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Presidential Documents

Title 3—

The President

Proclamation 8469 of December 31, 2009

40th Anniversary of the National Environmental Policy Act, 2010

By the President of the United States of America

A Proclamation

Forty years ago, the National Environmental Policy Act (NEPA) was signed into law with overwhelming bipartisan support, ushering in a new era of environmental awareness and citizen participation in government. NEPA elevated the role of environmental considerations in proposed Federal agency actions, and it remains the cornerstone of our Nation's modern environmental protections. On this anniversary, we celebrate this milestone in our Nation's rich history of conservation, and we renew our commitment to preserve our environment for the next generation.

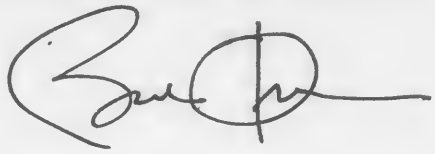
NEPA was enacted to "prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man." It established concrete objectives for Federal agencies to enforce these principles, while emphasizing public involvement to give all Americans a role in protecting our environment. It also created the Council on Environmental Quality to lead our Government's conservation efforts and serve as the President's environmental advisor.

America's economic health and prosperity are inexorably linked to the productive and sustainable use of our environment. That is why NEPA remains a vital tool for my Administration as we work to protect our Nation's environment and revitalize our economy. The American Recovery and Reinvestment Act of 2009 reaffirmed NEPA's role in protecting public health, safety, and environmental quality, and in ensuring transparency, accountability, and public involvement in our Government.

Today, my Administration will recognize NEPA's enactment by recommitting to environmental quality through open, accountable, and responsible decision making that involves the American public. Our Nation's long-term prosperity depends upon our faithful stewardship of the air we breathe, the water we drink, and the land we sow. With smart, sustainable policies like those established under NEPA, we can meet our responsibility to future generations of Americans, so they may hope to enjoy the beauty and utility of a clean, healthy planet.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 1, 2010, as the 40th Anniversary of the National Environmental Policy Act. I call upon all executive branch agencies to promote public involvement and transparency in their implementation of the National Environmental Policy Act. I also encourage every American to learn more about the National Environmental Policy Act and how we can all contribute to protecting and enhancing our environment.

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



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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR 1400

RIN 0560–AH85

Payment Eligibility and Payment Limitation; Miscellaneous Technical Corrections

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is amending the regulations that specify payment eligibility and payment limitation requirements for participants in CCC-funded programs. The amendments made in this rule address comments received on the interim rule and make minor technical corrections. This rule will apply to 2010 and subsequent crop, program, or fiscal year payments for participants in CCC-funded programs.

DATES: *Effective Date:* This rule is effective January 7, 2010.

FOR FURTHER INFORMATION CONTACT: James Baxa, Production, Emergencies and Compliance Division, FSA, USDA, telephone: (202) 720–3463. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

CCC published an interim rule on December 29, 2008 (73 FR 79267–79284) implementing the payment eligibility and payment limitation provisions from the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, the 2008 Farm Bill) that are applicable to most CCC and FSA commodity, price support, and conservation programs. The rule included specific payment limits for affected programs, provisions for how payments are attributed to individuals, average Adjusted Gross Income (AGI) limitation requirements for payment recipients, and other eligibility criteria that included actively engaged in farming requirements and provisions for minors. It included provisions that certain CCC farm program payments will be made only to persons and legal entities actively engaged in farming, as evidenced by contribution of land, capital, or equipment and labor or management to the farming operation. The majority of the provisions in the rule were requirements of the 2008 Farm Bill for which USDA had little or no discretion.

The comment period for the rule closed on January 28, 2009. CCC received comments requesting that the comment period be reopened. CCC reopened the comment period until April 6, 2009 (74 FR 6117). In response to the interim rule, CCC received 5,060 comments, including comments from producers, commodity groups, cooperatives, producer associations, lenders, crop consultants, certified public accountants, attorneys, members of Congress (both House and Senate), State agricultural officials, crop insurance agents, dairy farmers, cotton processors, organic and sustainable crop producers, commodity brokers, the USDA Office of the Inspector General, USDA agencies and employees, teachers, animal scientists, farm implement dealers, taxpayers, and a restaurant chef. The majority of comments raised questions or concerns about specific parts of the rule. The rest of the comments either supported parts of the rule or raised general policy issues about farm programs. Seventy-three percent of the comments stated that the payment eligibility rules need to be made more restrictive, particularly in the area of the requirements of active personal management; two percent asked for an exception for smaller farming operations.

This rule specifies that for most types of legal entities, the requirement that all partners, stockholders, or members must provide active labor or management does not apply if: (1) Interest holders who collectively hold at least 50 percent interest in the legal entity are providing personal labor or active personal management; and (2) they all are receiving, directly or indirectly, total payments less than one payment limitation. This was added to address the comments that the restrictions intended to end abusive practices by passive investors should not negatively impact smaller family farming operations where older members may not be active contributors. It is a change from the interim rule that required all partners, stockholders, and members in a legal entity to provide active personal labor or management for the legal entity to be eligible for 100 percent of the payment otherwise due the legal entity.

Also, in response to comments, this rule makes minor clarifications to ensure that the rule is clear and consistent with our handbook and with our current practice. This rule clarifies that "actively engaged in farming" provisions do not apply to Conservation Reserve Program contracts and extensions to such contracts made effective on or after October 1, 2008. It clarifies that determinations for joint operations with six or more members will be made by the FSA State office. It clarifies that certain "actively engaged in farming" requirements for a person can be met if the spouse of that person meets the requirements. It clarifies that for a change to a farming operation to be considered bona fide, one rather than all of the items in the list of bona fide changes must be met. It changes the April 1 date in the minor child provisions to the same June 1 date used for attribution of payments. This is for consistency since the manner in which payments will be attributed for payment limitation purposes depends in part on whether or not a participant is a minor. It clarifies the provisions for trusts and estates to make them consistent with the other sections regarding requirements for contributions. These changes to the rule are expected to have no substantive impact.

This rule also implements minor technical corrections, such as correcting internal paragraph references and inconsistent terminology, which are expected to have no substantive impact. Some of these changes were made in response to comments received; others were the result of our own review of the regulation for clarity and consistency. This rule amends 7 CFR part 1400 to implement these changes.

Discussion of Comments

The following provides a summary of the comments received that were related to each specific subpart or section and the agency's response, including changes we are making to the regulations.

Subpart A—General Provisions

The following discussion addresses the comments received on Subpart A identified by section.

Sec. 1400.1 Applicability

Comment: Wealthy farmers do not need payments. Put a cap of $25,000 for total payments.

