropylene substrates	(G) Branched silyl hydride cross linker
P–09–0089	12/04/08	03/03/09	Momentive Performance Materials	(G) Chemical intermediate	(G) Methyl hydrogen siloxanes and silicones chemical intermediate
P–09–0090	12/04/08	03/03/09	Momentive Performance Materials	(G) Silsesquioxanes chemical intermediate	(G) Silsesquioxanes
P–09–0091	12/05/08	03/04/09	CBI	(G) Crosslinking agent for coatings	(G) Aromatic polyisocyanate, aliphatic diol, glycol ethers-blocked
P–09–0092	12/05/08	03/04/09	CBI	(G) Crosslinking agent for coatings	(G) Aromatic polyisocyanate, aliphatic diol, glycol ethers-blocked
P–09–0093	12/05/08	03/04/09	CBI	(G) Crosslinking agent for coatings	(G) Aromatic polyisocyanate, aliphatic alcohol, aliphatic diol, glycol ethers-blocked
P–09–0094	12/05/08	03/04/09	CBI	(G) Crosslinking agent for coatings	(G) Aromatic polyisocyanate, aliphatic alcohol, aliphatic diol, glycol ethers-blocked
P–09–0095	12/05/08	03/04/09	CBI	(G) Crosslinking agent for coatings	(G) Aromatic polyisocyanate, aliphatic diol, glycol ethers-blocked
P–09–0096	12/05/08	03/04/09	CBI	(G) Crosslinking agent for coatings	(G) Aromatic polyisocyanate, aliphatic diol, glycol ethers-blocked
P–09–0097	12/05/08	03/04/09	CBI	(G) Rheological additive, toughener, film former for thermoset adhesives	(S) Amines, C_{36}-alkylenedi-, polymers with pyromellitic dianhydride, maleated
P–09–0098	12/04/08	03/03/09	CBI	(G) Polymer additive	(S) Zinc, bis[3-(acetyl-.kappa.O)-6-methyl-2*H*-pyran-2,4(3*H*)-dionato-.kappa.O4]diaqua-
P–09–0099	12/03/08	03/02/09	CBI	(G) Coating component	(G) Fluoroethylene vinyl copolymer
P–09–0100	12/05/08	03/04/09	Sachem, Inc.	(G) Chemical intermediate	(S) Tricyclo [3.3.1.13,7] decan-1-aminium, *N,N,N*-trimethyl-, chloride (1:1)
P–09–0101	12/05/08	03/04/09	Sachem, Inc.	(G) Chemical intermediate	(S) Tricyclo [3.3.1.13,7] decan-1-aminium, *N,N,N*-trimethyl-, hydroxide (1:1)
P–09–0102	12/09/08	03/08/09	CBI	(G) Concrete additive	(G) Acrylate polymer with vinyl ether
P–09–0103	12/09/08	03/08/09	CBI	(S) Solder mask for printed circuit board preparation	(G) Formaldehyde, polymers with alkyl aromatic phenol, cycloaliphatic-phenol polymer glycidyl ether, epichlorohydrin and aromatic diol, acrylic cycloaliphatic carboxylates.
P–09–0104	12/09/08	03/08/09	3M	(G) Adhesive	(G) Polyurea acrylate

I. 68 PREMANUFACTURE NOTICES RECEIVED FROM: 3/23/09 TO 4/10/09—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–09–0105	12/09/08	03/08/09	Dow Agrosciences	(G) Chemical intermediate	(G) Halo substituted benzonitrile
P–09–0106	12/09/08	03/08/09	Meadwestvaco Corporation — Specialty Chemicals Division	(S) Asphalt emulsifier salt	(G) Fatty acids, tall-oil, reaction products with modified fatty acids and polyalkanolamines, hydrochlorides
P–09–0107	12/09/08	03/08/09	Meadwestvaco Corporation	(S) Asphalt emulsifier	(G) Fatty acids, tall-oil, reaction products with modified fatty acids and polyalkanolamines.
P–09–0108	12/10/08	03/09/09	CBI	(G) Chemical intermediate	(G) Dialkyl imidazolium halide
P–09–0109	12/10/08	03/09/09	CBI	(G) Lubricant additive	(G) Alkyl ammonium tungstate complex
P–09–0110	12/10/08	03/09/09	CBI	(G) Lubricant additive	(G) Alkyl ammonium tungstate complex
P–09–0111	12/05/08	03/04/09	PPG Industries, Inc.	(G) Component of coating with open use	(G) Alkoxysilane functional acrylic resin
P–09–0112	12/10/08	03/09/09	CBI	(G) Aerspace structural adhesive	(G) Bis-A-epoxy resin—CTBN adduct
P–09–0113	12/11/08	03/10/09	CBI	(S) Polymerizable component of adhesive formulations	(G) Substituted bisphenolf resin
P–09–0114	12/11/08	03/10/09	Esstech, Inc.	(S) Adhesive	(S) 1,2,4,5-benzenetetracarboxylic acid; 1,4-bis (2-((2-methyl-1-oxo-2-propenyl) oxy)-1-(((2-methyl-1-oxo-2-propenyl) oxy) methyl) ethyl ester
P–09–0115	12/11/08	03/10/09	CBI	(G) Oilfield production chemical	(G) Alkanedioic acid, polymer with *N*-(aminoalkyl)-alkyldiamine, (chloromethyl)oxirane and alkylpolyol, acid salt
P–09–0116	12/09/08	03/08/09	Colonial chemical, Inc.	(S) Detergent for hard surface cleaners	(S) Coconut oil, reaction products with diisopropanolamine
P–09–0117	12/09/08	03/08/09	Colonial Chemical, Inc.	(S) Detergent for hard surface cleaners	(S) Fats and glyceridic oils, sesame, reaction products with diisopropanolamine
P–09–0118	12/09/08	03/08/09	Colonial Chemical, Inc.	(S) Detergent for hard surface cleaners	(S) Fats and glyceridic oils, avocado, reaction products with diisopropanolamine
P–09–0119	12/09/08	03/08/09	Colonial Chemical, Inc.	(S) Detergent for hard surface cleaners	(S) Corn oils, reaction products with diisopropanolamine
P–09–0120	12/15/08	03/14/09	CBI	(S) Polymerizable component of adhesive formulations	(G) Epoxidized siloxane
P–09–0121	12/15/08	03/14/09	CBI	(G) Fuel additive	(G) Substituted pyrrolidinealkanaminium, polyalkylene derivates
P–09–0122	12/16/08	03/15/09	CBI	(G) Coating resin for organic electrophotographic photoconductor	(G) Silicone modified polycarbonate
P–09–0123	12/16/08	03/15/09	The Dow Chemical Company	(G) Two component polyurethane ealstomers (MDI based)	(G) Polyester polyol
P–09–0124	12/17/08	03/16/09	Gharda Chemicals Limited	(S) Manufacture of automotive parts; manufacture of wire cable and insulation; manufacture of industrial valve linigs; manufacture of heat exchange parts; oil field pipe flanges; aircraft exterior and interior aircraft components; dry transfer insulation	(G) Poly (ether ketone)
P–09–0125	12/17/08	03/16/09	Gharda Chemicals Limited	(S) Manufacture of automotive parts; manufacture of wire and cable insulation; manufacture of industrial valve linings; manufacture of heat exchange parts; oil field pipe flanges and gaskets; aircraft - exterior and interior components; dry transfer insulation	(G) polyarylene ether nitrile
P–09–0126	12/17/08	03/16/09	CBI	(S) Intermediate for fuel additive	(G) Substituted pyrrolidine alkylamine, polyalkylene derivates

I. 68 PREMANUFACTURE NOTICES RECEIVED FROM: 3/23/09 TO 4/10/09—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–09–0127	12/18/08	03/17/09	CBI	(G) Open, non-dispersive use (industrial coatings resin)	(G) Aliphatic polyurethane resin aqueous dispersion
P–09–0128	12/18/08	03/17/09	Huntsman International, LLC	(S) Exhaust dyeing of cotton	(G) Naphthalenedisulfonic acid azo substituted napthalenesulfonic acid amino substituted triazin amino phenyl alkyl sulfonyl conpound
P–09–0129	12/18/08	03/17/09	CBI	(G) Open non-dispersive (adhesive)	(G) Aqueous polyurethane resin dispersion
P–09–0284	03/25/09	06/22/09	CBI	(G) Unsaturated polyester resin for filled and fiber reinforced composites	(G) Unsaturated polyester resin
P–09–0285	03/25/09	06/22/09	CBI	(G) Unsaturated polyester resin for filled and fiber reinforced composites	(G) Unsaturated polyester resin
P–09–0286	03/25/09	06/22/09	Cytec Industries Inc.	(G) Coatings resin	(G) Poly (oxyalkylenediyl), a-substituted carbomonocycle-.omega.-substituted carbomonocycle
P–09–0287	03/26/09	06/23/09	CBI	(G) Diesel fuel additive	(G) Acrylic acid, alkyl ester, polymer with ethylene and vinyl carboxylate
P–09–0288	03/27/09	06/24/09	CBI	(G) Silicone additive	(G) Alkyl silsesquioxanes
P–09–0289	03/27/09	06/24/09	The Dow Chemical Company	(S) Solid epoxy resins for powder coatings	(G) Solid epoxy resin
P–09–0290	03/27/09	06/24/09	The Dow Chemical Company	(S) Solid epoxy resins for powder coatings	(G) Solid epoxy resin
P–09–0291	03/30/09	06/27/09	CBI	(G) Polymerization aid	(G) Ammonium salt of fluoropropanoic acid
P–09–0292	03/31/09	06/28/09	Alberdingk Boley Inc.	(S) For wood and plastic coatings	(G) Hexanedioic acid, polymer with 2-(chloromethyl)oxirane polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, hexanedioicacid, 4,4′-(1-methylethylidene)bis[phenol] and oxirane 2-propenoate, 2,2-dimethyl-1,3-propanediol, 1,6-hexanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 5-isocyanato-1-(isocyanatomethyl)-alkylcyclohexane, compound with *N,N*-diethylethanamine
P–09–0293	03/31/09	06/28/09	CBI	(G) Coating for open, non-dispersive use; surface active agent	(G) Phosphoric acid, mixed esters with partially fluorinated alcohol, ammonium salts
P–09–0294	03/31/09	06/28/09	CBI	(G) Coating for open, non-dispersive use; surface active agent	(G) Phosphoric acid, mixed esters with partially fluorinated alcohol, ammonium salts
P–09–0295	03/30/09	06/27/09	CBI	(G) Dispersant\wetting agent	(G) Copolymer of the esters of acrylic acid and methacrylic acid
P–09–0296	03/30/09	06/27/09	CBI	(G) Dispersant\wetting agent	(G) Acrylic acid esters and methacrylic acid esters copolymer, cmpound with aminoethylpropanol
P–09–0297	03/30/09	06/27/09	CBI	(G) Dispersant\wetting agent	(G) Copolymer of acrylic acid and methacrylic acid esters, and vinylcaprolactam
P–09–0298	03/30/09	06/27/09	CBI	(G) Dispersant\wetting agent	(G) Copolymer of acrylic acid and methacrylic acid esters, and vinylcaprolactam, compound with aminomethylpropanol
P–09–0299	04/02/09	06/30/09	CBI	(G) Dispersant for organic pigments in polyolefin thermoplastics	(G) Fatty acid amide
P–09–0300	04/03/09	07/01/09	CBI	(G) Diesel fuel additive	(G) Aromatic dicarboxylic acid dialkyl amide dialkyl ammonium salt
P–09–0301	04/03/09	07/01/09	CBI	(G) Adhesive component	(G) Adipic acid, polymer with carbomonocyclic diisocyanates, benzenepolycarboxylic acids and alkanediols
P–09–0302	04/03/09	07/01/09	CBI	(G) Raw material	(G) Adipic acid, polymer with benzenepolycarboxylic acids and alkanepolyols

I. 68 PREMANUFACTURE NOTICES RECEIVED FROM: 3/23/09 TO 4/10/09—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–09–0303	04/03/09	07/01/09	CBI	(G) Raw material	(G) Adipic acid, polymer with benzenepolycarboxylic acids and alkanediols
P–09–0304	04/07/09	07/05/09	CBI	(G) Binding aid	(G) Propanamine blocked polymeric isocyanate
P–09–0305	04/07/09	07/05/09	CBI	(G) Adhesive and sealant	(G) Polymeric isocyanate
P–09–0306	04/06/09	07/04/09	CBI	(G) Dispersant	(G) Polyester
P–09–0307	04/10/09	07/08/09	CBI	(S) Raw material used in ultra violet curable inks and coatings	(G) Amine acrylate co-initiator
P–09–0308	04/10/09	07/08/09	CBI	(S) Raw material used in ultra violet curable inks and coatings	(G) Amine modified polyester acrylate

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 3/23/09 TO 4/10/09

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–09–0008	03/25/09	05/08/09	Cytec Industries Inc.	(G) Coatings resin	(G) Poly(oxyalkylenediyl), a-substituted carbomonocycle-.omega.-substituted carbomonocycle

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 38 NOTICES OF COMMENCEMENT FROM: 3/23/09 TO 4/10/09

Case No.	Received Date	Commencement Notice End Date	Chemical
P–02–0112	03/25/09	10/19/04	(G) Amidosiloxane
P–04–0514	04/03/09	03/18/09	(G) Polybutadiene acrylate
P–06–0103	04/08/09	03/19/09	(G) Polyetherpolyol polymer with aromatic ketone
P–07–0071	03/20/09	03/01/09	(G) Mdi and polymeric MDI prepolymer
P–07–0587	04/01/09	03/17/09	(G) *N,N*-dialkylalkylamine
P–08–0340	04/03/09	03/06/09	(G) 1,2-ethanediamine, *N*1,*N*2-bis(2-aminoethyl), polymer with haloalkyloxirane and polyoxyalkane
P–08–0477	04/03/09	03/18/09	(G) Hexyl carbamate
P–08–0560	04/01/09	03/18/09	(G) Modified polyalkyldiene polymer
P–08–0642	04/06/09	03/31/09	(G) Fluorinated acrylic copolymer
P–08–0705	03/27/09	03/09/09	(S) Chromium, 1-[2-[5-(1,1-dimethylpropyl)-2-hydroxy-3-nitrophenyl]diazenyl]-2-naphthalenol 1-[2-[2-hydroxy-4(or 5)-nitrophenyl]diazenyl]-2-naphthalenol ammonium sodium complexes
P–08–0719	04/03/09	03/18/09	(G) Polyester polyol
P–08–0742	03/24/09	03/04/09	(S) Phosphonium, tetrabutyl-, hydroxide (1:1)
P–09–0005	03/24/09	03/14/09	(G) Substituted phenol, polymer with 2-(chloromethyl)oxirane 1,3-diisocyanatomethylbenzene, 2-ethylhexanoate (ester), cyclized, reaction products with diethylenetriamine and 2-(methylamino) ethanol
P–09–0010	04/02/09	03/05/09	(G) Polyurethane pre-polymers of polymeric MDI and polyether polyols
P–09–0049	04/06/09	03/26/09	(G) Acrylic copolymer
P–09–0069	03/25/09	03/19/09	(G) Amides, from lignin, tall oil fatty acids, C_{21} dicarboxylic acids and polyalkanolamines
P–09–0070	03/25/09	03/19/09	(G) Amides, from lignin, tall oil fatty acids, C_{21} dicarboxylic acids and polyalkanolamines, hydrochlorides
P–09–0081	03/24/09	02/27/09	(G) Polymer of aliphatic diols, aliphatic polyols, and carboxylic anhydrides
P–09–0086	03/26/09	03/16/09	(S) Cyclosiloxanes, me 3-(2-oxiranylmethoxy)propyl
P–09–0092	03/25/09	03/18/09	(G) Aromatic polyisocyanate, aliphatic diol, glycol ethers-blocked
P–09–0121	04/08/09	04/02/09	(G) Substituted pyrrolidinealkanaminium, polyalkylene derivates

III. 38 NOTICES OF COMMENCEMENT FROM: 3/23/09 TO 4/10/09—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–09–0126	04/06/09	03/25/09	(G) Substituted pyrrolidine alkylamine, polyalkylene derivates
P–94–2242	04/02/09	06/01/95	(G) Salt of aminotetrazole
P–08–0070	12/15/08	11/25/08	(G) Fluorosilicone
P–08–0229	12/08/08	11/18/08	(G) Polyether and trialkylsilylalkylamine modified polyurethane
P–08–0230	12/08/08	11/18/08	(G) Trialkoxysilylalkylene modified polydialkylsiloxane
P–08–0399	12/17/08	11/24/08	(S) 1-(2,3-dimethyl-bicyclo[2.2.1]heptan)-ethanone
P–08–0409	12/03/08	11/05/08	(G) Alpha-alkenes, C_{20-24} .alpha.-,polymers with maleic anhydride, C_{16-30}-alkyl esters
P–08–0421	12/03/08	11/28/08	(G) Acrylic resin
P–08–0430	12/04/08	11/12/08	(G) Isocyanate terminated urethane polymer
P–08–0465	12/16/08	12/12/08	(G) Reaction product of substituted dioxazine compound and substituted alkyl sulfonyl compound
P–08–0466	12/10/08	11/28/08	(G) Phenolic resin
P–08–0629	12/02/08	11/13/08	(G) Phenol, 2,4,6,-tris[(dimethylamino)methyl]-, reaction products with triethylenetetramine mixture (includes: *N,N*-bis(2-aminoethyl)-1,2-ethanediamine, tris-(2-aminoethyl)amine), *N,N*-bis-(2-aminoethyl)piperazine, and *N*-[(2-aminoethyl)2-aminoethyl]piperazine
P–08–0648	12/01/08	11/17/08	(G) Pentaisobutylene
P–08–0650	12/12/08	12/11/08	(G) Styrene, methanamine modified polymer
P–08–0651	12/12/08	12/11/08	(G) Halogenated styrene modified polymer
P–08–0652	12/12/08	12/11/08	(G) Acrylic styrene modified polymer
P–08–0653	12/12/08	12/11/08	(G) Acrylonitrile, acrylate, styrene modified polymer

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: April 22, 2009.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E9–11748 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2009–0309; FRL–8413–8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 13, 2009 through April 24, 2009, consists of the PMNs and pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before June 19, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0309, 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–2009–0309. 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–2009–0309. 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 or e-mail. The 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, 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. To access the

electronic docket, go to *http://www.regulations.gov*, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the 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 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. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 13, 2009 through April 24, 2009, consists of the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit I. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 25 PREMANUFACTURE NOTICES RECEIVED FROM: 4/13/09 TO 4/24/09

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–09–0307	04/10/09	07/08/09	CBI	(S) Raw material used in ultra violet curable inks and coatings	(G) Amine acrylate co-initiator
P–09–0308	04/10/09	07/08/09	CBI	(S) Raw material used in ultra violet curable inks and coatings	(G) Amine modified polyester acrylate
P–09–0309	04/10/09	07/08/09	CBI	(G) Open, non-dispersive use	(G) Unsaturated polyester polymer
P–09–0310	04/10/09	07/08/09	CBI	(G) Open, non-dispersive use	(G) Unsaturated polyester polymer

I. 25 PREMANUFACTURE NOTICES RECEIVED FROM: 4/13/09 TO 4/24/09—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–09–0311	04/10/09	07/08/09	CBI	(G) Open, non-dispersive use	(G) Unsaturated polyester polymer
P–09–0312	04/10/09	07/08/09	CBI	(G) Open, non-dispersive use	(G) Unsaturated polyester polymer
P–09–0313	04/10/09	07/08/09	CBI	(G) Open, dispersive use	(G) Unsaturated polyester polymer
P–09–0314	04/15/09	07/13/09	Interfacial Solutions	(S) Interior building materials; injection molded goods electronic housing	(G) Modified (poly) lactic acid
P–09–0315	04/15/09	07/13/09	Interfacial Solutions	(S) Interior building materials; injection molded hard goods / electronics housings	(G) Modified (poly) lactic acid
P–09–0316	04/15/09	07/13/09	Eastman Kodak Company	(G) Raw material	(G) Disubstituted phenol
P–09–0317	04/17/09	07/15/09	Autoliv ASP, Inc.	(S) Fuel used in pyrotechnic composition for automotive inflators	(S) Copper (2+), bis[*N*-[amino(imino-kn)methyl]urea-ko]-, nitrate (1:2)
P–09–0318	04/17/09	07/15/09	CBI	(G) Coating material	(G) Polyester of aromatic / aliphatic dicarboxylic acid polymer with alkanepolyols and alkyl alkenoates
P–09–0319	04/17/09	07/15/09	CBI	(G) Pigment dispersant	(G) Polyester
P–09–0320	04/17/09	07/15/09	CBI	(S) Resin coating for electronic parts	(G) Silsesquioxanes
P–09–0321	04/17/09	07/15/09	CBI	(G) Coating material	(G) Polyester of aromatic / aliphatic / alkenoic dicarboxylic acid polymer with alkanepolyols
P–09–0322	04/17/09	07/15/09	CBI	(G) Adhesive component	(G) Adipic acid, polymer with methylenebis [carbomonocyclic isocyanate], polyether polyols and a polyester polyol
P–09–0323	04/21/09	07/19/09	CBI	(G) Component of industrial cleaning products	(G) Complex organic magnesium sulfate compound
P–09–0324	04/21/09	07/19/09	CBI	(G) Component of industrial cleaning products	(G) Complex organic magnesium acetate compound
P–09–0325	04/23/09	07/21/09	CBI	(S) Synthetic intermediate	(G) Aromatic hydrocarbon
P–09–0326	04/23/09	07/21/09	CBI	(S) Synthetic intermediate	(G) Aromatic bromide
P–09–0327	04/22/09	07/20/09	CBI	(G) Destructive use	(G) Surface modified aluminum hydroxide
P–09–0328	04/23/09	07/21/09	CBI	(G) Additive, open, non-dispersive use	(G) (2-methacryloyloxyethyl) benzyldimethylammonium chloride, polymer with alkyl-substituted methyl-2-propanoate and aryl-substituted methyl-2-propanoate,
P–09–0329	04/23/09	07/21/09	CBI	(G) Silicone treatment	(G) Alkyl siliconate
P–09–0330	04/24/09	07/22/09	Diamond Polymers, Inc.	(S) Finished articles substrate as pure substance or blended with other polymers; primarily for use in electronics and automotive components.	(G) Substituted butyric propionic acid copolymer
P–09–0331	04/24/09	07/22/09	Nanotech Industries, Inc.	(S) Flooring; top clear coating	(G) Urethane containing polyamine

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 9 NOTICES OF COMMENCEMENT FROM: 4/13/09 TO 4/24/09

Case No.	Received Date	Commencement Notice End Date	Chemical
P–08–0259	04/16/09	04/09/09	(G) 2,5-dihydro-3,6-bis[4-(alkylthio) aryl] - substituted pyrroledione
P–08–0447	04/14/09	03/16/09	(G) Silica alumino phosphate
P–08–0496	04/17/09	03/30/09	(G) Alkene-carboxylic acid copolymer alkanolamine salt
P–08–0674	04/17/09	03/30/09	(G) Mixed metal oxides
P–09–0021	04/21/09	04/06/09	(G) Polyurethane thermoplastic
P–09–0031	04/20/09	03/18/09	(G) Methacrylic polymer
P–09–0064	04/21/09	04/13/09	(G) Substituted sulfonated phenylazo naphthalene sulfonic acid salt
P–09–0067	04/10/09	03/23/09	(G) Polyester resin amine salt
P–09–0097	04/14/09	03/30/09	(S) Amines, C_{36}-alkylenedi-, polymers with pyromellitic dianhydride, maleated

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: May 4, 2009.

Darryl S. Ballard

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E9–11749 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0211; FRL–8907–7]

Notice of Receipt of a Clean Air Act Waiver Application To Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: The U.S. Environmental Protection Agency ("EPA"), in response to many requests from the public, is extending the public comment period on the waiver application to increase the allowable ethanol content of gasoline to 15 percent ("E15") which was submitted by Growth Energy and 54 ethanol manufacturers on March 6, 2009. EPA published notice of receipt and request for comment in the **Federal Register** for Growth Energy's application on April 21, 2009 (74 FR 18228). The public comment period was to end on May 21, 2009. The purpose of this document is to extend the comment period an additional 60 days until July 20, 2009. This extension of the comment period is provided to allow the public additional time to respond to the legal and technical issues raised in the application. This action does not extend the 270-day statutory deadline for the Administrator to grant or deny the E15 waiver request, which ends on December 1, 2009.

DATES: Written comments must be received on or before July 20, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0211, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2009–0211, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0211. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov*. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

How Can I Access the Docket?

EPA has established a public docket for this application under Docket ID No. EPA–HQ–OAR–2009–0211, which is available for Online viewing at *http://www.regulations.gov*, or in person viewing at the EPA/DC Docket Center Public Reading Room, 1301 Constitution Avenue, NW., Room 3334, Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the waiver request, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

FOR FURTHER INFORMATION CONTACT: Robert K. Anderson, Office of Transportation and Air Quality (6405J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–7518; fax number: (202) 343–2802; e-mail address: *anderson.robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2009, Growth Energy and 54 ethanol manufacturers submitted an application to the U.S. Environmental Protection Agency for a waiver of the prohibition of the introduction into commerce of certain fuels and fuel additives set forth in section 211(f) of the Clean Air Act ("the Act"). This application seeks a waiver for ethanol-gasoline blends of up to 15 percent by volume ethanol ("E15"). On April 21, 2009, EPA published notice for the receipt of the application, and, as required by section 211(f)(4) of the Act, EPA requested public comment on all aspects of the waiver application that will assist the Administrator in determining whether the statutory basis for granting the waiver request for ethanol-gasoline blends containing up to E15 has been met (See 74 FR 18228). EPA originally provided a 30-day period for the public to respond. The deadline for public comment was May 21, 2009.

In a letter dated April 17, 2009, the National Corn Growers Association requested a 60-day extension to the comment period. On April 27, 2009, EPA received a request from 36 national organizations who stated they represent a diverse cross-section of interests and who requested a 60-day extension to the comment window. Also on April 27, 2009, the Alliance of Automobile Manufacturers requested a 45-day extension. Finally, on May 6, 2009, AllSAFE—a group of national consumer, manufacturing, and gasoline retailer associations that utilize gasoline and ethanol fuel blends—requested a minimum 30-day extension to the comment period. In general, these parties stated that additional time would be needed in order to allow

commenters more time to properly address the complex legal and technical issues and provide more thorough comments that would aid in considering the E15 waiver.

Although EPA agrees that additional time for comments may be needed, this need must be balanced against the need to allow EPA ample time to review all relevant data and public submissions before the 270-day statutory decision deadline. EPA believes an additional 60 days would allow adequate time for these stakeholders and others to provide meaningful comment on the E15 waiver request. EPA does not anticipate any further extension of the comment period for this waiver request.

Extension of Comment Period

EPA has determined that extension of the comment period would aid in providing the public an adequate amount of time to respond to the complex legal and technical issues that result from possibly allowing E15 to be sold commercially. Accordingly, the public comment period for the E15 waiver to section 211(f) of the Act is extended until July 20, 2009. This action does not extend the 270-day statutory deadline of December 1, 2009, for the Administrator to grant or deny the E15 waiver request.

Dated: May 14, 2009.

Elizabeth Craig,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. E9–11785 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0277; FRL–8904–6]

Protection of Stratospheric Ozone: Request for Critical Use Exemption Applications for 2012

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Solicitation of Applications and Information on Alternatives.

SUMMARY: EPA is soliciting applications for the critical use exemption from the phaseout of methyl bromide for 2012 and beyond. This exemption is an annual exemption and all entities interested in obtaining a critical use exemption must provide EPA with technical and economic information to support a "critical use" claim and must do so by the deadline specified in this notice even if they have previously applied for an exemption. Today's notice also invites interested parties to provide EPA with new data on the technical and economic feasibility of methyl bromide alternatives.

DATES: Applications for the critical use exemption must be postmarked on or before July 20, 2009. The response period reflects the clarifications and reduction of burden in the application.

ADDRESSES: Applications for the methyl bromide critical use exemption should be submitted in duplicate (two copies) by mail to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Team, Mail Code 6205J, 1200 Pennsylvania Ave, NW., Washington, DC 20460 or by courier delivery (other than U.S. Post Office overnight) to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Review Team, 1310 L St. NW., Room 1040, Washington DC 20005. EPA also encourages users to submit their applications electronically to Robert Burchard, Stratospheric Protection Division, at *burchard.robert@epa.gov*. If the application is submitted electronically, applicants must fax a signed copy of Worksheet 1 to Robert Burchard at 202–343–2338 by the application deadline.

FOR FURTHER INFORMATION CONTACT:

General Information: U.S. EPA Stratospheric Ozone Information Hotline, 1–800–296–1996; also *http://www.epa.gov/ozone/mbr.*

Technical Information: Bill Chism, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503P), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 703–308–8136. E-mail: *chism.bill@epa.gov.*

Economic Information: Elisa Rim, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503P), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 703–308–8123. E-mail: *rim.elisa@epa.gov.*

Regulatory Information: Robert Burchard, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 202–343–9126. E-mail: *burchard.robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What do I need to know to respond to this request for applications?

A. Who can respond to this request for information?

Entities interested in obtaining a critical use exemption must complete the application form available at *http://www.epa.gov/ozone/mbr.* The application form may be submitted either by a consortium representing multiple users who have similar circumstances or by individual users who anticipate needing methyl bromide in 2012 and believe there are no technically and economically feasible alternatives. EPA encourages groups of users with similar circumstances of use to submit a single application (for example, any number of pre-plant users with similar soil, pest, and climactic conditions can join together to submit a single application). In some instances, state agencies will assist users with the application process (see discussion of voluntary state involvement in Part I.B. below). Given that this is the eighth round of the critical use exemption process, EPA will take a skeptical view regarding supporting new nominations (meaning, specific applicants who have not previously been nominated by the U.S. Government for an exemption) unless the applicant demonstrates that an unforeseeable change in circumstances (*e.g.*, withdrawal or significant change in registration status of an alternative) justifies the need.

In addition to requesting information from applicants for the critical use exemption, this solicitation for information provides an opportunity for any interested party to provide EPA with information on methyl bromide alternatives (*e.g.*, technical and/or economic feasibility research). The application form for the methyl bromide critical use exemption and other

information on research relevant to alternatives must be sent to the addresses specified above or e-mailed to the address specified above. The applicant's signature, which is required in order for EPA to process the application, is on Worksheet 1 of the application. Applicants submitting electronically must also fax a signed copy of Worksheet 1 to Robert Burchard at 202–343–2338 by the application deadline.

B. Whom can I contact to find out whether a consortium is submitting an application for my methyl bromide use?

You should contact your local, state, regional, or national commodity association to find out whether it plans to submit an application on behalf of your commodity group.

Additionally, you should contact your state regulatory agency (generally this will be the state's agriculture or environmental protection agency) to receive information about its involvement in the process. If your state agency has chosen to participate, EPA recommends that you first submit your application to the state agency, which will then forward applications to EPA. The National Pesticide Information Center Web site identifies the lead pesticide agency in each state (http://npic.orst.edu/state1.htm).

C. How do I obtain an application form for the methyl bromide critical use exemption?

An application form for the methyl bromide critical use exemption can be obtained either in electronic or hard-copy form. EPA encourages use of the electronic form. Applications can be obtained in the following ways:

1. PDF format and Microsoft Excel at EPA's Web site: *http://www.epa.gov/ozone/mbr/cueinfo.html;*
2. Hard copy ordered through the Stratospheric Ozone Protection Hotline at 1–800–296–1996;
3. Hard-copy format at DOCKET ID No. EPA–HQ–OAR–2009–0277. The docket can be accessed at the *http://www.regulations.gov* site. To obtain copies of materials in hard copy, please e-mail the EPA Docket Center: *a-and-r-docket@epa.gov.*

D. Which alternatives must applicants address when applying for a critical use exemption?

To support the assertion that a specific use of methyl bromide is "critical," applicants are expected to demonstrate that there are no technically and economically feasible alternatives available for that use. The Parties to the Montreal Protocol have developed an "International Index" of methyl bromide alternatives, which lists chemical and non-chemical alternatives by crop. In 2008, the United States submitted an index of alternatives, which includes the current registration status of available and potential alternatives, that is available on the Ozone Secretariat Web site: *http://ozone.unep.org/Exemption_Information/Critical_use_nominations_for_methyl_bromide/MeBr_Submissions/USA-Alternatives-Ex4-1-2008.pdf.*

Applicants must address technical, regulatory, and economic issues that limit the adoption of "chemical alternatives" and combinations of "chemical" and "non-chemical alternatives" listed for their crop within the "U.S. Index" of Methyl Bromide Alternatives. Applicants must also address technical, regulatory, and economic issues that limit the adoption of "non-chemical alternatives" and combinations of "chemical" and "non-chemical alternatives" listed for their crop in the "International Index."

E. What portions of the applications will be considered confidential business information?

You may assert a business confidentiality claim covering part or all of the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." You should clearly identify the allegedly confidential portions of otherwise non-confidential documents, and you may submit them separately to facilitate identification and handling by EPA. If you desire confidential treatment only until a certain date or until the occurrence of a certain event, your notice should state that. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth under 40 CFR part 2, subpart B; 41 FR 36752, 43 FR 40000, 50 FR 51661. If no claim of confidentiality accompanies the information when EPA receives it, EPA may make it available to the public without further notice.

If you are asserting a business confidentiality claim covering part or all of the information in the application, please submit a non-confidential version that EPA can place in the public docket for reference by other interested parties. Do not include on the "Worksheet Six: Application Summary" page of the application any information that you wish to claim as confidential business information. Any information on Worksheet 6 shall not be considered confidential and will not be treated as such by the Agency. EPA will place a copy of Worksheet 6 in the public domain. Applications that are not confidential business information will be placed in the Docket in their entirety. Please note, claiming business confidentiality may delay EPA's ability to review your application.

F. Must I submit a "Notice of Intent to Apply"?

A "Notice of Intent to Apply" is not required, but would facilitate the organization of the application review during the critical use exemption process. If EPA is aware of the consortia and the individuals who intend to submit applications 30 days before the application deadline, the technical experts will be better positioned to review the application. This Notice may be submitted to Robert Burchard via e-mail at *burchard.robert@epa.gov* or via U.S. mail to U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, 1200 Pennsylvania Ave., NW., 6205J, Washington, DC 20460 or by courier to U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, 1310 L St., NW., Room 1040, Washington, DC 20005.

G. What if I submit an incomplete application?

EPA will not accept any applications postmarked after July 20, 2009. If the application is postmarked by the deadline but is incomplete or missing any data elements, EPA will not accept the application and will not include the application in the U.S. nomination submitted for international consideration. If the application is substantially complete with only minor errors, corrections will be accepted. EPA reviewers may also call an applicant for further clarification of an application, even if it is complete.

All consortia or users who did not apply to EPA for the 2008 control period (calendar year) must submit an entire completed application with all Worksheets.

H. What if I applied for a critical use exemption in a previous year?

Users must apply to EPA for critical use exemptions on an annual basis. However, if a user group submitted a complete application to EPA in 2008, the user is only required to submit revised copies of the certain Worksheets listed below, though the entire

application with all Worksheets must be on file with EPA. You must submit Worksheets 1, 2B, 2C, 2D, 4, 5, and 6 in full regardless of whether you submitted an application in 2008. You need only complete the remaining worksheets if any information has changed since 2008. If you submitted a critical use exemption application to EPA in 2002, 2003, 2004, 2005, 2006, or 2007 but did not submit an application in 2008, then you must submit all of the worksheets in the application again in their entirety.

II. What is the legal authority for the critical use exemption?

A. What is the Clean Air Act (CAA) authority for the critical use exemption?

The October 1998 amendments to the Clean Air Act added sections 604(d)(6), 604(e)(3), and 604(h), requiring EPA to conform the U.S. phaseout schedule for methyl bromide to the provisions of the Montreal Protocol for industrialized countries. Under this schedule methyl bromide was phased out starting in 2005. Additionally, the 1998 amendment allowed EPA to exempt the production and import of methyl bromide from the phaseout for critical uses starting January 1, 2005, to the extent consistent with the Montreal Protocol.

B. What is the Montreal Protocol authority for the critical use exemption?

The Montreal Protocol provides an exemption to the phaseout of methyl bromide for critical uses in Article 2H, paragraph 5. The Parties to the Protocol included such an exemption in recognition that alternatives might not be available by 2005 for certain uses of methyl bromide agreed by the Parties to be "critical uses."

In their Ninth Meeting (1997), the Parties to the Protocol agreed to Decision IX/6, setting forth the following criteria for a "critical use" determination:

(a) That a use of methyl bromide should qualify as "critical" only if the nominating Party determines that:

(i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and

(ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.

(b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if:

(i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;

(ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries' need for methyl bromide;

(iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination . * * * Non-Article 5 Parties [*e.g.*, the U.S.] must demonstrate that research programs are in place to develop and deploy alternatives and substitutes. * * *

A Class I controlled substance that was produced or imported through the expenditure of allowances prior to its phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under EPA's phaseout regulations, unless otherwise precluded under separate regulations.

III. How is the U.S. implementing the critical use exemption?

Under the provisions of both the CAA and the Montreal Protocol, the critical use exemption became available to approved users on January 1, 2005. There is both a domestic and international component to the critical use exemption process. The following outline projects a timeline for the process for the next three years.

May 20, 2009: Solicit applications for the methyl bromide critical use exemption for 2012.

July 20, 2009: Deadline for submitting critical use exemption applications to EPA.

Fall 2009: U.S. Government (through EPA, Department of State, U.S. Department of Agriculture, and other interested federal agencies) prepares U.S. Critical Use Nomination package.

January 24, 2010: Deadline for U.S. Government to submit U.S. nomination package to the Protocol Parties.

Early 2010: Technical and Economic Assessment Panel (TEAP) and Methyl Bromide Technical Options Committee (MBTOC) reviews Parties' nominations for critical use exemptions.

Mid 2010: Parties consider TEAP/MBTOC recommendations.

November 2010: Parties authorize critical use exemptions for methyl bromide for production and consumption in 2012.

Mid 2011: EPA publishes proposed rule for allocating critical use exemptions in the U.S. for 2012.

Late 2011: EPA publishes final rule allocating critical use exemptions in the U.S. for 2012.

January 1, 2012: Critical use exemption permits the limited production and import of methyl bromide for specified uses for the 2012 control period.

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Dated: May 4, 2009.

Brian J. McLean,

Director, Office of Atmospheric Programs.

[FR Doc. E9–11742 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8908–4]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a meeting of the Good Neighbor Environmental Board (Board). The Board meets three times each calendar year, twice at different locations along the U.S. border with Mexico, and once in Washington, DC. It was created in 1992 by the Enterprise for the Americas Initiative Act, Public Law 102–532, 7 U.S.C. 5404. Implementing authority was delegated to the Administrator of EPA under Executive Order 12916. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the states of Arizona, California, New Mexico and Texas; and tribal and private organizations to provide advice on environmental and infrastructure issues along the US/Mexico Border.

The purpose of the meeting is to discuss environment priorities in the border region and to form workgroups that will begin drafting the Board's next report. The meeting will include a planning session, a business meeting and a public comment session. A copy of the meeting agenda will be posted at *http://www.epa.gov/ocem/gneb.*

DATES: The Good Neighbor Environmental Board will hold an open meeting on Wednesday, June 10, from

8:30 a.m. (registration at 8 a.m.) to 5:30 p.m. The following day, June 11, the Board will hold a business meeting from 8 a.m. until 12 p.m.

ADDRESSES: The meeting will be held at Sycuan Resort, 3007 Dehesa Road, El Cajon, CA 92019, phone number 619/442–3425. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Officer, *joyce.mark@epa.gov*, 202–564–3120, U.S. EPA, Office of Cooperative Environmental Management (1601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: If you wish to make oral comments or submit written comments to the Board, please contact Mark Joyce at least five days prior to the meeting.

General Information: Additional information concerning the GNEB can be found on its Web site at *http://www.epa.gov/ocem/gneb.*

Meeting Access: For information on access or services for individuals with disabilities, please contact Mark Joyce at 202–564–2130 or by e-mail at *joyce.mark@epa.gov.* To request accommodation of a disability, please contact Mark Joyce at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: May 13, 2009.

Mark Joyce,

Designated Federal Officer.

[FR Doc. E9–11751 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007-0837; FRL–8414–2]

Malathion; Notice of Receipt of Requests To Voluntarily Cancel or To Amend To Terminate Uses of Certain 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 requests by the registrants to voluntarily cancel or amend their registrations to terminate uses of certain products containing the pesticide malathion. The requests would terminate the malathion uses listed with their respective products in Table 2. The requests would not terminate the last malathion products registered for use in the United States. EPA intends to grant these requests 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 requests, or unless the registrants withdraw their requests within this period. Upon acceptance of these requests, 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 19, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007-0837, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007-0837. 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 or e-mail. The 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, 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 at *http://www.regulations.gov.* 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: Eric Miederhoff, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8028; fax number: (703) 308–7070; e-mail address: *miederhoff.eric@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 regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests to Cancel and/or Amend Registrations to Delete Uses

This notice announces receipt by EPA of requests from the registrants listed in Table 3 to cancel 12 and amend to terminate uses of 26 malathion product registrations. Malathion is a non-systemic, broad spectrum organophosphate pesticide with numerous commercial, agricultural and residential uses, as well as several wide area applications including use as a public health adulticide, as an abatement treatment for fruit fly, and in the Boll Weevil Eradication Program. Registrants requested EPA to cancel affected product registrations or to amend to terminate uses of pesticide product registrations identified in this notice in Tables 1 and 2, respectively. These requests will not terminate the last malathion products registered in the United States.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from registrants to cancel or amend to terminate uses of malathion product registrations. The affected products and the registrants making the requests are identified in Tables 1, 2, and 3 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 malathion registrants have requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by a 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 canceling or amending the affected registrations.

TABLE 1—MALATHION PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration Number	Product Name	Company
228-68	Riverdale Malathion 5	Nufarm Americas, Inc.
228-93	Riverdale Bin Spray	Nufarm Americas, Inc.

TABLE 1—MALATHION PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration Number	Product Name	Company
228-244	Riverdale 50% Malathion EC	Nufarm Americas, Inc.
228-252	Riverdale 4% Malathion Dust	Nufarm Americas, Inc.
228-274	Riverdale ULV Malathion	Nufarm Americas, Inc.
655-794	Prentox Malathion 57% EC	Prentiss, Inc.
5905-7	Fyfanon 5 LB Emulsion	Helena Chemical Company
5905-443	Helena Malathion 8 Insecticide	Helena Chemical Company
34704-3	Malathion 55 Insecticide Premium Grade	Loveland Products Inc.
34704-18	Malathion ULV Concentrate Insecticide	Loveland Products Inc.

TABLE 1—MALATHION PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration Number	Product Name	Company
34704-119	Clean Crop Malathion 8EC Insecticide	Loveland Products Inc.

TABLE 1—MALATHION PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration Number	Product Name	Company
34704-721	Niagara Malathion 5 Dust	Loveland Products Inc.

TABLE 2—MALATHION PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration Number	Product Name	Company	Terminate Use
192-96	Dexol Malathion Insect Control	Value Garden Supply	Residential lawns (broadcast)
239-739	Ortho Malathion 50 Insect Spray	The Scotts Company LLC	Residential lawns (broadcast)
655-310	Malathion 95% Technical Premium	Prentiss, Inc.	Greenhouse food crops, Commercial/Institutional/Industrial premises/equipment (outdoor), sewer systems
655-598	Prentox Malathion 50% Emulsifiable Insecticide	Prentiss, Inc.	Commercial/Institutional/Industrial premises/equipment (outdoor)
655-777	Prentox 5 LB Malathion Spray	Prentiss, Inc.	Greenhouse food crops, Commercial/Institutional/Industrial premises/equipment (outdoor), lentils, manure piles, residential lawns (broadcast)
769-736	SMCP Malathion Mole Cricket Bait Insecticide	Value Garden Supply	Residential lawns (broadcast), golf course turf
769-620	AllPro Malathion 57% Premium Grade	Value Garden Supply	Lentils, greenhouse uses, sewage systems, fly control for outdoor building surfaces
769-621	SMCP Malathion EM-5	Value Garden Supply	Residential lawns (broadcast)
769-644	SMCP MV Fog Solution	Value Garden Supply	Animal premise uses for dairy and livestock barns, stables and pens, food processing plants, outdoor use as a crack and crevice treatment around dairies and stables
769-844	Pratt Malathion Spray	Value Garden Supply	Residential lawns (broadcast)
769-961	Pratt Malathion 80	Value Garden Supply	Dairy cattle (lactating and nonlactating), poultry houses, cowpea forage and hay, cranberry, plum
5905-250	Fyfanon 8 LB Emulsion	Helena Chemical Company	Lentils, cowpea
9779-5	Malathion 5	WinField Solutions	Lentils
10088-56	Malathion 57%	Athea Laboratories, Inc.	Ornamental lawns and turf
10163-21	Prokil Malathion 8	Gowan	Lentils, greenhouse uses
10163-152	Malathion Technical	Gowan	Greenhouse food use
19713-217	Drexel Malathion 5EC	Drexel Chemical Company	Lentils
19713-402	Drexel Malathion Technical	Drexel Chemical Company	Greenhouse food crops, uses around commercial and industrial buildings, sewage systems
34704-108	Clean Crop Malathion 57 EC	Loveland Products, Inc.	Lentil

TABLE 2—MALATHION PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT—Continued

Registration Number	Product Name	Company	Terminate Use
34704-474	Cythion 8 Aquamul	Loveland Products, Inc.	Lentil
47000-107	Prozap Malathion	Chem-Tech Ltd.	Lentil, residential lawns (broadcast)
48273-26	Marman Malathion ULV	Nufarm	Lentils, greenhouse food uses
59144-1	Malathion 50% Insect Spray	Gro Tec, Inc.	Greenhouse uses
66330-220	Malathion 5 EC	Arysta LifeScience	Lentils, Greenhouse uses
66330-228	Malathion Technical	Arysta LifeScience	Greenhouse uses
66330-248	Malathion 8 EC	Arysta LifeScience	Greenhouse uses, lentils, Around the outside of buildings

Table 3 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 and Table 2 of this unit.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company Number	Company Name and Address
239	The Scotts Company LLC 14111 Scottslawn Road Marysville, OH 43041
655	Prentiss Incorporated 509 Tower Valley Drive Hillsboro, MO 63050
769, 192	Value Garden Supply 9100 W. Bloomington Freeway, Suite 113 Bloomington, MN 55431
5905	Helena Chemical Company 7664 Moore Road Memphis, TN 38120
9779	WinField Solutions PO Box 64589 MS 5705 St. Paul, MN 55164-0589
10088	Athea Laboratories, Inc. PO Box 240014 Milwaukee, WI 53224
10163	Gowan PO Box 5569 Yuma, AZ 85366-5569
19713	Drexel Chemical Company 1700 Channel Avenue PO Box 13327 Memphis, TN 38113-0327

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS—Continued

EPA Company Number	Company Name and Address
34704	Loveland Products, Inc. 7251 W 4th Street PO Box 1286 Greeley, CO 80632-1286
47000	Chem-Tech, Ltd. 4515 Fleur Dr. #303 Des Moines, IA 50321
48273, 228	Nufarm Americas, Inc. 150 Harvester Drive, Suite 200 Burr Ridge, IL 60527
59144	RegWest on behalf of Gro Tec, Inc. 30856 Rocky Road Greeley, CO 80631-9375
66330	Arysta Life Science North America 15401 Weston Parkway, Suite 150 Cary, NC 27513

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 Malathion

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 19, 2009. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The order effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the

EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a special review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

If the requests for voluntary cancellation and use termination are granted, the Agency intends to publish the cancellation order in the **Federal Register** that will allow persons other than the registrant to continue to sell and/or use existing stocks of canceled 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 canceled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. The Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 7, 2009.

Richard P. Keigwin, Jr.,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9–11631 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8908–3]

Proposed CERCLA Settlement Agreement for Recovery of Past Response Costs Incurred at the Bueno Mill and Mine Site Located Adjacent to Jamestown in Boulder County, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the requirements of section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed Settlement Agreement for Recovery of Past Response Costs ("Agreement") under section 122(h)(1)of CERCLA, 42 U.S.C. 9622(h)(1), concerning the Bueno Mine and Mill Site located adjacent to Jamestown in Boulder County, Colorado. This Agreement, as embodied in a CERCLA section 122(h) Settlement Agreement for Recovery of Past Response Costs, is designed to resolve the liability at the Site for Ozark-Mahoning Company and its parents Delaware Chemicals Corporation and Arkema Inc. ("Settling Parties") for past work and past response costs through covenants under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The proposed Agreement requires the Settling Party to pay $1,321,619 to the EPA Hazardous Substances Superfund.

Opportunity for Comment: For thirty (30) days following the date of publication of this notice, the Agency will consider all comments received, and may modify or withdraw its consent to the Agreement if comments received disclose facts or considerations which indicate that either the Agreement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA Superfund Records Center, 1595 Wynkoop St., 3rd floor in Denver, Colorado.

DATES: Comments must be submitted on or before June 19, 2009.

ADDRESSES: The proposed Agreement and additional background information relating to the settlement are available for public inspection at the EPA Superfund Records Center, 1595 Wynkoop St., 3rd Floor, in Denver, Colorado. Comments and requests for a copy of the proposed Agreement should be addressed to William Ross (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkoop St., Denver, Colorado 80202–1129, and should reference the Bueno Mine and Mill Site, in Boulder County, Colorado and the Docket Number CERCLA–08–2009–0001.

FOR FURTHER INFORMATION CONTACT: William Ross, Enforcement Specialist/SEE (8ENF–RC), Technical Enforcement Program, U.S. Environmental Protection Agency, 1595 Wynkop St., Denver, Colorado 80202–1129, (303) 312–6208.

SUPPLEMENTARY INFORMATION: Regarding the Agreement under section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1): In accordance with section 122(i) of CERCLA, 42 U.S.C. 9622(i), notice is hereby given that the terms of the Agreement have been agreed to by the Settling Parties which will pay a total of $1,312,619 to the Hazardous Substance Superfund. This payment represents 100% of the past response costs attributable to the Settling Parties incurred by the United States through the effective date of the Agreement.

Dated: May 8, 2009.

Sharon L. Kersher,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, Region 8.

[FR Doc. E9–11745 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2008–0787; FRL–8906–6]

Notice of Availability of RCRA Closure and Post-Closure Care Cost Estimating Software

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of a software package, referred to as CostPro, which will estimate the costs of RCRA Closure and Post-Closure care. Persons interested in obtaining a copy of the software package can contact EPA for a copy of this software.

DATES: This software will be available on or after May 1, 2009.

ADDRESSES: The official public docket is identified by Docket ID No. EPA–HQ–RCRA–2008–0737. All documents in the docket are listed in the *http://www.regulations.gov* index. 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 either electronically in *http://www.regulations.gov*, or in hard copy at the RCRA Docket, EPA/DC, 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 RCRA Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: For further information regarding distribution of this software, contact Bob Maxey, Office of Resource Conservation and Recovery, (703) 308–7273, *maxey.bob@epa.gov*. Mail inquiries may be directed to the Office of Resource Conservation and Recovery, (5303P), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

A. What is the regulatory basis of this software?

Subtitle C of the Resource Conservation and Recovery Act (RCRA) establishes financial assurance requirements for owners or operators of hazardous waste treatment, storage, or disposal facilities (TSDF). The RCRA hazardous waste regulations, (40 CFR parts 264 and 265), require that the owner or operator of a TSDF which seeks a Part B permit or has interim status to prepare an estimate of the costs required to close the facility and the cost to perform post-closure care at the facility based on the costs of a third-party performing the work.

B. How was the cost estimating method developed?

In 1986, EPA developed a methodology to evaluate closure and post-closure cost estimates. The methodology is discussed in detail in *Cost Estimates for Closure and Post-Closure Care Plans* (EPA/530–SW–87–009). The methodology provides EPA and state permit writers with a consistent, accurate and rapid method of evaluating cost estimates for closure and post-closure care of TSDFs. The software resulting from this effort is called CostPro.

C. How long has CostPro been used?

EPA first issued CostPro in 1996; it has been updated four times, the last of which was completed in 2001.

D. Does this action apply to me?

The methods and procedures set forth in CostPro are intended primarily for the use of EPA and state personnel in evaluating the adequacy of current cost estimates for closure and post-closure care of typical hazardous waste TSDFs. EPA has received a number of inquiries about CostPro from industry. To provide industry with our basis for these estimates, EPA will provide copies of CostPro upon request, as described in this notice.

E. What are the benefits to the update of CostPro?

The primary benefits to the update of CostPro are that (1) it will be on a MS.NET 2.0 platform in C#, which is a contemporary software platform and (2) the program data have been updated to 2009 values.

F. How is a CostPro estimate developed?

CostPro's general procedure for evaluating a cost estimate for a TSDF involves:

- Identifying each facility waste management unit (e.g., container storage unit, tank, landfill, etc.) requiring closure or post-closure care;
- Identifying the closure or post-closure care activities to be conducted at each waste management unit;
- Completing inventory worksheets provided for each waste management unit;
- Completing closure or post-closure care worksheets for primary and support worksheets for each waste management unit (e.g., removal, transportation and disposal of waste, building decontamination, and sampling and analysis, etc.); and,
- Evaluating total cost summary worksheets for each waste management unit and for the facility as a whole.

G. What are the sources of CostPro data?

The primary sources of cost information include the 2009 R.S. Means *Means Building Construction Cost Data* and *Means Site Work and Landscape Cost Data* guides and the 2006 Azimuth ECHOS (Environmental Cost Handling Options and Solutions) Environmental Remediation Cost Data guide. EPA has paid a fee to these companies for the use of these data by EPA and state government personnel only. Some data, e.g., costs for geotextile netting and geomembranes for landfills have been supplied by vendors.

H. How can the public obtain a copy of CostPro?

Because EPA's license for use of the program data extends only to EPA and one copy for each state government, public users who want to obtain a copy of the software package (or state governments that want to obtain more than one copy of the software package) will be asked to pay a fee to R.S. Means for its use, and submit proof to EPA that appropriate permission has been obtained from the R.S. Means Company. Contact Peter Cholakis of R.S. Means at *peter.cholakis@reedbusiness.com*. EPA will then mail a CD to the requester. See EPA contact information above.

Dated: May 11, 2009.

Matt Hale,

Director, Office of Resource Conservation and Recovery.

[FR Doc. E9–11741 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. EPA–RO4–SFUND–2009–0320, FRL–8907–8]

Lilburn Mercury Spill Superfund Site; Lilburn, Gwinnett County, GA; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Lilburn Mercury Spill Superfund Site located in Lilburn, Gwinnett County, Georgia for publication.

DATES: The Agency will consider public comments on the settlement until June 19, 2009. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2009–0320 or Site name Lilburn Mercury Spill Superfund Site by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *http://www.epa.gov/region4/waste/sf/enforce.htm.*
- *E-mail: Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: May 7, 2009.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E9–11829 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8907–9; Docket ID No. EPA–HQ–ORD–2009–0243]

An Approach To Using Toxicogenomic Data in U.S. EPA Human Health Risk Assessments: A Dibutyl Phthalate (DBP) Case Study

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of peer-review workshop and public comment period.

SUMMARY: EPA is announcing that Eastern Research Group, Inc., an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer-review workshop to review the external review draft document titled, "An Approach to Using Toxicogenomic Data in U.S. EPA Human Health Risk Assessments: A Dibutyl Phthalate Case Study" (EPA/600/R–09/028A). The EPA also is announcing a 30-day public comment period for the draft document. The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development. EPA is interested in developing methods to use genomic data most effectively in risk assessments performed at the Agency. NCEA developed this draft report for the purpose of describing an approach to using toxicogenomic data in risk assessment and illustrating the approach with a case study.

The public comment period and the external peer-review workshop are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward public comments that are submitted in accordance with this notice to the external peer-review panel prior to the meeting for their consideration. When finalizing the draft document, EPA intends to consider any public comments that EPA receives in accordance with this notice.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

Eastern Research Group, Inc. invites the public to register to attend this workshop as observers. In addition, Eastern Research Group, Inc. invites the public to give oral and/or provide written comments at the workshop regarding the draft document under review. The draft document and EPA's peer-review charge are available primarily via the Internet on NCEA's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea*. In preparing a final report, EPA will consider any comments and recommendations from the external peer-review workshop and any public comments that EPA receives in accordance with this notice.

DATES: The peer-review panel workshop will begin on Tuesday, June 23, 2009, at 8:30 a.m. and end at 4:30 p.m. Observers must register by Monday, June 15, 2009, and indicate if they wish to make brief oral statements at the workshop. The 30-day public comment period begins May 20, 2009, and ends June 19, 2009. Technical comments should be in writing and must be received by EPA by June 19, 2009.

ADDRESSES: The peer-review workshop will be held at Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024. The EPA contractor, Eastern Research Group, Inc., is organizing, convening, and conducting the peer-review workshop. To attend the workshop as an observer, register by Monday, June 15, 2009, via the Internet at *https://www2.ergweb.com/projects/conferences/peerreview/register-TgX.htm*. You may also register by e-mail at *meetings@erg.com* (subject line: TgX in Risk Assessment Peer Review Workshop), by phone: 781–674–7374 or toll free at 800–803–2833, or by faxing a registration request to 781–674–2906 (please reference the "TgX in Risk Assessment Peer Review Workshop" and include your name, title, affiliation, full address and contact information).

The draft "An Approach to Using Toxicogenomic Data in U.S. EPA Human Health Risk Assessments: A Dibutyl Phthalate Case Study" is available primarily via the Internet on NCEA's Internet home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea*. A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title, "An Approach to Using Toxicogenomic Data in U.S. EPA Human Health Risk Assessments: A Dibutyl Phthalate Case Study". Copies are not available from Eastern Research Group, Inc. Comments may be submitted electronically via *www.regulations.gov*, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Questions regarding information, registration, access or services for individuals with disabilities, or logistics for the external peer-review workshop should be directed to Laurie Waite, Eastern Research Group, Inc., 110 Hartwell Ave., Lexington, MA 02421; telephone: 781–674–7362; facsimile 781–674–2906; e-mail *laurie.waite@erg.com*. To request accommodation of a disability, please contact Laurie Waite, preferably at least 10 days prior to the workshop, to give as much time as possible to process your request.

For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*.

If you need technical information about the document, please contact Susan Y. Euling, National Center for Environmental Assessment (NCEA); telephone: 703–347–8575; facsimile: 703–347–8692; e-mail *euling.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Summary of Information About the Project/Document

The National Center for Environmental Assessment (NCEA) prepared this draft document for the purpose of describing an approach to using toxicogenomic data in risk assessment and illustrating the approach with a case study. The approach and case study described in this draft report were developed by a team of scientists at EPA laboratories and centers, and outside organizations including The Hamner Institute, the National Institute for Environmental Health Sciences, and the EPA's Science to Achieve Results (STAR) Bioinformatics Center at the University of Medicine and Dentistry of New Jersey and Rutgers University. The approach outlined is expected to be useful to risk assessors in EPA, as well as other federal agencies, and the scientific community at large. A case study to test the approach for dibutyl phthalate (DBP) is described. The case study presented in this draft document is a separate activity from any of the ongoing IRIS human health assessments for the phthalates.

II. Workshop Information

Members of the public may attend the workshop as observers, and there will be a limited time for comments from the public. Pre-registration is strongly recommended as space is limited, and registrations will be accepted on a first-come, first-served basis. The deadline for pre-registration is June 15, 2009. If space allows, registrations will continue to be accepted after this date, including on-site registrations. Time will be set aside to hear comments from observers, and individuals will be limited to a maximum of five minutes during the morning session of peer review

workshop. Please let ERG know if you wish to make comments during the workshop by registering on the Web site at *https://www2.ergweb.com/projects/conferences/peerreview/register-TgX.htm* and indicating your intent to make oral comments.

III. How to Submit Technical Comments to the Docket at www.regulations.gov.

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–0243, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* ORD.Docket@epa.gov
- *Fax:* 202–566–1753
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0243. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *regulations.gov*, including any personal information provided, unless a 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* or e-mail. The *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 *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 *www.epa.gov/epahome/dockets.htm*.

Docket: Documents in the docket are listed in the *regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: May 13, 2009.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E9–11744 Filed 5–19–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 03–123 and WC Docket No. 05–196; DA 09–870]

Pleading Cycle Established for Filing of Oppositions To Petition for Partial Reconsideration and Limited Waiver, and Petition for Partial Reconsideration, Concerning the Assignment of Ten-Digit Telephone Numbers and E911 Requirements for Internet-Based Telecommunications Relay Service (TRS)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission, via the Consumer and Governmental Affairs Bureau, announces the filing of petitions for partial reconsideration by Telecommunications for the Deaf and Hard of Hearing, Inc. and five consumer organizations (TDI Coalition), and GoAmerica, Inc. (GoAmerica). Petitioners seek reconsideration of the eligibility requirement that limits the assignment of ten-digit telephone numbers to individuals who are deaf or hard of hearing or who have a speech disability. Additionally, GoAmerica seeks reconsideration, or a limited waiver for six months, of the requirement that Internet-based TRS providers must answer a call back from the Public Safety Answering Point (PSAP) with priority (*i.e.*, move the call to the top of the queue).

DATES: Oppositions are due on or before June 4, 2009 and replies to oppositions are due on or before June 15, 2009.

ADDRESSES: Pursuant to 47 CFR 1.429(f) and (g), interested parties may submit oppositions or replies to oppositions identified by [CG Docket No. 03–123 and WC Docket No. 05–196], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting electronic filings.
- *Federal Communications Commission's Electronic Comment Filing System (ECFS):* Follow the instructions for submitting electronic filings.
- By filing paper copies.

For electronic filers through ECFS or the Federal eRulemaking Portal, because multiple docket numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the opposition or reply to opposition to each docket number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Because more than one docket number appears in the caption in this proceeding, filers must submit two additional copies for each additional docket number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal

Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties who choose to file by paper should also submit their documents on a compact disc. The compact disc should be submitted, along with three paper copies, to: Dana Wilson, Consumer and Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room 3–C418, Washington, DC 20554. Such a submission should be on a compact disc formatted in an IBM compatible format using Word 2003 or compatible software. The compact disc should be accompanied by a cover letter and should be submitted in "read only" mode. It should also be clearly labeled with the party's name, the proceedings (including the docket numbers) which in this case are [CG Docket No. 03–123 and WC 05–196], type of pleading (opposition or reply to opposition), date of submission, and the name of the electronic file on the compact disc. The label should also include the following phrase "Disc Copy—Not an Original." Each compact disc should contain only one party's pleadings, preferably in a single electronic file. In addition, paper filers must send compact disc copies to the Commission's copy contractor, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings and electronic media for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial mail and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, Consumer and Governmental Affairs Bureau at (866) 954–4053 (voice and videophone), (202) 418–0431 (TTY), or e-mail: *Gregory.Hlibok@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 09–870, released April 20, 2009, which announces the January 29, 2009 filing by TDI Coalition of a Petition for Partial Reconsideration, and by GoAmerica of a Petition for Partial Reconsideration and Limited Waiver, of *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03–123, WC Docket No. 05–196, Second Report and Order and Order on Reconsideration, document FCC 08–275; published at 73 FR 79683, December 30, 2008 (*Second Internet-Based TRS Order*).

Pursuant to 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are subject to disclosure. The full text of this document and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact the Commission's contractor at its Web site *http://www.bcpiweb.com*, by e-mail at *fcc@bcpiweb.com*, or by calling 1–800–378–3160. A copy of the underlying petitions may also be found by searching ECFS at *http://www.fcc.gov/cgb/ecfs*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html*.

Synopsis

In the *Second Internet-Based TRS Order*, the Commission concluded, in part, that only individuals with a hearing or speech disability will be eligible to obtain ten-digit telephone numbers under the numbering system adopted in the *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirement for IP-Enabled Service Providers*, CG Docket No. 03–123, WC Docket No. 05–196, Report and Order and Further Notice of Proposed Rulemaking, document FCC 08–151 (*Internet-Based TRS Order*); published at 73 FR 41286, July 18, 2008 and 73 FR 41307, July 18, 2008. To this end, the Commission also required providers to verify that persons receiving ten-digit numbers "have a medically recognized hearing or speech disability necessitating their use of TRS" through a self-certification process. TDI Coalition and GoAmerica seek reconsideration of this eligibility requirement that limits the assignment of ten-digit telephone numbers to individuals who are deaf or hard of hearing or who have a speech disability. TDI Coalition and GoAmerica contend, in part, that allowing assignment of ten-digit numbers to hearing persons would facilitate point-to-point (*i.e.*, non-relay) calls between a voice telephone user and an individual with a hearing or speech disability, and therefore reduce the number of VRS calls that are compensated from the Interstate TRS Fund.

In addition, GoAmerica requests that the Commission grant reconsideration or a limited waiver for six months of the requirement that Internet-based TRS providers answer a call back from the PSAP with priority. GoAmerica asserts that providers are not capable of meeting this requirement at the present time and are working collaboratively on a technical solution.

Federal Communications Commission.

Suzanne Tetreault,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. E9–11738 Filed 5–19–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, May 19, 2009, at 10 a.m.; Wednesday, May 20, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: These meetings 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.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9–11552 Filed 5–19–09; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before July 20, 2009.

ADDRESSES: You may submit comments, identified by *Reg P* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *FAX:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Cynthia Ayouch, Federal Reserve Board Acting Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

Report title: Reporting and Disclosure Requirements Associated with Regulation P.

Agency form number: Reg P.

OMB control number: 7100–0294.

Frequency: Reporting, on occasion; and disclosure, annually.

Reporters: State member banks, subsidiaries of state member banks, bank holding companies and their subsidiaries or affiliates, branches and agencies of foreign banks, commercial lending companies owned or controlled by foreign banks, corporations operating under section 25 or 25A of the Federal Reserve Act, and customers of these financial institutions.

Estimated annual number of institution respondents: Initial notice, 185; annual notice and revised notice, 6,735; opt-out notice, 1,235.

Estimated average time per response per institution: Initial notice, 80 hours; annual notice and revised notice, 8 hours; opt-out notice, 8 hours.

Estimated subtotal annual burden hours for institutions: 78,560 hours.

Estimated annual number of consumer respondents: 442,225.

Estimated average time per consumer response: 30 minutes.

Estimated subtotal annual burden hours for consumers: 221,113 hours.

Estimated total annual burden hours: 299,673 hours.

General description of report: This information collection is mandatory pursuant to section 504 of Gramm-Leach-Bliley Act (GLBA) (15 U.S.C 6804). Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises.

Abstract: The information collection pursuant to Regulation P is triggered by the establishment of a relationship between a customer and a financial institution. The regulation ensures that financial institutions provide customers notice of the privacy policies and practices of financial institutions and a means to prevent the disclosure of nonpublic personal information, in certain circumstances. Where applicable, financial institutions are required to provide an initial notice and

an annual notice of their privacy policies and practices, opt-out notices, and revised notices containing changes in policies and procedures.

Board of Governors of the Federal Reserve System, May 14, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–11651 Filed 5–19–09; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 2, 2009

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Edward Bailey Howlin, Jr., Davidsonville, Maryland, to individually acquire up to 20.71 percent of the voting shares of CommerceFirst, Bancorp, Inc., Annapolis, Maryland. Additionally, Edward Bailey Howlin, Jr., Howlin Family Partnership II, LLLP, Dawn Howlin Vanvie, and Holly Howlin, as a group acting in concert,; to acquire up to 21.5 percent of the voting shares of CommerceFirst, Bancorp, Inc., Annapolis, Maryland.

Board of Governors of the Federal Reserve System, May 15, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–11721 Filed 5–19–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The 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/*.

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 12, 2009.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Grayson Bancshares, Inc., Employee Stock Ownership Plan and Trust and First Grayson Bancshares, Inc., both in McGregor, Texas,; to acquire The Roxton Corporation Employee Stock Ownership Plan and Trust, McGregor, Texas, and indirectly acquire through merger The Roxton Corporation, McGregor, Texas, and The First Bank, Roxton, Texas, Roxton, Texas.

Board of Governors of the Federal Reserve System, May 15, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–11722 Filed 5–19–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreement are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 201201.

Title: Port of Seattle/Terminal Operator Agreement.

Parties: Port of Seattle; Eagle Marine Services, Ltd; SSA Terminals LLC; SSA Terminals (Seattle), LLC; and Total Terminals International, LLC.

Filing Party: David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036; C. Jonathan Benner; Esq.; Troutman Sanders LLP; 401 9th Street, NW.; Suite 1000; Washington, DC 20004.

Synopsis: The agreement would authorize the parties to discuss, exchange information, and reach agreement regarding various matters pertaining to operations at the Port of Seattle.

By Order of the Federal Maritime Commission.

Dated: May 15, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–11760 Filed 5–19–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 74 FR 22929 (May 15, 2009).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: May 20, 2009—1:30 p.m.

CHANGE: Withdrawal of Item 3 in the Closed Session.

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: May 20, 2009—1:30 p.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

1. Docket No. 02–15: Passenger Vessel Financial Responsibility—Request of Commissioner Brennan.
2. FMC Agreement No. 012067: U.S. Supplemental Agreement to HLC Agreement.
3. Public Access to Number and Type of Filings in FMC's SERVCON System.
4. FY 2009 Budget Status Update.

Closed Session

1. Docket No. 08–07: Petition of Olympus Growth Fund III, L.P. and Olympus Executive Fund, L.P. for Declaratory Order, Rulemaking or Other Relief.
2. Marine Terminal Agreements Exemption at 46 CFR 535.308.
3. Proof of Financial Responsibility for Windstar Sail Cruises Limited.
4. Investigative and Enforcement Matters.
5. Internal Administrative Practices and Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

FR Doc. E9–11814 Filed 5–18–09; 11:15 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

EMIC International Corporation, 10729 Audelia Road, #201, Dallas, TX 75238, Officer: Emmanuel U. Igwe, President (Qualifying Individual).

Bimini Shipping, LLC, 3301 NW South River Drive, Miami, FL 33142. Officer: Ronald H. Sasso, Manager (Qualifying Individual).

MEBS Global Reach LC, 4500 Southgate Pl., Ste. 700, Chantilly, VA 20151, Officers: Mitchell J. Martin, Director, USA Opera (Qualifying Individual), Bruce Oliver, Sr. Vice President.

IntlMOVE, Inc., 1880 NE 170th Street, N. Miami Beach, FL 33162, Officer: Eric Polacek, Dir. Of Operations (Qualifying Individual).

T.R.T. International Ltd., 196e Maracaibo Street, Newark, NJ 07114, Officer: Igor Mitnik, Vice President (Qualifying Individual).

G. B. Logistics (USA), Inc., 9080 Telstar Ave., #330, El Monte, CA 91731, Officer: Richard YY Yuan, President (Qualifying Individual).

Mota Import Export LLC dba MTI Mota Import, Export Cargo Express, 175 Smith Street, Perth Amboy, NJ 08861, Officers: Carmen Rodriquez, Secretary (Qualifying Individual), Angel Mota Ramirez, President.

Non Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Atlantic Shipping Services Inc., 8449 W. Bellfort Street, 340, Houston, TX 77071, Officer: Dominic G'Benoba, President (Qualifying Individual).

Trans Ocean Logistics Forwarding LLC, 822 Pratt Street, Rahway, NJ 07065, Officers: Edwin Fuster, Sr., Operating Manager (Qualifying Individual), Gloria Fuster, Asst. Operating Manager.

Martin Transports International, Inc., 15501 Texaco Ave., Paramount, CA 90723, Officer: Martin Scholz, President (Qualifying Individual).

Servi-Fast International Corporation, 7999 NW 81 Place, Medley, FL 33166, Officer: Robert E. Espejo, Secretary (Qualifying Individual).

A-Logistics, Inc., 484 2nd Ave., #11F, New York, NY 10016, Officer: Nikolai N. Simonov, President (Qualifying Individual).

Aladdin Shipping Inc., 510 John Alber Rd., Houston, TX 77076, Officer: Alaeldin M. Ahmed, President (Qualifying Individual).

TBB Global Logistics, Inc., 802 Far Hills Drive, New Freedom, PA 17349, Officer: Samuel Polakoff, President (Qualifying Individual).

Anjie Group, Inc., 65 West Merrick Road, Ste. 202, Valley Stream, NY 11580, Officers: Shuai-Stanley Yuan, President (Qualifying Individual), An Li, Vice President.

O.P. Premium Star Logistics LLC dba O.P. Premium Star Logistics, 223 Calle Felix, Delano, CA 93215, Officer: Otto Petgrave, Manager (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

WELL Worldwide Energy Logistics Inc., 3340–C Greens Road, #450, Houston, TX 77032, Officers: John E. Rulon, Vice President (Qualifying Individual), Martin Burt, President.

Cargoways Ocean Services, Inc., 1201 Hahlo Street, Houston, TX 77020, Officer: Frances Mahoney, Asst. Secretary (Qualifying Individual).

Total Global Solutions, Inc., 4290 Bells Ferry Rd., #224, Kennesaw, GA 30144, Officer: Kathleen G. Molnar, Secretary (Qualifying Individual), Dennis R. Smith, President.

Dated: May 15, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–11758 Filed 5–19–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 020890N.
Name: Aegis International, Inc.
Address: 300 Sunset Rd., Ste. 301, Burlington, NJ 08016.
Date Revoked: May 6, 2009.
Reason: Failed to maintain a valid bond.

License Number: 020743N.
Name: ASW America LLC.
Address: 5301 W. Cypress St., Ste. 102, Tampa, FL 33607.
Date Revoked: May 14, 2009.
Reason: Failed to maintain a valid bond.

License Number: 017712N.
Name: Awell Logistics Group, Inc.
Address: 655 John Muir Dr., Apt. E421, San Francisco, CA 94132.
Date Revoked: May 6, 2009.
Reason: Failed to maintain a valid bond.

License Number: 020468N.
Name: Barconsa S.A. Inc.
Address: 2944 N.W. 72nd Ave. Miami, FL 33122.
Date Revoked: May 1, 2009.
Reason: Failed to maintain a valid bond.

License Number: 017470NF.
Name: CTX Expres, Inc.
Address: 2450 W. Main St., #202, Alhambra, CA 91801.
Date Revoked: April 30, 2009.
Reason: Surrendered license voluntarily.

License Number: 020068NF.
Name: Ice Express LLC. dba Icexpress.
Address: 120 Nassau Ave., Inwood, NY 11096.
Date Revoked: May 1, 2009.
Reason: Failed to maintain valid bonds.

License Number: 020687NF.
Name: MP Transmec USA LLC dba TS Lines.
Address: 770 Foster Ave., Bensenville, IL 60106.
Date Revoked: May 8, 2009.
Reason: Failed to maintain valid bonds.

License Number: 001593N.
Name: Robertson Forwarding Co., Inc. dba RFC Consolidators.
Address: 4469 NW 97th Ave., Miami, FL 33178.
Date Revoked: May 10, 2009.
Reason: Failed to maintain a valid bond.

License Number: 013172F.
Name: Yung Hoon Kim dba Conex International.
Address: 20695 South Western Ave., Ste. 136, Torrance, CA 90501.
Date Revoked: May 6, 2009.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. E9–11757 Filed 5–19–09; 8:45 am]
BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Nominations to the Advisory Committee on Blood Safety and Availability

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: The Office of Public Health and Science (OPHS) is seeking nominations of qualified individuals to be considered for appointment as members of the Advisory Committee on Blood Safety and Availability (ACBSA). ACBSA is a Federal advisory committee in the Department of Health and Human Services. Management support for the activities of this Committee is the responsibility of the OPHS.

The qualified individuals will be nominated to the Secretary of Health and Human Services for consideration of appointment as members of the ACBSA. Members of the Committee, including the Chair, are appointed by the Secretary. Members are invited to serve on the Committee for up to four-year terms.

DATES: All nominations must be received no later than 4 p.m. EDT on June 30, 2009, at the address listed below.

ADDRESSES: All nominations should be mailed or delivered to Dr. Jerry Holmberg, Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852. Telephone: (240) 453–8803.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry Holmberg, Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852. Telephone: (240) 453–8803.

A copy of the Committee charter and roster of the current membership can be obtained by contacting Dr. Holmberg or by accessing the ACBSA Web site at *http://www.hhs.gov/bloodsafety. http://www.hhs.gov/bloodsafety.*

SUPPLEMENTARY INFORMATION: The Advisory Committee on Blood Safety and Availability advises the Secretary and the Assistant Secretary for Health. The Committee provides advice on a range of policy issues to include: (1) Definition of public health parameters around safety and availability of the blood and blood products, (2) broad public health, ethical, and legal issues related to transfusion and transplantation safety, and (3) the implications for safety and availability of various economic factors affecting product cost and supply.

The ACBSA consists of 20 voting members. The Committee is composed of 14 public members, including the Chair, and six (6) representative members. The public members are selected from State and local organizations, advocacy groups, provider organizations, academic researchers, ethicists, private physicians, scientists, consumer advocates, legal organizations, and from among communities of persons who are frequent recipients of blood or blood products. There are six (6) individuals designated to serve as official representative members of the blood and blood products industry or professional organizations. These representative members shall be from AABB (formerly the American Association of Blood Banks), Plasma Protein Therapeutic Association (PPTA), one of the two major distributors of blood on a rotating basis, a trade organization or manufacturer of blood, plasma, or other tissue test kits or equipment, and a major hospital organization that purchases blood and blood products.

All ACBSA members are authorized to receive the prescribed per diem allowance and reimbursement for travel expenses that are incurred to attend meetings and conduct Committee-related business, in accordance with Standard Government Travel Regulations. Individuals who are appointed to serve as public members are authorized also to receive a stipend for attending Committee meetings and to carry out other Committee-related business. Individuals who are appointed to serve as representative members for a particular interest group or industry are not authorized to receive a stipend for the performance of these duties.

This announcement is to solicit nominations of qualified candidates to fill positions on the ACBSA that are scheduled to be vacated in the public member category. The positions are scheduled to be vacated on March 1, 2010.

Nominations

Persons nominated for appointment as members of the ACBSA should be among authorities knowledgeable in blood banking, transfusion medicine, plasma therapies, transfusion and transplantation safety, bioethics, and/or related disciplines. Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration of appointment: (a) The name, return address, daytime telephone number and affiliation(s) of the individual being nominated, the basis for the individual's nomination, the category for which the individual is being nominated, and a statement bearing an original signature of the nominated individual that, if appointed, he or she is willing to serve as a member of the Committee; (b) the name, return address, and daytime telephone number at which the nominator may be contacted. Organizational nominators must identify a principal contact person in addition to the contact; and (c) a copy of a current curriculum vitae or resume for the nominated individual.

Individuals can nominate themselves for consideration of appointment to the Committee. All nominations must include the required information.

Incomplete nominations will not be processed for consideration. The letter from the nominator and certification of the nominated individual must bear original signatures; reproduced copies of these signatures are not acceptable.

The Department of Health and Human Services is committed to ensuring that women, minority groups, and physically challenged individuals are adequately represented on the Committee. Nominations of qualified candidates from these categories are encouraged. The Department also seeks to have geographic diversity reflected in the composition of the Committee.

The Standards of Ethical Conduct for Employees of the Executive Branch are applicable to individuals who are appointed as public members of Federal advisory committees. Individuals appointed to serve as public members of Federal advisory committees are classified as special Government employees (SGEs). SGEs are Government employees for purposes of the conflict of interest laws. Therefore, individuals appointed to serve as public members of the ACBSA are subject to an ethics review. The ethics review is conducted to determine if the individual has any interests and/or activities in the private sector that may conflict with performance of their official duties as a member of the Committee. Individuals appointed to serve as public members of the Committee will be required to disclose information regarding financial holdings, consultancies, and research grants and/or contracts.

Dated: May 14, 2009.

Jerry A. Holmberg,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. E9–11675 Filed 5–19–09; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Extension to HS Transportation Requirement.

OMB No.: 0970–0260.

Description: The Office of Head Start is proposing to renew authority to collect information regarding the Head Start transportation requirement without changes. The transportation requirement provides the requirement that each child be seated in a child restraint system while the vehicle is in motion, and the requirement that each bus have at least one bus monitor on board at all times. Waivers would be granted when the Head Start or Early Head Start grantee demonstrates that compliance with the requirement(s) for which the waiver is being sought will result in a significant disruption to the Head Start program or the Early Head Start program and that waiving the requirement(s) is in the best interest of the children involved.

Respondents: Head Start and Early Head Start program grants recipients.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Form	275	1	1	275

Estimated Total Annual Burden Hours: 275.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7245, Attn: Desk Officer for the Administration for Children and Families.

Dated: May 14, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–11652 Filed 5–19–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0546]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Electronic Data Collection Using MedWatch^{Plus} Portal and Rational Questionnaire

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by June 19, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title "Electronic Data Collection Using MedWatch^{Plus} Portal and Rational Questionnaire." Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed

collection of information to OMB for review and clearance.

Electronic Data Collection Using MedWatch^{Plus} Portal and Rational Questionnaire

FDA is implementing electronic data collection to improve adverse event reporting across the agency. FDA's current processes and systems for adverse event reporting vary across its centers and are not optimal for the efficient collection of voluntary and mandatory adverse event reports, product problems/consumer complaints, or errors associated with the use of FDA-regulated products. Current FDA reporting forms (Forms FDA 3500, 3500A, 1932, and 1932a) are an outgrowth of a paper process era and frequently result in the submission of inconsistent and poor quality information. In addition, the agency is limited in its ability to modify its paper forms to keep pace with changes in the types of regulated products and the information necessary to meet evolving standards to ensure post market safety. Further, the existing supporting business processes are not able to efficiently manage the information being provided on the paper forms. For example, the upfront data integrity constraints on required (vital) data limit the extent of reviewable information on items such as reporter identification of one or more subject product types (animal and human food/feed, drug—animal or human, device, etc.), reporter name, date of occurrence, related details, and followup information. Data collected on paper forms must be manually transcribed into an electronic format for usability and analysis. Furthermore, these forms are not very intuitive for a casual reporter (e.g., consumers of FDA-regulated products), that is, the paper forms lack the features available in an electronic system that assist a new user in understanding what information is being requested.

FDA has launched the development and implementation of a new electronic system for collecting, submitting and processing adverse event reports and other safety information for all FDA-regulated products. This new system, MedWatch^{Plus} Portal, will enhance the current MedWatch collection system and integrate the agency's existing safety reporting systems into the various FDA Adverse Event Report Systems (FAERS). FAERS will enable FDA staff to more efficiently analyze thousands of safety reports and to identify potential safety problems earlier than would be possible using paper forms. The MedWatch^{Plus} Portal provides one central point-of-entry for persons submitting information to FDA. The agency believes that one central point-of-entry will better enable persons to submit their information. In addition, mandatory reporters will be able to use the Internet to access the MedWatch^{Plus} Portal to report safety concerns about dietary supplements, nonprescription drugs, and human and animal food, thus fulfilling the mandatory reporting requirements of the Dietary Supplement and Nonprescription Drug Consumer Protection Act (DSNDCPA) (Public Law 109–462) and the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Public Law 110–85).

The MedWatch^{Plus} Portal involves the development of a single Web-based portal and a user-friendly data collection tool, the "Rational Questionnaire," which will make it easy for anyone to report a safety problem. The Rational Questionnaire will ask users simple questions to help guide them to determine what information they should provide. Anyone will be able to use the questionnaire to submit adverse event, product problem/consumer complaint, and medication use error reports to the FDA. For example, a healthcare practitioner could report an adverse event; a medical device maker could report a safety concern about a product; a pet owner could report a problem that their pet experienced associated with the use of an animal drug or animal food; a parent could report a reaction that their child experienced associated with the use of a cosmetic; and a consumer could report a concern about a drug they are taking at home, or about a food that may have made them ill. The system will compile the users' responses into a standardized report that would be routed to the appropriate FDA organizational component(s) for review and analysis.

There are several types of information that will be submitted to FDA via the MedWatch^{Plus} Portal and Rational Questionnaire. Some of the information is required to be submitted to FDA (mandatory reporting) and some of the information is submitted voluntarily (voluntary reporting). The majority of the information to be collected using the MedWatch^{Plus} Rational Questionnaire has been approved previously by OMB under the PRA. Recently, additional information collection has been mandated by DSNDCPA and FDAAA. A complete list of information collections, their current OMB approval numbers, as well as citations to the relevant statute, regulation or guidance information for each is depicted in table 1 of this document.

TABLE 1— INFORMATION COLLECTIONS

FDA Center	FDA Form No.	OMB No.	Relevant Statute, Regulation or Guidance Information	Mandatory (M) or Voluntary (V)
Center for Biologics Evaluation and Research/Center for Drug Evaluation and Research (CBER/CDER)	3500	0910–0291	MedWatch Form FDA 3500, Voluntary Reporting Instructions	V
CBER/CDER	3500A	0910–0291	21 CFR 310.305, 314.80, 314.98, 600.80 and 1271.350	M
Center for Devices and Radiological Health (CDRH)	3500	0910–0291	MedWatch Form FDA 3500, Voluntary Reporting Instructions	V
CDRH	3500A	0910–0291	21 CFR Part 803	M
Center for Food Safety and Applied Nutrition (CFSAN)	3500	0910–0291	None	V

TABLE 1— INFORMATION COLLECTIONS—Continued

FDA Center	FDA Form No.	OMB No.	Relevant Statute, Regulation or Guidance Information	Mandatory (M) or Voluntary (V)
CFSAN[1]	3500A	OMB approval is in process	Pub. L. 109–462; Section 761(b)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379aa–1(b)(1))	M
CFSAN/Center for Veterinary Medicine (CVM)[1]	None	This notice solicits comments on this proposed new collection	Pub. L. 110–85; Section 417 of the act (21 U.S.C. 350f)	M
CVM	1932a	0910–0284	Veterinary Adverse Drug Reaction, Lack of Effectiveness, or Product Defect Report Form and Instructions	V
CVM	1932	0910–0284	21 CFR 514.80	M
CVM[1]	None	This notice solicits comments on this proposed new collection	Pub. L. 110–85; Section 1002 of FDAAA	V
Office of Regulatory Affairs (ORA)	None	This notice solicits comments on this proposed new collection	None	V

[1] New reporting requirements included in DSNDCPA and FDAAA.

The single portal and a harmonized, Web-based format for submitting safety information will greatly enhance the ability of FDA to protect the public health. FDA will analyze electronic adverse event and safety reports for all marketed products and track safety signals throughout the life cycle of FDA-regulated products. FDA intends to review the information the agency receives to ensure that the submitters comply with the criteria established by the Federal Food, Drug, and Cosmetic Act (the act), where required.

Description of respondents: The respondents to this collection of information include all persons submitting mandatory or voluntary information electronically to FDA via the MedWatch^{Plus} Portal and Rational Questionnaire.

FDA expects that all of its centers and ORA will be utilizing the electronic reporting capabilities of MedWatch^{Plus} Portal by Fiscal Year 2011. Thus, FDA has prepared its estimate of the annual reporting burden on the basis that the majority of all submissions will be submitted electronically.

In accordance with 5 CFR 1320.8(d), in the **Federal Register** of October 23, 2008 (73 FR 63153), FDA published a 60-day notice requesting public comment on the proposed information collection. FDA received five letters in response to the four specified aspects of the collection of information, each containing one or more comments.

(Comment 1) Several comments commended FDA for implementing electronic data collection to improve adverse event reporting and expected the new format to greatly improve the agency's ability to utilize adverse event, product problem/consumer complaints, and medication use error reports submitted to FDA.

(Response) FDA agrees. As discussed previously in this document, the new system will enhance the current MedWatch collection system and integrate the Agency's existing adverse event reporting systems. This will enable FDA staff to more efficiently analyze thousands of safety reports and to identify potential safety problems earlier than would be possible using paper forms.

(Comment 2) One comment recommended that FDA continue to allow the submission of adverse event reports via paper. Another comment requested that FDA allow for a paper based contingency in the event that the MedWatch^{Plus} system becomes unavailable.

(Response) FDA agrees. The agency is not eliminating paper, or telephone reporting. We will continue to support and accept reports submitted to us by mail, fax or telephone including when the system is unavailable.

(Comment 3) One comment stated that FDA should recognize that the major component of the reporting burden is in the assembly of data, not in the transmission of data. The comment suggested that the submission of mandatory data to the MedWatch system will take 1 hour per initial report and from one-half hour to 3 hours for supplemental reports.

(Response) FDA agrees that the assembly of data is a major component of the reporting burden. However, the agency notes that the comment did not provide any data to support the burden hour figures set forth. Thus, FDA has not changed the burden hour estimates in tables 1 and 2 of this document.

(Comment 4) Several comments suggested that FDA consider using pilot programs in the different stages of developing the system. One comment suggested using a pilot with the proposed questionnaire. Another comment asked FDA to consider developing a pilot project with electronic medical record software vendors to assess the functionality and determine the impact on the practitioner's time to complete the submission. A third comment offered to provide the assistance of its professional association members to assess the functionality of the MedWatch^{Plus} portal and rational questionnaire.

(Response) FDA agrees. The agency intends to utilize internal and external early adopters for user acceptance testing that will include a test site environment for beta testing prior to implementation of the portal. However, the integration of electronic medical record software is not in scope for the planned releases of MedWatch^{Plus} portal and rational questionnaire.

(Comment 5) One comment expressed concern that those wanting to use the Web portal would not be able to find it.

Another comment suggested that FDA initiate a public education campaign to ensure potential users are aware of the new system and use the new system correctly.