Response: The limitations on payments per person or legal entity for the applicable period for the various CCC and FSA programs are specified in the 2008 Farm Bill. Therefore, we did not make any changes to the rule in response to the comment suggesting a $25,000 cap.

Regarding payments to wealthy farmers, as provided in the 2008 Farm Bill and in § 1400.500 of the regulations, persons and legal entities who exceed certain average AGI limits are not eligible for any payments or benefits for the programs specified in this section; and the average AGI limits in the current regulations are lower than under the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, commonly known as the 2002 Farm Bill). Therefore, we did not make any changes to the rule in response to the comment.

Comment: The elimination of a limitation for the Marketing Assistance Loans (MAL) and Loan Deficiency Payments (LDP) payments is consistent with the statute, but opens a potential loophole.

Response: A limitation is applied to a Marketing Loan Gain (MLG) and LDP, not MAL. In any case, as noted in the comment, the elimination of the cap on payments per person or legal entity for the applicable period for MLGs and LDPs is specified in the 2008 Farm Bill. Although there is now no limitation on MLGs and LDPs, persons receiving MLGs and LDPs are subject to other requirements in this part, including average AGI limitation provisions, so there are practical limits to how much a person or legal entity can qualify for while still having to meet the other requirements, particularly average AGI provisions. The regulations comply with the requirements in the 2008 Farm Bill; therefore, we did not make any changes to the rule in response to the comment.

Comment: How will this apply to the Conservation Reserve Program (CRP)? Will FSA release these contracts if over half the ownership fails to qualify (due to AGI or actively engaged)? If so, what incentive is there to follow the conservation practices? The provisions in both §§ 1400.1 and 1400.201 appear to require that a person be actively engaged in farming to be eligible to receive conservation benefits, which was not in the 2008 Farm Bill and therefore should not be in the rule.

Response: We will make a technical correction to this section to clarify that "actively engaged in farming" provisions in the current regulations do not apply to CRP contracts and extensions to such contracts beginning October 1, 2008. CRP contracts are subject to the regulations in place at the time the contract was executed, so the payment limitation, "actively engaged in farming," and average AGI limits in the current regulation do not apply to contracts executed prior to October 1, 2008. For contracts executed before that date, the regulations in the January 1, 2008 edition of the *Code of Federal Regulations* apply.

The average AGI limitations in effect when the contract was signed apply to CRP, but those limitations apply only when the initial contract is made; if the person or legal entity's average AGI exceeds the limit in later years, they are still eligible for annual rental payments for the duration of that contract.

Comment: The table that identifies payment limits identifies the Wetland Reserve Program (WRP) limit of $50,000. That is correct, but it needs a footnote that the payment limit does not apply to payments for perpetual or 30 year easements or under 30 year contracts.

Response: We added that footnote in this rule.

Sec. 1400.2 Administration

Comment: The interim rule should state specifically who will determine payment limitations and payment eligibility for a joint operation with six or more members.

Response: The determination will be made by the FSA State office, as it has been made in the past. We clarified that in this rule.

Comment: If people need to provide additional paperwork to FSA, allow them to withdraw their application for payment and resubmit; "stop" the 60 day determination clock as specified in § 1400.2(f). This has been done sometimes in the past, but it would be appropriate to specify it in the rule.

Response: This is and will continue to be our practice, and is specified in our handbook. Applicants have the option to withdraw or change their farm operating plan at any time. The 60 day determination provision in the rule requires the FSA county office to make a timely determination; it does not require the producer to submit documentation within 60 days. If an unfavorable determination is made, based on the documentation provided, a revised farm operating plan can be provided to the county office. No changes were made to the rule in response to this comment.

Sec. 1400.3 Definitions

Some commenters support the changes to the definition of capital, and the provisions that require funding provided to a farming operation to be independent and separate from funding provided to all other farming operations, and requiring that a person or entity's contribution of capital be independent from others. They also support the clarification that advance program payments are not considered capital contributions, all the changes and recommend they stay in the final rule, and the definitions of contribution and joint operation.

Comment: The definition of "capital" is fine, but it is not used consistently in §§ 1400.202, 1400.203, and 1400.204, which appear to disqualify any land, equipment, or capital acquired with a loan.

Response: The use of the term "capital" in sections §§ 1400.202, 1400.203, and 1400.204 is consistent with the way it is defined, including the provision that capital can include borrowed (loaned) funding. Sections 1400.202, 1400.203, and 1400.204 do further clarify appropriate loan terms, including guarantees and co-signers, for loans used for eligible "actively engaged" contributions of capital, land, and equipment. Those sections do not automatically disqualify all land, equipment, or capital acquired with a loan. No changes were made to the rule based on this comment.

Comment: The rule is not consistent on using the term "joint operation" as defined. Sections 1400.6(a) and 1400.106(b), for example, use slightly different terms. Change the references to general partnerships or joint ventures in those sections to "joint operation."

Response: We agree that the term "joint operation" should be used consistently. We will change §§ 1400.6 and 1400.106 to use the term "joint operation."

Comment: Change the definition of "family member" to include nieces and nephews. The definition will not allow some family members to be eligible, for example, a farmer will not be eligible for a direct payment if the farming partner

is the spouse's uncle; the farmer is not a direct descendent.

Response: The definition of family member in the rule is the definition that is required by the 2008 Farm Bill. The definition in the 2008 Farm Bill was clear and complete as written. Therefore, we did not make any changes to the rule in response to the comment.

Comments: A more rigorous definition of active personal management is needed; too many people per legal entity are qualifying for payment eligibility based on only active personal management. Change the definition of "active personal management" to be a measurable, quantifiable standard. That term as it is further used in the definitions of "contribution" and "significant contribution" represents a potential loophole. Set a specific monetary or time requirement; ideally, 1000 hours or 50 percent of the total hours necessary to conduct a farming operation of comparable size.

Add the words, "on a regular, substantial, and continuing basis" to the definition of "active personal management," including "day to day" supervision and "services including but not limited to significant on-site services."

Response: The definition of what constitutes a significant contribution is provided by regulation, not by statute and could be changed. We recognize the difficulty in determining the significance of a management contribution under the current definition and the desirability of a measurable, quantifiable standard. However, unlike labor, the significance of a management contribution is not appropriately measured by the amount of time a person spends doing the claimed contribution. The current regulatory definition of a significant contribution of active personal management has been in effect for over 20 years; Congress has not mandated a more restrictive definition during that time, including in the 2008 Farm Bill. However, we are currently exploring whether the current definition could be amended in a manner that would be fair, equitable, and enhance program integrity. At this time, no changes were made as the result of this comment and other related comments.