(Response) FDA agrees and is working with National Institutes of Health and the FDA Internet teams to follow the HHS Internet guidelines for Web design. We expect that the link to the MedWatch[Plus] portal and rational questionnaire will be prominently displayed on the FDA home page. FDA also intends to reach out to our industry stakeholders, as well as professional organizations and community interest groups. The rational questionnaire will provide the user with detailed navigation instructions to include drop-down menus, lists of values and controlled vocabularies where possible. In addition, FDA will issue guidance and technical documents for the iterative releases of the rational questionnaire. The FDA intends to provide a phased approach. The first release will include Reportable Food Reports. Early Warning Pet Food Recall and adverse event reports for veterinary drug products will follow. Other product reports (CFSAN, CVM, CDER, CBER and CDRH) will be rolled out in later releases.

(Comment 6) One comment suggested that FDA include a means by which adverse events associated with other products could be reported using the MedWatch[Plus] portal and rational questionnaire, including: devices used in animals, compounded drugs for animals, and biologics used in animals.

(Response) FDA agrees that individuals should be able to report adverse events associated with devices used in animals and adverse reactions associated with compounded drugs for animals. For example, when the MedWatch[Plus] portal is operational, reporters will be able to use the animal adverse event view of the rational questionnaire to submit these reports. Furthermore, adverse event reports submitted through the portal for biologic products used for animals will be forwarded to the U.S. Department of Agriculture.

(Comment 7) One comment suggested that the Naranjo scale be incorporated into the rational questionnaire.

(Response) FDA disagrees. The Naranjo scale is a causality assessment tool. FDA does not plan to require assessment of causality by reporters who already suspect a product-event association and have made the decision to report by accessing the MedWatch[Plus] portal.

(Comment 8) One comment suggested that FDA should adjust its business processes to effectively leverage and appropriately respond to rapidly changing data in terms of number of reports, varying quality, and potential impact to signal detection.

(Response) FDA agrees. The rational questionnaire will facilitate the collection of consistent, complete, accurate information and produce a structured report utilizing the HL7–ICSR data exchange message. The agency will continue to support the submission of "batched" adverse event reports through the FDA electronic submission gateway. FDA is moving toward the use of the HL7–ICSR message exchange; however, acceptable, alternative data exchange message formats (e.g., E2BM, E2BR) will be supported for a period of time that has not been yet been determined.

(Comment 9) One comment suggested that the MedWatch[Plus] portal and rational questionnaire should document who submits the information and stated that the type of submitter (e.g., pharmacist, physician, patient) provides a good indication of the accuracy of and the reasons behind the information provided.

(Response) FDA agrees that information describing the type of submitter is useful. The rational questionnaire reporting views will be created to include questions describing who the reporter is, the type of report (adverse event, product problem/consumer complaint or product use error), whether the reporting is mandatory, and identify the suspect product. From that information, the agency can infer the type of submitter as follows: General citizen, health care professional, and whether or not the reporter is a mandatory or voluntary reporter.

(Comment 10) One comment recommended that FDA obtain contact information from all individuals who submit adverse event reports, arguing that false reports could be submitted more readily if individual contact submission is not required for report submission. The comment also noted that such information would allow FDA to follow up with individuals and verify reported information in the event that FDA had questions or concerns regarding an individual report.

(Response) FDA is encouraging all users to provide contact information in all reports which both verifies the source of the report and allows FDA to conduct any needed followup. However, FDA will accept voluntary reports submitted by anonymous sources. Only mandatory reporters will be required to include their contact information.

(Comment 11) One comment urged FDA to consider how duplicate reporting through different mechanisms will be reduced or eliminated.

(Response) FDA agrees. We have a system requirement that addresses our abilities to assess and link duplicate reports to minimize the problem of duplicate reporting. In addition, the Web portal will allow followup information as well as attachments to be entered and linked to a previously submitted report.

(Comment 12) One comment suggested that FDA should incorporate the Alternative Summary Report (ASR) methodology in MedWatch[Plus].

(Response) FDA is considering including summary reporting (ASRs) in future releases of the rational questionnaire, but the exact mechanism has not been determined.

(Comment 13) The rational questionnaire should not have supplemental questions, which are not required by the agency's regulations at 21 CFR Part 803.

(Response) The rational questionnaire will include the information mandated by regulation, legislation or otherwise deemed necessary by the agency for a complete report. Reporters will not be required to submit information in response to optional questions.

(Comment 14) One comment recommended that a single acknowledgement bearing the MDR report number and the official time receipt stamp be transmitted to the sender within one hour of the MDR submission. Another comment noted that the FDA 3500A form is the evidentiary record of the MDR. The comment went on to express concern about how the MedWatch[Plus] system would acknowledge the submission of the adverse event report in the required timeframe.

(Response) FDA agrees. The reporter will receive an electronic response with an acknowledgement containing a unique FDA identification number, which the reporter can save and print. The acknowledgement receipt will be generated immediately by the MedWatch[Plus] system. The reporter may also print and save an electronic copy of their report. If the reporter creates an account, the reporter will have access, for an undetermined finite period of time, to both their in-process and previously submitted reports using the MedWatch[Plus] system. However, FDA notes that voluntary reporters who report anonymously will not receive such a response because we will not have their email address, but they will be able to print and save an electronic copy of their report.

(Comment 15) One comment asked that FDA engage stakeholders in a public consultation process and asked FDA to subject a draft of the rational questionnaire to a public consultation period to permit manufacturers, patients, and other stakeholders to comment prior to finalizing a questionnaire for production use.

(Response) FDA agrees. We plan to use internal and external stakeholders in user acceptance testing. Additionally, the agency intends to hold two public meetings for Reportable Foods and give presentations on the Web-based portal and the rational questionnaire at professional organization and industry meetings.

(Comment 16) One comment suggested that FDA make the electronic collection tool user friendly and asked that the questionnaire be made accessible and intuitive for a broad population to use, with easy to understand data entry instructions and a user-friendly interface that requires limited computer or technical expertise to complete. Another comment stated that the effectiveness of the rational questionnaire would depend on the length of time required for the user to complete the adverse event report.

(Response) FDA agrees that the rational questionnaire should be user friendly. We are taking every available step in developing this tool to ensure that it is user-friendly and accessible for public use while minimizing user time. Such steps include utilizing both internal and external expertise with Web-techniques and leveraging current technology. The agency is following HHS Web standards in developing the portal and rational questionnaire and plans to collect feedback during the user acceptance testing.

(Comment 17) Another comment suggested that questions on the rational questionnaire should be prioritized to capture the most important questions and information first in a shorter period of time. Another comment suggested that FDA should use an electronic approach that will ensure that reporters only see and fill out those fields relevant to the event that they are reporting.

(Response) FDA agrees that the questions should be prioritized. The rational questionnaire is designed to request the mandatory information first, then present the optional questions. In addition, the specific reporting situations will use a tree-branching logic approach. The reporter will be provided only those fields necessary to providing a full report and they will not see questions that are not needed, which helps in prioritizing the information.

(Comment 18) One comment suggested that FDA create an intelligent questionnaire that aligns with the reporter's knowledge base and experience. Another comment requested that FDA provide an advanced method of submitting information using the rational questionnaire that would allow individuals familiar with the system to more quickly and efficiently input the information.

(Response) FDA agrees. FDA is aware that persons familiar with the reporting process do not want to be led through the questionnaire because they know what information they want to report. The agency is planning future releases of the rational questionnaire with an "Expert Reporter" mode for those who are familiar with the information and frequent reporters. FDA notes that if a user chooses to establish an account with FDA, the system will be designed so that when the user properly signs in, the system will pre-populate the point-of-contact information. In addition, when a report is submitted, a user will be able to retain and save unique identifying information which can be used to access a previously filed report for additional followup reporting.

(Comment 19) One comment suggested that FDA ensure that the MedWatch^{Plus} portal is interoperable with software that institutions currently use to document suspected adverse drug events internally.

(Response) The MedWatch^{Plus} portal is available to all users through the Internet, without requiring the use of special software. The portal will also allow submission of attachments to reports in commonly-used file formats, such as Microsoft Word, Excel and Adobe. The agency intends to publish guidance that will provide a list of acceptable file types. In the event that a user would like to submit an attachment that is in an unacceptable file type, the agency intends to communicate with the user via a message providing instructions for file types we will accept and contact information for a help desk providing IT support and additional assistance to the public. The current MedWatch^{Plus} portal and rational questionnaire project scope does not include the integration with electronic medical record software, but may be considered in the future as medical software systems mature and are increasingly utilized.

(Comment 20) One comment asked FDA to ensure interoperability utilizing HL7 or other appropriate standards. Another comment asked FDA to utilize international consensus standards in electronic case reporting.

(Response) FDA agrees. The MedWatch^{Plus} rational questionnaire will produce an HL7–ICSR data exchange message and the portal will accept HL7–ICSR compliant exchange messages that are formatted outside the rational questionnaire. As noted previously in this document, the agency will continue to support the submission of 'batched' adverse event reports through the FDA electronic submission gateway. FDA is moving toward the use of the HL7–ICSR message exchange; however, acceptable, alternative data exchange message formats (e.g., E2BM, E2BR) will be supported for a period of time that has not been yet been determined. We intend to use structured and controlled vocabularies and terminologies where they exist.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Activity	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Voluntary View	37,565	1	37,565	0.6	22,539
Mandatory View using MedWatch^{Plus} Rational Questionnaire[2]	645	199	128,403	1.0	128,403
Mandatory View using direct Gateway-to-Gateway transmission[2]	2,578	199.2	513,613	0.6	308,168

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

FDA Activity	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Reportable Food (human and animal) Mandatory View	1,200	1	1,200	0.6	720
Reportable Food (human and animal) Voluntary View	1,200	1	1,200	0.6	720
Early Warning Recall Voluntary View	540	1	540	0.6	324
Total					460,874

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The reporter may choose to use the MedWatch[Plus] Rational Questionnaire or a direct Gateway-to-Gateway transmission to submit a Mandatory report. FDA believes that these are different reporting burdens for these two types of transmission of information. The reporting burden for use of the MedWatch[Plus] Rational Questionnaire Mandatory View is estimated to be 1 hour. The reporting burden for a direct Gateway-to-Gateway transmission is estimated to be 0.6 hours. Current reporting estimates indicate that approximately 80 percent of the Mandatory Reports would be submitted via a Gateway-to-Gateway transmission and 20 percent of reports would be received via the MedWatch[Plus] Rational Questionnaire in the future. The Mandatory View reporting burden estimates reflect this calculation.

The term "Voluntary View" refers to the MedWatch[Plus] Rational Questionnaire as it appears to a respondent submitting a voluntary report. The term "Mandatory View" refers to the Gateway-to-Gateway and the MedWatch[Plus] Rational Questionnaire as it appears to a respondent submitting a mandatory report. The estimated number of responses and hours per response for the voluntary view and the mandatory view are based on FDA's experience and the average number of voluntary reports and mandatory reports submitted to FDA in 2007 (and in the case of mandatory dietary supplement reports, those submitted to FDA from January 1, 2008, to April 15, 2008) via the existing methods of submission, including paper submission. The term, "Reportable Food (human and animal) Mandatory View" refers to the MedWatch[Plus] Rational Questionnaire as it appears to a respondent submitting a mandatory report under section 417 of the act (21 U.S.C. 350f). The term, "Reportable Food (human and animal) Voluntary View" refers to the MedWatch[Plus] Rational Questionnaire as it appears to the respondent submitting a voluntary report under section 417 of the act. The estimated number of responses and hours per response for the reportable food (human and animal) mandatory and voluntary views are based on FDA's experience with reports recently submitted to FDA that would be considered "Reportable Food" reports in the future. The term, "Early Warning Recall Voluntary View," refers to the MedWatch[Plus] Rational Questionnaire as it appears to a respondent submitting a mandatory report under FDAAA Section 1002 of the act (Public Law 110–85). The estimated number of responses and hours per response for the early warning recall voluntary view are based on FDA's experience with reports recently submitted to FDA that would be considered "Early Warning Recall" reports in the future.

In an effort to meet the needs of all reporters, the Rational Questionnaire will allow for the submission of a report by completing certain minimum data elements. Both mandatory and voluntary reporters will see and be provided the opportunity to submit additional optional information. A reporter can answer one, a few, or all of the optional questions. Reporters are strongly encouraged to submit as much optional information as possible. This will help to ensure FDA has sufficient information to identify products and problems, and enhance their ability to address these problems.

The optional questions serve a purpose for both the reporter and FDA. The reporter may believe that additional information is needed for FDA to fully understand the event/problem and the optional questions provide an opportunity to provide such information. For FDA, the optional questions may aid in fully understanding the problem and may eliminate the need for extensive followup with the reporter. Because reporters can choose to answer none, one, a few, or all of the optional questions, we estimated the maximum time needed to submit a safety report online for both voluntary and mandatory reporters in the hours per response column in table 2 of this document.

The agency's estimate of the number of respondents and the total annual responses in table 2 of this document is based on the mandatory and voluntary reports submitted to the centers and ORA. The estimated total annual responses in table 2 are based on initial reports. Followup reports, if any, are not counted as new reports. FDA estimates that it will receive 37,565 voluntary reports [23,033 (CBER/CDER) + 4,369 (CDRH) + 5,000 (CFSAN) + 163 (CVM) + 5,000 (ORA) = 37,565]. FDA estimates that it will receive 642,016 mandatory reports [459,121 (CBER/CDER) + 146,274 (CDRH) + 856 (CFSAN) + 35,765 (CVM) + 0 (ORA) = 642,016].

FDA received 23,033 voluntary reports to CBER/CDER during 2007. Based on this experience, FDA estimates that CBER and CDER, collectively, will receive 23,033 voluntary reports annually from 23,033 users of the electronic reporting system. FDA estimates the reporting burden for a voluntary report to be 0.6 hours, for a total burden of 13,820 hours (23,033 reports x 0.6 hours = 13,819.8 hours).

FDA received 459,121 mandatory reports to CBER/CDER during 2007. Based on this experience, FDA estimates that CBER and CDER, collectively, will receive 459,121 mandatory reports annually from 600 users of the electronic reporting system. FDA estimates the maximum reporting burden for a mandatory report to be 1 hour, for a total burden of 459,121 hours (459,121 reports x 1 hour) or a minimum burden of 312,202 hours with ((459,121 reports x 80% x 0.60 hour) + (459,121 reports x 20% x 1 hour) = 312,202.28 hours).

FDA received 4,369 voluntary reports to CDRH during 2007. Based on this experience, FDA estimates that CDRH will receive 4,369 voluntary reports annually from 4,369 users of the electronic reporting system. FDA estimates the reporting burden for a voluntary report to be 0.6 hours, for a total burden of 2,621 hours (4,369 reports x 0.6 hours = 2,621.4 hours).

FDA received 146,274 mandatory reports to CDRH during 2007. Based on this experience, FDA estimates that CDRH will receive 146,274 mandatory reports annually from 1,665 users of the electronic reporting system (a group comprised of facilities, importers, and manufacturers). FDA estimates the maximum reporting burden for a mandatory report to be 1 hour, for a total burden of 146,274 hours (146,274 reports x 1 hour = 146,274 hours) or a minimum burden of 99,466 hours with ((146,274 reports x 80% x 0.60 hour) + (146,274 reports x 20% x 1 hour) = 99,466.32 hours). FDA received 5,000 voluntary reports to CFSAN during 2007. Based on this experience, FDA estimates that CFSAN will receive 5,000 voluntary reports annually from 5,000 users of the electronic reporting system. FDA estimates the reporting burden for a voluntary report to be 0.6 hours, for a total burden of 3,000 hours (5,000 reports x 0.6 hours = 3,000 hours).

FDA received 214 mandatory dietary supplement reports to CFSAN from January 1, 2008, to April 15, 2008. Based on this experience, FDA estimates that CFSAN will receive 856 mandatory reports annually from 150 users of the electronic reporting system. FDA estimates the maximum reporting burden for a mandatory report to be 1 hour, for a total burden of 856 hours (856 reports x 1 hour = 856 hours) or a minimum burden of 582 hours with ((856 reports x 80% x 0.60 hour) + (856 reports x 20% x 1 hour) = 582.08 hours).

FDA received 163 voluntary reports to CVM during 2007. Based on this experience, FDA estimates that CVM will receive 163 voluntary reports annually from 163 users of the electronic reporting system. FDA estimates the reporting burden for a voluntary report to be 0.6 hours for a total burden of 98 hours (163 reports x 0.6 hours = 97.8 hours).

FDA received 35,765 mandatory reports to CVM during 2007. Based on this experience, FDA estimates that CVM will receive 35,765 mandatory reports annually from 808 users of the electronic reporting system. FDA estimates the maximum reporting burden for a mandatory report to be 1 hour, for a total burden of 35,765 hours (35,765 reports x 1 hour = 35,765 hours) or a minimum burden of 24,320 hours with ((35,765 reports x 80% x 0.6 hour) + (35,765 reports x 20% x 1 hour) = 24,320.20 hours).

FDA received 5,000 voluntary reports to ORA during 2007. Based on this experience, FDA estimates that ORA will receive 5,000 voluntary reports annually from 5,000 users of the electronic reporting system. FDA estimates the reporting burden for a voluntary report to be 0.6 hours, for a total burden of 3,000 hours (5,000 reports x 0.6 hours = 3,000 hours). ORA does not receive mandatory reports.

FDAAA, Section 1005, the Reportable Food Registry, established new electronic mandatory and voluntary reporting requirements for instances of "reportable" food, meaning an article of food (other than infant formula) for which there is a reasonable probability that the use of, or exposure to, such article of food will cause serious adverse health consequences or death to humans or animals. FDA received 625 voluntary food complaints leading to adverse events from January 1, 2008, to June 30, 2008, and there were 206 and 182 Class 1 Recalls for human food in Fiscal Years 2006 and 2007, respectively. Based on these experiences, FDA estimates that FDA could receive 200 to 1,200 "reportable" food reports annually from 200 to 1,200 mandatory and voluntary users of the electronic reporting system. FDA will utilize the upper-bound estimate of 1,200 for these calculations. FDA estimates the reporting burden for a mandatory "reportable" food report to be 0.6 hours, for a total burden of 720 hours (1,200 reports x 0.6 hours = 720 hours). FDA estimates the reporting burden for a voluntary "reportable" food report to be 0.6 hours, for a total burden of 720 hours (1,200 reports x 0.6 hours = 720 hours).

FDAAA, Section 1002, Early Warning Recall, mandated FDA establish a system to receive voluntary pet food complaint reports and provide an Early Warning Recall system for the public. FDA received 270 voluntary pet food reports from January 1, 2008, to June 30, 2008. FDA received 10,740 and 99 pet food complaints in FY 2007 and 2006, respectively. Based on these experiences, FDA estimates that FDA could receive 540 voluntary pet food reports annually from 540 users of the electronic reporting system. FDA estimates the reporting burden for a voluntary "Early Warning Recall" report to be 0.6 hours, for a total burden of 324 hours (540 reports x 0.6 hours = 324 hours).

Dated: May 13, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–11687 Filed 5–19–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A549 Cells: A Well-Characterized Lung Carcinoma Cell Line Utilized for a Variety of Scientific Studies, Including Adenovirus Production and Testing

Description of Technology: Scientists at the National Institutes of Health have developed a cell line designated A549 that was derived from explanted cultures of human lung cancer tissue. The A549 cell line has been tested under the guidance of the United States Food and Drug Administration (FDA) so, under current Good Manufacturing Practices (GMP), these cells may be suitable for use in manufacturing constructs for use in clinical trials. The A549 cell line has also been found to be suitable for adenovirus production, most notably replicating adenovirus constructs that do not require complementation by the viral oncogene, early region 1A (E1A), which is responsible for viral gene transcription. This cell line is further utilized as a negative control in assays to measure the replication of adenoviruses that lack E1A and as a target cell line to detect replication competent adenoviruses (RCA). A549 cells have been well characterized through their use in a wide variety of molecular studies, such as anti-tumor drug permeability and

efficacy analysis, infection assays, respiratory immunotoxicity tests, cell senescence studies, and cytokine expression profiling. These cells can also be utilized to study a variety of molecular characteristics for human tumors in culture.

Application:

- Cell bank tested under cGMP-compliance regulations and used to produce adenoviruses for use in clinical trials.
- Research tool to analyze the efficacy of potential anti-cancer agents to devise better cancer treatments for malignancies, such as non-small cell lung cancer (NSCLC).
- Research tool to study the infectivity of viruses that cause asthma in order to develop better asthma treatments.
- Standard research tool to analyze a variety of molecular biology procedures, for example, cell senescence, cytokine induction, protein expression, apoptosis, and receptor-ligand interactions.

Advantages:

- A549 cells are a well-characterized standard among the human lung carcinoma/alveolar cell lines used in molecular biology.
- The A549 cells stored at the NIH were tested under the guidance of the FDA's cGMP regulations.
- The A549 cells stored at the NIH may be suitable for producing adenoviruses that can be used in clinical trials and analyzing adenoviral-based therapies and vaccine strategies.

Inventors: Wade P. Parks, Donald J. Giard, and Stuart Aaronson (all formerly NCI).

Publication: DJ Giard et al. In vitro cultivation of human tumors: Establishment of cell lines derived from a series of solid tumors. J Natl Cancer Inst. 1973 Nov; 51(5):1417–1423.

Patent Status: HHS Reference No. E–129–2009/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing under a Biological Materials License Agreement.

Licensing Contact: Samuel E. Bish, PhD; 301–435–5282; *bishse@mail.nih.gov.*

Mobilizing the Body to Fight Cancer: T Cell Receptors Specific for the Tumor Antigen Survivin

Description of Technology: A major drawback of current chemotherapy-based cancer treatments is the harsh side-effects associated with many cancer drugs. Thus, there is an urgent need to develop new therapeutic strategies combining fewer side-effects and more specific anti-tumor activity. Immunotherapy is a promising new cancer therapeutic approach that directs an individual's innate and adaptive immune system to fight against specific diseases, including cancer.

T cell receptors (TCRs) are proteins that recognize antigens in the context of infected or transformed cells and activate T cells to mediate an immune response and destroy abnormal cells. TCRs consist of two domains, one variable domain that recognizes the antigen and one constant region that helps the TCR anchor to the membrane and transmit recognition signals by interacting with other proteins.

Scientists at the National Institutes of Health (NIH) have developed genetically modified T cells, which possess TCRs that specifically recognize human survivin, a tumor antigen expressed in many adult and pediatric cancers that is absent from most normal tissues. Non-human T cells that recognized human survivin peptides with high affinity in the context of human leukocyte antigen (HLA) alleles were identified. Then, using recombinant DNA technology, the survivin-specific TCRs from the non-human T cells were fused to human TCR backbones and expressed in human T cells. The resulting survivin-specific human T cells could prove to be powerful new immunotherapeutic tools for attacking survivin-expressing tumors after infusion into patients.

Applications:

- Immunotherapeutics to treat and/or prevent the reoccurrence of a variety of human cancers that overexpress human survivin by inserting survivin-specific TCR sequences into patient T cells
- A drug component of a combination immunotherapy regimen aimed at targeting the specific tumor-associated antigens expressed by cancer cells within individual patients.

Advantages:

- Survivin is overexpressed in virtually all cancers, including lung, colon, breast, pancreatic, stomach, liver, ovarian and prostate cancer, as well as in melanoma and hematopoietic malignancies, but this antigen is not expressed on normal cells. Thus, survivin is an ideal antigen for targeted treatment. Anti-survivin TCR immunotherapy could treat a host of cancer types while reducing the side-effects of treatment.
- The survivin-specific TCR sequences can be derived in non-human species in the context of a wide variety of HLA molecules and, thus, TCRs specific for each patient's HLA profile can be generated rapidly.
- The survivin-specific T cells should not be rejected by a patient's immune system since the survivin-specific TCR sequences are fused to a human TCR backbone.

Development Status: This technology is in the pre-clinical stage of development. The inventors plan to initiate a clinical trial in the next 6–12 months.

Market: Cancer continues to be a medical and financial burden on U.S. public health. According to U.S. estimates, cancer is the second leading cause of death with over 565,000 deaths reported in 2008 and almost 1.5 million new cases were reported (excluding some skin cancers) in 2008. In 2007, the NIH estimated that the overall cost of cancer was $219.2 billion dollars and $89 billion went to direct medical costs. Despite our increasing knowledge of oncology and cancer treatment methods, the fight against cancer will continue to benefit from the development of new therapeutics aimed at treating individual patients.

Inventors: Crystal L. Mackall *et al.* (NCI).

Publications:

1. Manuscript in preparation.
2. CJ Cohen et al. Recognition of fresh human tumor by human peripheral blood lymphocytes transduced with a bicistronic retroviral vector encoding a murine anti-p53 TCR. J Immunol. 2005 Nov 1;175(9):5799–5808. (Erratum in: J Immunol. 2006 Oct 15;177(8):5746.)
3. RA Morgan et al. Cancer regression in patients after transfer of genetically engineered lymphocytes. Science 2006 Oct 6;314(5796):126–129.

Patent Status: U.S. Provisional Application No. 61/140,338 filed 23 Dec 2008 (HHS Reference No. E–325–2008/0–US–01)

Licensing Status: Available for licensing.

Licensing Contact: Samuel E. Bish, PhD; 301–435–5282; *bishse@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute Pediatric Oncology Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize genetically engineered lymphocytes with specificity for human survivin. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Fused Azepinone Cyclin Dependent Kinase Inhibitors

Description of Technology: The invention describes a class of cyclin dependent kinase (CDK) inhibitors that have anti-proliferative activity in human tumor cell lines. CDKs are important in

the control of the cell cycle and alterations in CDK expression, function, or regulation and are associated with diseases characterized by cellular proliferation. Increasing CDK activity has been reported in many cancers. Likewise, the loss of inhibitory activity has been observed in a wide variety of primary human tumors and human tumor-derived cell lines, including lung, breast, brain, bone, skin, bladder, kidney, ovary, liver, colon, and pancreas as well as in leukemia. These compounds have also been found to potently inhibit GSK3beta activity which has recently been linked to a variety of cellular processes and several disparate areas of biology. In particular, GSK3beta activity has been strongly implicated in Alzheimer's as well as cardiac failure. Thus, the compounds of this invention offer unique opportunities for a variety of indications.

Applications: CDK/GSK3beta inhibitor therapeutics for the treatment of several indications including various cancers, neurodegenerative diseases, and cardiac conditions.

Development: Pre-clinical stage of development.

Inventors: Daniel W. Zaharevitz *et al.* (NCI).

Publication: DW Zaharevitz et al. Discovery and initial characterization of the paullones, a novel class of small-molecule inhibitors of cyclin-dependent kinases. Cancer Res. 1999 Jun 1;59(11):2566–2569.

Patent Status: HHS Reference No. E–025–1998/0—

- U.S. Patent No. 6,610,684, issued August 26, 2003;
- Australian Patent Nos. 780528 and 778735, issued March 24, 2005 and December 16, 2004;
- Canada Patent Application No. 2335115, filed June 16, 1999;
- Japanese Patent Application No. 2000–554735, filed June 16, 1999;
- United Kingdom Patent No. 1086105, validated March 01, 2006 ((E–025–1998/0–GB–09);
- French Patent No. 1086105, validated March 01, 2006 (E–025–1998/0–FR–10); and
- German Patent No. 69930120.3, validated March 16, 2006 (E–025–1998/0–DE–11).

Licensing Status: Available for licensing.

Licensing Contact: Whitney A. Hastings; 301–451–7337; *hastingw@mail.nih.gov.*

Dated: May 13, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–11706 Filed 5–19–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

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Antibody and Immunotoxin Treatments for Mesothelin-Expressing Cancers

Description of Technology: Mesothelin is a cell surface protein that is highly expressed in aggressive cancers such as malignant mesothelioma, ovarian cancer and pancreatic cancer. As a result, mesothelin is an excellent candidate for tumor targeted immunotherapeutics. However, the antibodies against mesothelin that are available for clinical trials are of murine origin. These antibodies have the potential to elicit immune responses in patients, which may adversely affect the ability to provide patients with repeated doses. Thus, the clinical application of the antibodies may be limited.

In order to address the issue of immunogenicity in patients, NIH inventors have generated anti-mesothelin antibody variable fragments (Fv) of human origin. These antibody fragments (HN1 and HN2) have the ability to efficiently recognize mesothelin on the surface of numerous cancer cells. As a result, these antibody fragments represent an attractive therapeutic alternative to the murine anti-mesothelin antibodies currently being tested in clinical trials.

Application:

- Use as an antibody therapeutic for mesotheliomas, pancreatic tumors and ovarian tumors.
- Use in an immunotoxin therapeutic for mesotheliomas, pancreatic tumors and ovarian tumors.
- Diagnostic for the detection of mesothelin positive tumors.
- Research agent for the detection of mesothelin.

Advantages:

- Fully human antibody reduces potential immunogenicity, thereby allowing repeated dosing.
- Antibody specificity improves the therapeutic efficacy of the agent.

Development Status: Preclinical stage of development with some pre-clinical data available.

Inventors: Mitchell Ho *et al.* (NCI).

Patent Status: U.S. Provisional Application No. 61/162,778, filed 24 Mar 2009 (HHS Reference E–091–2009/0–US–01)

Related Technologies/Publications:

- U.S. Patent 6,083,502 entitled "Mesothelium Antigen and Methods and Kits For Targeting It."
- PCT Application PCT/US97/0224 entitled "Mesothelium Antigen and Methods and Kits For Targeting It."
- U.S. Patent 6,809,184 entitled "Antibodies, Including Fv Molecules, and Immunoconjugates Having High Binding Affinity for Mesothelin and Methods for Their Use."
- PCT Application PCT/US98/25270 entitled "Antibodies, Including Fv Molecules, and Immunoconjugates Having High Binding Affinity for Mesothelin and Methods for Their Use."
- U.S. Patent 7,081,518 entitled "Anti-mesothelin antibodies having high binding affinity."
- PCT Application PCT/US00/14829 entitled "Immunoconjugates Having High Binding Affinity Improvement of scFVsr Ab's with Higher Affinity for Mesothelin."

Licensing Status: Available for licensing.

Licensing Contact: David A. Lambertson, Ph.D.; 301–435–4632; *lambertsond@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute Laboratory of Molecular Biology is seeking statements of capability or interest from parties interested in collaborative research to further

develop, evaluate, or commercialize antibody-based treatments of mesothelin-expressing cancers. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Simple Biosensors Based on Electrical Percolation Biological Semiconductors

Description of Technology: The invention offered for licensing is in the field of biosensors with application in diagnostics and in regulation of implantable biomedical devices. More specifically, it is related to biological semiconductors based on the electrical percolation of single-walled carbon nanotubes (SWNTs). The nanotubes are embedded with biological ligands (*e.g.,* antibodies). The electrical resistance of a semiconducting SWNT is found to dramatically increase upon the actuation by a specific antigen. Measurement of the change in resistance correlates with the concentration of the specific antigen and thus provides for quantitative determination and diagnostics of biological samples. The simple printing fabrication of electrical percolation biological semiconductors (EPBSC) can facilitate assembly of numerous types of gates (*e.g.,* antibodies, DNA, etc.) and print many of such gates on the same chip for the creation of biological CPUs for various biomedical applications, including direct biodetection and regulation of implantable biomedical devices.

Applications:

(a) Miniaturized biosensors for various biomedical applications, including: (i) Direct biodetection of microbial pathogens and their toxins ii) diagnostics and prognostics of human diseases (*e.g.,* cancer, cardiovascular, or other biomarkers) (iii) detection and analysis of nucleic acids (*e.g.,* DNA, RNA) (iv) detection and analysis of other analytes (carbohydrates, fatty acids, organic or inorganic compounds).

—Point of Care (POC) diagnostics (*e.g.,* Physician's office, home-use)

—Military applications (*e.g.,* remote sensing of biowarfare agents)

(b) Monitor food safety and detection of environmental pollution.

(c) Regulation of implantable biomedical devices such as insulin pumps or artificial hearts.

(d) New generation of personal detectors (*e.g.,* food allergens, cardiovascular event, etc.).

Advantages:

(a) The electrical percolation biological semiconductors (EPBSC) are relatively simple to assemble, and do not require specialized fabrication facilities or experience which may broaden the use of EPBSC in a similar way that PDMS (Polydimethylsiloxane) technology has broadened the use of lab-on-a-chip.

(b) Many EPBSC can be fabricated into the same chip enabling simultaneous detection of many analytes.

(c) Electronic based EPBS detection enable simple digital signal amplification and analysis.

(d) EPBSC can be relatively stable with respect to retention of biological viability and thus can be stored for a long period of time before use.

(e) EPBSC enable device miniaturization.

(f).EPBSC are relatively simple to use and may not require special equipment or a skilled operator. Thus, these biosensors can be utilized in a Physician Office setting, for military applications and for possibly remote sensing for detections of biowarfare materials.

(g) EPBSC devices will offer speed of detection, ease of use, and it will be inexpensive to make.

Development Status: Proof of concept was demonstrated. For example, using anti-Staphylococcal Enterotoxin B (SEB) IgG antibodies as a gate, and the SEB antigen as an actuator, the inventors could detect as little as 0.1 ng/mL of SEB.

Market: According to market research reports from 2003–2004 the global market for biosensors was projected to grow from approximately $7.0 billion in 2004 to approximately $9.5 billion in 2009, an average annual growth of about 7.0%. Ninety-nine percent (99%) of the biosensor's market is dominated by biomedical and life sciences, while only one percent (1.0%) with applications in environmental monitoring.

Because of the unique advantages offered by this technology (i.e., diversity of applications, simplicity of use and low cost), there is a good probability that if technically successful it will become commercially successful and financially rewarding.

Inventors: Avraham Rasooly (NCI) *et al.*

Patent Status: U.S. Provisional Application No. 61/115,546 filed 18 Nov 2008, entitled "Electrical Percolation Biomedical Semiconductors" (HHS Reference No. E–040–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contacts: Uri Reichman, Ph.D., MBA; 301–435–4616; *UR7a@nih.gov*; Michael Shmilovich, JD; 301–435–5019; *shmilovm@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute, Cancer Diagnostic Program, and the Food and Drug Administration, the Center for Devices and Radiological Health, Office of Science and Engineering Laboratories, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Electrical Percolation Biological Semiconductors for biodetection. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

C57BL/6J Embryonic Stem Cell Lines Generated Using Serum-Free Media

Description of Technology: NIH investigators have generated Embryonic Stem (ES) cell clones from C57BL/6J mice in a defined medium. These cell lines enable direct genetic alteration of mice in a pure genetic background.

Using a defined media supplement, knockout serum replacement (KSR) with knockout DMEM (KSR–KDMEM), the investigators established ES cell lines from blastocysts of C57BL/6J mice. One specific cell line, HGTC–8 was found to be karyotypically stable and germline competent, both prior to manipulation and after gene targeting. These cell lines transfected more efficiently, and exhibited increased efficiencies of cell cloning and chimera generation, when maintained in KSR–KDMEM.

Applications:

- Generation of knockout mice without the need to backcross.
- Generation of mice via targeted mutations.

Inventors: Jun Cheng, Lisa Garrett-Beal, and *Pamela L. Schwartzberg* (NHGRI).

Publication: J Cheng, A Dutra, A Takesono, L Garrett-Beal, PL Schwartzberg. Improved generation of C57BL/6J mouse embryonic stem cells in a defined serum-free media. Genesis. 2004 June; 39(2):100–104.

Patent Status: HHS Reference No. E–038–2009/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing under a Biological Materials License Agreement.

Licensing Contact: Suryanarayana (Suri) Vepa, Ph.D., J.D.; 301–435–5020; *vepas@mail.nih.gov*.

Identification of Renal Cell Carcinoma Biomarkers

Description of Technology: This invention describes the identification of potential renal cancer biomarkers which could be utilized in the development of a renal cancer diagnostics. The invention identified cancer protein biomarkers from clinically relevant samples including peripheral blood and

fresh frozen tissues. Vast availability of fresh frozen tissues and peripheral blood specimens that are easily obtained could lead to clinical tests amenable to therapeutic, prognostic and even early screening tests for renal cell carcinoma and other malignancies.

Applications: Renal cell carcinoma diagnostics, therapeutics and prognostics.

Market:

• Cancer is the second leading cause of death in the U.S.A. There is an acute need for cancer biomarkers that can be detected from clinically relevant samples and used for early diagnosis, therapeutic follow-up and prognosis of malignant diseases.

• The incidence of renal cell cancer has been rising steadily. Renal Cell Carcinoma is the most common type of kidney cancer, and the most common type in adults, responsible for approximately 80% of cases.

Inventors: Josip Blonder *et al.* (NCI).

Patent Status: PCT Application No. PCT/US2009/037855 filed 20 Mar 2009 (HHS Reference No. E–317–2008/0–PCT–01)

Licensing Status: Available for licensing.

Licensing Contact: Betty B. Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute Laboratory of Proteomics and Analytical Technologies is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize diagnostic, therapeutic and prognostic cancer biomarkers from clinical specimens. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: May 13, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–11705 Filed 5–19–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine Announcement of Workshop on the Non-Pharmacological Management of Back Pain

ACTION: Notice.

SUMMARY: The National Center for Complementary and Alternative Medicine (NCCAM) invites the research community to participate in an online Workshop on Non-Pharmacological Management of Back Pain. The purpose of this workshop is to identify and explore a range of important and timely clinical research questions related to non-pharmacological interventions to treat back pain. This information will help inform future research directions for NIH and the biomedical scientific field. This workshop will be split into three sessions that will feature presentations and discussions focusing on the current understanding and complexity of chronic back pain, promising questions associated with testable hypotheses, and the relevant outcome measures.

The Workshop will take place on May 27, 2009. Those interested in CAM research are particularly encouraged to view and participate.

Background: The National Center for Complementary and Alternative Medicine (NCCAM) was established in 1999 with the mission of exploring complementary and alternative healing practices in the context of rigorous science, training CAM researchers, and disseminating authoritative information to the public and professionals. NCCAM funds research grants that explore the science of CAM. For more information, see *http://nccam.nih.gov/grants/whatnccamfunds/.*

Participating: The Workshop will be broadcast on the Internet and archived on *http://www.videocast.nih.gov/.* Viewers may submit questions for the presenters and panelists by e-mailing *nccambkpnwkshp@mail.nih.gov* with questions or comments. For more information about what will be covered at the workshop, see *http://nccam.nih.gov/news/events/.*

FOR FURTHER INFORMATION CONTACT: To request more information, visit the NCCAM Web site at *http://nccam.nih.gov/news/events/,* call 301–594–3391 (Edward Culhane) or e-mail at *culhanee@mail.nih.gov.*

Dated: May 12, 2009.

Richard Nahin,

Senior Advisor for Scientific Coordination and Outreach, National Center for Complementary and Alternative Medicine, National Institutes of Health.

[FR Doc. E9–11679 Filed 5–19–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on Wednesday, June 10, 2009, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD..

Contact Person: Megan Mickal, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4151, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512523. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss and make recommendations regarding general issues related to the use of ultrafiltration devices in the treatment of extracellular body fluid overload in patients experiencing heart failure. Specifically, the committee will address the use of these devices in patients experiencing heart failure in the following terms: Identifying the most appropriate heart failure patients for whom these treatments should be indicated, determining where these treatments fit within the spectrum of treatment options, and defining what level of clinical evidence is necessary to

adequately evaluate and provide labeling for these devices.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 1, 2009. Oral presentations from the public will be scheduled between approximately 10 a.m. and 10:30 a.m., and between approximately 4 p.m. and 4:30 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 28, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 29, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 240–276–8932 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 11, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–11734 Filed 5–19–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. Name of Subcommittee: Health Care Quality and Effectiveness Research

Date: June 15–17, 2009 (Open from 5 p.m. to 5:15 p.m. on June 15 and closed for remainder of the meeting).

Place: Marriott RIO, Conference Room TBD, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

2. Name of Subcommittee: Health Care Technology and Decision Sciences

Date: June 16–19, 2009 (Open from 5 p.m. to 5:15 p.m. on June 16 and closed for remainder of the meeting).

Place: Marriott RIO, Conference Room TBD, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

3. Name of Subcommittee: Health Systems Research

Date: June 17–19, 2009 (Open from 5 p.m. to 5:15 p.m. on June 17 and closed for remainder of the meeting).

Place: Marriott RIO, Conference Room TBD, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

4. Name of Subcommittee: Health Care Research Training

Date: June 24–26, 2009 (Open from 5 p.m. to 5:15 p.m. on June 24 and closed for remainder of the meeting).

Place: Marriott RIO, Conference Room TBD, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: May 13, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–11657 Filed 5–19–09; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Children's Study Advisory Committee.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Children's Study Advisory Committee.

Date: May 26–27, 2009.

Time: May 26, 2009, 8:30 a.m. to 10 a.m.

Agenda: This portion of the meeting is being held to conduct new member orientation.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Time: May 26, 2009, 10 a.m. to 5:30 p.m.

Agenda: The agenda will include an update on the current status of the Study, a session on Childhood Obesity, an update on the status of the Independent Study Monitoring and Oversight Committee, a report from the Vandguard Centers, and other topics of interest.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Time: May 27, 2009, 8:30 a.m. to 4 p.m.

Agenda: There will be a subcommittee breakout session of the three Subcommittees: Scientific Review, Ethics, and Community Outreach and Engagement.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jessica Sapienza, Executive Secretary, National Children's Study, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 3A01, Bethesda, MD 20892, (703) 902–1339, *ncs@circlesolutions.com.*

This meeting is being published less than 15 days prior to the meeting due to timing limitations imposed by administrative matters.

Name of Committee: National Children's Study Advisory Committee; Scientific Review Subcommittee.

Date: May 26, 2009.

Time: 2:30 p.m. to 4 p.m.

Agenda: The agenda will include a discussion on childhood obesity and the Committee's role in scientific review.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jessica Sapienza, Executive Secretary, National Children's Study, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 3A01, Bethesda, MD 20892, (703) 902–1339, *ncs@circlesolutions.com.*

This meeting is being published less than 15 days prior to the meeting due to timing limitations imposed by administrative matters.

Name of Committee: National Children's Study Advisory Committee; Ethics Subcommittee.

Date: May 26, 2009.

Time: 2:30 p.m. to 4 p.m.

Agenda: The agenda will include a discussion on current ethical issues in the National Children's Study.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jessica Sapienza, Executive Secretary, National Children's Study, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 3A01, Bethesda, MD 20892, (703) 902–1339, *ncs@circlesolutions.com.*

This meeting is being published less than 15 days prior to the meeting due to timing limitations imposed by administrative matters.

Name of Committee: National Children's Study Advisory Committee; Community Outreach and Engagement Subcommittee.

Date: May 26, 2009.

Time: 2:30 p.m. to 4 p.m.

Agenda: The agenda will include an update on community engagement in the National Children's Study.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jessica Sapienza, Executive Secretary, National Children's Study, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 3A01, Bethesda, MD 20892, (703) 902–1339, *ncs@circlesolutions.com.*

This meeting 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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 12, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–11577 Filed 5–19–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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: Musculoskeletal, Oral and Skin Sciences, Integrated Review Group, Skeletal Biology Structure and Regeneration Study Section.

Date: June 1–2, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: John P. Holden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892. (301) 496–8551. *holdenjo@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Epidemiology and Population Studies, Integrated Review Group, Epidemiology of Cancer Study Section.

Date: June 2–3, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Denise Wiesch, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892. (301) 435–0684. *wieschd@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tumor Environment–ARRA–CR.

Date: June 2, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Eun Ah Cho, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892. (301) 451–4467. *choe@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group Surgery, Anesthesiology and Trauma Study Section.

Date: June 4–5, 2009.

Time: 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel Chicago, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Weihua Luo, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892. (301) 435–1170. *luow@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–H (95) S Revisions: Neurotoxicology and Alcohol.

Date: June 4–5, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton, 1201 K Street, NW., Washington, DC 20005.

Contact Person: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892. (301) 435–1033. *hoshawb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Supplements to Macromolecular Structure and Function A.

Date: June 4, 2009.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: David R. Jollie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892. (301) 435–1722. *jollieda@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Healthcare Delivery and Methodologies, Biostatistical Methods and Research Design Study Section.

Date: June 5, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Denise Wiesch, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892. (301) 435–0684. *wieschd@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, NOMD ARRA Competing Revisions.

Date: June 5, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Carol Hamelink, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040H, MSC 7850, Bethesda, MD 20892. (301) 451–1328. *hamelinc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, NTRC Competitive Revision Review.

Date: June 5, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis Hotel, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Peter B. Guthrie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892. (301) 435–1239. *guthriep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Bioengineering Sciences & Technologies, Integrated Review Group Modeling and Analysis of Biological Systems Study Section.

Date: June 5, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Raymond Jacobson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7849, Bethesda, MD 20892. (301) 435–0483. *jacobsonrh@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Social Psychology: ARRA Revised Applications.

Date: June 5, 2009.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Michael Micklin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892. (301) 435–1258. *micklinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurotechnology 2.

Date: June 5, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892. (301) 435–3009. *elliotro@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, NAME Revision Applications.

Date: June 5, 2009.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Heidi B. Friedman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892. (301) 435–0906. *hfriedman@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, CP: Review of Competing Revisions.

Date: June 5, 2009.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1443 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Cheri Wiggs, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892. (301) 435–1261. *wiggsc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MGA Revisions.

Date: June 5, 2009.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Michael M. Sveda, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892. (301) 435–3565. *svedam@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SYN Competitive Revisions.

Date: June 5, 2009.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Jonathan K. Ivins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040A, MSC 7806, Bethesda, MD 20892. (301) 594–1245. *ivinsj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MABS SRO Conflict Panel.

Date: June 5, 2009.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Amy L. Rubinstein, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 5152, MSC 7844, Bethesda, MD 20892. (301) 435–1159. *rubinsteinal@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, NCF Competitive Revisions.

Date: June 5, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Lawrence Baizer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892. (301) 435–1257. *baizer@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BPNS Competitive Revisions.

Date: June 5, 2009.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis Hotel, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Geoffrey G. Schofield, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892. (301) 435–1235. *geoffreys@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biomedical Informatics.

Date: June 5, 2009.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Bill Bunnag, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892. (301) 435–1177. *bunnagb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, APDA: Review of Competing Revisions.

Date: June 5, 2009.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel Chicago, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Estina E. Thompson, PhD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892. (301) 496–5749. *thompsone@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative Applications in Adult Psychopathology and Disorders of Aging.

Date: June 5, 2009.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel Chicago, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Estina E. Thompson, PhD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892. (301) 496–5749. *thompsone@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, CMBG ARRA Competing Revisions.

Date: June 5, 2009.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Toby Behar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892. (301) 435–4433. *behart@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Psychosocial Risk Prevention: ARRA Renewal Applications.

Date: June 5, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Avenue Hotel Chicago, 160 Huron Street, Chicago, IL 60611.

Contact Person: Anna L. Riley, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892. (301) 435–2889. *rileyann@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 11, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–11580 Filed 5–19–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Development of Thalidomide Analogs for the Treatment of Cancer

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in US Patent Application 60/792,098 entitled "Tetrahalogenated Compounds Useful as Inhibitors" [HHS Ref. E–080–2006/0–US–01], PCT Application PCT/US2007/008849 entitled "Tetrahalogenated Compounds Useful as Inhibitors" [HHS Ref. E–080–2006/0–PCT–02], Australian Patent Application 2007238785 entitled "A New Series Of Thalidomide Analogs That Have Potent Anti-angiogenic Properties" [HHS Ref. E–080–2006/0–AU–03], Canadian Patent Application 2,648,216 entitled "A New Series Of Thalidomide Analogs That Have Potent Anti-angiogenic Properties" [HHS Ref. E–080–2006/0–CA–04], European Patent Application 07755201.6 entitled "A New Series Of Thalidomide Analogs That Have Potent Anti-angiogenic Properties" [HHS Ref. E–080–2006/0–EP–05], US Patent Application 12/287,597 entitled "A New Series Of Thalidomide Analogs That Have Potent Anti-angiogenic Properties" [HHS Ref. E–080–2006/0–US–06], and all continuing patents, patent applications, and foreign counterparts thereto, to CuriRx, Inc., which has offices in Andover, Massachusetts. The patent rights in these inventions have been assigned to and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to:

The use of Gu998 (Compound 19e), Gu973 (Compound 19f), Gu1029 (Compound 20d) or Gu992 (Compound 20g) as cancer therapeutics.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before July 20, 2009 will be considered..

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: David A. Lambertson, Ph.D., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4632; Facsimile: (301) 402–0220; e-mail: *lambertsond@od.nih.gov*.

SUPPLEMENTARY INFORMATION: The invention concerns the use of tetrahalogenated thalidomide derivatives for the treatment of cancer. Thalidomide has been shown to be a potent inhibitor of angiogenesis (the formation of new blood vessels). The popular belief is that angiogenesis enhances tumor formation by providing tumors with increased nutrients, allowing their sustained growth. However, thalidomide is a natural teratogen that can cause severe birth defects, and has a propensity towards causing neotropenia and deep venous thrombosis in recipients of the drug. This led researchers to seek out safer derivatives of thalidomide that retain an anti-cancer activity. The tetrahalogenated derivatives disclosed by this technology may represent both a safer alternative to thalidomide and potentially a more successful alternative to the angiogenesis inhibitors currently being clinically tested.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 12, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–11680 Filed 5–19–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Manufacture, Use, Distribution of and Sale of Fused Azepinone Cyclin Dependent Kinase Inhibitors as Therapeutics

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent No. 6,610,684 entitled, "Fused Azepinone Cyclin-Dependent Kinase Inhibitors" and all foreign counterparts [HHS Ref. No. E–025–1998/0] to ShanaRx Pharmaceuticals. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to the use of the Cyclin Dependent Kinase Inhibitors and their methods of use in the Licensed Patent Rights for the treatment of: (i) Disorders caused by damage, injury, infection in or abnormal function of the peripheral or central nervous system including pain, neuropathy, retinal degeneration, glaucoma, Alzheimer's disease, Parkinson's disease, ALS, depression, schizophrenia, and anxiety; (ii) disorders caused by damage, injury, infection in or abnormal function of cerebral vasculature and cardiac vasculature including cardiac failure and myocardial infections; (iii) cancer and neoplastic disorders; (iv) inflammatory and autoimmune diseases including Multiple Sclerosis; and (v) endocrine and neuroendocrine disorders including Diabetes Mellitus.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before August 18, 2009 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated co-exclusive license should be directed to: Whitney A. Hastings, M.S., Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804. Telephone: (301) 451–7337; Facsimile: (301) 402–0220; E-mail: *hastingw@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: The invention describes a class of cyclin dependent kinase (CDK) inhibitors that have anti-proliferative activity in human tumor cell lines. CDKs are important in the control of the cell cycle and alterations in CDK expression, function, or regulation are associated with diseases characterized by cellular proliferation. Increasing CDK activity has been reported in many cancers and observed in a wide variety of primary human tumors and human tumor-derived cell lines, including lung, breast, brain, bone, skin, bladder, kidney, ovary, liver, colon, pancreas as well as in leukemia. The compounds of this invention have also been found to potently inhibit GSK3beta activity. Some of compounds of this invention have been shown to be more potent towards the GSK3beta target than towards CDKs. The GSK3beta enzyme, a proline-directed serine-threonine kinase, has been linked to a variety of cellular processes and several disparate areas of biology. Thus, this technology could provide therapeutic opportunities for a variety of indications, including Alzheimer's, neurological disorders, and cardiac failure.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within ninety (90) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 12, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–11681 Filed 5–19–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Free Admittance Under Conditions of Emergency

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; Extension of an existing information collection: 1651–0044.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Free Admittance Under Conditions of Emergency. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before July 20, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

Title: Free Admittance Under Conditions of Emergency.

OMB Number: 1651–0044.

Form Number: None.

Abstract: This collection of information will be used in the event of emergency or catastrophic event to monitor goods temporarily admitted for the purpose of rescue or relief.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Nonprofit Assistance Organizations.

Estimated Number of Respondents: 1.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1.

Dated: May 14, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–11754 Filed 5–19–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–36]

Disaster Housing Assistance Program-Ike (DHAP-Ike Grant Agreement)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

In August and September 2008, Hurricanes Ike and Gustave struck the United States causing catastrophic damage. On September 23, 2008, HUD and FEMA executed an Interagency Agreement under which HUD shall act as the servicing agency of DHAP-Ike. The paperwork involved in this action all activities related to DHAP-Ike from execution of the grant agreement to case management.

DATES: *Comments Due Date:* June 19, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0258) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Disaster Housing Assistance Program-Ike (DHAP-Ike Grant Agreement).

OMB Approval Number: 2577–0258.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use:

In August and September 2008, Hurricanes Ike and Gustave struck the United States causing catastrophic damage. On September 23, 2008, HUD and FEMA executed an Interagency Agreement under which HUD shall act as the servicing agency of DHAP-Ike. The paperwork involved in this action all activities related to DHAP-Ike from execution of the grant agreement to case management.

Frequency of Submission: Quarterly, Annually.

	Number of respondents	Annual response	×	Hours per response	=	Burden hours
Reporting Burden	120	3196		4.793		1,838,520

Total Estimated Burden Hours: 1,838,520.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 13, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–11684 Filed 5–19–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians; Notice of Proposed Renewal of Information Collection

AGENCY: Office of the Special Trustee for American Indians, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Special Trustee for American Indians, Department of the Interior, announces the proposed renewal of a public information collection required by The American Indian Trust Fund Management Reform Act of 1994, "Application to Withdraw Tribal Funds from Trust Status, 25 CFR part 1200," OMB Control No. 1035–0003, and that it is seeking comments on its provisions. After public review, the Office of the Special Trustee for American Indians will submit the information collection to Office of Management and Budget for renewal.

DATES: Consideration will be given to all comments received by July 20, 2009.

ADDRESSES: Written comments and recommendations on this information collection should be sent to the Office of the Special Trustee, Office of External Affairs, Attn: Frank Perniciaro, 4400 Masthead St., NE., Room 323, Albuquerque, New Mexico 87109. You may also e-mail comments to *frank_perniciaro@ost.doi.gov*. Individuals providing comments should reference OMB control number 1035–0003, "Application to Withdraw Tribal Funds from Trust Status, 25 CFR 1200."

FOR FURTHER INFORMATION CONTACT: To request more information on this information collection or to obtain a copy of the collection instrument, please write to the above address.

SUPPLEMENTARY INFORMATION:

I. Abstract

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected parties have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that the Office of the Special Trustee for American Indians is submitting to OMB for renewal.

Public Law 103–412, The American Indian Trust Fund Management Reform Act of 1994, allows Indian tribes on a voluntary basis to take their funds out of trust status within the Department of the Interior (and the Federal Government) in order to manage such funds on their own. 25 CFR part 1200, subpart B, Sec. 1200.13, "How does a tribe apply to withdraw funds?" describes the requirements for application for withdrawal. The Act covers all tribal trust funds including judgment funds as well as some settlements funds, but excludes funds held in Individual Indian Money accounts. Both the Act and the regulations state that upon withdrawal of the funds, the Department of the Interior (and the Federal Government) have no further liability for such funds. Accompanying their application for withdrawal of trust funds, tribes are required to submit a Management Plan for managing the funds being withdrawn, to protect the funds once they are out of trust status.

This information collection allows the Office of the Special Trustee to collect the tribes' applications for withdrawal of funds held in trust by the Department of the Interior. If this information were not collected, the Office of the Special Trustee would not be able to comply with the American Indian Trust Fund Management Reform Act of 1994, and tribes would not be able to withdraw funds held for them in trust by the Department of the Interior.

II. Data

(1) *Title:* Application to Withdraw Tribal Funds from Trust Status, 25 CFR 1200.

OMB Control Number: 1035–0003.

Current Expiration Data: August 31, 2009.

Type of Review: Information Collection Renewal.

Affected Entities: State, Local and Tribal Governments.

Estimated annual number of respondents: 2.

Frequency of response: Once per respondent.

(2) Annual reporting and record keeping burden:

Total annual reporting per respondent: 400 hours.

Total annual reporting: 800 hours.

(3) Description of the need and use of the information: The statutorily-required information is needed to provide a vehicle for tribes to withdraw funds from accounts held in trust for them by the United States Government.

III. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons

to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: May 14, 2009.

James P. Barham,

Director, Office of External Affairs, Office of the Special Trustee for American Indians.

[FR Doc. E9–11711 Filed 5–19–09; 8:45 am]

BILLING CODE 4310–2W–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–ES–2009–N0076; 70120–1113–0000–C4]

Endangered and Threatened Wildlife and Plants; Short-Tailed Albatross (Phoebastria albatrus): Initiation of 5-Year Status Review; Availability of Final Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of final recovery plan; initiation of 5-year status review and request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our final recovery plan for and the initiation of a 5-year status review for the short-tailed albatross (*Phoebastria albatrus*), a bird species listed as endangered under the Endangered Species Act of 1973, as amended (Act). Our recovery plan describes the status, current management, recovery objectives and criteria, and specific actions needed to enable us to reclassify the short-tailed albatross from endangered to threatened, or from threatened to delisted. It also includes criteria that would justify reclassifying the species from threatened back to endangered. We conduct 5-year reviews to ensure that our classification of each species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants is accurate. We request any new information on this species that may have a bearing on its classification as endangered. Based on the results of this 5-year review, we will make a finding on whether this species is properly classified under the Act.

DATES: To allow us adequate time to conduct our 5-year review, we are requesting that you submit your information no later than July 20, 2009. However, we accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information as well as the information that we receive for our 5-year review, see "Request for New Information." To obtain a copy of our recovery plan, see "Contacts."

FOR FURTHER INFORMATION CONTACT: Greg Balogh, Endangered Species Branch Chief, at the above address or by phone at (907) 271–2778.

SUPPLEMENTARY INFORMATION:

I. Background

We originally listed the short-tailed albatross (*Phoebastria albatrus*) in 1970 (35 FR 8491), under the then-Endangered Species Conservation Act of 1969, before passage of today's Act (16 U.S.C. 1531 *et seq.*). However, as a result of an administrative error (and not from any biological evaluation of status), we listed the species as endangered throughout its range, except within the United States (50 CFR 17.11). On July 31, 2000, we corrected this error when we published a final rule listing the short-tailed albatross as endangered throughout its range (65 FR 46643). This listing was effective August 30, 2000. For description, taxonomy, distribution, status, breeding biology and habitat, and a summary of factors affecting the species, please see the final listing rule. In that rule, we also determined designation of critical habitat to be not prudent because, among other reasons, we could not find habitat-related threats to the species within U.S. territory.

The species occurs in waters throughout the North Pacific, primarily along the east coast of Japan and Russia, in the Gulf of Alaska, along the Aleutian Islands and in the Gulf of Alaska south of 64° north latitude. At the time of our 2000 final listing rule, the short-tailed albatross population consisted of about 1,200 individuals known to breed on two islands: Torishima, an active volcanic island in Japan, and Minami-Kojima, an island whose ownership is under dispute by Japan, China, and Taiwan.

The severe decline in short-tailed albatross was caused by overexploitation for its feathers prior to and following the turn of the 20th century. This threat no longer exists, but its effect lingers. The species is thought to have once numbered 5 million individuals, but birds were harvested until only a few dozen remained. Numbering about 2,400 individuals in 2008, the short-tailed albatross is currently threatened by volcanic activity, extreme weather, small population size, a limited number of breeding sites, contamination by oil and other pollutants, and commercial fishery bycatch. Key recommendations for immediate action, as described in the recovery plan, are: (1) Formation of new breeding colonies at safe locations on Torishima and in the Bonin Islands; (2) stabilization of existing breeding habitat on Torishima Island; and (3) reduction of seabird bycatch in all North Pacific fisheries that may take this species.

II. Availability of Final Recovery Plan

A. Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most listed species native to the United States. Recovery plans describe actions considered necessary for the conservation and survival of the species, establish criteria for reclassifying or delisting listed species, and estimate time and cost for implementing needed recovery measures.

The Act requires us to develop recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires us to provide public notice and an opportunity for public review and comment during recovery plan development. We made our draft recovery plan for the short-tailed albatross available for public comment from October 27 through December 27, 2005 (70 FR 61988). We considered information we received during this comment period, along with information we received from five peer reviewers and the Government of Japan, in our preparation of our final recovery plan. The Short-tailed Albatross Recovery Team has taken into account these comments in redrafting the recovery plan and in revising and justifying the new recovery criteria we set forth in this final plan.

B. Recovery Criteria

The short-tailed albatross may be reclassified from endangered to threatened under the following conditions: The total breeding population of short-tailed albatross reaches a minimum of 750 pairs; and At least three breeding colonies each exhibiting a 3-year running average growth rate of greater than or equal to 6 percent for greater than or equal to 7 years, at least two of which occupy island groups other than Torishima with a minimum of greater than or equal to 50 breeding pairs each.

III. Initiation of 5-Year Status Review

A. Why Do We Conduct a 5-Year Review?

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain a List of Endangered and Threatened Wildlife and Plants (List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). An informational copy of the List, which covers all listed species, is also available on our Internet site at *http://endangered.fws.gov/wildlife.html#Species*. Section 4(c)(2)(A) of the Act requires us to review the status of each listed species at least once every 5 years. Then, based on such review, under section 4(c)(2)(B), we determine whether any species should be removed from the List (delisted), reclassified from endangered to threatened, or reclassified from threatened to endangered. Any change in Federal classification requires a separate rulemaking process.

Our regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing the species we are reviewing. This notice announces our active 5-year status review of the endangered short-tailed albatross.

B. What Information Do We Consider in Our Review?

We consider all new information available at the time we conduct our review. We consider the best scientific and commercial data that have become available since our current listing determination or most recent status review of the species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends (see five factors under heading "How Do We Determine Whether a Species is Endangered or Threatened?"); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

C. How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Under section 4(b)(1) of the Act, we are required to base our assessment of these factors solely on the best scientific and commercial data available.

D. What Could Happen as a Result of Our Review?

For each species we review, if we find new information indicating a change in classification may be warranted, we may propose a new rule that could do one of the following:

A. Reclassify the species from threatened to endangered (uplist);

B. Reclassify the species from endangered to threatened (downlist); or

C. Remove the species from the List (delist).

If we determine that a change in classification is not warranted, then the species remains on the List under its current status.

We must support any delisting by the best scientific and commercial data available, and only consider delisting if such data substantiate that the species is neither endangered nor threatened for one or more of the following reasons:

A. The species is considered extinct;

B. The species is considered to be recovered; and/or

C. The original data available when the species was listed, or the interpretation of such data, were in error (50 CFR 424.11(d)).

E. Request for New Information

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from the public, governmental agencies, Tribes, the scientific community, environmental entities, industry, and any other interested parties concerning the status of the species.

See "What Information Do We Consider in Our Review?" for specific criteria. If you submit information, support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Submit your comments and materials to office listed under "Contacts."

F. Public Availability of Comments

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. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where we receive comments.

IV. Contacts

Submit your comments and information on this species, as well as any request for information or for a copy of the final recovery plan, by any one of the following methods. You may also view information and comments we receive in response to this notice, as well as other documentation in our files, at the following locations by appointment, during normal business hours.

E-mail: greg_balogh@fws.gov; Use "Short-tailed albatross" as the message subject line.

Fax: Attn: Greg Balogh, (907) 271–2786.

U.S. mail: Greg Balogh, U.S. Fish and Wildlife Service, Anchorage Fish and Wildlife Field Office, 605 W. 4th Ave., Rm G–61, Anchorage, AK 99501.

In-Person Drop-off or Document review/pickup: You may drop off comments and information, review/obtain documents, or view received comments during regular business hours at the above address.

Internet: You may obtain a copy of the recovery plan on the Internet at *http://endangered.fws.gov/recovery/index.html#plans.*

V. Definitions

(A) *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, which interbreeds when mature;

(B) *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range; and

(C) *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

VI. Authority

We release our final recovery plan under section 4(f) of the Act, 16 U.S.C. 1533(f). We publish this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 30, 2009.

Gary Edwards,

Acting Regional Director, Region 7, U.S. Fish and Wildlife Service.

[FR Doc. E9–11700 Filed 5–19–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2009–N0063;1261–0000–80230–W2]

Cullinan Ranch Unit Restoration Project, San Pablo Bay National Wildlife Refuge, Solano County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; abbreviated final environmental impact statement and environmental impact report.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Game (CDFG) announce that the abbreviated final environmental impact statement/environmental impact report (EIS/EIR) for the Cullinan Ranch Restoration Project is now available. The abbreviated final EIS/EIR, which we prepared and now announce in accordance with the National Environmental Policy Act of 1969 (NEPA), describes the restoration plan for 1,500 acres (ac) of former hayfield farmland in the San Pablo Bay. The abbreviated final EIS/EIR responds to all comments we received on the draft document. This restoration project would combine tidal salt marsh habitat for endangered species, waterfowl, waterbirds, and fish, as well as public access features to increase accessibility to wildlife resource values in the San Pablo Bay, while minimizing project-induced flood impacts to Highway 37.

ADDRESSES: The abbreviated final EIS/EIR is available at the following locations:

- Refuge Headquarters Office, San Pablo Bay National Wildlife Refuge, 2100 Highway 37, Petaluma, CA 94954; (707) 769–4200 (telephone).
- San Francisco Bay National Wildlife Refuge Complex, 9500 Thornton Avenue, Newark, CA 94560; (510) 792–0222 (telephone).
- John F. Kennedy Public Library, 505 Santa Clara, Vallejo, CA 94590.
- Internet: *http://www.fws.gov/cno/refuges/cullinan/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Christy Smith, Refuge Manager, San Pablo Bay NWR, (707) 769–4200 (phone), *christy_smith@fws.gov* (e-mail); or Louis Terrazas, Wildlife Refuge Specialist, San Pablo Bay NWR, (707) 769–4200 (phone), *louis_terrazas@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Location

Located within the existing Refuge boundary, the Cullinan Ranch Unit is bordered by the South Slough and Dutchman Slough to the north and State Route 37 to the south. California Department of Fish and Game Pond 1 borders Cullinan Ranch to the west. Guadalcanal Village Wetlands (Guadalcanal), which is owned by the State of California and is currently being restored to tidal marsh, borders Cullinan Ranch to the east.

Background

The Cullinan Ranch restoration project would restore approximately 1,500 acres of diked baylands to historic tidal conditions by reintroducing tidal flow into the project area. This area, Cullinan Ranch, is located in an area of the Napa River Delta that was historically defined by a network of meandering sloughs and extensive estuarine tidal marshes. Reintroduction of tidal flow will restore vital salt marsh habitat for endangered species, including the salt marsh harvest mouse (*Reithrodontomys raviventris*) and the California clapper rail (*Rallus longirostris obsoletus*), as well as provide foraging and roosting habitat for fish, migratory waterfowl and waterbirds.

The proposed restoration is based on the concept that reintroduction of tidal waters will naturally develop saltwater marsh habitat conditions. The existing perimeter levee currently prevents tidal flows into the area, and, as a result, the land has subsided several feet in elevation and becomes inundated with fresh water during the rainy season. Once restored, twice-daily tidal flows would carry and deposit sediment, eventually establishing marsh plain elevations sufficient to support tidal marsh vegetation. As tidal waters enter and exit the site, tidal channels would develop or re-establish from previous channels. Continued tidal action would maintain an active exchange of water, sediment, and nutrients between the marsh habitat and the bay, further enhancing the value of the habitat for plants and wildlife.

In keeping with one of the purposes of the Refuge, "to conserve fish, wildlife, or plants which are listed as endangered species or threatened species," the Cullinan Ranch restoration project would restore historic salt marsh habitat for the benefit of threatened and endangered species as well as many other estuarine-dependent species.

Because some of the proposed project area includes State lands, we prepared the DEIS/EIR to satisfy the requirements of both NEPA and the California Environmental Quality Act (CEQA). The California Department of Fish and Game is the CEQA lead agency for this project.

Public Review

The formal public comment period for the draft EIS/EIR opened on May 2, 2008, and closed on June 17, 2008, although we received several comments during the 2 months following the comment period close. We announced the availability of the draft document by several methods, including press releases and public notice, including a notice in the **Federal Register** (73 FR 24302, May 2, 2008). The draft EIS/EIR identified and evaluated three alternatives for restoration. We received seven comment letters on the draft EIS/EIR. No comments received from interested individuals, groups, or agencies required us or CDFG to add new alternatives, significantly alter existing alternatives, or make changes to the impact analysis of the effect of any alternative. Thus, we were able to use an abbreviated format to fully document all our responses to comments in our final EIS/EIR, in compliance with the Council on Environmental Quality implementing regulations (40 CFR 1503.4 [c]) for NEPA.

Alternatives We Considered

No-Action Alternative

Under the No-Action Alternative, the lead agencies would take no action to

restore tidal influence to the site; however, continued maintenance of the Dutchman and South Slough levees would occur. Under this alternative, because the lead agencies would be required to maintain the northern levee along Dutchman Slough in perpetuity, maintenance activities would likely increase as the levees age and as scour increases in response to activities undertaken by the Napa Sonoma Restoration Project. Under the No-Action Alternative, the components of the Proposed Action would not be implemented.

Preferred Restoration Alternative

The Preferred Restoration Alternative would restore the entire 1,500-ac Cullinan Ranch Site with implementation of the following project components:

- *Component 1:* Construct boardwalk to provide access to existing electrical towers.
- *Component 2:* If needed, drainage ditches would be blocked to promote redevelopment of natural sloughs.
- *Component 3:* Improve the DFG Pond 1 levee and install water control structures.
- *Component 4:* Protect Highway 37 from project-induced flooding and erosion, through levee construction.
- *Component 5:* Construct public access areas.
- *Component 6:* Breach the levees along Dutchman and South Sloughs and Guadalcanal Village.
- *Component 7:* Implement long-term monitoring.

Partial Restoration Alternative

The Partial Restoration Alternative would restore 300 ac of the Cullinan Ranch Site. The Partial Restoration Alternative was developed in order to limit potential impacts to the hydrology of Dutchman Slough. While it would meet the purpose and need of the project, a smaller overall area within Cullinan Ranch would be restored, and connectivity with other adjacent restoration projects would be limited.

The Partial Restoration Alternative would include implementation of the following project components:

- *Component 1:* If needed, drainage ditches would be blocked to promote redevelopment of natural Sloughs.
- *Component 2:* Construct internal levee.
- *Component 3:* Protect Highway 37 from project-induced flooding and erosion, through levee construction.
- *Component 4:* Breach the levee along Dutchman Slough.
- *Component 5:* Long-term monitoring.

The final EIS/EIR contains our responses to all comments received on the draft document. Following the release of the abbreviated final EIS/EIR, we will prepare a Record of Decision not sooner than 30 days after the Environmental Protection Agency has published its notice of filing of the document in the **Federal Register**. We anticipate that we will issue a Record of Decision in the summer of 2009.

We provide this notice under regulations implementing NEPA (40 CFR 1506.6).

Dated: May 13, 2009.

Stephen M. Dyer,

Acting Regional Director, Pacific Southwest Region.

[FR Doc. E9–11778 Filed 5–19–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB07900 09 L10100000.PH0000 LXAMANMS0000]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), the Western Montana Resource Advisory Council will meet as indicated below.

DATES: The Western Montana RAC will meet June 18, 2009 at 9 a.m. The public comment period for the meeting will begin at 11:30 a.m. and the meeting is expected to adjourn at approximately 3 p.m.

ADDRESSES: The meeting will be held at the Butte Field Office, 106 N. Parkmont, Butte, Montana.

FOR FURTHER INFORMATION CONTACT: David Abrams, Western Montana Resource Advisory Council Coordinator, Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in western Montana. At the June 18 meeting, topics we plan to discuss include: Abandoned Mines Reclamation, public access issues, travel management implementation, Economic Stimulus Package Project Updates, and a review of Forest Service fee proposals.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

Richard M. Hotaling,

Field Manager.

[FR Doc. E9–11708 Filed 5–19–09; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 2, 2009. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 4, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

CALIFORNIA

El Dorado County

Wakamatsu Tea and Silk Colony Farm, 941 Cold Springs Rd., Gold Hill, 09000397

Los Angeles County

27th Street Historic District, (African Americans in Los Angeles) Along 27th St., Los Angeles, 09000399

52nd Place Historic District, (African Americans in Los Angeles) Along E. 52nd Pl., Los Angeles, 09000398

FLORIDA

Flagler County

Washington Oaks Historic District, 6402 Oceanshore Blvd., Palm Coast, 09000400

IOWA

Floyd County

Tyden Farm No. 6 Farmstead Historic District, 1145 300th St., Dougherty, 09000401

Polk County

Earle & LeBosquet Block, 407–409 Court Ave., Des Moines, 09000402

Hotel Randolph, 200–204 4th St., Des Moines, 09000403

Murillo Flats, 605 16th St., Des Moines, 09000404

Youngerman Block, 206–208 4th St., Des Moines, 09000405

MINNESOTA

Crow Wing County

Franklin Junior High School, 1001 Kingwood St., Brainerd, 09000406

Olmsted County

Benike Family Farmstead, 5209 Co. Rd. 21 NE., Elgin, 09000407

Ramsey County

Minnesota Building, 46 E. 4th St., Saint Paul, 09000408

MISSOURI

Chariton County

Salisbury Square Historic District, 402, 404, 406, 407, 408, 502, 504, 506, 508 S. Broadway, Salisbury, 09000409

St. Louis Independent city

Medart's, 7036 Clayton Ave., St. Louis, 09000410

Railway Exchange Building, 600 Locust St., St. Louis, 09000411

OHIO

Franklin County

Hayden Building, 20 E. Broad St., Columbus, 09000412

New Hayden Building, 16 E. Broad St., Columbus, 09000413

VIRGINIA

Floyd County

West Fork Furnace, VA 605, Floyd, 09000414

Fredericksburg Independent City

Idlewild, 1501 Gateway Blvd., Fredericksburg, 09000415

Louisa County

Shady Grove School, (Rosenwald Schools in Virginia MPS) 2925 Three Chpot Rd., Gum Spring, 09000416

Orange County

Chestnut Hill, 236 Caroline St., Orange, 09000417

South Boston Independent City

South Boston Historic District Boundary Increase, Neighborhoods of Marshall Ave., New Brick Warehouse, Mizpah Church, N. Main St., South Boston, 09000418

Request for REMOVAL has been made for the following resources:

OKLAHOMA

Washington County

Civic Center, Johnstone Ave. between 6th St. and Adams Blvd., Bartlesville, 89002122

TEXAS

Hunt County

Blanton School, 610 Witt St., Wolfe City, 06000823

[FR Doc, E9–11555 Filed 5–19–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[OMB Number 1105–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: Emergency 30-Day Notice of Information Collection Under Review: Collection of Information on Claims for Compensation for Physical and Emotional Injury, Death, and Commercial Claims Against the Government of Libya and Referred to the Foreign Claims Settlement Commission by the Department of State Legal Adviser.

The Department of Justice, Foreign Claims Settlement Commission (Commission) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 38, pages 8988–8989, on February 27, 2009, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 19, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *The title of the form/collection:* Claims of U.S. Nationals Against Libya.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: FCSC 1–09. Foreign Claims Settlement Commission, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Business Entities. Other: None. Information will be used as a basis for determining eligibility of U.S. nationals with physical and emotional injury, death, and commercial claims for awards payable by the Department of Treasury out of funds provided pursuant to the U.S.-Libya Claims Settlement Agreement for certain terrorism-related claims against Libya, its agencies and instrumentalities, and officials and employees thereof, and referred to the Commission by the Department of State Legal Adviser.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 175 individual respondents will complete the application in approximately two hours and 25 commercial respondents

will complete the application in approximately forty hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual public burden associated with this application is 1,350 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 15, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–11729 Filed 5–19–09; 8:45 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Notice of Affirmative Decisions on Petitions for Modification Granted in Whole or in Part

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of Affirmative Decisions on Petitions for Modification Granted in Whole or in Part.

SUMMARY: The Mine Safety and Health Administration (MSHA) enforces mine operator compliance with mandatory safety and health standards that protect miners and improve safety and health conditions in U.S. mines. This **Federal Register** Notice (FR Notice) notifies the public that it has investigated and issued a final decision on certain mine operator petitions to modify a safety standard.

ADDRESSES: Copies of the final decisions are posted on MSHA's Web site at *http://www.msha.gov/indexes/petition.htm*. The public may inspect the petitions and final decisions during normal business hours in MSHA's Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209. All visitors must first stop at the receptionist desk on the 21st Floor to sign-in.

FOR FURTHER INFORMATION CONTACT: Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (e-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 101 of the Federal Mine Safety and Health Act of 1977, a mine operator may petition and the Secretary of Labor (Secretary) may modify the application of a mandatory safety standard to that mine if the Secretary determines that: (1) An alternative method exists that will guarantee no less protection for the miners affected than that provided by the standard; or (2) that the application of the standard will result in a diminution of safety to the affected miners.

MSHA bases the final decision on the petitioner's statements, any comments and information submitted by interested persons, and a field investigation of the conditions at the mine. In some instances, MSHA may approve a petition for modification on the condition that the mine operator complies with other requirements noted in the decision.

II. Granted Petitions for Modification

On the basis of the findings of MSHA's investigation, and as designee of the Secretary, MSHA has granted or partially granted the following petitions for modification:

- *Docket Number:* M–2006–080–C.

FR Notice: 72 FR 8202 (February 23, 2007).

Petitioner: Black Beauty Coal Company, 13101 Ziegler 11 Road, P.O. Box 369, Coulterville, Illinois 62237.

Mine: Gateway Mine, MSHA I.D. No. 11–02408, located in Randolph County, Illinois.

Regulation Affected: 30 CFR 75.364(b)(1) (Weekly examination).

- *Docket Number:* M–2006–088–C.

FR Notice: 72 FR 8204 (February 23, 2007).

Petitioner: Cumberland River Coal Company, P.O. Drawer 109, Appalachia, Virginia 24216.

Mine: Band Mill Mine, MSHA I.D. 44–06816, located in Wise County, Virginia.

Regulation Affected: 30 CFR 75.364(b)(1) (Weekly examination).

- *Docket Number:* M–2008–002–C.

FR Notice: 73 FR 12775 (March 10, 2008).

Petitioner: Blue Diamond Coal Company, P.O. Box 47, Slemp, Kentucky 41763.

Mine: Mine #75, MSHA I.D. 15–17478, located in Perry County, Kentucky.

Regulation Affected: 30 CFR 75.364(b)(2) (Weekly examination).

- *Docket Number:* M–2008–014–C.

FR Notice: 73 FR 28529 (May 16, 2008).

Petitioner: AMFIRE Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650.

Mine: Ondo Extension Mine, MSHA I.D. No. 36–09005, located in Indiana County, Pennsylvania.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

- *Docket Number:* M–2008–015–C.

FR Notice: 73 FR 28529 (May 16, 2008).

Petitioner: AMFIRE Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650.

Mine: Nolo Mine, MSHA I.D. No. 36–08850, located in Armstrong County, Pennsylvania.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

- *Docket Number:* M–2008–016–C.

FR Notice: 73 FR 28529 (May 16, 2008).

Petitioner: AMFIRE Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650.

Mine: Madison Mine, MSHA I.D. No. 36–09127, located in Cambria County, Pennsylvania.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

- *Docket Number:* M–2008–017–C.

FR Notice: 73 FR 28529 (May 16, 2008).

Petitioner: AMFIRE Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650.

Mine: Gillhouser Run Mine, MSHA I.D. No. 36–09033, located in Indiana County, Pennsylvania.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

- *Docket Number:* M–2008–018–C.

FR Notice: 73 FR 28529 (May 16, 2008).

Petitioner: AMFIRE Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650.

Mine: Dora 8 Mine, MSHA I.D. No. 36–08704, located in Jefferson County, Pennsylvania.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

- *Docket Number:* M–2008–019–C.

FR Notice: 73 FR 28530 (May 16, 2008).

Petitioner: White County Coal, LLC, 1525 Country Road 1300 N, P.O. Box 457, Carmi, Illinois.

Mine: Pattiki Mine, MSHA I.D. No. 11–03058, located in White County, Illinois.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance).

- *Docket Number:* M–2008–020–C.

FR Notice: 73 FR 31147 (May 30, 2008).

Petitioner: Rockhouse Creek Development, LLC, P.O. Box 1389, Gilbert, West Virginia 25621.

Mine: No. 6 Mine, MSHA I.D. No. 46–08268, Mine No. 2, MSHA I.D. No. 46–

08636, and No. 9 Mine, MSHA I.D. No. 46–08976, located in Logan County, West Virginia; and No. 3 Mine, MSHA I.D. No. 46–08778 and No. 8 Mine, MSHA I.D. No. 46–09018, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2008–025–C.

FR Notice: 73 FR 34963 (June 19, 2008).

Petitioner: ICG Beckley, LLC, P.O. Box 49, Eccles, West Virginia 25836.

Mine: Beckley Pocahontas Mine, I.D. No. 46–05252, located in Raleigh County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2008–046–C.

FR Notice: 73 FR 61912 (October 17, 2008).

Petitioner: Black Beauty Coal Company, 13101 Ziegler 11 Road, P.O. Box 369, Coulterville, Illinois 62237.

Mine: Gateway Mine, MSHA I.D. 11–02408, located in Randolph County, Illinois.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. E9–11685 Filed 5–19–09; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before June 19, 2009.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: Standards-Petitions@dol.gov.*
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2009–001–M.

Petitioner: General Chemical (Soda Ash) Partners, P.O. Box 551, Green River, Wyoming 82935.

Mine: General Chemical Mine, MSHA I.D. No. 48–00155, located in Sweetwater County, Wyoming.

Regulation Affected: 30 CFR 57.22305 (Approved equipment (III mines)).

Modification Request: The petitioner requests a modification of the existing standard to permit an increase in the length of portable trailing cables, which is longer than the maximum length set forth in 30 CFR Appendix,1, Table 9, to enable safe handling practice of the cable in regards to their mining operation. The petitioner states that currently, the boring machines are approved for use with #2 American Wire Gauge (AWG) trailing cable. The petitioner proposes the following for its General Chemical Mine in Green River, Wyoming: (1) The maximum length for portable trailing cables in regards to power distributed to its boring machines will be 1,200 feet for cable sizes #2/0 AWG, #10 AWG, #1 AWG, and #2 AWG; (2) all instantaneous trip settings for over-current will be maintained at a level below the minimum available fault current calculated, using the MSHA short circuit program "Scwin"; (3) interrupt ratings for all breakers in the distribution circuit will be high enough to interrupt the maximum available fault current as calculated using the MSHA short circuit program "Scwin"; and (4) power distribution circuits pertaining to bore mining sections will be maintained on a typical basis in reference to the typical power distribution in effect at the time of investigation for this modification, whereby cable lengths in the distribution circuit leading up to the Load Center at the bore section will be maintained no longer than those proposed in the Short Circuit calculations, using the MSHA program "Scwin" at the time of this petition. The petitioner asserts that an equal measure of protection will be maintained at all times as that afforded by the standard.

Docket Number: M–2009–008–C.

Petitioner: M.C. Mining, LLC, 4126 State Highway 194 West, Pikeville, Kentucky 41501.

Mine: Mine No. 3, MSHA I.D. No. 15–08079, located in Pike County, Kentucky.

Regulation Affected: 30 CFR 75.503(18.35) (Permissible electric face equipment; maintenance).

Modification Request: The petitioner requests a modification of the existing standard to permit the maximum length of trailing cables to be increased for supplying power to permissible pumps used in the mine. The petitioner states that: (1) This petition will only apply to trailing cables supplying three-phase, 575-volt power to permissible pumps; (2) the maximum length of the trailing cables will be 1,597 feet; (3) the 575-volt permissible pump trailing cable will not be smaller than #6 American Wire Gauge (AWG); (3) all circuit breakers used to protect #6 trailing cables exceeding 500 feet in length will have

an instantaneous trip unit calibrated to trip at 150 amperes, the trip setting will be sealed or locked and breakers will have permanent legible labels, and each label will identify the circuit breaker as being suitable for protecting #6 cables. The label will be maintained legible; (5) persons designated by the operator will visually examine the trailing cables to ensure the cable is in safe operating condition; (6) trailing cables that are not in safe operating condition will be removed from services immediately and repaired or replaced; (7) each splice or repair in the trailing cables will be made in a workmanlike manner and in accordance with the instructions of the manufacturer of the splice or repair materials. The splice or repair will comply with 30 CFR 75.603 and 30 CFR 75.604; (8) permanent warning labels will be installed and maintained on the cover(s) of the power center to identify the location of each sealed or locked short-circuit protection device. These labels will warn miners not to change or alter these short-circuit settings; (9) the alternative method will not be implemented until the miners designated to examine the integrity of seals or locks, verify the short-circuit settings, and proper procedures for examining trailing cables for defects and damage have received the elements of the specified training; and (10) proposed revisions for Part 48 training plans will be submitted to the District Manager within 60 days after the petition is granted for the area in which the mine is located, which will include training in the proper procedures for examining the trailing cables to ensure safe operating condition, and training in how to verify that circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained.

Docket Number: M–2009–009–C.

Petitioner: Twentymile Coal Company, Three Gateway Center, suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

Mine: Foidel Creek Mine, MSHA I.D. No. 05–03836, located in Routt County, Colorado. *Regulation Affected:* 30 CFR 75.312(c) & (d) (Maine mine fan examination and records).

Modification Request: The petitioner requests a modification of the existing standard to permit fan-stoppage devices and automatic closing doors to be tested without stopping the mine fan. The petitioner proposes the following alternative procedure for testing the fans: (a) The fan door will be installed according to drawings approved by MSHA, and the fan alarm signal will be installed according to MSHA requirements, including the warning light near the door location and an audible and visual alarm at the dispatcher and communication center locations; (b) air reversal doors will be tested every seven days by rotating the test frame outward until it contacts the air flow reversal door; (c) the person conducting the test will make a visual observation of the movement of the test frame and general maintenance of the metal door and frame for good repair; (d) the fan alarm signal system (mechanical switch) which is mounted to the fan house, will be tested by a responsible person every seven days by actuating the switch; (e) the actuating of the fan alarm switch will be verified by a responsible person with the communication center and the dispatcher; (f) the person who made the tests will record the results in a secure book at a surface location by the end of the shift on which the tests were made. The book will also indicate the general repair of the system and will be made available to representatives of the Secretary. The petitioner states that the MSHA District Manager will be notified regarding future testing of additional air reversal fan doors, when each fan is equipped with the new test frame system, so that an inspection may be scheduled prior to the seven day testing. The petitioner further states that until all main fans are equipped in compliance with the approved system, miners must be removed from the mine for testing of any fan not yet equipped. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection to all miners as would be provided by the standard.

Docket Number: M–2009–010–C.

Petitioner: Frasure Creek Mining, LLC, P.O. Box 142, Justice, West Virginia 24851. *Mines:* No. 5 Mine, MSHA I.D. No. 46–08942, Deep Mine No. 15, MSHA I.D. No. 46–09209, located in Fayette County, West Virginia, and Isaban Deep Mine No. 3, MSHA I.D. No. 46–09245, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to permit blow-off dust covers to be used without the nozzles. The petitioner proposes to continue its weekly inspections and functional testing of the complete deluge-type water spray system. The petitioner states that dust covers are not necessary because the nozzles can be maintained in an unclogged condition through weekly use. The petitioner further states that it is burdensome to recap the large number of covers weekly after each inspection and functional test. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners by the existing standard.

Docket Number: M–2009–012–C.

Petitioner: Wolf Run Mining Company, 1 Edmiston Way, Buckhannon, West Virginia 26201.

Mines: Imperial Mine, MSHA I.D. No. 46–09115, located in Upshur County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to permit blow-off dust covers not to be applied to nozzles on deluge-type systems. The petitioner states that: (1) The functional test required each year under 30 CFR 75.1101–11 will be done weekly; (2) functional tests are currently being done a weekly basis and although more than adequate pressure and flow rates are being maintained for these deluge systems, in some tests, the dust covers do not come off all sprays; (3) by doing this functional test weekly, all sprays can be inspected and maintained on a weekly basis. The dust covers provide protection for sprays which are tested yearly, and by testing weekly, the covers are not necessary. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. E9–11673 Filed 5–19–09; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before June 19, 2009.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: Standards-Petitions@dol.gov.*
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2009–004–C.

Petitioner: Cumberland Coal Resources, LP, Three Gateway Center, 401 Liberty Avenue, Suite 1340, Pittsburgh, Pennsylvania.

Mine: Cumberland Mine, MSHA I.D. No. 36–05018, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance for the standard with respect to vertical degasification wells with horizontal laterals into the underground coal seam. The petitioner proposes to mine through vertically drilled degasification boreholes with horizontal laterals using the following plugging procedures: (1) The borehole will be filled with flexible gel prior to the anticipated mine through and may use alternative grouting methods including cementatious or polyurethane grout; (2) a packer will be installed at a location in the lateral to ensure that an appropriate amount of the lateral is filled with gel; (3) any water present in the hole will be tested for chlorides prior to the time of gelling and the gel quality will be adjusted to compensate for the chloride concentration; and (4) a triplex piston pump will be used to pump 1.75 times the calculated hole volume of gel underground until the volume of gel is depleted and 100–140 psi pressure is realized, or until gel leakage is observed along the ribs underground. The petitioner also proposes to use the following procedures for mining through plugged degasification boreholes: (1) Prior to mining within 300 feet of the borehole or lateral MSHA and the Bureau of Deep Mine Safety, and a representative of the miners will be notified both verbally and through a letter accompanied by a drawing of the borehole location and copy of a certification that plugging has occurred; (2) prior to mining through, the District Mine Inspector from the Bureau of Deep Mine Safety, the MSHA District Manager, and a representative of the United Mine Workers of America will be notified in sufficient time to have a representative present during the mining through operation; and (3) inform all personnel working underground at the beginning of the shift in which a borehole or lateral will be mined through to inform them of the cut through and communication procedure to be used. Persons may review a complete description of the petitioner's procedures for plugging and mining through oil and gas wells at the MSHA address listed in this notice. The petitioner asserts that the proposed alternative method would at all times guarantee no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M–2009–005–C.