Comment: Do not allow a combined contribution of labor and management to be counted as a "significant contribution" in the definition. Define both with a quantifiable standard.

Response: A strict division of responsibilities between labor and management is not a realistic expectation for many smaller farming operations, where actively engaged members of the operation typically do a combination of both. A significant contribution by an actively engaged farmer often does include a combination of labor and management. No changes were made as a result of this comment.

Comment: "Commensurate" is used throughout, but never defined. Since it is crucial to payment eligibility, need to define it.

Response: "Commensurate" is not defined in this rule, because it is utilized based upon its common dictionary definition and is not used in a special way in the rule. When making a determination regarding commensurate contributions, we have not required and will not require that the contribution be exactly proportional to the ownership share. No changes were made to the rule as a result of this comment.

Sec. 1400.5 Denial of Program Benefits

Comment: It is unfair to consider fallow land or land with no production as an example of a scheme or device. Sometimes producers make mistakes providing information. The current test for scheme or device in the regulation is too difficult to meet and is arbitrary and capricious.

Response: Land where no crops are grown or commodities produced is provided as a factor in an example of a scheme or device in the rule. Also, it is listed as one indicator of a possible scheme or device; it has not and will not be used as the only proof that a scheme or device has occurred. The term "fallow" land did not appear in the previous rule or the preamble.

The requirement to deny program benefits to persons who have participated in a scheme or device is in the 2008 Farm Bill, and the statute also gives the Secretary discretionary authority to decide what other serious actions merit denial of benefits. The expanded provisions on denial of benefits are consistent with the general policy of the 2008 Farm Bill to tighten payment limits and payment eligibility. We agree with Congress that it is important to prevent taxpayer money being used to reward fraud, and particularly to prevent schemes such as "creating a business arrangement using rental agreements and other arrangements to conceal the interest of a person or legal entity in a farm or farming operation for the purpose of obtaining program payments the person or legal entity would otherwise not be eligible to receive." Therefore, we did not make any change to the rule in response to this comment.

Comment: The section on submitting false information should include the words "knowingly" and "intentionally," to make it clear that accidentally submitting wrong information will not be considered fraud.

Response: The rule does refer to "knowingly" engaging in the creation of a fraudulent document. By dictionary definition, fraudulent means intentionally false. Therefore, we did not make any changes to the rule in response to the comment.

Sec. 1400.7 Commensurate Contributions and Risk

Comment: Changing "at risk" to "at risk for a loss" is not supported by statute; it is unclear how a person's risk could be measured to determine whether it is commensurate to the claimed share of profits and losses. All members of a partnership are 100 percent liable for a loss. One partner may have substantially greater personal assets at risk outside the partnership than another partner.

Response: This change was intended only to clarify that persons who share no risk in the crop are not eligible for payment; no one should be made eligible or ineligible by this wording change. Also, the dictionary definition of risk includes exposure to the chance of loss. Therefore, we did not make any changes to the rule in response to the comment.

Subpart B—Payment Limitation

The following discussion addresses the comments received on Subpart B identified by section.

Sec. 1400.100 Revocable Trust

Comments: What about revocable living trusts? The IRS does not recognize this as an entity with independent tax status, but USDA does, so a person can not qualify as actively engaged because land is leased through the trust, and a family member is the trustee.

This rule can be read to require a living trust to be treated as an entity subject to its own payment limitation. There should be an exception for living trusts created by a husband and wife, where they are the sole beneficiaries, the trust uses one of their social security numbers, and the trust income is reported on their individual returns. It looks like this rule requires that with a trust, two people who would normally qualify for two payments would be eligible for only one payment, or be forced to apply as cash rent tenants on their own land.

Response: The 2008 Farm Bill clearly specifies that "a revocable trust shall be considered to be the same person as the grantor of the trust," which is reflected in the rule. The tax status of such trust is irrelevant for the purposes of payment eligibility. We cannot attribute two payment limitations to one Social Security number. Therefore, we did not make any changes to the rule in response to the comment.

Sec. 1400.101 Minor Children

Comment: The provision attributing payments received by a minor to the parent who receives the greater amount of farm payments exceeds the authority. The payments must be attributed equally to the parents, not to the one receiving the greater payments.

Response: The 2008 Farm Bill requires that payments received by a child under the age of 18 be attributed to the parents of the child. It also authorizes the Secretary to "issue regulations specifying the conditions under which the payments received by a child under the age of 18 will not be attributed to the parents of the child." The 2008 Farm Bill does not require that the payments be attributed equally, and it gives the authority to set exceptions, so the regulation is within the authority. This provision prevents actions to evade the payment limitation provisions through manipulation of the attribution of payments received by minor children. Therefore, we did not make any changes to the rule in response to the comment.

Sec. 1400.102 States, Political Subdivisions, and Agencies Thereof

Some commenters support the requirement that payments to States be used to support public schools.

Comment: The 2008 Farm Bill allowed an exception to the payment limits for States with a population of less than 1,500,000. The rule should specify that.

Response: We will add a provision to the rule specifying that the population will be determined using the most recent U.S. Census Bureau data, and specifying the 1,500,000 threshold. Using 2008 data, the list of States that meet the criteria are: Alaska, Delaware, Hawaii, Maine, Montana, North Dakota, New Hampshire, Rhode Island, South Dakota, Vermont, and Wyoming.

Comment: States with populations greater than 1,500,000 should still be eligible for full benefits.

Response: The 2008 Farm Bill states that States may receive direct, counter-cyclical, or Average Crop Revenue Election (ACRE) payments not to exceed $500,000, and that the payments may only be used to maintain a public school; there is an exception for States with a population less than 1,500,000. We do not have the authority to expand that exception to all States. Therefore, we did not make any changes to the rule in response to the comment.

Comment: State lands should still be eligible for CRP.

Response: CRP contracts are administered under the regulations in place when the contract was established. Any State lands already under a CRP contract approved prior to October 1, 2008 will remain subject to the rules in 7 CFR part 1400 in effect when the contract was approved. However, new contracts will be established under the current rules, and State lands will not be eligible for new CRP enrollments or extensions. We did not make any changes to the rule in response to the comment.

Sec. 1400.104 Changes in Farming Operations

Comment: For a farming operation of economically viable size, the requirement to add twenty percent base acres in order to qualify another family member will require adding hundreds of acres to the farm. This is an unreasonable hardship.