Petitioner: Pinnacle Mining Company, LLC, P.O. Box 338, Pineville, West Virginia 24874–0338.

Mine: Pinnacle Mine, MSHA I.D. No. 46–01816, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

Modification Request: The petitioner requests a modification of the existing standard to permit mining through Surface Drilled Coalbed Methane Wells with Horizontal Branches in Coal Seams. The petitioner proposes to continue mining through the vertical boreholes and horizontal legs and branches of Coalbed Methane Wells that penetrate the coalbed being mined. The petitioner states that the following method(s) will be used to protect the miners in the mine against hazards from the wells while mining through Surface Drilled Coalbed Methane Wells with Horizontal Branches in Coal Seams: Intact Surface Articulated Horizontal Borehole (SAHB) Mine plans *Option 1:* (1) The SAHB will be infused with water prior to the underground mining operations breaching the SAHB; (2) legs that are opened after mining through may have an effective plug installed into the coal rib to prevent an influx of methane into the mined area. An effective plug is any material that impedes the flow of methane and water. Typically, a hydraulic packer is used to plug the hole but cement or grout may be substituted; and (3) the holes may be filled with water after other legs are breached. The petitioner states that typically, open legs are breached several times during development mining, which allows the segmented hole to be ventilated or filled with water, and when the trunk line of a SAHB has not been severed, a negative pressure surface pump connected to the SAHB may be used to ventilate the hole. *Option 2:* (1) The SAHB will be infused with water prior to the underground mining operations breaching the SAHB; (2) a low strength grout mixture will be injected into the SAHB from the surface after infusion; (3) if the SAHB is located such that it may be used as a gob well for longwall panel, the amount of grout mixture injected will be limited to filling a void in the coal seam, or the SAHB will be filled with grout to at least fifty feet above the upper most underground mineable coal seam. The petitioner also states that the following method(s) will be used to protect the miners in the mine against hazards from the wells while mining through Surface

Drilled Coalbed Methane Wells with Horizontal Branches in Coal Seams: Breached Surface Articulated Horizontal Borehole (SAHB) Mine Through Plan: (1) Breached SAHB's will be ventilated in accordance with all State and Federal regulations; (2) legs that are open after mining through may have an effective plug installed into the coal rib to prevent an excess of methane into the mined area. An effective plug is any material that impedes the flow of methane and water. Typically, a hydraulic packer is used to plug the hole but cement or grout may be substituted. The hole is plugged when typical face ventilation will not suffice and the potential for methane accumulation exists, usually occurring immediately after cut through; (3) typically, open legs are breached several times during development mining, which allows the segmented hole to be ventilated and eliminates methane storage capacity; (4) should a situation occur where a breached leg continues to produce methane and cannot be ventilated, the hole will be water infused again. Water infusion will take place underground using mine water at standard operating pressure. The hole will remain infused until it is determined that it may be safely bled off and ventilated or it is breached during secondary mining; and (5) when the trunk line of a SAHB has not been severed, a negative pressure surface pump connected to the SAHB may be used to ventilate the hole. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2009–006–C.

Petitioner: Spartan Mining Company, P.O. Box 1120, Holden, West Virginia 25625.

Mine: Road Fork No. 51 Mine, MSHA I.D. No. 46–01544, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance when: (1) Mining within 75 feet of a horizontal wellbore; (2) when initially mining through a horizontal wellbore; and (3) when subsequently mining through horizontal wellbores, using the specific procedures listed in this petition for modification. The petitioner states that; (1) no person shall be permitted in the area of the mine-through operation except those actually engaged in the operation, company personnel, personnel from MSHA, and personnel from the appropriate West Virginia agency; (2) the mine-through operation shall be under the direct supervision of a certified official; and (3) prior to mining through the first lateral wellbore of a coalbed methane well and a well which has already had at least one lateral wellbore mined through, Spartan will verify that any water that is present will be bailed from the vertical section of the wellbore, as close to the coal seam elevation as practical, using normal bailing equipment; and (4) the surface wellhead will be maintained opened to bring the vertical section of the wellbore to outside atmosphere pressure. A complete description of the procedures the petitioner will use in implementing its modification can be reviewed at the MSHA address listed in this notice. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2009–007–C.

Petitioner: Black Butte Coal Company, P.O. Box 98, Point of Rocks, Wyoming 82942.

Mine: Black Butte and Leucite Hills Mines, MSHA I.D. No. 48–01180, located in Sweetwater County, Wyoming.

Regulation Affected: 30 CFR 77.1304(a) (Blasting agents; special provisions).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of commercially recycled petroleum-based lubrication oil that is commercially mixed with unused No. 2 fuel oil to create a blasting agent. The petitioner states that the mixed oil is purchased in batches of approximately 8,000 to 10,000 gallons and is not mixed with ammonium nitrate prill until the Ammonium Nitrate-Fuel Oil (ANFO) components are placed in a blasting hole. The petitioner asserts that the proposed alternative method would at all times guarantee no less than the same measure of protection afforded by the existing standard.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. E9–11674 Filed 5–19–09; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on May 26, 2009 via conference call. The meeting will begin at 11 a.m. (EDT), and continue until conclusion of the Board's agenda.

LOCATION: 3333 K Street, NW., Washington, DC 20007, 3rd Floor Conference Room.

STATUS OF MEETING: Open. Directors will participate by telephone conference in such a manner as to enable interested members of the public to hear and identify all persons participating in the meeting. Members of the public may observe the meeting by joining participating staff at the location indicated above.

MATTERS TO BE CONSIDERED: 1. Approval of the agenda.

2. Consider and act on Board of Directors' response to the Inspector General's Semiannual Report to Congress for the period of October 1, 2008 through March 31, 2009.

3. Consider and act on other business.

4. Public comment.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President for Legal Affairs, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Katherine Ward, at (202) 295–1500.

Dated: May 15, 2009.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. E9–11916 Filed 5–18–09; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Matter To Be Deleted From the Agenda of a Previously Announced Agency Meeting

TIME AND DATE: 11:15 a.m., Thursday, May 21, 2009.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTER TO BE DELETED: 3. Personnel (1). Closed pursuant to some or all of the following: Exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. E9–11843 Filed 5–18–09; 11:15 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0154]

Criteria for Identifying Materials Licensees for the U.S. Nuclear Regulatory Commission's Agency Action Review Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the completion and availability of the new criteria for identifying nuclear materials licensees for discussion at the Agency Action Review Meeting (AARM). The new criteria may be found in SECY–08–0135 in the Agencywide Documents Access and Management System (ADAMS) Accession Number: (ML082480564) or in the supplementary information below.

ADDRESSES: A copy of SECY–08–0135 is available for inspection and/or copying for a fee in the NRC Public Document Room (PDR), 11555 Rockville Pike, Rockville, Maryland. Publicly available documents related to this notice are available electronically through the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/reading-rm/adams.html*. From this site, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Duane White, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6272, e-mail: *Duane.White@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

In 2002, NRC developed a process for providing information on significant nuclear materials issues and adverse licensee performance. This process was provided in SECY–02–0216, "Proposed Process for Providing Information on Significant Nuclear Materials Issues and Adverse Licensee Performance," dated December 11, 2002 (ADAMS Accession Number: ML022410435). As part of this process, criteria were developed to identify nuclear material licensees with significant performance problems that will be discussed at the AARM. These criteria may be found in Table 1 of SECY–02–0216.

The AARM is an agency meeting that allows senior NRC managers (1) to review agency actions resulting from the performance of nuclear reactor licensees for those nuclear power plants with significant performance problems as determined by the reactor oversight process (ROP) action matrix, (2) to review results of the staff's assessment of ROP effectiveness, (3) to review industry performance trends, and (4) to review agency actions concerning fuel cycle facilities and other nuclear materials licensees (including Agreement State licensees) with significant performance problems.

In 2008, the NRC staff developed new criteria to be used in identifying nuclear material licensees with significant performance problems that will be discussed at the AARM. The agency will continue to identify nuclear material licensees with significant performance problems based on operating performance, inspection results, and judgment of the severity of the safety performance problems. However, the new criteria provide additional clarity and incorporate NRC's current policy and procedures. The criteria were submitted to the Commission for information in SECY–08–0135.

Discussion

New Criteria for Identifying Nuclear Materials Licensees for the AARM

The new criteria for identifying nuclear materials licensees for discussion at the AARM are as follows:

(1) *Strategic Plan*—Licensee has an event that results in the failure to meet a strategic outcome for safety and security in the NRC strategic plan (NUREG–1614); or

(2) *Significant Issue or Event*—Licensee has an issue or event that results in: (a) An Abnormal Occurrence Report to Congress (per NRC Management Directive 8.1), or (b) a severity level I or II violation, as described in the NRC Enforcement Policy (including equivalent violations dispositioned by Alternative Dispute Resolution), or (c) a level III or higher International Nuclear Event Scale Report to the International Atomic Energy Agency (per NRC Management Directive 5.12), and there are unique or unusual aspects of the licensee's performance that warrant additional NRC oversight (e.g., a significant event, which requires an incident investigation team (IIT) or augmented inspection team (AIT)); or

(3) *Performance Trend*—Licensee has multiple and/or repetitive significant program issues identified over more than one inspection or inspection period, and the issues resulted in a severity level I, II, or III violation, as described in the NRC Enforcement Policy (including equivalent violations dispositioned by Alternative Dispute Resolutions (ADR)), and there are unique or unusual aspects of the licensee's performance that warrant additional NRC oversight (*e.g.*, oversight panel formed for order implementation).

You can find NRC's strategic plan (NUREG–1614) and the referenced management directives and enforcement policy on NRC's public document collections Web page at *http://www.nrc.gov/reading-rm/doc-collections/*.

Public Comments on the Proposed Criteria

The proposed criteria for identifying nuclear materials licensees with significant performance issues were published on March 17, 2008 (73 FR 14278). The comment period ended on May 1, 2008. The NRC received one public comment on the proposed criteria. This commenter indicated that it supported the proposed criteria and requested clarification or modification as to why category 3 "Performance Trend" of the criteria explicitly references NRC's ADR as an element of the enforcement process but, category 2 "Significant Issues" does not reference ADR. Also, the commenter indicated, for clarity, that the title of criterion 2 should be changed to "Significant Issue or Event" to reflect NRC's intent to include both issues and events. In response to these comments, the proposed criteria were revised by changing the title for category 2 to "Significant Issue or Event" and adding a reference to ADR in category 2 of the criteria.

Dated at Rockville, Maryland, this 12th day of May 2009.

James G. Luehman,

Deputy Director, Division of Materials Safety and State Agreements.

[FR Doc. E9–11704 Filed 5–19–09; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2009–29; Order No. 215]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to amend an earlier filing concerning the addition of Address Management Services to the Mail Classification Schedule. The amendment affects a Move Update service. This notice addresses procedural steps associated with this filing.

DATES: Comments are due May 19, 2009.

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*.

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 15784 (April 7, 2009).

On May 8, 2009, the Postal Service filed a notice of an amendment to its March 10, 2009 request to add Address Management Services to the Mail Classification Schedule (MCS) as a market dominant product.[1] The Postal Service states that the amendment is occasioned by recent developments regarding the manner in which *FASTforward*® Move Update Notification (FFMUN) will be offered as a component of Address Management Services.[2] Effective June 1, 2009, FFMUN will no longer be offered as a stand-alone component of Address Management Services, but will, instead, be included in the existing *FASTforward* MLOCR service with no change in the annual fee for *FASTforward* MLOCR service. There will no longer be a separate charge for FFMUN service.

The Postal Service states that notice of the proposed changes has already been given to *FASTforward* licensees through the Postal Service's RIBBS Web site at *http://www.usps.com* and at the National Association of Presort Mailers conference.

The Commission will review the request and the comments of interested parties and may approve the request, institute further proceedings, permit the Postal Service to modify the request, or take other appropriate action under rule 3020.34.

In Order No. 198, the Commission appointed Robert Sidman to serve as the Public Representative in this proceeding. Mr. Sidman will continue to represent the interests of the general public with respect to the Amendment.

Pursuant to rule 3020.33, the Commission provides interested persons an opportunity to express views and offer comments on whether the planned modifications are consistent with the policies of 39 U.S.C. 3622 and 3642. Comments are due no later than May 19, 2009.

It is Ordered:

1. Comments on the Amendment are due no later than May 19, 2009.

2. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E9–11682 Filed 5–19–09; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of the United States Postal Service of Amendment to Its Request to Add Postal Products to the Mail Classification Schedule in Response to Order No. 154, May 8, 2009 (Amendment). Included as part of the Amendment are revised pages 4 and 8 to Attachment A to the Postal Service's initial filing in this docket. Address Management Services is one of seven postal services that the Postal Service has proposed to add to the MCS in this proceeding. The Commission's notice and order of the Postal Service's initial filing was issued on March 30, 2009. PRC Order No. 198, Notice and Order Concerning Request to Add Seven Postal Services to the Mail Classification Schedule Product Lists, March 30, 2009 (Order No. 198). Comments on the initial request have been received and are currently under review by the Commission.

[2] Address Management Services was one of the products proposed in its March 10, 2009 filing to add to the Market Dominant Product List. Order No. 198 at 3.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Correction

In FR Doc. E9–11077 for Monday, May 11, 2009, (73 FR 21839) in the second column of the Sunshine Act Notice make the following correction:

Revise the sixth line of the third paragraph to read: "The proposed amendments are designed to".

Dated: May 14, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–11701 Filed 5–19–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, May 21, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the item listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, May 21, 2009 will be: institution and settlement of injunctive actions; institution and settlement of administrative proceedings of an enforcement nature; and other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: May 14, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–11702 Filed 5–19–09; 8:45 am]

P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59916; File No. SR–FINRA–2009–008]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change as Modified by Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Filing as Amended by Amendment No. 2 Relating to Changes to Forms U4, U5, and FINRA Rule 8312

May 13, 2009.

I. Introduction

On March 6, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and

Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Uniform Application for Securities Industry Registration or Transfer ("Form U4") and the Uniform Termination Notice for Securities Industry Registration ("Form U5") as well as FINRA Rule 8312 (FINRA BrokerCheck Disclosure).

The proposed rule change was published in the **Federal Register** on March 27, 2009.[3] The Commission received 1654 comment letters on the proposed rule change.[4] FINRA responded to the comments on May 6, 2009.[5] FINRA filed Amendment No. 1 to the proposed rule change on May 6, 2009.[6] On May 11, 2009, FINRA filed Amendment No. 2 to the proposed rule change.[7] This order approves the proposed rule change, as modified by Amendment No. 1 and issues notice of, and solicits comments on, Amendment No. 2, and approves the filing, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Proposed Rule Change

The proposed rule change would make certain changes to Forms U4 and U5 (together referred to as the "Forms") by:

- Revising questions on the Forms to reflect the most recent change to the definition of statutory disqualification[8] and to help more accurately identify individuals and firms (collectively referred to as "persons") subject to a statutory disqualification pursuant to Section 15(b)(4)(D) or (E) of the Act (referred to as "willful violations").
- Revising questions on the Forms regarding disclosure of arbitrations or civil lawsuits to require reporting of allegations of sales practice violations made against a registered person in arbitration or a civil suit regardless of whether that person is named as a party.
- Revising questions on the Forms regarding customer complaints, arbitrations or civil litigation to clarify the manner in which individuals and firms must report sales practice violations alleged against registered persons.
- Raising the monetary threshold that triggers reporting of settlements of customer complaints, arbitrations or civil lawsuits from $10,000 to $15,000, and making a conforming change in the description of "Historic Complaints" in FINRA Rule 8312.
- Revising the definition of "Date of Termination" in Form U5, and permitting firms to amend the "Date of Termination" and "Reason for Termination" sections of the Form U5.

The proposal would also make certain technical and conforming changes to the Forms.

A. Revisions to the Forms Regarding Willful Violations

The revised Forms would enable FINRA and other regulators[9] to query the Central Registration Depository ("CRD") to identify persons who are subject to a statutory disqualification as a result of a willful violation. The proposal would add questions to Form U4, which would require a person to answer whether the SEC, the U.S. Commodity Futures Trading Commission ("CFTC")[10] or any SRO[11] has ever:

- *Found* you to have willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board, or *found* you to have been unable to comply with any provision of such Act, rule or regulation?
- *Found* you to have willfully aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board?
- *Found* you to have failed reasonably to supervise another person subject to your supervision, with a view to preventing the violation of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board?

FINRA proposes to require firms to amend Form U4 to respond to these new questions the first time they file an amendment to Form U4 after the effective date of the proposed rule change, but in any event, no later than 180 days following the effective date of the proposed rule change.[12] If a firm determines that the registered person must answer "yes" to any part of these questions, the amended U4 filing would have to include completed disclosure reporting pages ("DRP(s)") covering the proceedings or action reported.[13]

FINRA proposes to add a question[14] to the Form U5 Regulatory Action DRP. After implementation, firms would be required to provide more detailed information about certain regulatory actions. In addition, for regulatory actions in which the SEC, CFTC or an SRO is involved, the proposal would require firms to answer questions eliciting whether the action involves a willful violation, which correspond to those questions proposed to be added to Form U4. A firm would not be required to amend Form U5 to answer this question and/or add information to a Form U5 Regulatory Action DRP that

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59616 (March 20, 2009), 74 FR 13491 ("Notice").

[4] Approximately 1,451 comment letters were form comment letters. Of these, 770 utilized "Letter Type A" (from financial advisors expressing their desire to have an opportunity to respond to unadjudicated allegations before they are reported to CRD and thus opposing the aspect of the proposal which would require reporting of allegations of sales practice violations in arbitrations or civil lawsuits in which the registered person is not a named party). Six hundred eighty one utilized "Letter Type B" (expressing similar thoughts as Letter Type A but from persons who are qualified as both insurance agents and financial advisors). Each of the letter types is posted on the Commission's Internet Web site (*http://www.sec.gov/comments/sr-finra-2009-008/finra2009008.shtml*). *See* Exhibit 1 for a list of individual comment letters.

[5] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, FINRA, dated May 5, 2009 ("Response Letter").

[6] Amendment No. 1 is a technical amendment which corrects a minor error in the rule text.

[7] In Amendment No. 2, FINRA states that it will delay the effective date of the willful violation questions for 180 days following Commission approval of the proposed rule change and makes other adjustments concerned with implementation of the statutory disqualification change in response to issues raised by commenters, which changes are discussed *infra*.

[8] *See* Section 3(a)(39) of the Act.

[9] In addition to FINRA, regulators that use the Forms include other self-regulatory organizations ("SROs") and securities regulators of states and other jurisdictions.

[10] Proposed Questions 14C(6)–(8), respectively.

[11] Proposed Questions 14E(5)–(7), respectively.

[12] The Commission notes that FINRA originally proposed 120 days for firms to comply with this aspect of the proposed rule change but amended the filing to state that these questions would not become effective for 180 days, which gives firms 180 days to comply with this provision. *See* Amendment No. 2, *supra* note 7.

[13] FINRA is not proposing any new questions addressing willful violations on the Form U4 Regulatory Action DRP, which elicits specific information regarding the status of the events reported in response to Questions 14C and 14E. *See* Notice at 13492.

[14] Question 12C.

was filed previously, unless it is updating a regulatory action that it reported as pending on the current DRP.

B. Revisions to Forms To Require Reporting of Allegations of Sales Practice Violations Against Registered Persons Made in Arbitrations or Civil Lawsuits in Which the Registered Person Is Not a Named Party

The proposed rule change would revise the Forms to require the reporting of allegations of sales practices violations made against registered persons in a civil lawsuit or arbitration in which the registered person is not a named party. Specifically, the proposal would amend the Forms to require the reporting of alleged sales practice violations made by a customer against persons identified in the body of a civil lawsuit or an arbitration claim, regardless of whether those persons are named as parties.[15] The proposed questions would apply only to arbitration claims or civil suits filed on or after the effective date of the proposed rule change.

A "yes" answer to the newly-proposed questions [16] would indicate that the applicant or registered person, though not named as a respondent/defendant in a customer-initiated arbitration or civil lawsuit, was either named in or could be reasonably identified from the body of the arbitration claim or civil suit as a registered person who was involved in one or more of the alleged sales practice violations. A firm would be required to answer yes only after it has conducted a reasonable investigation into the allegations in the arbitration claim or lawsuit and made a good faith determination that the alleged sales practice violation(s) involved the registered person.

As a result of the proposed rule change, alleged sales practice violations made by a customer against persons identified in the body of a civil lawsuit or arbitration claim would be treated the same way that customer complaints are currently treated in the Forms.[17] Such matters would be required to be reported no later than thirty days after receipt by the firm of the arbitration claim or lawsuit. In addition, as is currently the practice with respect to customer complaints reported to the CRD, registered persons would have an opportunity to provide context on the reported matter on Form U4. Persons not currently registered with a member firm, but who were registered within the previous two years, would be afforded an opportunity to provide context on the reported matter through a Broker Comment, which would be disclosed through BrokerCheck consistent with FINRA Rule 8312. To the extent a matter becomes non-reportable (if, for example, the arbitration or civil suit is dismissed and the dismissal is not part of a settlement, or it is settled for less than the monetary threshold designated on Form U4), it would, like other customer complaints that become non-reportable after a 24-month period, be eligible for disclosure through BrokerCheck as an "Historic Complaint," provided it meets certain criteria.[18]

C. Revisions To Clarify the Manner in Which Individuals and Firms Must Report Sales Practice Violations Alleged Against Registered Persons

The proposed rule change would revise questions on the Forms [19] to clarify the manner in which individuals and firms must report allegations of sales practice violations against registered persons made in an arbitration filing or civil lawsuit or through consumer-initiated complaints.

D. Revisions To Raise the Monetary Threshold for Reporting Customer Complaints, Arbitration, or Civil Lawsuits From $10,000 to $15,000 on the Forms and Conforming Change to FINRA Rule 8312

Currently, the Forms require consumer-initiated arbitration or civil lawsuits to be reported only when they have been settled for $10,000 or more,[20] and customer complaints to be reported only when they have been settled for $10,000 or more.[21] The proposed rule change would raise these amounts to $15,000. In addition, the proposed rule change would amend the description of "Historic Complaints" in FINRA Rule 8312 to conform to these revised monetary thresholds for reporting of settlements of customer complaints, arbitrations or civil lawsuits in the Forms.[22]

E. Revisions To Clarify the Definition of "Date of Termination" in Form U5 and To Allow Firms To Amend the "Date of Termination" and "Reason for Termination"

FINRA proposes to amend Form U5 by clarifying the definition of "date terminated" and to permit a firm to amend the "Date of Termination" and "Reason for Termination," subject to certain conditions and notifications, provided the firm provides a reason for the amendment.

FINRA would notify other regulators and the broker-dealer with which the person is currently associated (if the person is associated with another firm) when the date of termination or reason for termination has been changed. The original date of termination or reason for termination would remain in the CRD in form filing history, which information is available only to regulators. Any changes to the "Date of Termination" filed by firms would not affect the manner in which FINRA determines whether an individual is required to requalify by examination or obtain an appropriate waiver upon reassociating with another firm, or whether FINRA has retained jurisdiction over the individual. Rather, FINRA would continue to determine such periods based on the original "Date of Termination" provided by the firm and/or the date that the original filing was processed by CRD, respectively.

F. Technical and Conforming Changes to the Forms

The proposed rule change would make various technical and conforming changes to the Forms, including, among others, converting certain free text fields to discrete fields on the DRPs of the Forms; adding to Section 7 of Form U5

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[15] The proposed rule change would add Questions 14I(4) and (5) to Form U4 and Questions 7E(4) and (5) to Form U5. These questions would, in most respects, reflect the language of the corresponding questions regarding alleged sales practice violations of persons identified in consumer complaints (*i.e.*, Questions 14I(2) and (3) in Form U4 and Questions 7E(2) and (3) in Form U5).

[16] Question 14I(4)–(5) on Form U4 and Question 7E(4)–(5) on Form U5.

[17] The proposed rule change would make corresponding changes to Customer Complaint/Arbitration/Civil Litigation DRPs to reflect the changes discussed. These changes would include, *e.g.*, eliciting specifically whether, in the case of an arbitration or lawsuit, the individual was named as a respondent or defendant. The DRPs would require disclosure of the alleged damages and disposition for matters in which sales practice violations are alleged against an individual who was not named in an arbitration or lawsuit.

[18] *See* FINRA Rule 8312(b)(7) and proposed conforming revisions. FINRA has proposed replacing NASD Rule 3070 and Incorporated NYSE Rule 351 with a single rule, proposed FINRA Rule 4530, in the Consolidated FINRA Rulebook. *See Regulatory Notice* 08–71 (November 2008). FINRA stated that it would consider whether corresponding changes to the reporting requirements currently found in NASD Rule 3070 and Incorporated NYSE Rule 351 would be warranted as a result of the proposed rule change. *See* Notice at 13494.

[19] Questions 14I on Form U4 and 7E on Form U5.

[20] *See* Question 14I(1)(c) on Form U4 and Question 7E(1)(c) on Form U5.

[21] *See* Question 14I(2) on Form U4 and Question 7E(2) on Form U5.

[22] The increase of the monetary threshold in Rule 8312 to $15,000 is a conforming change to the description of "Historic Complaint" that will only be applied to settlements that occur after the effective date of the proposed rule change. Under the proposal, matters settled for more than $10,000 before the proposed monetary change would continue to be disclosed through the BrokerCheck program. *See* Response to Comments at 8–9.

(Disclosure Questions) an optional "Disclosure Certification Checkbox" that would enable firms to affirmatively represent that all required disclosure for a terminated person has been reported and the record is current at the time of termination; and incorporating the definition of "found" from the Form U4 Instructions into the Form U5 Instructions.

III. Discussion of Comments and Commission Findings

The Commission received 1,451 form comment letters, and 203 individual comment letters, regarding this proposal. FINRA responded to the comment letters on May 6, 2009.[23] After careful review of the proposal and consideration of the comment letters and the Response Letter, the Commission finds, for the reasons discussed below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[24] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[25] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

A. Revisions to the Forms Regarding Willful Violations

Approximately forty-two commenters provided comments on this aspect of the proposal.[26] While most support the policy in general,[27] many were concerned with the potential administrative burden firms face in complying with this provision and offered a variety of ways to lessen the burden on the industry.[28] Specifically, these commenters requested, in combination or separately, among other suggestions, (1) a time period of more than 120 days (commenters asked for up to eight months) to submit amended Forms U4 with answers to the new questions; (2) disabling the CRD "completeness check" so that U4 amendments may continue to be processed without firms having to respond to the new questions the first time they submit an amended U4 for a registered representative; (3) eliminating the requirement that a registered person sign the U4 amendment; (4) providing a mechanism to "batch file" answers to the new questions for those persons who have all "no" answers; and (5) that FINRA pre-populate the new questions with a "no" answer until the final time period to comply with the provision.

FINRA stated that it appreciates the industry's concerns, and as a result, has determined to provide firms with 180 days to comply with the proposed rule change.[29] In order to accomplish this, pursuant to Amendment No. 2, the questions regarding willful violations will not become effective until 180 days after Commission approval of this proposal.[30] In addition, FINRA stated in Amendment No. 2 that during the 180-day period, answers to the new questions will be provisional, indicating that "no" answers may change to "yes" answers as of the 181st day. Furthermore, FINRA will allow firms to batch file Form U4 amendments for purposes of filing "no" answers to the six new questions for as many as 65,000 registered persons at one time for 180 days after implementation of the proposal, up to the effective date of these questions, at which time all answers provided to these questions must be complete and accurate.[31] Finally, FINRA noted that it filed a proposal to allow firms to file amendments to the U4 disclosure information without obtaining the registered person's manual signature under certain circumstances.[32]

The Commission believes this aspect of the proposal is consistent with the Act and will provide more accurate disclosure regarding individuals who are subject to statutory disqualification as a result of willful violations. This should enable FINRA and other regulators to more easily identify persons subject to these disqualifications.[33] Furthermore, in Amendment No. 2, FINRA provided firms with a number of accommodations which should address the concerns raised by the firms regarding the administrative burden associated with answering the revised questions.

B. Revisions to Forms To Require Reporting of Allegations of Sales Practice Violations Against Registered Persons Made in Arbitrations or Civil Lawsuits in Which the Registered Person Is Not a Named Party

Registered persons, who comprised a majority of the commenters, objected to the new requirement to report arbitration claims or lawsuits alleging sales practice violations in which the registered person is not named as a respondent.[34] Among the objections raised by the commenters were their inability to defend themselves against a claim in arbitration or lawsuit if they were not named as a respondent; that the charge would in effect render them guilty without any finding by an arbitration panel or court; that they

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[23] *See* Response Letter, *supra* note 5.

[24] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78*o*–3(b)(6).

[26] *See, e.g.*, comment letters from PIABA, NSCP, Torngren, S. Brown/LPL, T. Rowe Price, Hefren-Tillotson, Janney, ARM, Raymond James, CGMI, Goldman Sachs, Mougey/Kraszewski, NASAA, Fidelity, Wells Fargo, SIFMA, UBS, St. John's, Morgan Stanley, NAIBD, Sherman, BofA, Deutsche Bank, Charles Schwab, Sutherland, Malecki, Edward Jones, PFS, TIAA–CREF, Capital Investment, Nelson, Genworth, MWA, FSI, St. Bernard Financial, Farmers Financial, Silver, Ilgenfritz, T. Greene/Woodforest, Lincoln Investment, MML, and NPH.

[27] *See, e.g.*, comment letters from PIABA, NSCP, Torngren, S. Brown/LPL, T. Rowe Price, Hefren-Tillotson, Janney, ARM, Raymond James, CGMI, Goldman Sachs, Mougey/Kraszewski, NASAA, Fidelity, Wells Fargo, SIFMA, UBS, St. John's, Morgan Stanley, NAIBD, Sherman, BofA, Deutsche Bank, Charles Schwab, Sutherland, Malecki, Edward Jones, PFS, TIAA–CREF.

[28] Other comments relate to fees and the proposed language. A few commenters requested that FINRA waive the fees associated with the U4 amendments filed to comply with the proposal. *See, e.g.*, T. Rowe Price, FSI, and MML. FINRA responded that it would not charge for "no" answers; however, as is FINRA's current practice, it would charge a disclosure review fee for "yes" answers, given that FINRA staff must review these events. *See* Response Letter at 3. Some commenters objected to the language in FINRA's proposed questions and requested that FINRA use less legalese and restate the questions in "plain English." *See, e.g.*, St. Bernard Financial, NPH, and Sutherland. FINRA responded that its language tracks the language in the Act. Persons should contact FINRA or other regulators if needed for further guidance on compliance with the Forms. *See* Response Letter at 4.

[29] *See* Response Letter at 2.

[30] For persons filing their initial U4, the Commission would expect firms to get the correct answer to these questions before filing the U4 and not merely to check no.

[31] FINRA stated that it believes this approach represents an effective alternative to relaxing Web CRD system completeness checks, which FINRA is unable to accomplish due to system constraints. This would achieve the same result and provides firms with the full 180 days to conduct the due diligence necessary to respond to the new questions. *See* Response Letter at 2–3. After 180 days, starting on the date the answers become effective, for any "no" answers provided, whether batched or not, the firm and registered person will have represented that the person has not been the subject of any finding addressed by the question(s).

[32] *See* Securities Exchange Act Release No. 59784 (April 17, 2009), 74 FR 18779 (April 24, 2009) (SR–FINRA–2009–019).

[33] The Commission believes it is reasonable for FINRA to charge disclosure review fees, consistent with FINRA's current practice, for persons who respond "yes" to the newly-proposed questions regarding willful violations to help defray costs associated with review of the disclosure event.

[34] *See, e.g.*, form comment letters, Letter Type A and Letter Type B, *infra* note 4, and comment letters from Morey, NEXT, FNIC, McDaniel, Jeff White, Herrick, H. Garrett/Financial Network, Calley, Preston, Johns, and Livingston.

would not have notice of a claim or lawsuit if they were not respondents; and that this change could lead to inaccurate information being included in CRD.

Those in support of the change state that this change will fill a loophole in FINRA's rules, that written customer complaints are currently reported, and that it does not make sense to distinguish between a written complaint and an arbitration filing or lawsuit.[35] Commenters also note that a variety of legitimate reasons exist for not naming a registered person in an arbitration claim or lawsuit. For example, one commenter noted that under FINRA's arbitration rules, each separately-represented party in an arbitration claim has four opportunities to strike a participant from the panel. Accordingly, if a firm and registered representative are both named and separately represented, the defense has eight opportunities to strike potential arbitrators, whereas the plaintiff would only have four.[36]

Other commenters note that attorneys use CRD to screen industry arbitrators to determine whether to strike a particular arbitrator from the list of potential arbitrators.[37] With this change to the reporting requirements, registered representatives will have to update their arbitration disclosure forms to reflect these new disclosures. These commenters believe that customers should have access to information with respect to whether a potential arbitrator has a claim in arbitration or is being sued for allegations involving sales practice violations.[38] This additional information should enable claimants and their attorneys to make a more informed judgment with respect to striking a particular industry arbitrator from the arbitration selection list.

The Commission has weighed the arguments on both sides of the issue and, on balance, believes that the benefit to investors of having information in BrokerCheck regarding registered representatives who are the subject of an arbitration claim or lawsuit involving a sales practice violation outweighs the potential harm to registered representatives of having to disclose the information. BrokerCheck already includes information on written customer complaints. It is difficult to justify different reporting requirements for a written customer complaint and an arbitration claim or lawsuit, merely because the registered representative was named as a respondent. The commenters note that there are a number of reasons why an attorney might decide not to name a registered representative as a respondent.[39] The Commission agrees with the commenters that disclosure in CRD should not depend on a tactical decision made by an attorney who is representing a claim in an arbitration proceeding or civil suit. Investors are entrusting registered representatives with their savings and should have sufficient pertinent information available to enable them to select a registered representative with whose background they are comfortable. Furthermore, FINRA provides registered representatives with the ability to respond to the arbitration claim or lawsuit in Web CRD, which information will also be public in BrokerCheck.

Given the central role of CRD as the repository for information on registered persons in the securities industry, its use by firms, regulators, and the public,[40] and the Congressional mandate in Section 15A(i) of the Act, the Commission believes that FINRA should continuously strive to improve CRD and BrokerCheck. The changes proposed in this filing should enhance CRD and BrokerCheck by including more relevant information that should prove useful to regulators, brokerage firms, and the investing public.

C. Revisions To Clarify the Manner in Which Individuals and Firms Must Report Sales Practice Violations Alleged Against Registered Persons

Approximately four commenters opined that the proposed clarification regarding written or oral complaints would expand what constitutes a complaint and represents a significant change in the current reporting requirements.[41] FINRA responded that it has issued interpretive guidance for approximately the past decade indicating that an oral complaint by itself is not reportable,[42] but an oral complaint that alleges a sales practice violation that is settled for $10,000 or more is reportable.[43] FINRA stated that this rule proposal would not alter or expand this interpretation. The Commission agrees with FINRA and believes that this clarification should be helpful to persons in complying with reporting requirements.

D. Proposal To Raise the Monetary Threshold for Reporting Customer Complaints, Arbitration, or Lawsuits from $10,000 to $15,000 on the Forms and Conforming Change to FINRA Rule 8312

Approximately eleven commenters expressly wrote in support of increasing the monetary threshold for reporting a customer complaint, arbitration or lawsuit from $10,000 to $15,000.[44] Two commenters suggested raising the threshold to higher amounts, $25,000[45] and $30,000.[46] One commenter postulates that raising the threshold would increase the ability of public investors with small claims to receive compensation without the necessity of participating in a hearing.[47]

Eight commenters oppose the proposed revision of the monetary threshold.[48] These commenters believe that the monetary threshold should be eliminated completely and that all settled matters should be reported. The commenters state that public investors should have access to information on all settled matters so that they may determine how, or whether, such matters affect a registered person's integrity and trustworthiness.[49]

The Commission understands that firms and registered persons may wish to settle claims they consider non-meritorious rather than incur the costs associated with litigation. The Commission believes that it is reasonable for FINRA to raise the monetary threshold amount below which settled matters are not reported from $10,000 to $15,000, to reflect an increase in costs that has occurred since the $10,000 threshold was established in 1998.

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[35] *See, e.g.*, Aidikoff, Bakhtiari, Caruso, Layne, Lewins, Lipner, J. Miller, Meyer, NASAA, Neuman, PIABA, Pounds, Sadler, Silver, Stark, and Torngren.

[36] *See* comment letter from Shewan.

[37] *See, e.g.*, comment letters from Kruske, Meissner, Shockman, and Davis.

[38] *Id.*

[39] *See, e.g.*, comment letters from from Pounds, Layne, Caruso, Bakhtiari, Neuman, Stephens, Sadler, PIABA, Stark, Buchwalter, J. Miller, Torngren, Aidikoff, Lipner, Feldman, Rosca, Dunlap, Haigney, Fellows, Thompson, Schultz, Banks, Davis, Keeney, Ilgenfritz, Ostwald, Silver, Van Kampen, Meissner, Lewins, Kruske, Graham, Harrison, Corneli, Carlson, Burke, St. John's, Port, Krusckell, Vasquez, Shockman, Bernstein, Gladden, Gana, Shewan, and Malecki.

[40] *See, e.g.*, FINRA's Web site encouraging investors to use BrokerCheck at *http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/index.htm.*

[41] *See, e.g.*, comment letters from T. Rowe Price, Lincoln Investment, FSI, and Sutherland.

[42] *See* Form U4, Question 14I(3).

[43] *See* Form U4, Question 14I(2).

[44] *See, e.g.*, comment letters from Capital Investment, S. Brown/LPL, T. Rowe Price, Canning, Cornell, NASAA, FSI, St. John's, NAIBD, Charles Schwab, and TIAA–CREF.

[45] *See* comment letter from T. Greene/Woodforest.

[46] *See* comment letter from Sutherland.

[47] *See* comment letter from Cornell.

[48] *See* comment letters from Layne, PIABA, Torngren, Steiner, Meyer, Mougey/Kraszewski, NAIBD, and Malecki.

[49] *Id.* One commenter supports the proposed rule change with respect to the Forms, but opposes the conforming change to FINRA Rule 8312 and argues that all historic complaints in FINRA Rule 8312 should be revealed by FINRA for the use of public investors. *See* comment letter from NASAA at 3.

E. Revisions To Clarify the Definition of "Date of Termination" in Form U5 and to Allow Firms to Amend the "Date of Termination" and "Reason for Termination"

Twelve commenters support the proposal to allow firms to amend the "Date of Termination" and the "Reason for Termination" sections of the Form U5.[50] Some of these commenters note that the change will help to ensure the accuracy of information contained in the CRD.[51]

Approximately six commenters oppose the proposal to allow firms to amend the "Reason for Termination" section of the Form U5.[52] At least one commenter notes that firms should know at the time they file a Form U5 why they are terminating a registered representative.[53] In general, these commenters believe that allowing firms to make such a change increases the potential for abuse by firms and collusion between a firm and a registered representative in changing the reason for termination. All of the commenters who oppose the change, except for one, believe that firms should continue to be required to obtain a court order or an arbitration award to revise the "Reason for Termination" section of the Form U5.[54] That commenter suggests that firms be allowed to amend the reason for termination without a court order or arbitration award only in those circumstances where the change is based on a clerical error.[55] Similarly, the commenter also suggests that firms be allowed to amend the date of termination only in those cases involving clerical errors.[56] In its Response Letter, FINRA stated that given the safeguards in place, which include a firm's requirement to provide a reason for the amendment, FINRA's monitoring of the amendments, and notification to regulators, it did not want to restrict changes to the date of or reason for termination due to clerical errors.

The Commission believes that it is reasonable for FINRA to amend its rules to allow firms to modify the "Reason for Termination" and "Date of Termination" filed on a Form U5 through an amendment to that original filing, and that it is acceptable for FINRA to not restrict this aspect of the proposal to situations of clerical error. However, the Commission expects FINRA to monitor all changes to the date of and reason for termination, and to notify other regulators and the broker-dealer with which the person is currently associated (if the person is associated with another firm) when a date of termination or reason for termination is amended,[57] as it has represented it will do, to assure these amendments are not made for inappropriate reasons.[58] The Commission believes that under the proposal, safeguards are in place to help prevent abuse of the ability to change the date and reason for termination and that the proposal should make it more efficient for firms to correct inaccurate information in the CRD.

F. Technical and Conforming Changes to the Forms

Four commenters wrote in support of these proposed changes.[59] One commenter believes that the proposed revisions to the Forms would make them more user-friendly and, in the case of the Form U4, more likely to elicit from a registered person all pertinent information necessary to complete the form accurately and completely.[60] Another commenter states that the incorporation of the definition of the term "found" into the Form U5 instructions would remove any possible ambiguity and achieve consistency in the interpretation and application of the reporting requirements.[61] The Commission agrees that these technical and conforming changes should add clarity and consistency to the Forms and should assist persons in completing the Forms more accurately and completely.

IV. Solicitation of Comments Concerning Amendment No. 2

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 including whether the filing, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2009–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–008. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–008 and should be submitted on or before June 10, 2009.

V. Accelerated Approval of Filing as Amended by Amendment No. 2

The Commission finds good cause to approve the filing, as amended, prior to the thirtieth day after publication in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[62] As discussed above, in Amendment No. 2, FINRA is proposing to delay the effective date of the questions regarding willful

[50] *See* comment letters from Capital Investment, S. Brown/LPL, T. Rowe Price, Canning, NASAA, Lincoln Investment, FSI, AALU, Charles Schwab, Sutherland, PFS, and TIAA–CREF.

[51] *See, e.g.*, comment letters from Canning and FSI.

[52] *See* comment letters from Layne, PIABA, Torngren, Cornell, Mougey/Kraszewski, and Malecki.

[53] *See* comment letter from Cornell.

[54] *See* comment letter from Cornell.

[55] This commenter, unlike the other commenters, also opposes allowing firms to amend the date of termination, other than in circumstances of clerical error, contending that a change in the date of termination for any other reason may be subject to manipulation and negotiation. *See* comment letter from Cornell.

[56] *Id.*

[57] *See* Notice at 13496 and Response Letter at 9–10.

[58] *See e.g.*, comment letters from Layne, Smiley, Mougey/Kraszewski, Silver, and Ilgenfritz.

[59] *See* comment letters from T. Rowe Price, Lincoln Investment, FSI, and Charles Schwab.

[60] *See* comment letter from T. Rowe Price.

[61] *See* comment letter from Charles Schwab.

[62] 15 U.S.C. 78s(b)(2).

violations for 180 days and providing other adjustments with respect to the willful violation questions to lessen the burden on the industry of complying with the change in response to the concerns raised by the commenters. The Commission believes that the proposed change in Amendment No. 2 should substantially lessen the burden of complying with the changes. The Commission notes that the changes to the questions relating to willful violations are to reflect changes made to the definition of statutory disqualification in the Act. The Commission believes that it is important to implement the other changes to the Forms as soon as practicable, and FINRA will implement the remainder of the changes upon Commission approval. Accordingly, pursuant to Section 19(b)(2) of the Act,[63] the Commission finds good cause exists to approve the filing as amended by Amendment No. 2 prior to the thirtieth day after notice in the **Federal Register.**

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, with Section 15A(b)(6) of the Act.[64]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[65] that the proposed rule change (SR–FINRA–2009–008), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[66]

Florence E. Harmon,

Deputy Secretary.

EXHIBIT 1

Comments on FINRA Rulemaking

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Proposed Changes to Forms U4 and U5

(Release No. 34–59616; File No. SR–FINRA–2009–008)

Total Number of Comment Letters Received—1654

Comments have been received from individuals and entities using the following Letter Types:

a. 770 individuals or entities using Letter Type A.
b. 681 individuals or entities using Letter Type B.