Response: As stated in the preamble to the previous publication of the payment eligibility and limitation rule, additional persons or legal entities beyond one for payment limitation purposes may be recognized if an FSA State office specialist determines that the increase in base acres was of a magnitude that would support further additions to the farming operation of persons or legal entities for payment limitation purposes. Also, the "substantive change" provisions were announced well in advance of the 2009 crop year, so that operations would have time to adjust. As specified, the addition of a family member to a farming operation will be considered a bona fide and substantive change if they also meet the "actively engaged in farming" requirements of § 1400.208. One, not all, of the bona fide changes listed in the rule must occur for the change to be considered bona fide; we changed the rule to make it clearer that the list of changes considered bona fide is an "or" list, not an "and" list.

Comment: Is "amount" of equipment or land transferred a dollar value or the number of pieces of equipment or acres of land? Specify which it is in the rule.

Response: The regulation also refers to fair market value, so the regulation is already clear that dollar value is meant. Therefore, we did not make any changes to the rule in response to the comment.

Comments: Several comments address the issue of substantive change, and seller financing, when the buyer or new partner is a non-family member. Prohibiting seller financing of land or equipment is unduly burdensome. The use of seller financing is a key component of succession planning and is critical in attracting young and beginning farmers. In many cases, this provision will eliminate the ability of beginning farmers an opportunity to enter farming.

For example, if a 67-year-old farmer tries to get a new farmer started to take over the farm, the new farmer is likely to be young and have little capital. If they start as partners, this will be a problem under the substantive change rule. If the farmer is only getting one-third of the maximum payment, why is there a problem adding a new person? The rules should be waived for persons who are not near the payment limit.

Another example is a farmer planning to retire who wants to add a niece's husband to the farm. He is not a direct descendent. Why must the farmer lose half the farm payment, which is only a third of the maximum payment anyhow, for helping a new farmer?

This prevents a farmer from buying out his neighbor if there is any kind of seller financing. This is unduly restrictive.

Response: The previous rule did not change the provisions about seller financing when the buyer or new partner is a non-family member; the provisions have been substantially similar for the past twenty years. FSA is not prohibiting seller financing; it is merely setting the regulations for the changes to the farming operation that will justify payment eligibility for another person or legal entity. We did not make any changes to the rule in response to the comments.

Comment: Add a clause in § 1400.104(a)(3)(ii) that the FSA State office makes the substantive determination that the change supports additional persons or entities to the farming operation "based solely on the expectation to benefit from the commercial success of the farming operation." In other words, the change should be obviously to increase the profits of the farming operation, not just to maximize government payments.

Response: The purpose of § 1400.104 is to specify that substantive changes to the farming operation must in fact be bona fide and substantive to change the payment eligibility for the operation. The 2008 Farm Bill requires these provisions. It does not specify that the change must also be financially prudent; that change would exceed our

discretionary authority. The payment limitations regulations are intended to limit farm program payments to persons and legal entities actively engaged in farming and with average AGI below certain thresholds, rather than to limit payments to financially prudent persons and legal entities. Therefore, we did not make any changes to the rule in response to the comment.

Comment: We strongly support the changes in § 1400.104(a)(4) and (a)(5), which end some abusive sales and gifts practices formerly used to dodge the payment limits. To further strengthen these paragraphs, add that the former owner has "no direct or indirect control."

Response: We will make this change to the rule.

Sec. 1400.105 Attribution of Payments

Comment: Under IRS tax law, a C corporation is taxed as a separate entity, and tax liability does not extend to stockholders. How can USDA legally attribute payments to a corporation to the stockholders? C corporations are not "pass through" entities.

Response: The 2008 Farm Bill specifically requires that "attribution of payments made to legal entities be traced through four levels of ownership in legal entities." The tax status of an entity is irrelevant for the purposes of attribution of payments. Therefore, we did not make any changes to the rule in response to the comment.

Comment: Charitable organizations do not necessarily have members or owners. Add a new paragraph saying that if the charity does not have members or owners, the payment will be attributed as if it had one member, itself.

Response: That is how payments to a charitable organization will be attributed under the current regulations. Therefore, we did not make any changes to the rule in response to this comment.

Subpart C—Payment Eligibility

The following discussion addresses the comments received on Subpart C by section.

Sec. 1400.201 General Provisions for Determining Whether a Person or Legal Entity Is Actively Engaged in Farming

Some commenters support the addition of "and separately," and similar language, as well as the requirement that the risk be commensurate with the share of the operation.

Comment: Remove the "actively engaged in farming" provisions. Farming operations members that have outside jobs cannot work on the farm, but the money from FSA programs helps hire farm hands and buy new equipment, helping the local economy.

Response: The 2008 Farm Bill requires that actively engaged in farming is an eligibility requirement for certain payments. Therefore, we did not make any changes to the rule in response to the comment.

Comment: The requirements in §§ 1400.105 and 1400.204 requiring separate, distinct, identifiable, and documentable contributions, and similar provisions, are not realistic given the ways farms really operate and discriminate against spouses. Decisions and workloads are typically shared by family members on a family farm, and it is hard to separate one person's contribution. The "independently and separately," "separate and distinct," *etc.* requirements for contributions in this section are confusing, possibly redundant, and likely to be inconsistently applied at the local level. Also, it appears to be more restrictive than was required by the 2008 Farm Bill.

Response: The 2008 Farm Bill requires us to determine whether someone is actively engaged in farming based on their contributions to the farming operation and their share of the profits or losses, "commensurate with the contributions of the person to the farming operation." To determine whether a person's contributions and share of the profits and losses are commensurate with their contributions, we need to know what their separate, distinct, identifiable, and documentable contributions are. In other words, we need to know what specific contributions they made in order to verify that they are actively engaged in farming, and the specific contributions must be documentable. With regards to spouses, as specified in § 1400.202, if one spouse is actively engaged in farming, the other is considered to have made a contribution of labor or management to that farming operation. The 2008 Farm Bill requires us to have actively engaged in farming as an eligibility requirement for certain payments. Therefore, we did not make any changes to the rule in response to the comment.

Comment: Require a person to actually work on a farm to be an "active farmer." Do not let insurance policyholders and corporate staff receive payments. A conference call is not farming.

Response: The 2008 Farm Bill requires us to have actively engaged in farming as an eligibility requirement for certain payments. Personal labor contributed to a farming operation would, by its nature, require that the person actually work on the farm. However, in lieu of a significant contribution of personal labor, the statute also allows a significant contribution of active personal management. Management encompasses more than on-site supervision; therefore, it would be overly restrictive and not supported by statute to make the change suggested by the comment. However, we are currently exploring whether the current definition could be amended in a manner that would be fair, equitable, and enhance program integrity. Therefore, we did not make a change to the rule in response to this comment and other related comments.