1. Robert Keenan, CEO, St. Bernard Financial Services, Inc., dated March 26, 2009 ("St. Bernard Financial")
2. Patricia A. Nelson, dated March 26, 2009 ("Nelson")
3. Edward J. Wiles, Jr., SVP, CCO Genworth Financial Securities Corp., received April 1, 2009 ("Genworth")
4. John L. Small, dated April 3, 2009 ("Small")
5. Herb Pounds, dated April 3, 2009 ("Pounds")
6. Richard M. Layne, Law Office of Richard M. Layne, received April 6, 2009 ("Layne")
7. Steven B. Caruso, Esq., Maddox Hargett Caruso, P.C., dated April 7, 2009 ("Caruso")
8. Ryan K. Bakhtiari, Aidikoff, Uhl & Bakhtiari, dated April 7, 2009 ("Bakhtiari")
9. Neal E. Nakagiri, President, CEO, CCO, NPB Financial Group, LLC, dated April 8, 2009 ("NPB")
10. John Morey, Financial Advisor, Raymond James Financial Services, dated April 8, 2009 ("Morey")
11. John Dardis, Division Manager, NEXT Financial Group, dated April 8, 2009 ("NEXT")
12. J. Richard Coe, President, Coe Financial Services, dated April 8, 2009 ("Coe Financial")
13. Michael Klimis, President and CEO, Klimis & Associates, Inc., dated April 8, 2009 ("Klimis")
14. Mary Allen, Financial Advisor, Royal Alliance Associates, Inc., dated April 8, 2009 ("M. Allen/ Royal Alliance")
15. Marsha Williams, Woodforest Financial Services, dated April 8, 2009 ("M. Williams/Woodforest")
16. Daniel Thomas, Jr., Certified Financial Planner, Thomas Financial Group LLC, dated April 8, 2009 ("Thomas Financial")
17. Jerome Bonnett, President, Bonnett Financial Services, Inc., dated April 8, 2009 ("Bonnett Financial")
18. Gregory J. Spinazze, Senior Vice President, Cambridge Wealth Strategies, dated April 9, 2009 ("Cambridge Wealth")
19. Charles Robertson, Financial Planner/Advisory Rep., Triad Advisors, dated April 9, 2009 ("Triad")
20. Thomas Schirmer, Registered Representative & Principal, FNIC, dated April 9, 2009 ("FNIC")
21. Jude McDaniel, President, McDaniel & McDaniel, dated April 9, 2009 ("McDaniel")
22. Jeff White, CFP, Retirement-Coach, dated April 9, 2009 ("Jeff White")
23. Henry W. Garrett, Investment Adviser Representative, Financial Network, dated April 9, 2009 ("H. Garrett/Financial Network")
24. David P. Neuman, Stoltmann Law Offices, P.C., dated April 9, 2009 ("Neuman")
25. Richard A. Stephens, Esq., dated April 9, 2009 ("Stephens")
26. J. Pat Sadler, Esq., Sadler Hovdesven, P.C., dated April 9, 2009 ("Sadler")
27. Daniel W. Roberts, dated April 9, 2009 ("Roberts")
28. John Austin, Registered Principal, Financial Network, dated April 9, 2009 ("J. Austin/Financial Network")
29. Arthur F. Grant, President, Cadaret Grant, dated April 9, 2009 ("Cadaret Grant")
30. William Grace, Registered Representative, dated April 10, 2009 ("Grace")
31. Charles Lutrick, Registered Representative, dated April 10, 2009 ("Lutrick")
32. Suzanne Seay, CFP, dated April 10, 2009 ("Seay")
33. Ken Loebel, Vice President, BankFinancial, dated April 10, 2009 ("BankFinancial")
34. Brian N. Smiley, President, Public Investors Arbitration Bar Association, received April 10, 2009 ("PIABA")
35. Alan Freedman, Financial Advisor, Geronimo Financial, LLC, dated April 10, 2009 ("Geronimo Financial")
36. Hugh Nichols, Registered Representative, Mutual Service Corporation, dated April 10, 2009 ("Mutual Service")
37. Pam Fritz, Chief Compliance Officer, MWA Financial Services, Inc., dated April 13, 2009 ("MWA")
38. Brent Johnson, President, Financial Synergies, Inc., dated April 13, 2009 ("Financial Synergies")
39. Leonard Steiner, dated April 13, 2009 ("Steiner")
40. Steve A. Buchwalter, Esq., dated April 13, 2009 ("Buchwalter")
41. Bradley R. Stark, P.A., dated April 13, 2009 ("Stark")
42. Joan Hinchman, Executive Director, President and CEO, The National Society of Compliance Professionals, Inc., dated April 13, 2009 ("NSCP")
43. Ronald L. King, Chief Compliance Officer, Capital Investment Companies, dated April 13, 2009 ("Capital Investment")
44. Keith Miller, dated April 13, 2009 ("K. Miller")

[63] 15 U.S.C. 78s(b)(2).
[64] 15 U.S.C. 78*o*–3(b)(6).
[65] 15 U.S.C. 78s(b)(2).
[66] 17 CFR 200.30–3(a)(12).

45. John Miller, Swanson Midgley, LLC, dated April 14, 2009 ("J. Miller")
46. Stephen P. Meyer, Esq., dated April 14, 2009 ("Meyer")
47. William P. Torngren, dated April 14, 2009 ("Torngren")
48. Philip M. Aidikoff, Esq., dated April 14, 2009 ("Aidikoff")
49. Seth E. Lipner, Prof. of Law, Zicklin School of Business, Baruch College, CUNY, Member, Deutsch Lipner, dated April 14, 2009 ("Lipner")
50. Jeffrey A. Feldman, Law Offices of Jeffrey A. Feldman, dated April 14, 2009 ("Feldman")
51. Gregory C. Sernett, Vice President and Chief Compliance Officer, Ameritas Investment Corp., dated April 14, 2009 ("G. Sernett/ Ameritas")
52. Stephanie L. Brown, Managing Director, General Counsel, LPL Financial Corporation, dated April 15, 2009 ("S. Brown/LPL")
53. Michael J. Frailey, LUTCF, dated April 15, 2009 ("Frailey")
54. Jill Clark, dated April 15, 2009 ("Clark")
55. Stephen D. Mann, dated April 15, 2009 ("Mann")
56. Christopher Taggart, dated April 15, 2009 ("Taggart")
57. David Moffet, dated April 15, 2009 ("Moffet")
58. Lawrence A. Wanek, CFP, ChFC, LUTCF, dated April 15, 2009 ("Wanek")
59. Tom Schmidt, dated April 15, 2009 ("Schmidt")
60. Bradley J. Green, dated April 15, 2009 ("Green")
61. Ralph Barringer, dated April 15, 2009 ("Barringer")
62. Norajane McIntyre, dated April 15, 2009 ("McIntyre")
63. Shaun Seedhouse, CFP, dated April 15, 2009 ("Seedhouse")
64. Terry Lewis, LUTCF, dated April 15, 2009 ("Lewis")
65. Laura Drake, dated April 15, 2009 ("Drake")
66. Lori Susalla Oancea, J.D., dated April 15, 2009 ("Oancea")
67. Douglas Olawsky, ChFC, FIC, dated April 15, 2009 ("Olawsky")
68. Courtney L. Livingston, LUTCF, FIC, dated April 15, 2009 ("Livingston")
69. Robert T. MacDonald, dated April 15, 2009 ("MacDonald")
70. Richard N. Preston, ChFC Wealth Management Advisor, dated April 15, 2009 ("Preston")
71. Jan Carpenter, CPCU, ChFC, Agent, dated April 15, 2009 ("Carpenter")
72. Stephen Coon, dated April 15, 2009 ("Coon")
73. James A. White, CLU, ChFC, dated April 15, 2009 ("James White")
74. Cynthia Jo Johns, dated April 15, 2009 ("Johns")
75. Gary R. Young, dated April 15, 2009 ("G. Young")
76. Roger Gainer, ChFC, dated April 15, 2009 ("Gainer")
77. Steven P. Brooks, dated April 15, 2009 ("Brooks")
78. Harold A. Schwartz, dated April 15, 2009 ("Schwartz")
79. Raymond Kojetin, dated April 15, 2009 ("Kojetin")
80. Steve Klein, Chief Compliance Officer, Farmers Financial Solutions, LLC, dated April 15, 2009 ("Farmers Financial")
81. Jerry R. Neill, CLU, ChFC, dated April 15, 2009 ("Neill")
82. Marian H. Desilets, President, Association of Registration Management, dated April 15, 2009 ("ARM")
83. James Schuberth, dated April 15, 2009 ("Schuberth")
84. Sarah McCafferty, Vice President and Chief Compliance Officer, T. Rowe Price, dated April 15, 2009 ("T. Rowe Price")
85. R. Drew Kistler, Vice Chairman & Chief Compliance Officer, Hefren-Tillotson, Inc., dated April 15, 2009 ("Hefren-Tillotson")
86. Frederick T. Greene, Senior Vice President and Portfolio Manager, Woodforest Financial Services, Inc., dated April 15, 2009 ("T. Greene/ Woodforest")
87. Lance B. Kolbet, RHU, LUTCF, President, University Financial Group, Inc., dated April 15, 2009 ("University Financial")
88. Nancy Kay, CCO, Wall Street Financial Group, dated April 15, 2009 ("Wall Street Financial")
89. Michael Kish, dated April 16, 2009 ("Kish")
90. Blair M. Broussard, LUTCF, dated April 16, 2009 ("Broussard")
91. Steven Van Scoik, dated April 16, 2009 ("Van Scoik")
92. Tim Chisholm, dated April 16, 2009 ("Chisholm")
93. Paul Dougherty, dated April 16, 2009 ("Dougherty")
94. Bert Reames, CLU, dated April 16, 2009 ("Reames")
95. Joseph Kosek, dated April 16, 2009 ("Kosek")
96. J. P. Hildebrand, dated April 16, 2009 ("Hildebrand")
97. Anthony P. Ladas, CLU, ChFC, dated April 16, 2009 ("Ladas")
98. Charlene Logan, dated April 16, 2009 ("Logan")
99. Richard J. Cooney, ChFC, dated April 16, 2009 ("Cooney")
100. Nancy A. Dorsett, dated April 16, 2009 ("Dorsett")
101. Nicola Young, dated April 16, 2009 ("N. Young")
102. Mark J. Miller, dated April 16, 2009 ("M. Miller")
103. Maria Buss, LUTCF, RFC, dated April 16, 2009 ("Buss")
104. Jay Mccluskey, dated April 16, 2009 ("Mccluskey")
105. Joseph W. Guess, dated April 16, 2009 ("Guess")
106. Rick Theobald, dated April 16, 2009 ("Theobald")
107. Michael Kidd, dated April 16, 2009 ("Kidd")
108. Daniel G. Stockemer, dated April 16, 2009 ("Stockemer")
109. Alin L. Rosca, Attorney at Law, John S. Chapman & Associates, LLC, dated April 16, 2009 ("Rosca")
110. Linda L. Paulsen, dated April 16, 2009 ("Paulsen")
111. Thomas F. Taylor, CLU, ChFC, dated April 16, 2009 ("Taylor")
112. R. Graham Self, dated April 16, 2009 ("Self")
113. James A. Dunlap Jr., Esq., James A. Dunlap Jr. & Associates LLC, dated April 16, 2009 ("Dunlap")
114. William B. (Blake) Woodard, dated April 16, 2009 ("Woodard")
115. Dayton P. Haigney, III, dated April 16, 2009 ("Haigney")
116. Gwendolyn L. Wood, dated April 16, 2009 ("Wood")
117. Henry D. ("Hank") Fellows, Jr., Esq., Fellows LaBriola LLP, dated April 16, 2009 ("Fellows")
118. Charles M. Thompson, Attorney at Law, dated April 16, 2009 ("Thompson")
119. Laurence S. Schultz, Driggers, Schultz and Herbst, dated April 16, 2009 ("Schultz")
120. Robert S. Banks, Jr., Banks Law Office, P.C., dated April 16, 2009 ("Banks")
121. Ronald M. Amato, Shaheen, Novoselsky, Staat, Filipowski, Eccleston, PC, dated April 16, 2009 ("Amato")
122. Steven W. Stambaugh, Registered Principal, LPL Financial Corporation, dated April 16, 2009 ("S. Stambaugh/LPL")
123. Theodore M. Davis, Esq., dated April 16, 2009 ("Davis")
124. James D. Keeney, Esq., James D. Keeney, P.A., dated April 16, 2009 ("Keeney")
125. Sharon Herrick, dated April 16, 2009 ("Herrick")
126. Merrell Dean, Registered Representative, Ameritas Investment Corp., received April 16, 2009 ("M. Dean/Ameritas")
127. Gerald Calley, dated April 16, 2009 ("Calley")
128. Roscoe O. Orton, CLU, President, Eastern Idaho Association of Insurance and Financial Advisors, dated April 16, 2009 ("EIAIFA")
129. Scott C. Ilgenfritz, Esq., Johnson, Pope, Bokor, Ruppel Burns, LLP, dated April 16, 2009 ("Ilgenfritz")

130. Culpepper Webb, dated April 16, 2009 ("Webb")
131. Kevin Vasilik, dated April 16, 2009 ("Vasilik")
132. Janice K. Nielsen, dated April 16, 2009 ("Nielsen")
133. Mitchell S. Ostwald, Law Offices of Mitchell S. Ostwald, dated April 16, 2009 ("Ostwald")
134. Mario Dalla Valle, dated April 16, 2009 ("Valle")
135. Scott L. Silver, Esq., Blum & Silver, LLP, dated April 16, 2009 ("Silver")
136. William J. Gladden, Securities Arbitration Attorney, dated April 16, 2009 ("Gladden")
137. John M. Ivan, Senior Vice President and General Counsel, Janney Montgomery Scott LLC, dated April 16, 2009 ("Janney")
138. Adam J. Gana, Napoli Bern Ripka, LLP, dated April 16, 2009 ("Gana")
139. Scott R. Shewan, Born Pape Shewan, LLP, dated April 16, 2009 ("Shewan")
140. Tim Canning, Law Offices of Timothy A. Canning, dated April 17, 2009 ("Canning")
141. Al Van Kampen, Attorney at Law, dated April 17, 2009 ("Van Kampen")
142. Diane Anderson, Registrations Manager, Raymond James & Associates, Inc., received April 17, 2009 ("Raymond James")
143. Justin Slattery, dated April 17, 2009 ("Slattery")
144. James Livingston, President/Chief Executive Officer, National Planning Holdings, Inc., dated April 17, 2009 ("NPH")
145. Charles Maurice, dated April 17, 2009 ("Maurice")
146. Richard G. Wallace, Foley Lardner LLP, dated April 17, 2009 ("Wallace")
147. Stuart D. Meissner, Esq., Stuart D. Meissner LLC, dated April 17, 2009 ("Meissner")
148. Richard A. Lewins, Esq., Special Counsel, Burg Simpson Eldredge Hersh Jardine PC, dated April 17, 2009 ("Lewins")
149. Jeffrey Kruske, Law Office of Jeffrey S. Kruske, P.A., dated April 17, 2009 ("Kruske")
150. David Shrom, Shrom Associates/ FSC Securities Corporation, dated April 17, 2009 ("Shrom/FSC")
151. Nicholas J. Taldone, Attorney, dated April 17, 2009 ("Taldone")
152. Evan J. Charkes, Managing Director and Deputy General Counsel, Citigroup Global Markets, Inc., dated April 17, 2009 ("CGMI")
153. John W. Curtis, General Counsel Global Compliance, Goldman, Sachs Co., dated April 17, 2009 ("Goldman Sachs")
154. Jan Graham, Graham Law Offices, dated April 17, 2009 ("Graham")
155. David Harrison, Esq., Law Offices of David Harrison, dated April 17, 2009 ("Harrison")
156. William A. Jacobson, Esq., Associate Clinical Professor of Law, Director, Cornell Securities Law Clinic, dated April 17, 2009 ("Cornell")
157. Peter J. Mougey, Esq. and Kristian P. Kraszewski, Esq., dated April 17, 2009 ("Mougey/Kraszewski")
158. Fred Joseph, President, North American Securities Administrators Association, Inc., Colorado Securities Commissioner, received April 17, 2009 ("NASAA")
159. Robert K. Savage, Esq., The Savage Law Firm, P.A., dated April 17, 2009 ("Savage")
160. Gary A. Sanders, Vice President, Securities and State Government Relations, National Association of Insurance and Financial Advisors, dated April 17, 2009 ("NAIFA")
161. Kert Martin, dated April 17, 2009 ("Martin")
162. Carl J. Carlson, Attorney, dated April 17, 2009 ("Carlson")
163. Nancy L.H. Boyd, Director of Compliance, Lincoln Investment Planning, Inc., dated April 17, 2009 ("Lincoln Investment")
164. John S. Burke, Esq., Higgins Burke, P.C., dated April 17, 2009 ("Burke")
165. Charles V. Senatore, Senior Vice President, Chief Compliance Officer, Fidelity Investments, dated April 17, 2009 ("Fidelity")
166. Jonathan W. Evans, Esq., dated April 17, 2009 ("J. Evans")
167. William S. Shepherd, Managing Partner, Shepherd, Smith & Edwards, LLP, received April 17, 2009 ("Shepherd")
168. Ronald C. Long, Director, Regulatory Affairs, Wells Fargo Advisors, dated April 17, 2009 ("Wells Fargo")
169. Dale E. Brown, President & CEO, Financial Services Institute, Inc., dated April 17, 2009 ("FSI")
170. Amal Aly, Managing Director and Association General Counsel, Securities Industry and Financial Markets Association, dated April 17, 2009 ("SIFMA")
171. W. Scott Greco, Greco & Greco, P.C., received April 17, 2009 ("Greco")
172. Eileen O'Connell Arcuri, UBS Financial Services Inc., dated April 17, 2009 ("UBS")
173. Colin S. Casey, dated April 17, 2009 ("Casey")
174. Christine Lazaro and Lisa Catalano, Securities Arbitration Clinic, St. John's University School of Law, dated April 17, 2009 ("St. John's")
175. Laura Lang, IBSI, received April 17, 2009 ("IBSI")
176. Barry D. Estell, Attorney at Law, received April 17, 2009 ("Estell")
177. Robert S. Rosenthal, Chief Legal Officer, MML Investors Services, Inc., dated April 17, 2009 ("MML")
178. Michael P. Corry, President, Association for Advanced Life Underwriting, dated April 17, 2009 ("AALU")
179. Michelle Oroschakoff, Managing Director, and Jill Ostergaard, Managing Director, Morgan Stanley, dated April 17, 2009 ("Morgan Stanley")
180. Geoffrey Boyer, President, Boyer Financial Group, received April 17, 2009 ("Boyer Financial")
181. David M. Koll, dated April 17, 2009 ("Koll")
182. Robert C. Port, Esq., Cohen, Goldstein, Port Gottlieb, LLP, dated April 17, 2009 ("Port")
183. Lisa M. Roth, National Association of Independent Broker-Dealers Member Advocacy Committee Chair, Keystone Capital Corporation, CEO/CCO, dated April 17, 2009 ("NAIBD")
184. Steven M. Sherman, Law Offices of Steven M. Sherman, received April 17, 2009 ("Sherman")
185. Douglas G. Preston, Senior Vice President, Head of Regulatory Affairs, Bank of America Securities LLC, dated April 17, 2009 ("BofA")
186. Stephen Krosschell, Goodman & Nekvasil, P.A., dated April 17, 2009 ("Krosschell")
187. Jessica Vasquez, Willeford Law Firm, dated April 17, 2009 ("Vasquez")
188. Rosemary J. Shockman, Shockman Law Office, dated April 17, 2009 ("Shockman")
189. John R. Tait, dated April 17, 2009 ("Tait")
190. Margie Adams, Director, Deutsche Bank Securities Inc., received April 17, 2009 ("Deutsche Bank")
191. Bari Havlik, SVP and Chief Compliance Officer, Charles Schwab & Co., Inc., dated April 17, 2009 ("Charles Schwab")
192. Clifford Kirsch and Susan Krawczyk, Sutherland Asbill & Brennan LLP, dated April 17, 2009 ("Sutherland")
193. Jenice L. Malecki, Esq., Malecki Law, dated April 17, 2009 ("Malecki")
194. Jesse Hill, Director of Regulatory Relations, Edward Jones, dated April 17, 2009 ("Edward Jones")
195. Scot Bernstein, Law Offices of Scot D. Bernstein, A Professional Corporation, dated April 18, 2009 ("Bernstein")

196. Robert Mabe, Registered Representative, dated April 18, 2009 ("Mabe")
197. John R. Still, dated April 20, 2009 ("Still")
198. David Farrell, dated April 20, 2009 ("Farrell")
199. Daniel Woodring, V.P. and Chief Compliance Officer, PFS Investments Inc., dated April 20, 2009 ("PFS")
200. James Rice, Registered Principal, Royal Alliance Associates, dated April 21, 2009 ("J. Rice/Royal Alliance")
201. Hattie Evans, Registered Representative, Financial Network, dated April 21, 2009 ("H. Evans/ Financial Network")
202. Doria G. Bachenheimer, VP, Associate General Counsel, Regulatory Law, and Pamela Lewis Marlborough, Associate General Counsel, TIAA–CREF, dated April 22, 2009 ("TIAA–CREF")
203. Doug Richards, dated April 27, 2009 ("Richards")

[FR Doc. E9–11697 Filed 5–19–09; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59924; File No. SR–Phlx–2009–23]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc., Order Approving Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto To Amend the By-Laws, Rules, and Option Floor Procedure Advices Concerning Governance of the Exchange

May 14, 2009.

On March 13, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its By-Laws, Rules of the Board of Governors, Options Rules, and Option Floor Procedure Advices to make changes to certain standing committees and governance processes of the Exchange. On March 25, 2009, Phlx filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on April 9, 2009.[3] On April 30, 2009, Phlx filed Amendment No. 2 to the proposed rule change.[4] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2.

In its filing, the Exchange proposes to conform its governance structure to more closely resemble that of its corporate siblings, The NASDAQ Stock Market LLC ("Nasdaq") and NASDAQ OMX BX, Inc. ("BX").[5] In particular, Phlx proposes to eliminate the Admissions Committee and the Options Allocation, Evaluation and Securities Committee ("Allocation Committee"); consolidate the Options Committee and the Foreign Currency Options Committee into the Quality of Markets Committee; and eliminate the use of the Weekly Bulletin.[6] Phlx also proposes to change the membership structure of the Business Conduct Committee and eliminate the Hearing Officer; make the Finance Committee optional at the discretion of the Board; and authorize the Board or its designee to take certain actions in the event of an emergency or extraordinary market conditions. Finally, the Exchange proposes technical changes that, among other things, delete obsolete references to departments and positions that have been re-named or no longer exist.

Pursuant to this proposed rule change, the eleven current standing committees of the Board of Governors of the Exchange ("Board") would be reduced to eight.[7] Of those eight, the Finance Committee would become optional at the discretion of the Board.[8]

The Commission has carefully reviewed the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[9] including, in particular, Section 6(b)(1) of the Act,[10] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; Section 6(b)(3) of the Act,[11] which requires that the rules of a national securities exchange assure a fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer; and Section 6(b)(5) of the Act,[12] which requires that an exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The proposed rule change will conform certain of the By-Laws and rules of the Exchange to those of Nasdaq, while maintaining the fair representation of the Exchange's members in the administration of the affairs of the Exchange. Among other things, the Exchange proposes to eliminate the Admissions Committee, and to have the Phlx Membership Department perform the functions that are currently performed by the Admissions Committee. In this respect, the proposed change would reflect the practice at Nasdaq, which does not have an Admissions Committee and whose staff handles membership application

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59697 (April 2, 2009), 74 FR 16249 ("Notice").

[4] In Amendment No. 2, Phlx made technical and conforming changes to certain By-Laws, including changes to the paragraph numbering in Article I, Section 1–1 (Definitions) and revisions to the marking of new rule text in Article X, Sections 10–1 (Standing Committees) and 10–15 (Finance Committee). These changes were designed to reflect intervening amendments to those By-Laws proposed in a preceding Phlx filing (File No. SR–Phlx–2009–17) that were recently approved by the Commission. *See* Securities Exchange Act Release No. 59794 (April 20, 2009), 74 FR 18761 (April 24, 2009) (SR–Phlx–2009–17). Because Amendment No. 2 is technical in nature, the Commission is not required to publish it for comment.

[5] The Exchange, Nasdaq, and BX are subsidiaries of The NASDAQ OMX GROUP, Inc. *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31) (order approving changes to the Exchange's governing documents in connection with its acquisition by The NASDAQ OMX Group, Inc.).

[6] The Weekly Bulletin contained, among other things, notice of changes in permit holder and member organization status and applications. Currently, if the Admissions Committee votes favorably regarding a request by an applicant, Phlx posts his or her name in the Weekly Bulletin and on its Web site for seven days to invite readers to report information regarding applications and applicants. The Exchange proposes to eliminate the Weekly Bulletin and instead provide notification regarding membership approvals on its Web site.

[7] The remaining standing committees would be: Executive Committee, Audit Committee, Business Conduct Committee, Compensation Committee, Finance Committee, Nominating Committee, Member Nominating Committee, and Quality of Markets Committee. *See* Phlx By-Law Article X, Section 10–1. *See also* Amendment No. 2 (reflecting changes made by SR–Phlx–2009–17 to create the Nominating Committee and the Member Nominating Committee).

[8] The Exchange noted that Nasdaq's Finance Committee is also optional at the discretion of Nasdaq's board of directors. *See* Notice, *supra* note 3, at 74 FR 16254.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(1).

[11] 15 U.S.C. 78f(b)(3).

[12] 15 U.S.C. 78f(b)(5).

processing and decisions regarding membership.[13] As proposed, the Membership Department would assume responsibility for administering the admissions and membership processes currently overseen by that committee including, among other things, the admission, denial, reinstatement and revocation of membership to the Exchange.[14]

An applicant for Exchange membership or admission whose application is not approved currently has a right to an appeal hearing pursuant to By-Law Article XI. The Exchange proposes to include the Membership Department in this By-Law in order to permit appeals from Membership Department decisions.[15] Accordingly, the current appeal rights of applicants will be preserved.

Similarly, the Exchange proposes to delete the Allocations Committee and have the Exchange's staff perform the duties and functions that are currently performed by the Allocation Committee.[16]

In addition, the Exchange proposes to combine its Options Committee and Foreign Currency Options Committee, which are currently two separate Board committees, into the existing Quality of Markets Committee. The duties and functions of the Exchange's reformulated Quality of Markets Committee would be analogous to those of the Nasdaq's Quality of Markets Committee and would include, among other things, responsibility for advising the Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the Exchange's market. The Quality of Markets Committee would include a number of Member Representative members that is equal to at least twenty percent of the total number of members of the Quality of Markets Committee.[17] In addition, the number of Non-Industry members on the Quality of Markets Committee would equal the sum of the number of Industry members and Member Representative members. Accordingly, the proposed new formulation for the Quality of Markets Committee would continue to assure the fair representation of the Exchange's members on this committee.

The Exchange also proposes to provide that the President of the Exchange, and his or her designated staff, would have general supervision over the options trading floor as well as general supervision over the dealings of members on the trading floor and on Exchange trading systems. The President would also be given responsibility regarding supervision of relations with other options exchanges. The Exchange notes that such authority is consistent with the practice at Nasdaq.[18] Similarly, the Exchange proposes to adopt a By-Law provision similar to Nasdaq that authorizes the Board or its designee to take certain actions in the event of an emergency or extraordinary market conditions.[19]

Further, the Exchange proposes to alter the composition of the Business Conduct Committee, which serves as the disciplinary committee of the Exchange. As amended, the Business Conduct Committee could consist of not less than five, or more than nine, members.[20] In addition, the majority of committee members would be Non-Industry members, and the remaining committee members would be Industry members. At least one BCC member would have to be a member of the Exchange that conducts an options business at Phlx. The Exchange has informed the Commission that, upon approval, it initially intends to have five persons serve on the BCC.[21]

In addition, the Exchange proposes to conform its hearings processes to more closely resemble those of Nasdaq. Specifically, the Exchange proposes to change the composition of its disciplinary hearing panel by deleting the requirement to have a presiding Hearing Officer. In its place, a new position of Hearing Attorney would be created to assume the administrative duties that the Hearing Officer previously handled. The Hearing Attorney would advise the Hearing Panel on applicable rules and procedures, but would not be a voting member of the Hearing Panel. The process of appealing Hearing Panel decisions would remain unchanged.

The Commission notes that the Exchange's proposal is designed to more closely align certain aspects of Phlx's governance structure and processes to more closely resemble that of Nasdaq, which, like the Exchange, is a subsidiary of NASDAQ OMX GROUP, Inc. As discussed above, the Commission finds that the proposal is consistent with the Act. In particular, the proposal should allow the Exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, and should continue to assure the fair representation of the Exchange's members in the administration of its affairs.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Phlx–2009–

[13] *See* Notice, supra note 3, at note 13.

[14] According to the Exchange, its staff has been "involved in virtually all aspects of the Exchange's admissions and membership process," including assisting the Admissions Committee in the performance of its duties. *See* Notice, *supra* note 3, at 74 FR 16250. To accomplish this transfer, the Exchange proposes to delete By-Law Article X, Section 10–6 (Admissions Committee) and transfer the duties and functions of that committee to the Membership Department in new Rule 900.1 (General Powers and Duties of Membership Department). In addition, Exchange proposes to delete By-Law Article XII, Section 12–5, which sets forth duties and functions of the Admissions Committee with respect to applications for permits and admission as a foreign currency options participant, and transfer those duties to the Membership Department in new Rule 900.2 (Membership Applications).

[15] Such appeals would be heard by a special committee of the Board composed of at least three governors, at least one of which would be an Independent Governor. *See* Phlx By-Law Article XI, Section 11–1(c). Designated Independent Governors are selected through a process that is subject to the input of Phlx's Member Organization Representatives. *See* Phlx By-Law Article III, Section 3–2 (Member Nominating Committee creates a list of candidates for each Designated Governor Position); see also Article I, Section 1–1(e) (Designated Governors include Designated Independent Governors).

[16] The Exchange notes that Nasdaq does have a board of directors committee that is equivalent to the Allocation Committee. *See* Notice, *supra* note 3, at note 20.

[17] A Member Representative Member is "a member of any committee appointed by the Board of Governors who has been elected or appointed after having been nominated by the Member Nominating Committee." *See* Phlx By-Law Article I, Section 1–1.

[18] *See* Notice, *supra* note 3, at note 29.

[19] *See* Proposed Phlx By-Law Article IV, Section 4–23. *See also* Nasdaq By-Law Article IX, Section 5. In addition, the Exchange currently has other extraordinary market conditions provisions in its rules. *See* Rules 1080(e) and 98.

[20] The BCC currently consists of nine members including three Independent Governors, one member or person associated with a member organization who conducts business on XLE (Phlx's electronic equity trading system), one member who conducts an options business at the Exchange, and four persons who are members or persons associated with a member organization. In particular, the Exchange poses to eliminate the requirement to seat on the BCC one member or person associated with a member organization who conducts business on XLE, because XLE is no longer operating. *See* Notice, *supra* note 3, at note 34.

[21] *See* E-mail from Jurij Trypupenko, Assistant General Counsel, The NASDAQ OMX Group, Inc., to Richard Holley III, Senior Special Counsel, Division of Trading and Markets, Commission, dated May 14, 2009. Phlx has committed to submit a separate proposed rule change by its July 2009 Board meeting to clarify in Article X, Section 10–11 that the Business Conduct Committee shall include a number of committee members equal to at least 20% of the total number of members on the Business Conduct Committee that are representative of Phlx members. This provision would be relevant only in the event that the Exchange chose to appoint six or more members to the BCC, since with a five member BCC the required appointment of "at least one" committee member who is a member of the Exchange that conducts an options business at Phlx would satisfy the 20% requirement.

23), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11739 Filed 5–19–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59907 File No. SR–NASDAQ–2009–042]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Its Limited Liability Agreement

May 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 29, 2009, The NASDAQ Stock Market LLC ("NASDAQ Exchange" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDAQ Exchange is filing this proposed rule change with regard to proposed changes to its Limited Liability Company Agreement (the "Agreement").[3] The proposed rule change will be implemented as soon as practicable following approval by the Commission. The text of the proposed rule change is available at *http://www.cchwallstreet.com/nasdaq*, at the NASDAQ Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASDAQ Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The NASDAQ Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 24, 2008, NASDAQ OMX acquired the Philadelphia Stock Exchange, Inc. (renamed NASDAQ OMX PHLX, Inc. ("PHLX")), and on August 29, 2008, NASDAQ OMX acquired the Boston Stock Exchange, Incorporated (renamed NASDAQ OMX BX, Inc. ("BX")). Following those acquisitions, the NASDAQ Exchange, PHLX, and BX have been evaluating means to realize synergies in the operations of these three exchanges while maintaining the separate identity and member representation structures of each.

In making this evaluation, the NASDAQ Exchange and its sister exchanges have given consideration to the experiences of their respective boards and have reviewed the governance documents of other exchanges. In particular, the NASDAQ Exchange and the other exchanges have reviewed the board structures established by NYSE Euronext and its exchange subsidiaries. In Securities Exchange Act Release No. 55293,[4] the Commission approved a structure in which certain committees of the board of directors of NYSE Euronext, the public holding company, perform functions for exchange subsidiaries, which do not themselves have these committees. Specifically, the Commission's approval order states that "the NYSE Euronext board of directors will have an audit committee, a human resource and compensation committee, and a nominating and governance committee. Each of the audit committee, human resource and compensation committee, and nominating and governance committee of the NYSE Euronext board of directors will consist solely of directors meeting the independence requirements of NYSE Euronext. These committees also will perform relevant functions for NYSE Group,[5] the Exchange,[6] NYSE Market,[7] NYSE Regulation,[8] Archipelago,[9] NYSE Arca,[10] and NYSE Arca Equities,[11] as well as other subsidiaries of NYSE Euronext, except that the board of directors of NYSE Regulation will continue to have its own compensation committee and nominating and governance committee."

The NASDAQ Exchange and the other exchanges owned by NASDAQ OMX have also considered the experience of the NASDAQ Exchange in operating as a subsidiary of a public company since 2006. During the period, the board of each of the NASDAQ Exchange and its parent corporation (currently NASDAQ OMX, and formerly The Nasdaq Stock Market, Inc.) has appointed its own audit committee and management compensation committee. However, these committees at the NASDAQ Exchange level have generally found themselves duplicating the work of other committees at the exchange or holding company level. The NASDAQ OMX audit committee has broad authority to review the financial information that will be provided to shareholders and others, systems of internal controls, and audit, financial reporting and legal and compliance processes. Because NASDAQ OMX's financial statements are prepared on a consolidated basis that includes the financial results of NASDAQ OMX's subsidiaries, including the NASDAQ Exchange and the other exchange subsidiaries, the NASDAQ OMX audit committee's purview necessarily includes these subsidiaries. The committee is composed of four or five directors, all of whom must be independent under the standards established by Section 10A(m) of the Act[12] and Rule 4200(a) of the NASDAQ Exchange. All committee members must be able to read and understand financial statements, and at least one member must have past employment experience in finance or accounting, requisite professional certification in accounting,

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[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Agreement includes and incorporates an exhibit designated as the By-Laws of the NASDAQ Exchange (the "By-Laws"). Under applicable Delaware law, the By-Laws are considered part of the Agreement.

[4] Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120).

[5] NYSE Group, Inc., the former public holding company of NYSE Euronext's U.S. exchanges.

[6] New York Stock Exchange LLC ("NYSE"), a registered national securities exchange.

[7] NYSE Market, Inc., a subsidiary of NYSE to which it has delegated certain operational authority.

[8] NYSE Regulation, Inc., a subsidiary of NYSE to which it has delegated certain operational authority.

[9] Archipelago Holdings, Inc., formerly the public holding company of the entities now known as NYSE Arca, Inc. and NYSE Arca Equities, Inc.

[10] NYSE Arca, Inc., a registered national securities exchange.

[11] NYSE Arca Equities, Inc., a subsidiary of NYSE Arca to which it has delegated certain operational authority.

[12] 15 U.S.C. 78j–1(m).

or any other comparable experience or background that results in the individual's financial sophistication.

By contrast, the audit committee of the NASDAQ Exchange has a more limited role, focused solely on the exchange entity and its subsidiaries that operate as facilities of the NASDAQ Exchange. As described in the current By-Laws, the primary functions of the audit committee are (i) oversight over financial reporting, (ii) oversight over the systems of internal controls established by management and the Board and the legal and compliance process, (iii) selection and evaluation of independent auditors, and (iv) direction and oversight of the internal audit function. However, to the extent that the committee reviews financial and accounting matters, its activities are duplicative of the activities of the NASDAQ OMX audit committee, which is also charged with providing oversight over financial reporting and independent auditor selection for NASDAQ OMX and all of its subsidiaries, including the NASDAQ Exchange, BX, and PHLX and their subsidiaries. Similarly, the NASDAQ OMX audit committee has general responsibility for oversight over internal controls and direction and oversight over the internal audit function for NASDAQ OMX and all of its subsidiaries. Thus, the responsibilities of the exchanges' audit committees are fully duplicated by the responsibilities of the NASDAQ OMX audit committee. Accordingly, the NASDAQ Exchange is proposing to allow the elimination of its audit committee by amending Article III, Section 5 of the By-Laws.[13]

The NASDAQ Exchange believes, however, that even in light of the NASDAQ OMX audit committee's overall responsibilities for internal controls and the internal audit function, it is nevertheless important for the NASDAQ Exchange Board to maintain its own independent oversight over the NASDAQ Exchange's controls and internal audit matters relating to the NASDAQ Exchange's operations. In this regard, the NASDAQ Exchange notes that its regulatory oversight committee currently has broad authority to oversee the adequacy and effectiveness of the NASDAQ Exchange's regulatory and self-regulatory organization responsibilities, and is therefore able to maintain oversight over controls in tandem with the NASDAQ OMX audit committee's overall control oversight responsibilities. Similarly, it is already the practice of NASDAQ OMX's Internal Audit Department ("Department"),[14] which performs internal audit functions for all NASDAQ OMX subsidiaries, to report to the NASDAQ Exchange regulatory oversight committee on all internal audit matters relating to the NASDAQ Exchange. This practice will be formally reflected in the Department's written procedures. In addition, to ensure that the NASDAQ Exchange Board retains authority to direct the Department's activities with respect to the NASDAQ Exchange, the Department's written procedures will be amended to stipulate that the NASDAQ Exchange regulatory oversight committee may, at any time, direct the Department to conduct an audit of a matter of concern to it and report the results of the audit both to the NASDAQ Exchange regulatory oversight committee and the NASDAQ OMX audit committee.

The NASDAQ Exchange also proposes to amend Section 4.13 of the By-Laws in order to follow the NYSE Euronext model with respect to allowing the elimination of its compensation committee and the performance of its function by the NASDAQ OMX compensation committee and/or subsidiary boards. The NASDAQ OMX By-Laws provide that its compensation committee considers and recommends compensation policies, programs, and practices for employees of NASDAQ OMX. Because many employees performing work for the NASDAQ Exchange are also employees of NASDAQ OMX, its compensation committee already performs these functions for such employees. Moreover, certain of its senior officers are also officers of NASDAQ OMX and other NASDAQ OMX subsidiaries because their responsibilities relate to multiple entities within the NASDAQ OMX corporate structure. Accordingly, NASDAQ OMX pays these individuals and establishes compensation policy for them. Most notably, the Chief Executive Officer of the NASDAQ Exchange is also an "executive officer" of NASDAQ OMX within the meaning of NASDAQ Exchange Rule 4350. Under that rule, the compensation of executive officers of an issuer of securities, such as the common stock of NASDAQ OMX, that is listed on the NASDAQ Exchange, must be determined by, or recommended to the board of directors for determination by, a majority of independent directors or a compensation committee comprised solely of independent directors. Accordingly, the NASDAQ OMX board of directors and/or its compensation committee is legally required to establish the compensation for this individual.

To the extent that policies, programs, and practices must also be established for any NASDAQ Exchange officers or employees who are not also NASDAQ OMX officers or employees, the NASDAQ Exchange Board will perform such actions without the use of a compensation committee (but subject to the recusal of Staff Directors).[15] Moreover, as already provided in the Agreement, the regulatory oversight committee of the BX Board must be informed about the compensation and promotion or termination of the BX chief regulatory officer and the reasons therefor, to allow it to provide oversight over decisions affecting this key officer.

The NASDAQ Exchange is also proposing to amend Article III, Section 6 to allow the NASDAQ Exchange Board to eliminate its arbitration and mediation committee, provided that, as is currently the case, the NASDAQ Exchange's arbitration and mediation program is operated by the Financial Industry Regulatory Authority ("FINRA") in accordance with FINRA rules pursuant to a regulatory services agreement.[16] As provided in the Agreement, the arbitration and mediation committee is to advise the Board on the development and maintenance of an equitable and efficient system of dispute resolution that will equally serve the needs of

[13] Similarly, BX is proposing elimination of its audit committee (SR–BX–2009–021 (April 29, 2009)). PHLX expects to file a similar proposed rule change in the near future.

[14] *See* e-mail from John Yetter, Vice President and Deputy General Counsel, NASDAQ OMX Group, Inc., to Christopher W. Chow, Special Counsel, Commission, dated May 5, 2009.

[15] Staff Directors are directors of the NASDAQ Exchange that are also serving as officers. Since the NASDAQ Exchange Board would not be responsible for setting the compensation of any Staff Directors who are also officers of NASDAQ OMX, they would be permitted to participate in discussions concerning compensation of NASDAQ Exchange employees, but would recuse themselves from a vote on the subject to allow the determination to be made by directors that are not officers or employees of the NASDAQ Exchange. If a Staff Director was not also an employee of NASDAQ OMX, that Staff Director would also absent himself or herself from any deliberations regarding his or her compensation.

[16] The NASDAQ Exchange and FINRA are parties to a Regulatory Services Agreement ("RSA") that is dated June 28, 2000 but that did not become operative until July 1, 2006, when the NASDAQ Exchange first began to operate as a national securities exchange. Under the RSA, FINRA provides a comprehensive dispute resolution program for NASDAQ members. Prior to July 1, 2006, The Nasdaq Stock Market, Inc., which was the predecessor of the NASDAQ Exchange, operated a market as a facility of the National Association of Securities Dealers, Inc. ("NASD"), FINRA's predecessor. Accordingly, neither the NASDAQ Exchange nor its predecessor market has ever operated a dispute resolution program that was not administered by FINRA or NASD.

public investors and NASDAQ Exchange members, to monitor rules and procedures governing the conduct of dispute resolution, and to have such other powers and authority as are necessary to effectuate the purposes of the NASDAQ Exchange rules. However, because the NASDAQ Exchange's arbitration and mediation program is operated by FINRA in accordance with FINRA rules, there is no meaningful role for a committee to advise the Board with respect to the operation of the program or the development of rules, nor have the NASDAQ Exchange rules provided the committee with any specific administrative power or authority. Rather, any information needed by the Board or NASDAQ Exchange staff to evaluate the effectiveness of FINRA's administration of the program is obtained through the NASDAQ Exchange's oversight of FINRA's performance through its authority under its regulatory services agreement to obtain reports from FINRA and to conduct audits. Accordingly, the NASDAQ Exchange has concluded that the committee may reasonably be eliminated. However, the Agreement will continue to provide for the establishment of such a committee in the event that the NASDAQ Exchange later opts to establish an arbitration or mediation program that is not operated by FINRA in accordance with FINRA rules. In such an event, the committee would play a role in advising the Board in the manner currently described in the Agreement.

The NASDAQ Exchange is also proposing to make minor changes to its rules governing the selection of Member Representative Directors. Under the Agreement, twenty percent of the NASDAQ Exchange's directors are selected through a process in which the NASDAQ Exchange member nominating committee nominates a slate of candidates but members also have the opportunity to nominate alternative candidates. If no alternative candidates are duly nominated by members, the candidates recommended by the member nominating committee are elected. Alternatively, if alternative candidates are nominated, there is a "Contested Election" in which members cast ballots in order to determine who fills the vacancies. In connection with its acquisition by NASDAQ OMX, BX recently adopted a similar process.[17] When Commission staff reviewed the applicable BX filing, staff required that BX adopt a provision providing that a member, either alone or together with its affiliates, may not cast votes representing more than twenty percent of the votes cast for a candidate, and any votes cast by the member, either alone or together with its affiliates, in excess of the twenty percent limit shall be disregarded. The NASDAQ Exchange proposes to amend Article II, Section 2 of the By-Laws to adopt a similar limitation. Similarly, Commission staff suggested that BX adopt clarifications to the definition of "Voting Date," which is analogous to the definition of "Election Date" in the Agreement. The NASDAQ Exchange is now amending Article I of the By-Laws to provide that an Election Date is selected by the Board on an annual basis, but that members only cast votes on such date if there is a Contested Election.

Finally, the NASDAQ Exchange is updating the Agreement to reflect the name change of The Nasdaq Stock Market, Inc. to The NASDAQ OMX Group, Inc.;[18] the name change of National Association of Securities Dealers, Inc. to FINRA;[19] to correct typographical errors in the definition of "Industry member" in Article I of the By-Laws and in Section 6 of the Agreement; and to redesignate the Agreement as the "Second Amended Limited Liability Company Agreement of The NASDAQ Stock Market LLC."[20]

2. Statutory Basis

The NASDAQ Exchange believes that its proposal is consistent with Section 6(b) of the Act[21] in general, and furthers the objectives of: (1) Section 6(b)(1) of the Act,[22] which requires a national securities exchange to be so organized and have the capacity to carry out purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; and (2) Section 6(b)(5) of the Act,[23] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will allow the elimination of two Board committees whose roles are limited by the NASDAQ Exchange's status as a wholly owned subsidiary of NASDAQ OMX, thereby allowing directors to focus greater attention on matters falling directly within the purview of the Board, including regulatory quality, market structure, new product initiatives, and review of proposed rule changes. The filing also allows the elimination of the NASDAQ Exchange arbitration and mediation committee, whose role is considerably limited by the NASDAQ Exchange's use of FINRA to manage its arbitration and mediation program. The filing also adopts improvements to the process for selection of Member Representative Directors, to limit the influence of a group of affiliated members over an election. Finally, the filing adopts clarifications, updates terminology, and corrects typographical errors in several provisions of the Agreement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASDAQ Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[17] Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02, –23, –25, SR–BSECC–2001–01).