Comment: Except for the spouse provisions, the changes to the actively engaged provisions are not required by the 2008 Farm Bill. Withdraw them, or at least delay implementation. Implement the 2008 Farm Bill that reflects the intent of Congress, no more, no less. Congress could have directed USDA to change the definition of actively engaged, but they did not. They had every opportunity, but chose not to, so it is clear the congressional intent was not to change the actively engaged provisions. So, withdraw the entire actively engaged changes.

Response: The provisions in this rule do not exceed our discretionary authority and are within the provisions set by the 2008 Farm Bill, which does in fact amend the provisions for what constitutes "actively engaged in farming." We did comply with the requirements of the 2008 Farm Bill; as discussed in further detail in a response to a comment on § 1400.204, we did provide an exception to the requirement that all stockholders or members in a legal entity such as a corporation must contribute personal labor or active personal management.

Comment: Payments should only go to people who are resident farmer operators; people who perform on a regular basis the day-to-day work of that farm unit, or someone who previously farmed that unit and is now renting it out on a crop share basis. Off-farm owners should not be eligible, even if they provide off-site management or supervision.

Response: The suggested change is beyond our statutory authority. As indicated previously, we are exploring whether the current definition of a significant contribution of active personal management could be amended in a manner that would be fair, equitable, and enhance program integrity. Therefore, we did not make a

change to the rule in response to this comment and other related comments.

Comment: If one spouse is actively engaged, the other should automatically qualify, whether the land is owned or rented.

Response: Section 1400.202 specifies that if one spouse, or an estate of a deceased spouse, is determined to be actively engaged in farming, the other spouse is considered to have made a significant contribution of active personal labor or management, only to the same farming operation. This is not to say that the spouse will automatically meet the other requirements of being actively engaged in farming; contributions of land, capital, or equipment are generally also required to qualify as actively engaged in farming. There is no difference if the land is owned or rented with respect to spousal eligibility. The 2008 Farm Bill requires us to have actively engaged in farming as an eligibility requirement. Therefore, we did not make any changes to the rule in response to the comment.

Sec. 1400.202 Persons

Some commenters strongly support the "independently and separately" language.

Comments: Under the old "3 entity" rule, many farms set up complex corporate structures to maintain eligibility. Now, they are being penalized and spouses will not be eligible. Delay the rule so that people have time to meet the new rules. For example, some farmers organized their family business around the 3 entity rule. More time is needed to adjust to the new rules. Also, a "farm wife" should be automatically considered to have made a separate and distinct contribution. Equal spousal qualification rules should apply regardless of the operation's legal structure.

The provision for spouses discriminates against spouses who operate as part of an entity or corporation. All spouses of actively engaged producers should be considered actively engaged.

Response: Equal spousal qualification rules do apply regardless of the operation's legal structure, as specified in further detail in our handbooks. We cannot delay implementation of the rule. We do not agree that the rule penalizes spouses in a farming operation. The previous rule included a provision by which if one spouse is determined to be actively engaged in farming, the other spouse is credited for the purposes of payment eligibility with making significant contributions of active personal labor or active personal management to the farming operation. While each spouse may now have their own respective limitation, each must also meet applicable program and payment eligibility requirements to receive program benefits. This is not to be construed as meaning if one spouse qualifies for payment, the other automatically qualifies as well. As previously mentioned, both spouses must make significant and requisite contributions to the farming operation that are commensurate with their claimed shares to be considered actively engaged in farming and eligible for program benefits. We did not make a change to the rule in response to this comment; we have further clarified in our handbooks that spouse qualification rules apply regardless of the operation's legal structure.

Comment: The provision for spouses discriminates against single people.

Response: The provisions for spouses are as required by the 2008 Farm Bill. Therefore, we did not make any changes to the rule in response to the comment

Comment: To preserve the long term viability of the soil, eligible persons should be owners of the property that they farm and for which they are receiving payments.

Response: The 2008 Farm Bill does not restrict eligibility to landowners although specific provisions for landowners are provided. Therefore, we did not make any changes to the rule in response to the comment.

Comment: If a spouse has arthritis and can not perform labor or management, does that impact eligibility under CRP? It appears that the rule discriminatory towards people with health issues.

Response: Under the provisions of this rule, if one spouse is determined to be actively engaged in farming, the other spouse is credited for the purposes of payment eligibility with making significant contributions of personal labor or active personal management to the farming operation. In any case, actively engaged in farming provisions do not apply to CRP contracts approved on or after October 1, 2008. We did not make any changes to the rule in response to the comment.

Comment: The exemption for minor children for actively engaged should also apply to retired parents.

Response: There is no exemption for minor children for actively engaged in farming in 7 CFR part 1400. This rule changes § 1400.203 to clarify that at least 50 percent, rather than all, of the members, partners, or stockholders in an entity must make a contribution for the members, partners, or stockholders of the joint operation to be considered actively engaged. That provision may help retired parents in a family entity qualify for payment.

Comment: The spouse provision should make it clear that the spouse's active engagement will be considered to be "commensurate" with their interest. Also, it should apply in the context of the cash rent tenant rule.

Response: It does apply, and we believe that it is clear. We have clarified this in our handbooks.

Comment: If an adult child is trying to start a farm and is renting land from their parents, it is unreasonable that the parents cannot cosign or guarantee a loan in order for their adult child to obtain the operating money? If farmers change an operation's structure FSA is now telling them that they are told they will be out of compliance with USDA's Risk Management Agency.

Why is a parent prohibited from co-signing a loan for an adult child that is renting land from them?

Response: The rule does not prevent co-signing a loan; it only determines payment eligibility and payment limitations. A person who is renting land from someone who also co-signed a loan may not meet the requirements for "actively engaged in farming." We did not change the rule in response to these comments.

Comment: Why does FSA care about interest rates and repayment schedules? Why are you dictating the terms of financial agreements?

Response: The 2008 Farm Bill requires us to determine whether someone is actively engaged in farming based on their contributions to the farming operation and their share of the profits or losses, "commensurate with the contributions of the person to the farming operation." To determine that the contribution of land, capital, or equipment is in fact from that person, we need this information. If the contribution is funded with a loan, we need this information to ensure that there are not improperly favorable "sweetheart" funding agreements between members of a farming operation set up for the purposes of evading payment eligibility provisions. We did not make any changes to the rule in response to this comment.

Sec. 1400.203 Joint Operations

Comments: A more rigorous definition or measurable standard for active personal management is needed; too many people per entity are qualifying for payment eligibility based on only active personal management. However, the comments did not represent a consensus on what that standard should be. Use a 1000 hour eligibility (test) for an active

contribution of management and labor combined. Require each actively engaged partner to work at least 1000 hours in proving labor or management, or engage in labor or management for hours equal to at least half those required by the share of the operation.

Define active management to include marketing, securing financing, supervising employees, and scheduling field activities.

Close the potential loopholes and end unlimited payments to the nation's largest farms. Require a person to either work half time on a farm or provide half the labor or management to qualify as an active farmer. The "actively engaged" issue is the biggest potential loophole of all. Megafarms with investor partners use this potential loophole to collect unlimited payments.

The excess payments gained from the actively engaged potential loopholes allow megafarms to outbid smaller farmers and beginning farmers for land, leading to the demise of family farming. This potential loophole is strangling the economic future of rural communities and choking off farm entry for the next generation.

Require a person to either work half to three quarters of their time on the farm, or provide half the labor or all the management on the share of the operation to qualify as an active farmer.

To qualify for eligibility based on active personal management and no labor, the rule should require that person to personally provide at least 75 percent of the total management required to run the farm or 90 percent of the total management that would be necessary to conduct a farming operation commensurate in size with their requisite share of the operation.

To clarify separate and distinct contributions of active personal management, add language in § 1400.203(a)(1) specifying that merely participating in meetings and voting is not sufficient. Add similar language in § 1400.204(a)(1).

Response: As indicated previously, the definition of what constitutes a significant contribution is provided by regulation, not by statute and, therefore, could be changed. We recognize the difficulty in determining the significance of a management contribution under the current definition and the appeal of a measurable, quantifiable standard. However, unlike labor, the significance of a management contribution is not appropriately measured by the amount of time a person spends doing the claimed contribution. The current regulatory definition of a significant contribution of active personal management has been in effect for over 20 years; Congress has not mandated a more restrictive definition during that time, including in the 2008 Farm Bill. However, we are currently exploring whether the current definition could be amended in a manner that would be fair, equitable, and enhance program integrity. Therefore, no changes were made at this time as the result of this comment and other related comments.

Comment: The "separate and distinct" requirement is not in the 2008 Farm Bill. The 2008 Farm Bill requires that the stockholders or members collectively make a significant contribution of labor or management. The examples in the preamble are unrealistic and reflect a division of labor that does not happen in the context of family farming. The rule should require that all the members together collectively make a contribution.

Response: As indicated in the comment, the 2008 Farm Bill requires that the stockholders or members in a legal entity that is a corporation or similar entity collectively make a significant contribution of personal labor or active personal management. It does not, however, indicate what percentage of stockholders or members in the legal entity must collectively make that significant contribution. However, if the legal entity is general partnership, joint venture, or similar entity, the statute requires that each partner or member must make a significant contribution of personal labor or active personal management. Therefore, we did not make any changes to the rule in response to the comment.

Comment: The provisions on joint and several liability appear to prohibit owner financing and situations where a third party lender requires secondary liability or other credit enhancements from interested persons where a loan is made to acquire an interest in a farming operation. Sound underwriting principles compel Farm Credit associations to require the very sort of credit enhancements that this rule appears to prohibit. Clarify why CCC is doing this. Why does the rule specify the interest rate and repayment schedule for the activities it appears to prevent?

Provisions in §§ 1400.203 and 1400.204 appear to say that if the capital, land, or equipment of an entity is acquired through a loan that is made to, guaranteed by, or co-signed by a person or entity that owns the farming entity, then that farming entity is not eligible for program payments. The rule does not appear to distinguish between loans made between financial entities and the farming entity, and loans made between persons or entities that may own the farming entity. Many commercial loans to farming entities use these very structures, and therefore this could make it difficult for farmers to both obtain credit and maintain payment eligibility. Similarly, the provisions about "prevailing interest rates" are vague. Rewrite this section so as not to infringe upon the lending relationships of farm entities and their financial institutions.

Response: This rule does not prohibit any owner financing methods; it merely specifies the requirements for payment eligibility. The eligibility requirements include a requirement that contributions by a person or entity be made by that person or entity, which means that in the case of a financed contribution, that the eligible person or entity be responsible for the loan. The provisions on interest rates and repayment schedules are intended to ensure that there are not improperly favorable "sweetheart" funding agreements between members of a farming operation set up for the purposes of evading payment eligibility provisions. We made minor technical corrections to the rule to clarify that the requirements for commensurate contributions are slightly different from those for significant contributions.

Comment: FSA told a farmer that he is not eligible because someone had cosigned his loan. He owns a lot of equipment and rents his house, so he does have risk in the farming operation. How do you expect beginning farmers to get started without a little help?

Response: If the person in question is not actively engaged in farming because they have not made the required contributions, then they are not eligible for payment. A person who is renting land from someone who also co-signed a loan may not meet the requirements for "actively engaged in farming." We did not make a change to the rule in response to this comment.

Comment: The current language appears to prohibit common joint financing arrangements currently in use. To fix that, replace the words "interest, and" in §§ 1400.203(b)(1)(iii) and 1400.204(c)(1)(iii) with "interest, or."

The provisions in § 1400.203(b)(1) and (b)(2) appear to contradict each other, as do the provisions of § 1400.204(c)(1) and (c)(2), concerning financing arrangements. If the second paragraph is in each case intended to be the exception to the first, then the words "must not" should be replaced with "should not" and the "and" connecting the two paragraphs should be replaced with an "or."

Response: We will make a technical correction in the rule to make it more clear which requirements apply to commensurate contributions and which apply to significant contributions.

Comment: In § 1400.203(c), add a requirement that no one person can provide the active labor, active management, or combination of labor and management for multiple farming operations collectively receiving more than one maximum payment.

Response: "Actively engaged in farming" determinations are made based on contributions to a farming operation. A person or legal entity can be legitimately involved in multiple farming operations. We do not believe there is authority for the suggested change. Therefore, we did not make a change to the rule in response to this comment.

Sec. 1400.204 Limited Partnerships, Limited Liability Partnerships, Limited Liability Companies, Corporations, and Other Similar Legal Entities

Comment: The requirement that each member make a contribution of labor or management does not make sense in this situation where only one payment is being received (for multiple people in the family farm). For example, unless an elderly family member is providing active labor or management, the family will lose that percentage of program payments.

Response: We agree that does not make sense. The intent of the provisions requiring that each member contribute active management or labor was to prevent the share of persons who were strictly passive investors in a legal entity from being eligible for payments. The intent was not to penalize smaller operations that have multiple members sharing payments less than or equal to the payment limit for one person or legal entity. Therefore, we added an exception if at least 50 percent of the stock is held by partners, stockholders, or members that are providing active personal labor or active personal management and the partners, stockholders, or members providing active personal labor or active personal management are collectively receiving total payments equal to or less than one limitation.