[18] *See* Preamble, Signature Page, and Schedule A and B of the Agreement; Article I of the By-Laws.

[19] *See* Article I of the By-Laws.

[20] *See* Preamble and Signature Page of the Agreement; Preamble of the By-Laws.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78(b)(1).

[23] 15 U.S.C. 78f(b)(5).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2009–042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–042. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–042 and should be submitted on or before June 10, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11740 Filed 5–19–09; 8:45 am]

BILLING CODE 8010–01–P

[24] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections and a new collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Reports Clearance Officer to the addresses or fax numbers shown below.

(OMB),
Office of Management and Budget,
Attn: Desk Officer for SSA,
Fax: 202–395–6974,
E-mail address:
OIRA_Submission@omb.eop.gov.
(SSA),
Social Security Administration,
DCBFM,
Attn: Reports Clearance Officer.
1332 Annex Building,
6401 Security Blvd.,
Baltimore, MD 21235,
Fax: 410–965–6400,
E-mail address: *OPLM.RCO@ssa.gov.*

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than July 20, 2009. Individuals can obtain copies of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–3758 or by writing to the e-mail address we list above.

1. Questionnaire about Special Veterans Benefits—0960–NEW. SSA will use the information collected on the SSA–2010 to determine continuing eligibility for Special Veterans Benefits and to determine how much (if any) of a foreign pension may be used to reduce or increase the amount of Social Security Special Veterans retirement benefits. The respondents will complete the SSA–2010 biannually so SSA can determine if benefits should be increased, decreased, suspended, or terminated, based on the data collected. The respondents are beneficiaries receiving Social Security Special Veterans retirement benefits.

Type of Request: Request for a new information collection.

Number of Respondents: 2,500.

Frequency of Response: 1.

Average Burden per Response: 20 minutes.

Estimated Annual Burden: 833 hours.

2. Request for Reconsideration—Disability Cessation—20 CFR 404.909, 416.1409—0960–0349. Claimants or their representatives use Form SSA–789–U4 to request that SSA reconsider a determination and to indicate whether they wish to appear at a disability hearing. The claimants can also use this form to submit any additional information/evidence for use in the reconsidered determination and to indicate if they will need an interpreter for the hearing. SSA will use the information on the completed form either to arrange for a hearing or to prepare a decision based on the evidence of record. The respondents are applicants or claimants for Social Security benefits or Supplemental Security Income (SSI) payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden per Response: 13 minutes.

Estimated Annual Burden: 6,500 hours.

3. Function Report Adult—Third Party—20 CFR 404.1512 & 416.912—0960–0635. Disability Determination Services (DDS) use the information from the SSA–3380–BK to determine eligibility for SSI and Social Security Disability Insurance (SSDI) claims. The information is an evidentiary source DDSs evaluators use to determine eligibility for SSI and SSDI claims. The respondents are third parties familiar with the functional limitations (or lack thereof) of claimants who apply for Social Security benefits and SSI disability payments.

Type of Request: Revision of an OMB-approved information collection.

Respondent types	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Individuals	500,000	1	61	508,333
Private Sector	500,000	1	61	508,333
Total	1,000,000			1,016,666

4. Disability Hearing Officer's Decision—Title XVI Disabled Child Continuing Disability Review—20 CFR 404.913–404.914, 404.917, 416.994a, 416.1413–416.1414, 416.1417—0960–0657. Disability Hearing Officers (DHO) use the SSA–1209–BK to prepare and issue the disability determination for Title XVI disabled child continuing disability reviews. The form provides the framework for addressing the crucial elements of the case in a sequential and logical fashion. The completed form is the official document of the decision. A copy becomes the personalized portion of the notice to the claimant/representative. The respondents are DHOs in State DDSs.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 267.

Frequency of Response: 79.

Total Number of Responses: 21,093.

Average Burden per Response: 85 minutes.

Estimated Annual Burden: 29,882 hours.

5. Medical Consultant's Review of Mental Residual Functional Capacity Assessment—20 CFR 404.1520a, 404.1640, 404.1643, 404.1645, 416.920a—0960–0678. SSA uses Form SSA–392–SUP to facilitate the medical/psychological consultant's review of the Mental Residual Functional Capacity Form, SSA–4734–SUP. The SSA–392–SUP records the reviewing medical/psychological consultant's assessment of the SSA–4734–SUP. It also documents whether the reviewer agrees or disagrees with how the adjudicator completed the SSA–4734–SUP. Medical/psychological consultants prepare the SSA–392–SUP for each SSA–4734–SUP an adjudicator completes. The respondents are medical/psychological consultants who conduct a quality review of adjudicating components' completion of SSA's medical assessment forms.

Type of Request: Revision of an OMB-approved information collection.

Number of Responses: 45,000.

Frequency of Response: 1.

Average Burden per Response: 12 minutes.

Estimated Annual Burden: 9,000 hours.

6. Representative Payment Policies Regulation—20 CFR 404.2011, 404.2025, 416.611, 416.625—0960–0679. When SSA determines it is not in a beneficiary's best interest to receive payments directly, as it may cause substantial harm, the beneficiary may dispute SSA's decision. If the beneficiary disputes the decision, he or she provides SSA with information the agency will use to re-evaluate the decision. In addition, after SSA selects a representative payee, the payee must provide SSA information on his or her continuing relationship and responsibility for the beneficiary he or she represents and explain how he or she used the beneficiary's payments. Respondents are beneficiaries and representative payees.

Type of Request: Extension of an OMB-approved information collection.

CFR section	Number of respondents	Frequency of response	Average burden per response	Estimated annual burden
404.2011(a)(1), 416.611(a)(1)	250	1	15	63
404.2025, 416.625	3,000	1	6	300
Totals	3,250			363

7. Function Report Adult—20 CFR 404.1512 & 416.912—0960–0681. State DDSs use Form SSA–3373–BK to collect information about a disability applicant's or recipient's impairment-related limitations and ability to function. The information is an evidentiary source DDSs evaluators use to determine eligibility for SSI and SSDI claims. The respondents are Title II and Title XVI applicants (or current recipients undergoing redeterminations) for disability benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 4,005,367.

Frequency of Response: 1.

Average Burden per Response: 61 minutes.

Estimated Annual Burden: 4,072,123 hours.

II. SSA has submitted the information collections we list below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than June 19, 2009. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–3758 or by writing to the above e-mail address.

1. Surveys in Accordance with E.O. 12862 for the Social Security Administration—0960–0526. Under the auspices of E.O.12862, Setting Customer Service Standards, SSA conducts multiple customer satisfaction surveys each year. These voluntary customer satisfaction assessments include paper, Internet, and telephone surveys; mailed questionnaires, focus groups, and customer comment cards. The purpose of these questionnaires is to assess customer satisfaction with the timeliness, appropriateness, access, and overall quality of existing SSA services and proposed modifications/new versions of services. The respondents are recipients of SSA services (including most members of the public), professionals, and individuals who work on behalf of SSA beneficiaries.

Type of Request: Revision of an OMB-approved information collection.

	Number of respondents (burden for all activities within that year)	Frequency of response	Range of response times (minutes)	Burden (burden for all activities within that year; reported in hours)
Year 1 (June 2009–May 2010)	1,400,001	1	5–90	123,000
Year 2 (June 2010–May 2011)	1,400,351	1	5–90	123,058
Year 3 (June 2011–June 2012)	1,400,001	1	5–90	123,000
Totals	4,200,353			369,058

2. Youth Transition Process Demonstration Evaluation Data Collection—0960–0687.

Background

The purpose of the Youth Transition Demonstration (YTD) project is to help young people with disabilities make the transition from school to work. While participating in the project, youth can continue to work and/or continue their education because SSA waives certain disability program rules and offers services to youth who are receiving disability benefits or have a high probability of receiving them. We are currently implementing YTD projects in eight sites across the country. The evaluation will produce empirical evidence on the effects of the waivers and project services including educational attainment, employment, earnings, and receipt of benefits by youth with disabilities, but also on the Social Security Trust Fund and Federal income tax revenues. This project is authorized by Sections 1110 and 234 of the Social Security Act.

Project Description

Given the importance of estimating YTD effects as accurately as possible, we will evaluate the project using rigorous analytic methods based on randomly assigning youth to a treatment or control group. We will conduct several data collections. These include (1) baseline interviews with youth and their parents or guardians prior to random assignment; (2) follow-up interviews at 12 and 36 months after random assignment; (3) interviews and/or roundtable discussions with local program administrators, program supervisors, and service delivery staff; and (4) focus groups of youths, their parents, and service providers. The respondents are youths with disabilities enrolled in the project; their parents or guardians; program staff; and service providers.

Type of Request: Revision of an existing OMB Clearance.

Data collection year	Collection	Number of respondents	Responses per respondent	Average burden per response (hours)	Total response burden (hours)
2009	Baseline	1,895	1	0.55	1,042
	Informed Consent	1,895	1	0.083	157
	12 Month Follow-up	1,518	1	0.83	1,260
	In-depth Interviews	120	1	0.42	50
	Focus Group	150	1	1.5	225
	Program Staff/Service Provider	80	1	1	80
	36 Month Follow-up	364	1	0.83	302
Total 2009		6,022			3,116

3. The Mental Health Treatment Study (MHTS)—0960–0726.

Background

Because of advances in medical treatment, assistive devices, changes in the way we view those with disabilities, and legislation designed to assure access to employment, SSA is taking on an increasingly active role in assisting Social Security disability beneficiaries who want to return to work. As a result, SSA developed the MHTS under Section 234 of the Social Security Act (42 U.S.C. 434), which gives the Commissioner of Social Security the authority to carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of interventions that facilitate a beneficiary's return to work. Part of the agency's role involves finding ways to promote work and increase independence among disability beneficiaries. SSA received additional support for this study in February 2001, through President Bush's New Freedom Initiative-a comprehensive program whose primary goal is to promote the full participation of individuals with disabilities in all areas of society. The aim of the initiative is to help Americans with disabilities by increasing their access to effective technologies, expanding educational opportunities, increasing the ability of Americans with disabilities to integrate into the workforce, and promoting increased access into daily community life. This initiative provided SSA with the support that will enable beneficiaries to maximize their self-sufficiency and potentially enter or reenter the workforce.

MHTS Collection

The MHTS implemented a randomized trial study that will evaluate the effect of the intervention on employment and functional outcomes for SSDI beneficiaries with a primary mental impairment of schizophrenia or affective disorder. SSA is currently implementing the MHTS in 22 demonstration sites across the United States, with one site having two locations. The study participants are SSDI beneficiaries with varying clinical and demographic characteristics, employment histories, and, sometimes, additional medical impairments. The study design has two arms: treatment (special services), and control (regular services) groups. SSA randomly assigned study participants to the treatment or control group. Each treatment or control recipient will participate for a total of 24 months following enrollment. The treatment intervention activities include the following: diagnostic psychiatric assessment, comprehensive medical

assessment, systematic medication management, supporting employment, individualized clinical treatment, supplemental health insurance, coordination and payment of recipients' claims, as well as quality assurance mechanisms and adherence to treatment guidelines, with subsequent training to improve deficiencies as identified.

The comprehensive assessment of the MHTS outcomes will identify which, if any, of the interventions resulted in successful employment and functioning outcomes, and identify the characteristics of the interventions that contributed to the success. This information enables SSA to develop better ways to improve services to current and future recipients. SSA also uses this information to guide any potential changes to program rules to allow for better coordination among other Federal and state programs.

Type of Request: Revision of an OMB-approved information collection.

Questionnaire	Number of respondents [1]	Frequency of response	Number of responses	Burden per response (minutes)	Total annual burden (hours)
Screener Estimated Burden					
Screener Survey	2,265	1	2,265	4	151
Estimated Burden for Treatment Group					
Baseline	1,121	1	1,121	47	878
Quarterly	1,121	7	7,847	18	2,354
Follow-up	1,121	1	1,121	30	561
Total			10,089		3,793
Estimated Burden for Control Group					
Baseline	1,117	1	1,117	47	875
Quarterly	1,117	7	7,819	7	912
Follow-up	1,117	1	1,117	30	559
Total			10,053		2,346
Total Estimated Burden for All Study Activities					
Screener Survey	2,265	1	2,265		151
Treatment Group	1,121	9	10,089		3,793
Control Group	1,117	9	10,053		2,346
Total			22,407		6,290

[1] The number of respondents may reduce over time due to study withdrawals.

Dated: May 14, 2009.

John Biles,

Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.

[FR Doc. E9–11715 Filed 5–19–09; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2009–0021]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/States, SDX–BENDEX–SVES Files)—Match 6000 and 6003)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program which is scheduled to expire on December 31, 2009.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with the States.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 965–0201 or writing to the Deputy Commissioner for Budget, Finance and Management, 800 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Deputy Commissioner for Budget, Finance and Management as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data

Integrity Boards (DIB) approval of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: May 13, 2009.

Mary Glenn-Croft,

Deputy Commissioner for Budget, Finance and Management.

Notice of Computer Matching Program, SSA With the States

A. Participating Agencies

SSA and the States.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the conditions, safeguards, and procedures under which the States may obtain Social Security number (SSN) verification and certain information from us relating to the eligibility for, and payment of, Social Security, Supplemental Security Income, and Special Veterans Benefits, including certain tax return, quarters of coverage, prisoner, and death information. This information is available from our various Systems of Records.

Individual agreements with the States will describe the information to be disclosed and the conditions under which we agree to disclose such information.

C. Authority for Conducting the Matching Program

Our authority to disclose data and the State Agency's authority to use data protected under our Systems of Records for specified purposes is Sections 1137, 453, and 1106(b) of the Social Security Act (42 U.S.C. 1306(b), 1320b–7, and 653). Under this legal authority, the State Agency has independent authority to collect and maintain data from our Systems of Records.

The Privacy Act, Section 1106(a) of the Social Security Act (42 U.S.C. 1306), the regulations promulgated pursuant to that section (20 CFR Part 401), and the Federal Information Security Management Act of 2002 (FISMA) (44 U.S.C. 3541, et seq.), provide legal requirements for the disclosure and use of our data protected under applicable Systems of Records.

D. Categories of Records and Individuals Covered by the Matching Program

States will provide us with names and other identifying information of appropriate benefit applicants or recipients. Specific information from participating States will be matched, as provided in the agreement for the specific programs, with the following systems of records maintained by us.

1. SDX—Supplemental Security Record/Special Veteran's Benefits (SSR/SVB) System, SSA/ODSSIS (60–0103);

2. BENDEX—Master Beneficiary Record (MBR), SSA/ORSIS (60–0090) and the Earnings Recording and Self-Employment Income System, SSA/OEEAS (60–0059);

3. SVES—SSR/SVB, SSA/ODSSIS (60–0103); MBR, SSA/ORSIS (60–0090); the Earnings Recording and Self-Employment Income System, SSA/OEEAS (60–0059); the Master Files of SSN Holders and SSN Applications, SSA/OEEAS (60–0058); and the Prisoner Update Processing System (PUPS), SSA/OEEAS (60–0269);

4. Quarters of Coverage Query—the Earnings Recording and Self-Employment Income System, SSA/OEEAS (60–0059) and the Master Files of SSN Holders and SSN Applications, SSA/OEEAS (60–0058);

5. Prisoner Query—PUPS, SSA/OEEAS (60–0269).

E. Inclusive Dates of the Matching Program

The matching program will become effective no sooner than 40 days after notice of the matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

Individual State matching agreements under the matching program will become effective upon the effective date of this matching program or the signing of the agreements by the parties to the individual agreements, whichever is later. The duration of individual State matching agreements will be subject to the timeframes and limitations contained in this matching program.

[FR Doc. E9–11714 Filed 5–19–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6621]

Culturally Significant Objects Imported for Exhibition Determinations: "The Golden Age of Dutch Seascapes"

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 in the exhibition: "The Golden Age of Dutch Seascapes," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Peabody Essex Museum, Salem, MA, from on or about June 13, 2009, until on or about September 7, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 14, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–11769 Filed 5–19–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6622]

Culturally Significant Objects Imported for Exhibition Determinations: "The Art of Power: Royal Armor and Portraits From Imperial Spain"

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 in the exhibition: "The Art of Power: Royal Armor and Portraits from Imperial Spain," 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 National Gallery of Art, Washington, DC, from on or about June 28, 2009, until on or about November 1, 2009 and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* (202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 13, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–11766 Filed 5–19–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 9, 2009

The following Agreements were filed with the Department of Transportation under Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2009–0104.

Date Filed: May 4, 2009.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP Mail Vote 600, Resolution 024a, Establishing Passenger Fares and Related Charges (Memo 1525), Intended effective date: 1 June 2009.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–11717 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2009–0053]

Agency Information Collection Activities: Request for Comments for New Information Collection; Truck Congestion Information Assessment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We published a **Federal Register** Notice with a 60-day public comment period on this information collection on February 26, 2009. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by June 19, 2009.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA–2009–0053 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: *http://www.regulations.gov.*

Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Jones, 202–366–5053, Federal Highway Administration, Department of Transportation, Office of Highway Policy Information, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Truck Congestion Information Assessment.

Background: The Federal Highway Administration's (FHWA) ability to assess congestion is critical for our national leadership role. Highway traffic congestion causes an estimated 3.5 billion hours of delays per year in 75 of the largest metropolitan areas. The volume of freight, the mix of goods, and the way they are moved has changed dramatically and highway system improvements have not kept pace with the growth and demand for freight transportation, resulting in congestion on our Nation's highways and straining other freight modes as well.

The purpose of this research is to collect highway congestion information to assess highway system performance and validate findings of the report on bottlenecks produced from Speed, Highway Performance Monitoring System (HPMS) and Freight Analysis Framework (FAF) data.

The selected service provider will establish, promote, collect and analyze data from a developed system to provide easy access 24 hours a day, 7 days a week allowing the roadway user a convenient way to report areas of heavy congestion and bottleneck conditions at any point in time encountered nationally on the highway system. Roadside users can report information by using an automated phone system or the Internet. The information from the user will be date, time, state, and highway route number, direction of travel, mile marker and weather condition. The reporting from the roadside user is voluntary.

Respondents: Approximately 1200 Interstate roadway users daily, with the majority being truck drivers.

Frequency: Every day for 3 years.

Estimated Average Burden per Response: Each response will be approximately 1 minute.

Estimated Total Annual Burden Hours: Approximately 4,380 hours in the first year, 7,665 the second year, and 9,855 the third year. Totaling 21,900 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and

(4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: May 14, 2009.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E9–11727 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[U.S. DOT Docket No. FHWA–2009–0054]

Agency Information Collection Activities: Request for Comments for a New Information Collection, Titled: Reports, Forms and Recordkeeping Requirements

AGENCY: Federal Highway Administration, DOT.

ACTION: Request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We published a **Federal Register** Notice with a 60-day public comment period on this information collection on February 26, 2009. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by June 19, 2009.

ADDRESSES: You may submit comments identified by Docket ID Number FHWA–2009–0054 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas Granda, PhD, Team Leader, Human Centered Systems, Office of Safety Research and Development, HRDS–07, Turner-Fairbank Highway Research Center, Federal Highway Administration, 6300 Georgetown Pike, McLean, VA 22101, tel. 202–493–3365 between 8 a.m. and 5:30 p.m., Monday through Friday, except Federal holidays, or Paul J. Tremont, PhD (same address) at 202–493–3338.

SUPPLEMENTARY INFORMATION:

Title: Reports, Forms and Recordkeeping Requirements.

The FHWA invites public comments on our intention to request the Office of Management and Budget (OMB) to approve a total of 30 field and laboratory research studies that will include collections of information from the general public. These studies will be conducted over a period not to exceed 3 years with an annual burden of approximately 1000 hours and a grand total burden of approximately 3000 hours. These collections are integral to the performance of various analytical, field, and laboratory human factors research projects that FHWA intends to conduct in support of its mission of improving safety and increasing mobility on our Nation's highways through National Leadership, Innovation, and Program Delivery.

The field and laboratory research FHWA conducts usually involves observations of driver behavior. In the field, these studies are often completely non-intrusive. However, some field research studies require that interview data be collected from individuals in the field. For example, if drivers are participating in a research study on a novel intersection, interview data might be acquired from a subset of drivers to determine what they observed while driving or how they made their decisions. In these cases the interview will be brief (10–15 minutes). The same procedure may be used with laboratory studies.

The vast majority of laboratory and field studies that FHWA conducts acquire data on human performance in controlled experimental settings. For example, FHWA may be interested in drivers' reactions to the visibility of signs of differing reflectivity.

Research Areas and Associated Collections

The FHWA Office of Safety Research and Development intends to conduct analytical, field, and laboratory research projects focused on highway safety that will require acquisition of data from small samples of the general public. This research is directed at human factors issues within the following broad program areas: (A) infrastructure design including innovative intersection configurations and signage and roadway markings; (B) highway operations; (C) intelligent transportation systems, including traffic management centers; (D) driver-vehicle and infrastructure-vehicle interfaces; (E) older and younger driver programs; and (F) pedestrian and bicyclist concerns. Given that the focus of the research in the above areas is on human factors issues, it will require that data be collected on a few key demographic variables such as age, gender, and driving experience. The data collected will not be linked to personal identifying information. Before any study is conducted under this approval request, a thorough review will be undertaken to ensure such data is not currently available, and that the proposed study does not duplicate other work.

Situations that Require Collections of Information—Examples from Each Category

Category A Infrastructure Design. An example from Category A would be a study designed to test an innovative intersection design such as a Diverging Diamond Interchange (DDI). This is a highly efficient intersection design, but if not properly implemented, it could potentially cause confusion. In a DDI, drivers cross over to the left side of the highway, with the result that opposing traffic is placed on their right side. When testing a DDI, FHWA will need to know whether drivers perceived any ambiguity in the signage, if they had any orientation problems seeing opposing traffic on their right, and if they have any suggestions for improving the overall ease with which such an intersection could be driven. Other innovative intersection designs would also benefit from similar information acquired from drivers. Roadway departure is another problem area that could benefit from individual driver data. For example, it would be helpful to know how drivers perceive their interaction with the infrastructure led to or prevented roadway design.

Category B Highway Operations. One of the many challenges confronting highway engineers is designing a signal system that maximizes throughput and minimizes delay. Excess delay can have the unintended consequence of encouraging drivers to run red lights. This problem can be examined by

observing drivers' behavior under differing signaling conditions. However, direct verbal reports of drivers are often needed to determine why drivers are making their decisions. For example FHWA may learn from questioning drivers that they would be less likely to speed up when approaching a signal if they knew the signal system would recognize this behavior and respond accordingly. One way this might happen is by advising the motorist earlier of the impending signal change. Driver interviews performed under this study area can provide information on many key issues including behavioral adaptation, decision making, and reaction times to signal phases and changes. This kind of information could lead to improvements to signal controllers that increase mobility and improve safety. Speed management is another area that could benefit from interview data. For example, lower speed limits in construction zones are difficult to enforce, and interview data with drivers can provide information on better methods of restraining driver speeds in these hazardous situations.

Categories C and D (Intelligent Transportation Systems (ITS), including Driver-Vehicle and Driver-Infrastructure Interfaces and Traffic Management Centers). One ITS safety countermeasure being studied by FHWA is a system to protect the potential victim of a red light runner at a signalized intersection. ITS affords the capability, via wireless communication and advanced sensing technologies, to warn a driver if another driver is about to run a red light and a collision is imminent. This warning can be given in the car or from special signals placed in the infrastructure. FHWA is interested in determining how drivers respond to these new warnings that tell them to slow down or stop. Information acquired in interviews with drivers is needed to clarify their understanding of the purpose of various special signals, as well as aspects of their behavior not readily detectable, such as whether they checked their rear view mirror before braking, and whether they would have proceeded through the intersection had the signal not come on. Such information will assist FHWA in designing intelligent infrastructure systems to benefit highway safety and operations.

Category E (Older and Younger Drivers). The opinions of these two high risk groups are needed for almost all FHWA safety related studies. For example, data on the ease of use expressed by older drivers with respect to an innovative design informs the engineer which aspects of the new design present potential safety problems and may be in need of modification. In contrast, young drivers present a separate set of challenges for highway engineers. Their ability to negotiate a new design may be less of a concern, however; it is necessary to understand how these drivers regard the conflict points presented by new designs. This is of particular importance as some younger drivers may be willing to take extra risks in situations where ambiguity exists. Gathering verbal feedback from younger drivers will help engineers determine areas of potential ambiguity in design and modify these areas as necessary to ensure they are not introducing safety hazards.

Category F (Pedestrians and Bicyclists). Research related to pedestrians and bicyclists arises from the need to determine the most effective ways to accommodate these infrastructure users. While overt pedestrian and bicyclist behavior can be directly observed fairly easily, it is sometimes necessary to collect user opinions and reactions. For example, when a new intersection design is being introduced (e.g., a triple lane roundabout) it is especially advantageous to acquire data that provides insights into the needs and challenges that pedestrians and bicyclists face as they negotiate such an intersection. The needs of disabled pedestrians are also considered when researching new intersection treatments, and in these efforts FHWA works closely with the U.S. Access Board to ensure that novel intersection treatments accommodate their needs. Another example of research in this area is determining bicyclists' reactions to such treatments as separately marked bicycle lanes, signage, and overall roadway configuration.

Description of How Field and Laboratory Study Participants Will Be Acquired

Samples for research studies will be acquired by advertisement in local papers, by the distribution of flyers, or by postings to the internet. Typically, interested parties contact FHWA and they are asked a few questions to determine whether they qualify for the study. These questions involve such issues as age, driver familiarity with the location or scenario being used, number of miles driven per year, and gender.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From These Information Collections and Requests for Comments

Frequency: This approval request is for 30 studies over a 3-year period.

Individual Respondent Burden: FHWA estimates data acquisition from persons participating in research will average about 1 hour.

Estimated Total Annual Burden Hours: The maximum burden for any single field study with in-person interviewing will be (200*10)/60 or 33 hours. The maximum burden for any single research study (including a short interview of approximately 10 minutes) will be (200*60)/60 or 200 hours. The grand total of burden hours under this approval request is 3,000 hours (30 studies, at 1 hour per study). Since this burden will be over a three-year period, the total annual burden becomes 1,000 hours. Respondents will not incur any reporting or record keeping cost, or any record keeping burden as a result of these collections.

Public Comments Invited: You are asked to comment on any aspect of these information collections, including: (1) Whether the proposed collections are necessary for FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. FHWA will respond to your comments and summarize or include them when requesting clearance from OMB for these information data collections.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on May 14, 2009.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E9–11726 Filed 5–19–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2009–0039]

Agency Information Collection Activities: Notice of Request for Renewal of a Previously Approved Information Collection Titled: Federal Highway Administration (FHWA) State Reports for American Recovery and Reinvestment Act (ARRA)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for comments.

SUMMARY: The FHWA invites public comments about our intention to request

the Office of Management and Budget's (OMB) approval for information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by July 20, 2009.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA–2009–0039, by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Karen White, 202–366–9474, Office of Policy and Governmental Affairs, HPTS, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Federal Highway Administration (FHWA) State Reports for American Recovery and Reinvestment Act (ARRA), OMB Control # 2125–0623.

Background: The American Recovery and Reinvestment Act of 2009 (ARRA), provides the State Departments of Transportation and Federal Lands Agencies with $27.5 billion for highway infrastructure investment. With these funds also comes an increased level of data reporting with the stated goal of improving transparency and accountability at all levels of government. According to President Obama "*Every American will be able to hold Washington accountable for these decisions by going online to see how and where their tax dollars are being spent.*" The Federal Highway Administration (FHWA) in concert with the Office of the Secretary of Transportation (OST) and the other modes within the U.S. Department of Transportation (DOT) will be taking the appropriate steps to ensure that this accountability and transparency is in place for all infrastructure investments.

The reporting requirements of the ARRA are covered in Sections 1201, 1512 and 1609. Section 1201 (c)(1) stipulates that "notwithstanding any other provision of law each grant recipient shall submit to the covered agency (FHWA) from which they received funding periodic reports on the use of the funds appropriated in this Act for covered programs. Such reports shall be collected and compiled by the covered agency (FHWA) and transmitted to Congress. Covered agencies (FHWA) may develop such reports on behalf of grant recipients (States) to ensure the accuracy and consistency of such reports."

Section 1512 of the ARRA requires "any entity that receives recovery funds directly from the Federal Government (including recovery funds received through grant, loan, or contract) other than an individual," including States, to provide regular "Recipient Reports."

Section 1609 references the National Environmental Policy Act of January 1, 1970. The ARRA legislation requires that "The President shall report to the Senate Environment and Public Works Committee and the House National Resources Committee every 90 days... the status and progress of projects and activities funded by this Act with respect to compliance with National Environmental Policy act requirements and documentation."

As the recipients or grantees for the majority of the ARRA funds, States and Federal Land Management Agencies (FLMA) are by statute responsible for reporting to FHWA on the projects, use of ARRA funds, and jobs supported. States and FLMA that receive recovery fund apportionments directly from the Federal government are responsible for reporting to FHWA, which in turn is responsible for reporting periodically to Congress and quarterly to the *Recovery.gov* Web site. To achieve a high-quality, consistent basis for reporting, the FHWA has designed a system for obtaining and summarizing data for all purposes.

States and FLMA will be responsible for providing the data that are not currently available at the national level. Not every data element required to be reported by the ARRA needs to be specifically collected. To the maximum extent possible, FHWA will utilize existing data programs to meet the ARRA reporting requirements. For example, for the requirement to report aggregate expenditures of State funds, FHWA will use existing reports submitted by States and data collected in the Financial Management Information System (FMIS). While the reporting obligations in the ARRA are only applicable to the grant recipients, the States and FLMA may need to obtain certain information from their contractors, consultants, and other funding recipients in order to provide the FHWA with all of the required information. Additional information on the American Recovery and Reinvestment Act of 2009 is available at *http://www.fhwa.dot.gov/economicrecovery/index.htm*.

Respondents: In a reporting cycle, it is estimated that reports will be received from approximately 70 grant recipients. Respondents include: 50 State Departments of Transportation, the District of Columbia and Puerto Rico, the U.S. territories, the following Federal Land Management Agencies: National Park Service, U.S. Fish and Wildlife, National Forest Service and the Bureau of Indian Affairs, and several Native American Indian Governments who, by contract, manage their own transportation program. These reports will be submitted online and reviewed for accuracy by the FHWA Division Offices before being submitted to FHWA Headquarters for compilation and submission to OST for publication on Recovery.gov.

Form#: FHWA–1585.

Background: This form is used by the State DOTs and the FLMAs to provide information on the status of all their ARRA projects. The data that is collected on this form addresses the reporting requirements of Sections 1201 and 1512.

Frequency: Monthly until September 2012.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden Hours: 3,010 hours.

Form#: FHWA–1586.

Background: This form is used to collect information concerning how each State and FLMA plans to invest its allotment of ARRA funding. The list needs to be consistent with the list of projects provided in the State's Section 1511 certification, as it may be amended. States and FLMA should provide their best estimates of a complete list of projects to be funded with ARRA grants as of the plan's due date. If a State has not programmed all ARRA funds by that time, that information should be provided as well. These data will be used for meeting the reporting requirements of Sections 1201, 1512 and 1609.

Frequency: Initial list was due March 31, 2009. Additional updates are due

within 2 weeks of the State or FLMA issuing a new Section 1511 certification.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden Hours: 280 hours.

Form#: FHWA–1587.

Background: This form is used by States, FLMA and the FHWA to provide summary employment information for all active ARRA projects. These data will be used for meeting the reporting requirements of Sections 1201 and 1512.

Frequency: Monthly until September 2012.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden Hours: 3,010 hours.

Form#: FHWA–1588.

Background: This report form is for cases in which a State or FLMA needs to provide information on one or more individual ARRA projects that are part of a previously awarded grouped, bundled or area wide project. These data will be used for meeting the reporting requirements of Sections 1201, 1512 and 1609. States and FLMA shall provide the required information as individual projects. If a State or Federal Lands agency has no grouped or bundled projects, then no report is necessary. An example of an area wide grouped or bundled project would be a district wide bridge project that involves re-decking one bridge and replacing the guardrail on a second. Each of these individual bridge projects would be reported on this form after they have been awarded.

Frequency: Monthly as needed until September 2012

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden Hours: 560 hours.

Form#: FHWA–1589

Background: This form is to be used by the FHWA to gather employment information on every ARRA project that is initiated by the FHWA. Monthly employment information will be used to meet the requirements of Sections 1201 and 1512. In order for FHWA to fulfill the reporting obligations, FHWA must collect and analyze certain employment data for each FHWA ARRA funded contract. FHWA will require contractors and consultants to provide the required information for their own workforce as well as the workforce of all subcontractors that were active on their ARRA funded project(s) for the reporting month.

Frequency: Monthly until the contract is completed or September 2012 whichever occurs first.

Estimated Average Burden per Response: 0.5 hour.

Estimated Total Annual Burden Hours: 500 hours.

Form#: FHWA–1590.

Background: This form contains the detailed instructions for completing the previous ARRA data reporting forms.

Frequency: Issued once initially.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden Hours: 12 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: May 14, 2009.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E9–11724 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highways in Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, the Mercer Corridor Improvements Project, located in the city of Seattle, King County, Washington. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before November 16, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Brian Hasselbach, Area Engineer, Federal Highway Administration—Washington Division, 711 South Capitol Way, Suite 501, Olympia, WA 98501. Office hours are 8 a.m. to 4 p.m. (Pacific Time), (360) 753–9411, *Brian.Hasselbach@dot.gov.* You may also contact Angela Brady, Project Manager, Seattle Department of Transportation (SDOT), P.O. Box 34996, Seattle, WA 98124; telephone: 206–684–3115; and e-mail: *angela.brady@seattle.gov.* SDOT's regular office hours are between 8 a.m. and 5 p.m. (Pacific Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency actions by issuing a Finding of No Significant Impacts (FONSI) for the Mercer Corridor Improvements Project. The purpose of the project is to provide vehicular and pedestrian improvements to the Mercer Street corridor between Interstate 5 (I–5) on and off ramps and Dexter Avenue North. The project is located in the South Lake Union neighborhood of Seattle, King County, Washington.

The actions by FHWA on this project, and the laws under which such actions were taken, are described in the December 2008 Environmental Assessment (EA); the May 2009 FONSI; and in other documents in the FHWA's administrative record for the project. The EA, FONSI, and other documents in the FHWA administrative record are available by contacting FHWA or the Seattle Department of Transportation at the addresses provided previously.

The EA and FONSI can be viewed and downloaded from the project Web site at *http://www.seattle.gov/Transportation/ppmp_mercer.htm* or viewed at the Seattle Public Library, as well as local neighborhood service centers within the project area. This notice applies to all Federal agency decisions on the project, as of the issuance date of this notice, and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544]; Anadromous Fish Conservation Act [16 U.S.C. 757(a)-757(g)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act [7 U.S.C. 4201–4209]; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended [42 U.S.C. 61].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund [16 U.S.C. 4601–4604]; Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: May 14, 2009.

Brian Hasselbach,

Area Engineer, Olympia, Washington.

[FR Doc. E9–11713 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 670 (Sub-No. 1)]

Notice of Rail Energy Transportation Advisory Committee Meeting

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Rail Energy Transportation Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Rail Energy Transportation Advisory Committee (RETAC), pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C., App. 2).

DATES: The meeting will be held on Thursday, June 11, 2009, beginning at 9 a.m., E.D.T.

ADDRESSES: The meeting will be held in the Hearing Room on the first floor of the Surface Transportation Board's headquarters at Patriot's Plaza, 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman (202) 245–0202 or Anika S. Cooper (202) 245–0212. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.

SUPPLEMENTARY INFORMATION: RETAC arose from a proceeding instituted by the Board, in *Establishment of a Rail Energy Transportation Advisory Committee*, STB Ex Parte No. 670. RETAC was formed to provide advice and guidance to the Board, and to serve as a forum for discussion of emerging issues regarding the transportation by rail of energy resources, particularly, but not necessarily limited to, coal, ethanol, and other biofuels, The purpose of this meeting is to continue discussions regarding issues such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, carriers, and users of energy resources. Potential agenda items include reports from each of the four RETAC subcommittees (Best Practices, Capacity Planning, Communication, and Performance Measures), a report on the supplemental study recently released by Christensen Associates on rail capacity and infrastructure investment, a briefing on infrastructure implications of economic stimulus legislation, and may include a discussion of the federal legislative agenda on energy issues.

The meeting, which is open to the public, will be conducted pursuant to RETAC's charter and Board procedures. Further communications about this meeting may be announced through the Board's Web site at *http://www.stb.dot.gov*.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 721, 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: May 15, 2009.

By the Board, Anne K. Quinlan, Acting Secretary.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–11703 Filed 5–19–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

17th Meeting: RTCA Special Committee 206/EUROCAE WG 76 Plenary

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA special committee 206 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 206: Aeronautical Information Services Data Link.

DATES: The meeting will be held June 15–19, 2009 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Radisson Bay Point Resort, St. George's Bay, St. Julians, Malta. Phone: +356–2137–4894 Reservation number from the US: 1–800–395 7046 Web site: *http://www.radisson.com*; Contact person: Laurence Mutuel—Cell +33 6 30 93 73 82 / office +33 5 61 19 69 79.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 206 meeting/EUROCE WG 76. The agenda will include:

15 June

- Opening Plenary (Chairmen's remarks and introductions, Review and approve meeting agenda and minutes, Schedule for this week).
- Discussion.
- Action Item Review.
- Schedule for next meetings.
- Presentations.
- FLYSAFE Project—Laurence Mutual.

- Status of SAE G–10 Response to Symbology Standards Request—Bob Smith.
- Coordination between 76/206 and 78/214—Stephane Dubet.
- Others to be determined.
- SPR and INTEROP.

June 16

- AIS and MET Subgroup meetings.

June 17

- AIS and MET Subgroup meetings.

June 18

- AIS and MET Subgroup meetings.

June 19

- AIS and MET Subgroup meetings.
- Plenary Session (Other Business, Meeting Plans and Dates).
- Closing Plenary Session (Other Business, Meeting Plans and Dates, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 14, 2009.

Meredith Gibbs,

RTCA Advisory Committee.

[FR Doc. E9–11752 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2009–0092; Notice 1]

Pilkington North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Pilkington North America, Inc. (Pilkington) has determined that certain replacement rear windows that it manufactured for 2006–2009 Honda Civic two-door coupe passenger car do not fully comply with paragraphs S6.2 and S6.3 of 49 CFR 571.205, Federal Motor Vehicle Safety Standard (FMVSS) No. 205 *Glazing Materials*. Pilkington has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Pilkington has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Pilkington's, petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Pilkington estimated that 206 replacement rear windows (NAGS part number FB22692GTY) for 2006–2009 Honda Civic two-door coupe passenger cars are involved. Pilkington also states that all of the subject windows were manufactured on April 16, 2008.

Paragraphs S6.2 and S6.3 of FMVSS No. 205 require in pertinent part:

> S6.2 A prime glazing manufacturer certifies its glazing by adding to the marks required by section 7 of ANSI/SAE Z26.1–1996, in letters and numerals of the same size, the symbol "DOT" and a manufacturer's code mark that NHTSA assigns to the manufacturer. NHTSA will assign a code mark to a manufacturer after the manufacturer submits a written request to the Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, * * *
>
> S6.3 A manufacturer or distributor who cuts a section of glazing material to which this standard applies, for use in a motor vehicle or camper, must—
>
> (a) Mark that material in accordance with section 7 of ANSI/SAE Z26.1–1996; and
>
> (b) Certify that its product complies with this standard in accordance with 49 U.S.C. 30115.

Pilkington explained that the noncompliances with FMVSS No 205 exist due to its failure to label the replacement rear windows with the marks required by section 7 of ANSI/SAE Z26.1–1996, the symbol "DOT," and its NHTSA assigned manufacturer code mark.

Pilkington states that it believes that this noncompliance is inconsequential to motor vehicle safety for three reasons. First, the non-compliance relates solely to product monograms or markings; the subject rear windows meet all other safety and performance standards. Second, NHTSA has previously granted other exemptions for non-compliant product labeling. In the past, the agency has recognized that the failure to meet labeling requirements often is inconsequential as to motor vehicle safety. Third, the information contained in these product markings is not required in order for consumers to operate their vehicles safely.

Pilkington stated its belief that the noncompliance will not interfere with any future tracing of the windows because Pilkington is only one of three manufacturers of rear windows for this particular Honda Civic, the other two being PGW (Pittsburgh Glass Works, formerly known as PPG) and Auto Temp, Inc. Given that the windows produced by the two other manufacturers will be properly marked, Pilkington's unlabeled rear windows should easily be identified and traced, if necessary should any future defects or noncompliances be discovered.

Pilkington also stated its belief the lack of a monogram is inconsequential with respect to motor vehicle safety because consumers do not need the information in these monograms in order to operate their vehicles in a safe manner. Pilkington has tested a number of the parts in its possession and confirmed that they meet all other applicable FMVSS.

Pilkington also has informed NHTSA that it has corrected the problem that caused these errors so that they will not be repeated in future production. Pilkington also notes its intent to ensure that no additional non-compliant rear windows are in the marketplace. In this pursuit, Pilkington stated its intention to write to all wholesalers and distributors which purchased the subject replacement parts asking them to return to Pilkington any rear windows lacking compliant markings. However, Pilkington is seeking an exemption from quarterly reporting obligations and from any regulations that could potentially require efforts to contact end users or to label or mark rear windows now in use.

In summation, Pilkington states that it believes that the noncompliances are inconsequential to motor vehicle safety and that no corrective action is warranted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/*. Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

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.). DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

You may view documents submitted to a docket at the address and times given above. You may also view the documents on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets available at that Web site.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 19, 2009.

Authority: 49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8.

Issued on: May 14, 2009.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E9–11720 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket Number: FTA–2009–0009]

Notice of Availability of Proposed Guidance for New Starts/Small Starts Policies and Procedures and Request for Comments

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of, and requests comments on, the Federal Transit Administration's (FTA) Proposed Guidance on New Starts/Small Starts Policies and Procedures. The proposed guidance presents weights to be assigned for the six project justification criteria for New Starts and the three project justification criteria for Small Starts in the project evaluation process. FTA also proposes a process to ensure that the impacts of tunnels are considered in project evaluation.

DATES: Comments on the Proposed Guidance on New Starts/Small Starts Policies and Procedures must be received by June 19, 2009. Late filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments [identified by the Docket Number FTA–2009–0009] by any of the following methods:

Web site: http://regulations.gov. Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 202–493–2251.

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

Hand Delivery: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590, between 8:30 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: You must include the agency name (Federal Transit Administration) and the docket number (FTA–2009–0009). You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to the Federal government Web site located at *http://regulations.gov*. This means that if your comment includes any personal identifying information, such information will be made available to users of Web site.

FOR FURTHER INFORMATION CONTACT: Elizabeth Day, Office of Planning and Environment, telephone (202) 366–5159 and Christopher Van Wyk, Office of Chief Counsel, telephone (202) 366–1733. FTA is located at 1200 New Jersey Ave., SE., East Building, Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The proposed changes described in the policy guidance made available by this notice have been necessitated by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) Technical Corrections Act of 2008 (Pub. L. 110–244), which amends 49 U.S.C. 5309. The Act specifies that each of the project justification criteria for proposed New Starts and Small Starts projects should be given "comparable, but not necessarily equal, numerical weight * * * in calculating the overall project rating." The guidance proposes to set the weights at 20 percent each for the mobility, cost-effectiveness, land use, and economic development criteria, and 10 percent each for the operating efficiencies and environmental benefits criteria for New Starts projects. Each of the three project justification criteria for Small Starts (land use, economic development and cost-effectiveness) would be set at a third each.

The Act further states that the Secretary of Transportation shall analyze, evaluate, and consider the congestion relief, improved mobility, and other benefits of tunnels in transit projects that include a transit tunnel, as well as the associated ancillary and mitigation costs necessary to relieve congestion, improve mobility, and decrease air and noise pollution in those projects that do not include a tunnel but where a transit funnel was one of the alternatives analyzed. FTA proposes to require that project sponsors develop and consider such information during alternative analysis studies. FTA will ensure that such information has been addressed as part of the FTA review of project applications for entry into preliminary engineering.

FTA will respond to comments received on the proposed guidance in a second **Federal Register** notice to be published after the close of the comment period. That notice will describe any changes made to the weights for project justification criteria

and to the process for consideration of tunnel alternatives in response to comments received.

FTA requests comments on the policy guidance, which is available in DOT's electronic docket at *http://regulations.gov* and on FTA's Web site at *http://www.fta.dot.gov/planning/newstarts/planning_environment_5615.html.*

Issued this May 14, 2009, in Washington, DC.