Comments: The legal entity should be eligible if some of the members work off the farm because they have to; for example, an operation that is only a few hundred acres.

All of the members should be eligible if the legal entity is solely owned by relatives, especially if they are siblings.

The rule should add an exemption for small operations if 51 percent of the members are actively engaged.

Not all the members in the family farm have the time, ambition, or skills to participate fully. Passive members of the entity may be doing the farm a favor by remaining passive. For farms with family members only, the actively engaged requirement should be either management and labor or land, capital, and equipment.

In a family entity where all the members are a family and no-one is getting payments through another entity, all family members should be considered to be actively engaged.

This section disincentivizes outside investment and distributing shares of a family corporation to family members who are not actively engaged in the operation. Many family farms have non-actively-engaged family members and outside investors as shareholders so that the operation can continue to the next generation. The decision to dilute ownership should not be deterred by the government.

Response: In response to these comments, this rule adds an exemption if members who collectively hold at least 50 percent interest in the entity make a significant contribution, as described above.

Comment: Allow the county committee to grant exceptions for family farms that are bona fide operations, but where some of the members do not provide commensurate contributions due to their age.

Response: This rule adds an exemption if members who collectively hold at least 50 percent interest in the entity make a contribution, as described above. There will not be an additional provision for exceptions by the FSA county committee.

Comment: Drop the requirement that each stockholder in a corporation be actively engaged in labor or management. Corporations can only get one payment; it is partnerships that are the problem.

Response: The rule does not require that each stockholder be actively engaged; it requires that they make a contribution. This rule makes a change to require that stockholders who collectively hold at least 50 percent interest in the entity, rather than all of the stockholders, contribute.

Comment: Allow members of an entity to make a "combined" contribution to qualify as actively engaged, and collectively share one payment limitation through direct attribution.

Response: The changes in this rule to §§ 1400.203 and 1400.204 should permit this to occur in most situations.

Comment: Section 1400.204(c)(1)(ii) has a "such joint operation" with no antecedent. Should this be "such legal entity?".

Response: We corrected that in this rule.

Comment: The 2008 Farm Bill requires that a person's or entity's share of the profits or losses be commensurate to their contribution and at risk, but it does not require that the risk of loss be commensurate with the claimed share of the operation. That is not realistic. There are good business reasons why risk is different, such as preferred stock.

Response: In the case of a legal entity, such as a corporation, the risk of loss pertains to the legal entity, not the stockholders of the legal entity. Therefore, no changes were made in response to this comment.

Comment: Change the definition of actively engaged to exclude corporate partners whose farming is solely to reap government benefits. An investor is not a farmer.

Response: There is no statutory authority to make this specific change. However, if a scheme or device has been adopted, the provisions in § 1400.5 would apply. Additionally, as indicated in response to a related comment, we are exploring whether the current definition of a significant contribution of active personal management could be amended in a manner that would be fair, equitable, and enhance program integrity. Therefore, no changes were made at this time as the result of this comment and other related comments.

Comment: Active managers should be required to live within 20 miles of the farm they claim to manage.

Response: This comment's particular change was not made because it is very specific and might not apply to operations in different locations. It would not be unusual in a rural area for an active manager who works on the farm every day but does not live there to have a daily commute of more than 20 miles to the farm. We made no change to the rule in response to this comment.

Comment: To clarify spousal eligibility, add the words "or their spouses" after the words "ownership interest" in § 1400.204(a)(2).

Response: We made that change in this rule.

Sec. 1400.207 Landowners

Comment: No landowner should get a subsidy if the land is rented by a real farmer and not owner-operated.

Absentee landowners should not get payments unless they are actively engaged.

Response: As specified in the 2008 Farm Bill, the regulation allows landowners to be eligible for payment only if they have a share in the risks and profits of the farming operation. In other words, landowners who receive a fixed rental payment regardless of the success of the farming operation are not "producers," are not considered to be "actively engaged in farming" and are not eligible for payment. The previous rule added more specific language to clarify that absentee landowners will not be eligible to receive payment unless they have a share in the risks and profits of the farming operation. Therefore, we did not change the rule in response to these comments.

Comment: Are members of a limited liability corporation (LLC) that rents land out on a share crop basis determined to be actively engaged under the landowner exemption? If so, clarify that in the rule.

Response: If an LLC rents land, the LLC, rather than the members, would or would not be eligible for payment based upon a determination of the LLC's eligibility. We did not change the rule in response to this comment.

Comment: Add a paragraph (a)(4) to this section to read "rents the land at a rate that is usual and customary." This is needed to avoid cut rate leases that are used to evade payment limits.

Response: This language is not in the 2008 Farm Bill, and we do not have the discretionary authority to add such additional requirements. Therefore, we did not change the rule in response to this comment.

Sec. 1400.209 Sharecroppers

Some commenters support all the changes to § 1400.209.

Comment: The AGI limits will force landlords to change from crop share renting to cash basis, which will greatly increase the risk to the (crop share) farmer. The shift of farm payment from the landlord, who probably pays a 40 percent income tax rate on the benefit, to the farmer, who probably pays a 20 percent income tax rate, will reduce income tax revenue for the government. Taxpayers will lose.

The paperwork burden is encouraging landowners to move from share rent to cash rent, which increases the risk for (renting) farmers.

Response: The paperwork burden is necessary to implement payment limitation, payment eligibility, and average AGI provisions. The average AGI provisions are as specified in the 2008 Farm Bill and we must implement them. The argument that the landlord pays a higher tax rate than the cash rent farmer on a farm program payment is not a sufficient justification to change the rule, since the government would spend even less if no payment were made at all due to ineligibility. The rule reflects the requirements of the 2008 Farm Bill; therefore, we did not make any changes in response to the comment.

Comment: Some renters have a landlord and also a separate owner or "waterlord" who owns the water rights to the property. Waterlords are not allowed the same landlord exemption from actively engaged. They should be. If they do not get the exemption, they will shift from share rent to cash rent, which again increases the risk to (renter) farmers.

Response: The 2008 Farm Bill does not mention waterlords; we have no authority to set separate eligibility requirements for them or to apply landowner provisions if, in fact, they are not the owner of the land being farmed. The rule reflects the requirements of the 2008 Farm Bill; therefore, we did not make any changes in response to the comment.

Sec. 1400.210 Deceased and Incapacitated Persons

Comment: Explicitly state that if an individual member of a farming operation dies, all the surviving members should continue to receive timely payments for their share of the operation.