Matthew J. Welbes,

Acting Deputy Administrator.

[FR Doc. E9–11718 Filed 5–19–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2009–0051]

Surface Transportation Project Delivery Pilot Program; Caltrans Audit Report

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comment.

SUMMARY: Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) established the Surface Transportation Project Delivery Pilot Program, codified at 23 U.S.C. 327. To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) mandates semiannual audits during each of the first 2 years of State participation. This notice announces and solicits comments on the third audit report for the California Department of Transportation (Caltrans).

DATES: Comments must be received on or before June 19, 2009.

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590. You may also submit comments electronically at *http://www.regulations.gov*, or fax comments to (202) 493–2251.

All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the 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://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Ruth Rentch, Office of Project Development and Environmental Review, (202)–366–2034, *Ruth.Rentch@dot.gov,* or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366–4928, *Michael.Harkins@dot.gov,* Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov.*

Background

Section 6005 of SAFETEA–LU (codified at 23 U.S.C. 327) established a pilot program to allow up to five States to assume the Secretary of Transportation's responsibilities for environmental review, consultation, or other actions under any Federal environmental law pertaining to the review or approval of highway projects. In order to be selected for the pilot program, a State must submit an application to the Secretary.

On June 29, 2007, Caltrans and FHWA entered into a Memorandum of Understanding (MOU) that established the assignments to and assumptions of responsibility to Caltrans. Under the MOU, Caltrans assumed the majority of FHWA's responsibilities under the National Environmental Policy Act, as well as the FHWA's responsibilities under other Federal environmental laws for most highway projects in California.

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) requires the Secretary to conduct semiannual audits during each of the first 2 years of State participation; and annual audits during each subsequent year of State participation. The results of each audit must be presented in the form of an audit report and be made available for public comment. This notice announces the availability of the third audit report for Caltrans and solicits public comment on same.

Authority: Section 6005 of Pub. L. 109–59; 23 U.S.C. 315 and 327; 49 CFR 1.48.

Issued on May 11, 2009.

Jeffrey F. Paniati,

Acting Deputy Federal Highway Administrator.

Surface Transportation Project Delivery Pilot Program; Federal Highway Administration Audit of California Department of Transportation; January 26–30, 2009

Introduction

Overall Audit Opinion

Based on the information reviewed, it is the Federal Highway Administration (FHWA) audit team's opinion that as of January 30, 2009, the California Department of Transportation (Caltrans) continued to work toward meeting all responsibilities assumed under the Surface Transportation Project Delivery Pilot Program (Pilot Program), as specified in the Memorandum of Understanding (MOU) [1] with FHWA and in the Caltrans Application for Assumption (Application).

With the completion of FHWA's third audit, the audit team has completed onsite audits of the majority of the Caltrans Districts. The audit team identified significant differences across the Districts in terms of the Pilot Program: resource availability and allocation, details of implementation, processes, and improvement and progress toward meeting all commitments. The highly decentralized nature of Caltrans operations is a major contributing factor to the variation observed. The decentralized nature of the organization necessitates clear, consistent and ongoing oversight by Caltrans Headquarters over District operations. A robust oversight program will help foster the exchange of information and the sharing of best practices and resources between Districts and will put the entire organization in a better position to more fully implement all assumed responsibilities and meeting all Pilot Program commitments.

Due to the multiyear timeframes associated with more complex and controversial projects, the full lifecycle of project development (beginning with environmental studies and concluding

[1] Caltrans MOU between FHWA and Caltrans available at: *http://environment.fhwa.dot.gov/strmlng/safe_cdot_pilot.asp.*

with the issuance of a record of decision) has yet to be fully realized by the Pilot Program. Caltrans continues to gain experience in understanding the resource requirements and processes necessary to administer its Pilot Program. It is the audit team's opinion that Caltrans needs to continue to refine its approaches and resources to meet all Pilot Program commitments, especially given the likelihood of increasing resource demands associated with exclusively managing more complex and controversial projects under the Pilot Program.

During the onsite audit, Caltrans staff and management continued to express ongoing interest in receiving feedback from the FHWA audit team related to program successes and areas in need of improvement. By addressing all findings in this report, Caltrans will continue to move its program toward full compliance with all assumed responsibilities and meeting all Pilot Program commitments.

Background

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub L. 109–59) section 6005(a) established the Pilot Program, codified at title 23, United States Code (U.S.C.), section 327. The Pilot Program allows the Secretary of Transportation (Secretary) to assign, and the State to assume, the Secretary's responsibilities under the National Environmental Policy Act (NEPA) for one or more highway projects. Upon assigning NEPA responsibilities, the Secretary may further assign to the State all or part of the Secretary's responsibilities for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review of a specific highway project. When a State assumes the Secretary's responsibilities under this program, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of the FHWA.

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) mandates that FHWA, on behalf of the Secretary, conduct semiannual audits during each of the first 2 years of State participation; and annual audits during each subsequent year of State participation. The focus of the FHWA audit process is four fold: (1) To assess a Pilot State's compliance with the required MOU and applicable Federal laws and policies, (2) to collect information needed to evaluate the success of the Pilot Program, (3) to evaluate Pilot State progress in meeting its performance measures, and (4) to collect information for use in the Secretary's annual report to Congress on the administration of the Pilot Program. Additionally, 23 U.S.C. 327(g) requires FHWA to present the results of each audit in the form of an audit report that is published in the **Federal Register**. This audit report must be made available for public comment, and FHWA must respond to public comments received no later than 60 days after the date on which the period for public comment closes.

Caltrans published its Application under the Pilot Program on March 14, 2007, and made it available for public comment for 30 days. After considering public comments, Caltrans submitted its Application to FHWA on May 21, 2007, and FHWA, after soliciting the views of Federal agencies, reviewed and approved the Application. Then on June 29, 2007, Caltrans and FHWA entered into an MOU that established the assignments to and assumptions of responsibility to Caltrans, which became effective July 1, 2007. Under the MOU, Caltrans assumed the majority of FHWA's responsibilities under NEPA, as well as FHWA's responsibilities under other Federal environmental laws for most highway projects in California. Caltrans' participation in the Pilot Program will be effective through August 2011 (23 U.S.C 327(i)(1)).

Scope of the Audit

This is the third FHWA audit of the Caltrans Pilot Program. The onsite portion of the audit was conducted in California from January 26 through January 30, 2009. As required in SAFETEA–LU, each FHWA audit must assess compliance with the roles and responsibilities assumed by the Pilot State in the MOU. The audit also includes recommendations to assist Caltrans in administering a successful Pilot Program.

The audit primarily focused on four key Pilot Program areas: (1) The Local Assistance (LA) program (Caltrans manages LA and Capital projects through independent organizational entities), (2) the role of the regional offices, (3) the effectiveness of and adherence to specified performance measures, and (4) the continued review of compliance with assumed responsibilities.

Prior to the onsite audit, FHWA conducted telephone interviews with Federal resource agency staff at the U.S. Army Corps of Engineers (USACE) and U.S. Fish and Wildlife Service (USFWS) regional offices in California. The onsite audit included visits to the Caltrans Headquarters Office (HQ) in Sacramento and to four Caltrans District/Regional Offices: District 3/North Region (Marysville), District 4 (Oakland), District 6/Central Region (Fresno), and District 10 (Stockton). The audit team also visited the USFWS and USACE offices in Sacramento.

This report documents findings within the scope of the audit as of the completion date of the onsite audit (*i.e.*, January 30, 2009).

Audit Process and Implementation

The intent of each FHWA audit completed under the Pilot Program is to ensure that each Pilot State complies with the commitments in its MOU with FHWA. The FHWA does not evaluate specific project-related decisions made by the State because these decisions are the sole responsibility of the Pilot State. However, the FHWA audit scope does include the review of the processes and procedures used by the Pilot State to reach project decisions in compliance with MOU section 3.2.

In addition, Caltrans committed in its Application (incorporated by reference in MOU section 1.1.2) to implement specific processes to strengthen its environmental procedures in order to assume the responsibilities assigned by FHWA under the Pilot Program. The FHWA audits review how Caltrans is meeting each commitment and assesses Pilot Program performance in the core areas specified in the *Scope of the Audit* section of this report.

The Caltrans' Pilot Program commitments address:

- Organization and Procedures Under the Pilot Program.
- Expanded Quality Control Procedures.
- Independent Environmental Decisionmaking.
- Determining the NEPA Class of Action.
- Consultation and Coordination with Resource Agencies.
- Issue Identification and Conflict Resolution Procedures.
- Record Keeping and Retention.
- Expanded Internal Monitoring and Process Reviews.
- Performance Measures to Assess the Pilot Program.
- Training to Implement the Pilot Program.
- Legal Sufficiency Review.

The FHWA team for the third audit included representatives from the following offices or agencies:

- FHWA Office of Project Development and Environmental Review.
- FHWA Office of Chief Counsel.
- FHWA Alaska Division Office.
- FHWA Resource Center Environmental Team.

- Volpe National Transportation Systems Center.
- U.S. Fish and Wildlife Service.
- U.S.D.A. Forest Service.

During the onsite audit, FHWA interviewed more than 80 Caltrans staff (from both the Capital and LA programs) in four District/Region offices and Caltrans HQ. The audit team interviewed a cross-section of staff including top senior managers, senior environmental planners, generalists, associate planners, and technical experts. The audit team also reviewed project files and records for over 35 projects managed under the Pilot Program.

The FHWA acknowledges that Caltrans identified specific issues during its third self-assessment performed under the Pilot Program (required by MOU section 8.2.6), and has established processes to address each issue. Some issues described in the Caltrans self-assessment may overlap with FHWA findings identified in this audit report.

In accordance with MOU section 11.4.1, FHWA provided Caltrans with a 30-day comment period to review the draft audit report. FHWA reviewed comments received from Caltrans and revised sections of the draft report, where appropriate, prior to publishing it in the **Federal Register** for public comment.

Status of Findings From the Last Audit

As part of the third audit, FHWA evaluated the corrective actions implemented by Caltrans in response to the audit findings in the second audit report.

The FHWA observed that Caltrans continues to demonstrate compliance with two areas identified as "Compliant" in either the first audit (January 2008) or second audit (July 2008); the establishment of Pilot Program policies and procedures and interagency agreements that involve other agencies as signatories.

While previous audits also found Caltrans to be "Compliant" with its commitment to put in place a consistent process to conduct formal legal sufficiency reviews, limited information was available to support any finding determination during the third audit because only one formal finding of legal sufficiency had been completed.

The FHWA also reviewed the current status of "Deficient" and "Needs Improvement" audit findings identified during the second FHWA audit in July 2008.

"Deficient" audit findings:

(1) Performance Measure: "Effectiveness of relationships with the general public"—Caltrans reported progress in its third self-assessment on the performance measure "effectiveness of relationships with agencies and the general public." Caltrans developed a method to evaluate its relationships with the general public by assigning a survey rating measuring the quality of public meeting materials. The survey was completed for 27 projects for which public meetings were held since the initiation of the Pilot Program. (See related findings N10 and D2 below.)

(2) Quality Assurance/Quality Control (QA/QC) Certification Process—Through project files reviews, the FHWA audit identified one instance where the environmental branch chief was not the final document reviewer (based on the signature dates included on the form). The audit team did verify that the External QC Certification form was correctly completed prior to proceeding with the Internal QC Certification form.

(3) Environmental Document Process—Class of Action Determinations—The audit team observed that the project files reviewed in this audit contained the required concurrence by the HQ Environmental Coordinator for Environmental Assessment (EA) and Environmental Impact Statement (EIS) class of action determinations. (See related finding D5 below.)

"Needs Improvement" audit findings:

(1) Commitment of Resources—The audit team is aware that Caltrans has systems in place designed to capture time spent by staff on various tasks and activities required under the Pilot Program. However, interviews with Caltrans District staff working on LA projects revealed that work hours associated with the Pilot Program are not consistently entered into the Expenditure Authorization system using the Pilot Program specific codes. Caltrans has not clearly identified how the information gathered by these time-recording systems helps Caltrans determine the sufficiency of staff resources needed under the Pilot Program.

Resource tracking is an ongoing area of concern for the audit team. As the complexity of projects increases with maturation of the Pilot Program, the variability in reporting and tracking resource expenditures may affect the timely delivery and quality of environmental documents. (See related finding N5 below.)

(2) District Training Approaches and Implementation—During the three FHWA audits, the audit team identified considerable variation in training needs assessments, approaches, and responsibilities across Districts and also within individual Districts. The observed variations in training approaches may result in potentially widely varying levels of competency among staff. In order to achieve a sufficient level of competency among all staff, Caltrans HQ environmental staff need to actively monitor each District's training methods and ensure that consistency is achieved in terms of training assessment and delivery. (See related findings N7 and N12 below.)

(3) Pilot Program Performance Measures—These two performance measures have been addressed by Caltrans in the following manner:

a) Performance Measure: "Timely Completion of NEPA Process"—Caltrans has expanded this performance measure to include tracking the time from initiating environmental studies to the approval date of the draft and final environmental documents. The performance measure also now differentiates the timeframes by EAs and EISs. Previously, project timeframes were reported in aggregate instead of by environmental document type.

b) Performance Measure: "Maintain documented compliance with requirements of all Federal laws and regulations being assumed."—Caltrans reported in its third self-assessment that 100 percent of final environmental documents contained documentation of: section 7 of the Endangered Species Act, as amended (section 7) biological opinions and letters of concurrence, State Historic Preservation Officer concurrences under section 106 of the National Historic Preservation Act (section 106), and section 4(f) of the U.S. Department of Transportation Act of 1966 (section 4(f)) findings and conclusions. (See related finding N8 below.)

(4) Quarterly Reports—The quarterly reports Caltrans provides to FHWA under section 8.2.7 of the MOU continue to include inaccurate/incomplete information on environmental document approvals and decisions under the Pilot Program. Each of the first five quarterly reports received by FHWA have been revised, some several times, to address data reporting errors including: omitted categorical exclusions, EAs, findings of no significant impacts, re-evaluations, section 4(f) analyses, and section 7 and section 106 consultations, as well as numerous consultations and categorical exclusions (CEs) reported in error. The third self-assessment reported that a quarterly report protocol was developed and implemented prior to preparing the fifth quarterly report. However, the audit team determined that the fifth

report also included errors and omissions (omitted EA, re-evaluation and notice of intent, and section 7 consultations reported in error) and a revised report was submitted. (See related finding D1 below.)

(5) Varying Understanding of Section 6004/Section 6005 CEs—The audit team did not observe any misunderstanding of section 6004 and section 6005 SAFETEA–LU CE determinations in the District Offices visited in the third audit.

(6) Creating and Maintaining Project Protocols and Project Files—The Caltrans' third self-assessment reported that corrective action discussions were completed with staff managing projects with incomplete project files and/or those not conforming to the Uniform Environmental File System (UFS) protocol. Additionally, it was reported that discussions of the retention of electronic communications were completed with District staff. (See related findings C1 and N4 below.)

(7) QA/QC Process Implementation—Caltrans' third self-assessment reported on the number of ways that Caltrans actively monitors conformance with the Pilot Program QC procedures. Methods include ongoing communication with senior environmental planners regarding the QC processes, discussions at staff meetings, review by senior environmental planners of environmental documents and HQ Environmental Coordinators actively monitoring conformance with the QC procedures. (See related finding C4 below.)

Key Elements of Implementation

One purpose of each FHWA audit of a State Pilot Program is to identify and collect information on Pilot Program implementation practices for consideration by potential future Pilot Program participants. Key programmatic elements used by Caltrans to administer its Pilot Program include documenting policies and procedures in Standard Environmental Reference (SER) Chapter 38, annotated outlines for environmental documents, QC certification forms, environmental document review checklists, and monthly NEPA delegation statewide teleconferences.

Effective Practices

The FHWA audit team observed during interviews and through project file reviews completed in Districts 3, 4, 6, 10 and the North and Central regions the following effective practices:

(1) Central Region practices:

(a) The environmental document template used for each project establishes the format and provides technical cues at locations where specific data should be entered by environmental document authors. The use of document templates helps to ensure compliance with environmental laws and to improve document consistency and quality.

(b) For large projects, once the Preliminary Environmental Study (PES) form has been completed by Caltrans staff, environmental staffers perform joint field reviews with the local agencies and their consultants. This affords Caltrans and local agency staff the opportunity to discuss the NEPA process requirements and the required technical studies needed to complete the process.

(c) Individual Development Programs (IDPs) are critical elements in the training process for Caltrans staff (in both the Capital and LA programs). Senior environmental planners regularly and consistently use IDPs to guide and track staff training.

(2) The LA staff in District 10 use a work plan and tracking sheet that serves as a work flow chart for LA projects in the District. This tool is useful because it helps Caltrans and local governments understand the requirements, sequencing, and timing of environmental compliance activities throughout the project development process.

Findings Definitions

The FHWA audit team carefully examined Pilot Program areas to assess compliance in accordance with established criteria (*i.e.*, MOU, Application). The time period covered by this third audit report is from the start of the Caltrans Pilot Program (July 1, 2007) through completion of the third onsite audit (January 30, 2009) with the focus of the audit on the most recent 6 month period. This report presents audit findings in three areas:

- *Compliant*—Audit verified that a process, procedure or other component of the Pilot Program meets a stated commitment in the Application and/or MOU.
- *Needs Improvement*—Audit determined that a process, procedure or other component of the Pilot Program as specified in the Application and/or MOU is not fully implemented to achieve the stated commitment or the process or procedure implemented is not functioning at a level necessary to ensure the stated commitment is satisfied. *Action is recommended to ensure success.*
- *Deficient*—Audit was unable to verify if a process, procedure or other component of the Pilot Program met the stated commitment in the Application and/or MOU. *Action is required to improve the process, procedure or other component prior to the next audit; or* Audit determined that a process, procedure or other component of the Pilot Program did not meet the stated commitment in the Application and/or MOU. *Corrective action is required prior to the next audit.*

Summary of Findings—January 2009

Compliant

(C1) *Completion of the PES form*—As stated in Chapter 6 of the LA Procedures Manual, completing the PES form for each project is one of the roles and responsibilities of LA staff. The audit team learned through interviews with LA staff in the Central Region office that training had been provided on how to complete the PES form. The audit team also confirmed through file reviews that the PES forms in the Central Region were completed correctly.

(C2) *Tracking and Managing Projects*—The Central Region office developed a sophisticated data management and tracking system using the File Maker software application for tracking and managing Capital projects (i.e., projects on the State Highway System (SHS)). The Central Region has standard practices to ensure that all projects are entered into the system and tracked appropriately. The system included data validation features such as color coded items to identify missed deadlines or inactive projects. The audit team found that all environmental staffers in the office appear to be able to input data into the system. The File Maker system is used to track, manage, and provide reports on the Capital projects in the Region. As a result, the audit team was able to determine that the Central Region office is compliant with section 8.2.7 of the MOU, requiring Caltrans to report to FHWA any approvals and decisions Caltrans makes with respect to the responsibilities it has assumed under the Pilot Program.

(C3) *Project Files/UFS*—Section 8.2.4 of the MOU and procedures specified in SER Chapter 38 require that Caltrans staff maintain project files and general administrative files for all Capital and LA projects in accordance with the UFS.

The audit team found that the North and Central Regions have taken additional steps to ensure that project files are organized correctly and that the proper information can be located easily. Additional sub-tabs have been added to the UFS file tab system to improve the clarity and consistency across the Districts in these Regions. The new sub-tabs were added for topic

areas likely to contain large amounts of information (e.g., biology, special status species, coordination correspondence).

(C4) *QA/QC Process*—The Central Region has established a QA/QC unit. The audit team interviewed members of this unit during the onsite visit at the Regional office. To ensure compliance with section 8.2.5 of the MOU, the QA/QC unit implemented, for its Capital program staff, a QC process that involves an internal review and QA/QC branch chief signature that exceeds the requirements of the QC plan in the SER Chapter 38.

Needs Improvement

(N1) *QA/QC Certification Process*—Section 8.2.5 of the MOU and SER Chapter 38 require Caltrans staff to review each environmental document in accordance with the policy memorandum titled "Environmental Document Quality Control Program under the NEPA Pilot Program" (July 2, 2007). The audit team observed improvement since the previous audit (July 2008) in the completion of the QC certification forms. However, the audit team still identified incomplete and incorrectly completed QC certification forms. These inconsistencies were also identified in the third Caltrans self-assessment and corrective actions were discussed in that report.

(N2) *Self-Assessment and Process Reviews*—Section 8.2.6 of the MOU and SER Chapter 38 require Caltrans to regularly perform an internal formal process review for environmental compliance, referred to by Caltrans as a self-assessment. A summary report of the Caltrans self-assessment is provided to FHWA prior to each FHWA audit. The audit team has identified aspects of the self-assessment process that need improvement in order for this process to meet its stated intent. These areas include:

(a) Review of projects during the self-assessment. To fully assess compliance with the project development process and responsibilities assumed under the Pilot Program, Caltrans needs to evaluate projects at all phases of project development, as well as compliance with project filing procedures. A complete review should include not only projects that have reached decision points and have been reported in the quarterly reports to FHWA, but also projects yet to reach a decision point.

(b) More details on performance measures. As the self-assessment is the primary method of data collection and evaluation of success in meeting Pilot Program performance measures, more details and discussion regarding each performance measure should be included in the self-assessments. Examples of areas that need further explanation include: (1) The sampling procedures used for checking EA/EIS project files organized according to the established filing system and (2) the sampling procedures used for checking the completeness of the QC certification forms.

(c) Limited scope of the self-assessment review. A significant proportion of the third self-assessment focused on the effectiveness of corrective actions implemented by Caltrans to address deficiencies noted in its second self-assessment and actions taken to address FHWA Pilot Program audit findings. While an important component of the self-assessment process, review of improvement regarding noted deficiencies from prior internal and external audits is only one aspect of a successful self-assessment process. The bulk of the self-assessment process should be focused on confirmation that all Pilot Program requirements are being fully met, including pursuit of newly occurring areas of weakness/ potential weakness.

(d) To ensure that Caltrans is effectively reviewing all elements of assumed responsibility as stated in the MOU and Application, it must present a systematic review of all Pilot Program processes and procedures. Caltrans has yet to establish a methodology/approach to specify how it will conduct its self-assessment process. In particular, the process it is using and intends to use to determine, for each audit, what Pilot Program elements warrant review, the level of review to be performed on each selected element, the depth of the review (e.g., the sample size of documents reviewed, the number of districts contacted/staff interviewed, the frequency of reviews), and the coverage of each self-assessment (what parts of the Program have been/need to be reviewed/re-reviewed). The current self-assessment process has yet to demonstrate that Caltrans is evaluating its Program in a manner that will determine for all applicable components if "its process is working as intended, to identify any areas needing improvements in the process" (MOU Section 8.2.6). Evidence to suggest that the self-assessment process needs improvement is demonstrated by new Needs Improvement and Deficient audit findings identified by the FHWA audit team in this audit in areas recently reviewed (but not identified) under Caltrans self-assessment. In addition, the FHWA audit team identified new Deficient findings in Pilot Program areas not evaluated by the self-assessment process.

(N3) *Air Quality Conformity Determinations*—Section 8.5.1 of the MOU and SER Chapter 38 require Caltrans staff to document the air quality conformity analysis for each project by submitting a request to FHWA for a formal conformity determination. The request for the conformity determination should be submitted to FHWA as soon as possible after the preferred alternative is identified. The FHWA conformity determination must be received before the final NEPA action is completed.

Through interviews and project file reviews in the Districts visited, the audit team identified a misunderstanding by the Caltrans staff regarding the air quality conformity determination process. This misunderstanding and confusion was not observed in the first two audits. Several Caltrans staff interviewed in both the North and Central Regions were not aware of their responsibilities to request formal FHWA conformity determinations for projects processed though the LA program. Interviews identified a lack of communication and misunderstandings between Caltrans staff and local agencies regarding air quality conformity analysis and determinations. In two of seven project files reviewed for air quality conformity determinations, FHWA conformity determination letters were missing. For another file, the conformity letter was not included in the project file but was subsequently located by Caltrans staff and included in the file during the audit.

(N4) *Project Files/UFS*—Section 8.2.4 of the MOU and SER Chapter 38 require Caltrans to maintain project files and general administrative files. To support statewide consistency in file content and organization, the UFS has been developed for mandatory use for all Capital and LA projects.

Despite the "Compliant" finding regarding the North and Central regions described under item C3 above, the audit team identified that some project files were not established as soon as environmental studies had begun, as required by SER Chapter 38.

Additional inconsistencies identified included:

(a) Several instances where project files were missing UFS tabs and some sections contained no information or an explanation as to why the tabs were missing or tab sections were incomplete (i.e., empty).

(b) Required project documentation was missing from several project files. Examples of missing documents include PES forms, QA/QC certification forms, air quality conformity determination

letters, State Historic Preservation Office concurrence letters for section 106 determinations, "Plans, Specifications and Estimates" information, and various transmittal letters.

(c) Project file reviews identified unsigned/incomplete documentation including incomplete environmental document filing checklists, unsigned environmental document preparation and review tools, and unsigned LA EA document title pages.

(N5) *Commitment of Resources*—Section 4.2.2 of the MOU requires Caltrans to maintain adequate organizational and staff capability effectively to carry out the responsibilities it has assumed, including devoting adequate staff resources to the Pilot Program. In the Districts/Regions visited, interviews with the Caltrans staff working on LA projects revealed the following:

(a) Inconsistencies associated with charging time spent on Pilot Program activities to the official Work Breakdown Structure (WBS) code (6DELE). Staff interviews identified two main reasons for incomplete adherence to use of the WBS code: not having the time to determine the amount of time and enter it in the time sheet system; not tracking Pilot Program labor expenditures at all.

(b) LA staffers expressed frustration to the audit team regarding the amount of work to be accomplished by current LA staff in the Districts. Concerns were frequently expressed regarding inadequate staffing, lack of timeliness in filling vacant positions, and the difficulty coping with the pressure to advance projects in a timely manner and on schedule.

The audit team learned that Caltrans is considering updating and enhancing the LP 2000 system which should present an opportunity to improve resource tracking for LA staff, and projecting future staff needs.

(N6) *Adequate QA/QC Review of Technical Studies*—The second Caltrans self-assessment identified that the peer review of the biological resources technical studies was sometimes less thorough than the same reviews performed for SHS projects. The audit team confirmed this finding through interviews with LA staff in one District visited. Caltrans has committed to ensure that the appropriate level of environmental analysis is conducted for all NEPA documents for projects on both the SHS and also on local streets and roads.

A corrective measure was identified in the self-assessment to remind the staff biologists that the peer review of biological resource technical studies for the LA projects uses the same standard as for Capital projects. The audit team concurs in this corrective measure and also recommends that additional follow-up review occurs to ensure that it is being implemented.

(N7) *Training on Air Quality Conformity*—MOU section 12.1.1 requires Caltrans to provide training "in all appropriate areas with respect to the environmental responsibilities that Caltrans has assumed." Three of four LA and Capital environmental planners interviewed in the Central Region office indicated an ongoing need for training in the area of air quality conformity, its role in the Statewide Transportation Improvement Program, the Transportation Improvement Plan, and emissions budgets. Interviewees indicated that additional training or primers by Caltrans' air quality specialists are needed for environmental planners due to this being such a dynamic area affecting many projects. Caltrans should assess if other environmental planners in other Districts/Region offices also find this area problematic and require additional training in this area. Air quality specialists should also work with environmental planners in their Districts to ensure that everyone understands their role and the required processes.

(N8) Procedural and Substantive Requirements—MOU section 5.1.1 requires Caltrans to be subject to the same procedural and substantive requirements that apply to FHWA in carrying out the responsibilities assumed. Through interviews with USACE and USFWS staff located in California, the audit team learned that there have been a few instances where environmental requirements were not completely and correctly implemented.

(a) In at least one instance, based on the biological assessment of the project, take of threatened or endangered species was anticipated and quantified. However, Caltrans made a request for informal, not formal consultation, to the USFWS. This process decision is contrary to the implementing regulations of section 7 of the ESA.

(b) In other instances, the USACE reported that environmental assessment documents prepared pursuant to NEPA and reviewed by the USACE under section 404 of the Clean Water Act, contained insufficient information to support decisionmaking and chosen alternatives. Further, as part of their Clean Water Act section 404 permit verification, the conclusions made by Caltrans in relation to ESA requirements were not supported. This noncompliance prevented the USACE from issuing its required permit without the proper consultation with the USFWS.

It is the opinion of the audit team, based on these observations, that Caltrans staff and/or the consultants hired by Caltrans to conduct biological assessments, submit permit applications, and perform NEPA analyses, could benefit from training in various environmental laws and regulations. It is also noted that the technical reviews and other QC reviews should have identified these errors. The MOU section 10.2.1.C performance measure to monitor relationships with Federal resource agencies needs to be implemented.

(N9) *Assignments under the Pilot Program*—MOU section 3.2.2 requires Caltrans to comply with the requirements of all applicable environmental laws. Caltrans staff interviewed indicated a lack of understanding of the SAFETEA–LU section 6002 (§ 6002; 23 U.S.C. 139) environmental review process definition and role of participating agencies, particularly in comparison to that of cooperating agencies.

In a review by the audit team of four EIS project files, the audit team found that the cooperating and participating agency invitation letters sent by Caltrans were not totally accurate and were confusing. The letters were based on the template invitation letter provided in the SER, with links to the Local Assistance Manual. This template contains the following errors and confusing language:

(a) The subject line for the letter only mentions an invitation to become a participating agency, with no indication of an invitation to also be a cooperating agency, when both apply. Yet, in the body of the letter, there is a combined discussion of cooperating agency status and participating agency status.

(b) In the list of activities that will be occurring during the NEPA process, there are two instances listing both FHWA and Caltrans as providing various information. Under the Pilot Program, as stated in the first paragraph of the letter, FHWA is not involved in the project.

(c) The letter does not clarify the different roles and responsibilities of participating and cooperating agencies.

(d) The letter states that an agency will be a cooperating agency only if it has "jurisdiction for permit." That is not in accordance with 40 CFR 1598.5 which defines cooperating agency as, "any Federal agency other than the lead agency which has jurisdiction by law or special expertise with respect to any

environmental impact involved in the proposal."

Caltrans needs to ensure that the SAFETEA–LU environmental review process (§ 6002; 23 U.S.C. 139) is fully and correctly implemented.

(N10) *Performance Measure—"Monitor relationships with the general public"*—MOU section 10.2.1.C requires Caltrans to monitor relationships with the general public. This is the first audit to evaluate this performance measure as such a tool had not previously been developed for this performance measure. This measure is intended to assess the effectiveness of any changes in communication that could affect an existing relationship among Caltrans and the general public. The tool or indicator measure developed involves Caltrans staff and/or consultants performing self assessments to evaluate public meeting materials. To fully assess this relationship, however, the views of the other party must be considered as well. The current performance measure does not reflect the general public's views on communication with Caltrans regarding Federal-aid highway projects. More details need to be provided regarding the projects for which the public meeting materials are being evaluated. Different projects require different and appropriate materials depending on the scope and issues involved in the project. Using a generic rating for all projects, with no additional information or explanation may not truly reflect the desired outcome.

(N11) *Documentation of Class of Action Determinations*—Through project file reviews, the audit team found inconsistencies in the class of action determination documentation. The SER Chapter 38 "Defining the Class of Action" requires for EAs and EISs, that either a Deputy District Director for Environmental (or designee) or a District Local Area (DLA) Engineer and a District senior environmental planner make a determination with the concurrence of the Division of Environmental Analysis Environmental Coordinator.

Four of six EIS project files reviewed by the audit team did not include documentation on the class of action determination. For one project, the class of action was changed from an EIS to an EA, but no documentation was identified in the file to explain the change or to demonstrate concurrence on the decision to down scope the environmental document type. For another project, the project file did not contain an explanation for the change of action from an EA to an EIS.

(N12) *LA Training Plan*—Under section 12.1.1 of the MOU, Caltrans is responsible for ensuring that its staff is properly trained and that training will be provided "in all appropriate areas with respect to the environmental responsibilities Caltrans has assumed." This section of the MOU also states that "Caltrans agrees to have all appropriate employees (including consultants hired for the purpose of carrying out the Secretary's responsibilities) attend such training." Additionally, the Application states that DLA environmental staffers "will provide training to local agencies and their consultants to ensure that LA environmental documents follow statewide procedures and meet Federal requirements."

Section 12.1.2 of the MOU requires that a training plan be updated annually during Caltrans' participation in the Pilot Program. This training plan is shared with FHWA on an annual basis. The training plans submitted for Fiscal Year (FY) 07–08 and FY 08–09 included information only on Capital program training and did not include information on training for DLA staff or how staff will provide training to local agencies and consultants. The information gaps in the FY08–09 Training Plan include:

(a) The lack of a formalized training plan for DLA staff on DLA-specific processes—Four interviewees and pre-audit information collection revealed no evidence of a formal training plan to carry out the LA responsibilities under the Pilot Program, including training for DLA staff and staff in local agencies and consultants. Interviews in all Districts/Regions visited indicated varying training activities have occurred, however, this information—or an explanation on the approach—is not included in the training plan.

(b) The lack of an ongoing training procedure for local agencies and consultants, including expected courses or outreach to be offered. Six interviewees stated that there is no formal approach being used by Caltrans Districts to ensure proper training or outreach is provided to local agencies and consultants. Given the very large number of LA projects in some Districts, and the typically high staff turnover within local agencies, Caltrans needs to formalize and implement an ongoing training plan to ensure that LA program staff can carry out the responsibilities under the Pilot Program and work with the local agencies and consultants to ensure compliance with statewide procedures and Federal requirements assumed by Caltrans.

Deficient

(D1) *Quarterly Reports*—The quarterly reports Caltrans provides to FHWA under section 8.2.7 of the MOU continue to consistently include an inaccurate listing of all approvals and decisions under the Pilot Program. The quarterly reports received by FHWA for the first five quarters have all contained substantial errors and have had to be revised and resubmitted to FHWA by Caltrans.

Discussions with Caltrans staff developing input for the quarterly reports identified inconsistent approaches and procedures in the processes leading to report production. Communication is not always timely between the project generalists and the staff responsible for project tracking and reporting. Additionally, two of the four Districts visited during the third audit were unable to readily produce a list of the projects within that District that fall under the Pilot Program. The audit team finds the quarterly reporting process and products deficient.

(D2) *Performance Measure—"Monitor relationships with Federal and State resource agencies"*—MOU section 10.2.1.C requires Caltrans to "assess change in communication among Caltrans, Federal and State resource agencies." In all three Caltrans self-assessments (December 2007, June 2008, and December 2008) under "Progress in Meeting Pilot Program Performance Metrics" Caltrans stated that this performance measure has not yet been implemented. The audit team understands that Caltrans has engaged a consultant to undertake a survey of Federal and State resource agencies to assess their relationships with Caltrans; however, the minimal degree of progress after 18 months of the Pilot Program renders Caltrans' performance on this requirement deficient at the time of the audit.

(D3) *Delegation of Signature Authority*—In six of the eight Caltrans District Offices reviewed in this audit, the audit team learned of the delegation of signature authority for EISs and individual Section 4(f) Evaluations that occurred in October 2007.

In September 2007, Caltrans asked for clarification of signature authority for EISs as stated in the Application and section 1.1.2 of the MOU. The FHWA responded with clarification of this signature authority through a letter from FHWA to Caltrans dated September 12, 2007. This letter stated that the Draft EIS can be signed by either the Deputy District Director for Environmental Planning or the District Director, at the Caltrans' District discretion. Final EISs are to be signed by District Directors, and not further delegated. There was no request for clarification for individual Section 4(f) Evaluations and therefore,

that signature authority remains as agreed to with the Deputy District Director.

During the audit, the audit team learned of two memos, dated October 2007, that delegated, for six Districts, the signature of individual Section 4(f) Evaluations to the Environmental Office Chiefs and the signature of EISs to the Environmental Division Chief or the District Director.

This delegation is inconsistent with the FHWA clarification letter. Additionally, Chapter 38 of the SER is inconsistent regarding this delegation of signature authority for Draft EISs, indicating two different delegation signature authorities, one to the Deputy District Director and one to the Deputy District Director for Environmental Planning, in the sections "Signature Authorities" and "Signature Protocols."

(D4) *Assignment of Section 6002 Responsibility under the Pilot Program*—Under MOU section 3.2.2, Caltrans is responsible for complying with the requirements of any applicable environmental law. Therefore, Caltrans is responsible for complying with SAFETEA–LU section 6002 (23 U.S.C. 139) which defines provisions of the environmental review process. The SAFETEA–LU section 6002(d)(23 U.S.C. 139(d)) states that a Federal lead agency for a highway project conducting a NEPA process under section 6002, in this case Caltrans, "shall identify, as early as practicable in the environmental review process for a project, any other Federal and non-Federal agencies that may have an interest in the project, and shall invite such agencies to become participating agencies in the environmental review process for the project."

In three of the six EIS project files reviewed, there were participating agency invitations sent out to only 5 to 10 agencies per project. For those projects, the audit team, thorough interviews and review of project files, learned that more local, State, Federal, or tribal governmental agencies, either may have or already had, expressed an interest in the project and were therefore required to be an invited participating agency.

The Caltrans' third self-assessment included a section on "Understanding of Section 6002 Requirements," and did not report any finding that requires a corrective action.

Based on its review of project files and interviews with Caltrans staff, the audit team finds Caltrans' compliance with its Pilot Program responsibilities to be deficient with regard to the intent and requirements of SAFETEA–LU section 6002 regarding inviting participating agencies.

(D5) *Corrective Action for Audit Deficiency*—In three of the project files reviewed by the audit team that contained a class of action determination documentation, the class of action determination concurrence was issued the day before the third audit began, or actually, in two instances, the concurrence was issued during the audit. This is a failure to fully address the deficiency, "Environmental Document Process—Class of Action Determination," noted in the previous audit.

[FR Doc. E9–11719 Filed 5–19–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Literacy and Education Commission

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Financial Literacy and Education Commission, established by the Financial Literacy and Education Improvement Act (Title V of the Fair and Accurate Credit Transactions Act of 2003).

DATES: This meeting of the Financial Literacy and Education Commission will be held on Wednesday, May 27, 2009, beginning at 10 a.m.

ADDRESSES: The Financial Literacy and Education Commission meeting will be held in the Cash Room at the Department of the Treasury, located at 1500 Pennsylvania Avenue, NW., Washington, DC, 20220. To be admitted in the Treasury building, attendees must RSVP with their name as shown on a government-issued ID, organization represented (if any), phone number, date of birth, Social Security number and country of citizenship. To register, visit *http://www.treasury.gov/ofe,* click on the "Financial Literacy and Education Commission" and then click on "Event Summary and Registration." For admittance to the Treasury building on the day of the meeting, attendees must present a government-issued ID, such as a driver's license or passport, which includes a photo and date of birth.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Dubis Correal by e-mail at *dubis.correal@do.treas.gov* or by telephone at (202) 622–5770 (not a toll free number). Additional information regarding the Financial Literacy and Education Commission and the Department of the Treasury's Office of Financial Education may be obtained through the Office of Financial Education's Web site at *http://www.treas.gov/ofe.*

SUPPLEMENTARY INFORMATION: The Financial Literacy and Education Improvement Act, which is in Title V of the Fair and Accurate Credit Transactions Act of 2003 (Pub. L. 108–159), established the Financial Literacy and Education Commission (the "Commission") to improve the financial literacy and education of persons in the United States. The Commission is composed of the Secretary of the Treasury and the heads of the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Securities and Exchange Commission, the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs, the Federal Trade Commission, the General Services Administration, the Small Business Administration, the Social Security Administration, the Commodity Futures Trading Commission, and the Office of Personnel Management. The Commission is required to hold meetings that are open to the public every four months.

This meeting of the Commission, which will be open to the public, will be held in the Cash Room at the Department of the Treasury, located at 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The room will accommodate 80 members of the public. Seating is available on a first-come, first-seated basis. Participation in the discussion at the meeting will be limited to Commission members, their staffs, and special guest presenters.

Dated: May 12, 2009.

Andrew Mayock,

Executive Secretary, U.S. Department of the Treasury.

[FR Doc. E9–11737 Filed 5–19–09; 8:45 am]

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Federal Register

Wednesday,
May 20, 2009

Part II

The President

Memorandum of May 15, 2009—Assignment of Reporting Function Under the American Recovery And Reinvestment Act of 2009

Federal Register
Vol. 74, No. 96
Wednesday, May 20, 2009

Presidential Documents

Title 3—

The President

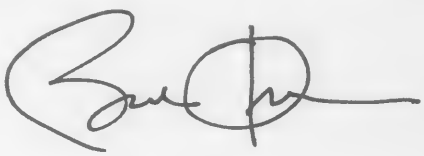
Memorandum of May 15, 2009

Memorandum for the Chair of the Council On Environmental Quality

Assignment of Reporting Function Under the American Recovery And Reinvestment Act of 2009

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the authority to perform the function conferred upon the President by section 1609(c) of Division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) of providing specified reports to the Congress.

You are authorized and directed to publish this memorandum in the *Federal Register.*



THE WHITE HOUSE,
Washington, May 15, 2009

[FR Doc. E9–11982
Filed 5–19–09; 11:15 am]
Billing code 3125–W9–P

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S. 735/P.L. 111–20
Protecting Incentives for the Adoption of Children with Special Needs Act of 2009 (May 15, 2009; 123 Stat. 1616)
Last List May 13, 2009

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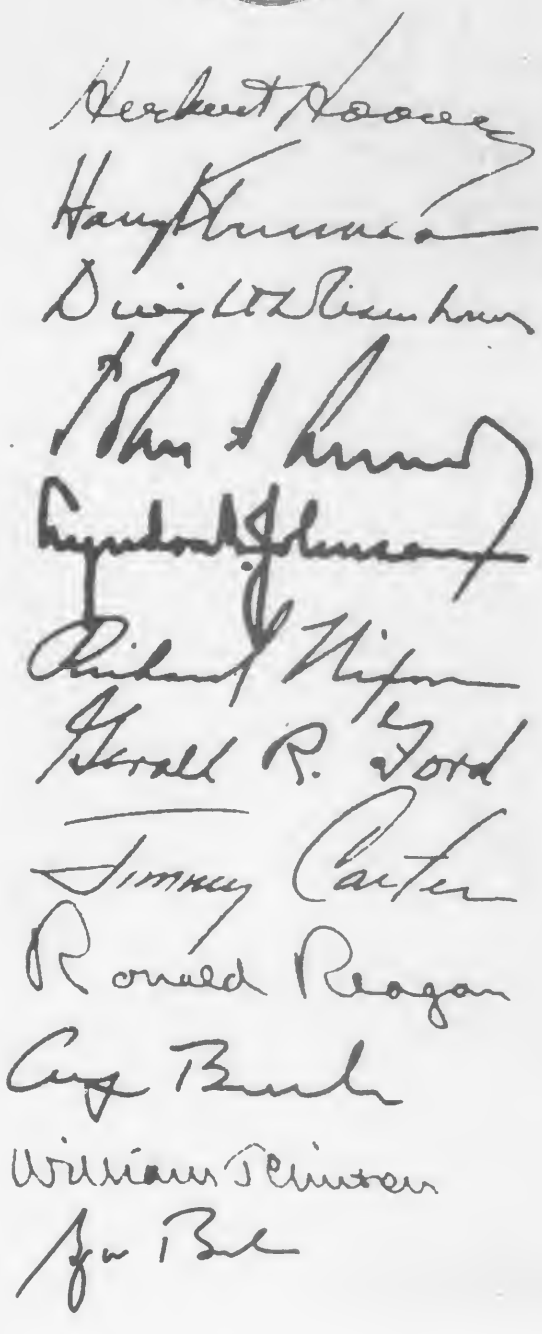

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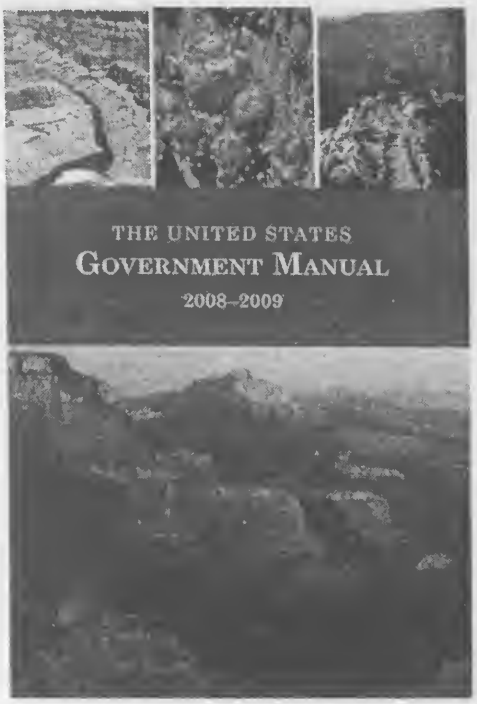

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