Response: The regulation does not prevent payments to surviving persons if a deceased person was a member of the farming operation. The regulation also already specifically allows such payments to the estate of a deceased person, provided that a representative of the person's estate provides the determining authority the requisite documentation that the person was, or intended to be, actively engaged in farming. If this comment is about direct and counter-cyclical payment program (DCP) enrollments, it is outside the scope of this rule; the DCP regulations are in 7 CFR part 1412. If the comment is about payments on behalf of the estate of a deceased person, the rule already addresses this situation; therefore, no change was made as a result of this comment.

Subpart D—Cash Rent Tenants

The following discussion addresses the comments received on Subpart D by section.

Sec. 1400.301 Eligibility

Comment: It is unreasonable to require the tenant to exercise complete control over the leased equipment for an entire crop year, when that equipment is leased from a landlord or from the same source as the hired labor. It is wasteful to leave equipment idle when it could otherwise be put to efficient use.

Response: The section on cash rent tenants did not change significantly with the previous rule, so the requirement of a contribution of equipment and the complete control requirement are not new. The change made in the previous rule was to specify that "complete control" means "exclusive access and use by the tenant."

To clarify further, the current regulations do not require that a tenant lease equipment for an entire crop year; the regulation only states that if a tenant is eligible for payment based on a contribution of equipment that such equipment be leased for the entire crop year. A cash rent tenant can be eligible for payment by contributing either labor or management and equipment. In other words, no contribution of equipment is required for a cash rent tenant to be eligible for payment if they make a significant contribution of labor to the farming operation instead. We did not change the rule based on this comment.

Comment: The provisions about leased equipment are not feasible for custom farm work. For example, if a farmer hires someone to combine corn for a flat rate, it is impossible to separate into equipment lease and labor for the purposes of the regulation or the 902 forms. With a custom flat rate, there is no risk to the farmer, like there would be if the farmer leases the equipment and breaks a belt, so it is in no way the same thing as a lease or separable into a lease and labor. Clarify in the rule, so it is applied consistently and correctly.

Response: To be "actively engaged" as a cash rent tenant based on a contribution of equipment, the equipment must be leased and other requirements must be met. A custom farming contract is not a lease. The rule is consistent in the sense that it makes no mention of custom farming as qualifying a cash rent tenant as actively engaged. This is consistent with the 2008 Farm Bill, which allows a recipient of custom farming services to be eligible if the person or legal entity is a landowner, adult family member of a family farming operation, sharecropper, or grower of hybrid seed. The 2008 Farm Bill explicitly prohibits us from making any other rules with

respect to custom farming in terms of being "actively engaged." Therefore, we did not make any changes in response to the comment.

Comment: To clarify spousal eligibility, add the words "or their spouses" after the words "each member" in § 1400.301(d).

Response: We made that change in this rule.

Subpart E—Foreign Persons

The following discussion addresses the comment received on Subpart E by section.

Sec. 1400.402 Notification

Comment: Section 1400.402, which sets forth notification requirements for both foreign and domestic legal entities, should be combined with section § 1400.107, "Notification of Interests."

Response: Section 1400.402 is currently located in the subpart on Foreign Persons, because it specifically requires foreign and domestic legal entities to notify the county committee of foreign interests in that entity. We did not change the rule in response to this comment.

Subpart F—Average Adjusted Gross Income Limitation

The following discussion addresses the comments received on Subpart F by section.

Sec. 1400.500 Applicability

Comment: We support payment limits that deny payments to anyone whose average nonfarm AGI exceeds $500,000, and denying direct payments to anyone whose average farm AGI exceeds $750,000.

Response: These requirements, as specified in the 2008 Farm Bill, were implemented in the previous rule and require no additional changes.

Comment: We support the $1 million AGI cap for conservation program benefits, providing that the 75 percent farm income exemption remains intact.

Response: The $1 million AGI cap for conservation program benefits, as specified in the 2008 Farm Bill, was implemented in the previous rule. There is an exception if not less than 66.66 percent of that income is farm income. That 66.66 percent threshold was specified in the 2008 Farm Bill; there is no authority to change the threshold to 75 percent, as suggested. Therefore, we did not make any changes in response to the comment.

Comment: Consider alternatives to the AGI limits and provisions set in the 2008 Farm Bill. Corporations making more than $250,000 in profit or where the shareholders are not at least 50 percent immediate family members should be excluded.

Reducing the AGI limit to $250,000 might slow down the trend towards bigger and bigger farms driving the small ones out of business.

The subsidy cap should be gross sales over $1 million.

Farm income should exceed all other forms of income to be eligible for any payment.

Farm income should be at least 25 percent of total income to be eligible for any payment.

The current AGI limits in the 2008 Farm Bill would be devastating to America's farmers, and any further reduction could lead us to rely on imported food as we do with oil today. Can you change the limits?

Payment limits should be done by number of acres rather than income, because the big operators will always find a way to get around the AGI limits with shadow partners or big machinery purposes. The coverage should be for a certain number of acres, not a certain AGI.

Use net income instead of gross, so that we can also collect social security.

If there is going to be a gross income limit, it should be at least a million and probably two million, but there does need to be an upper income. Gross income is harder to manipulate than net, so it should probably be gross.

Response: The 2008 Farm Bill was specific on the AGI provisions. The $500,000 limit on nonfarm AGI and the $750,000 limit on farm income were specified in the 2008 Farm Bill, as well as the general categories of what will be considered farm income. Therefore, we did not make any changes in response to the comments.

Comment: Remove or delay implementation of the AGI limits. With no time to plan for these changes we will be forced to lay off farm hands, grow fewer crops and livestock, and increase food prices.

Response: We must implement the requirements of the 2008 Farm Bill; therefore, we did not make any changes in response to the comments.

Comment: Waive the AGI limit for conservation programs for cost-share forestry activities in priority areas identified by States per section 8002 of the 2008 Farm Bill.

Response: The Secretary has the authority, as specified in the 2008 Farm Bill and in § 1400.500, to waive the AGI limit on a case-by-case basis for the protection of environmentally sensitive land of special significance. Forest stewardship activities in priority areas could meet that criteria, but such activities will be reviewed on a case-by-case basis. That is already specified in the rule, so we did not make any changes to the rule in response to this comment.

Comment: Are the "previous 3 tax years" based on the crop year or the time of signup? For example, if one person signs up for 2011 DCP in October 2010, do they have the same 3 years for AGI calculation as someone who signs up for 2011 DCP in January 2011?

Response: For the purposes of determining the 3 applicable tax years, it does not matter when during a crop, fiscal, or program year a person signs up for the program. In this example, the 3 applicable tax years would be 2007 through 2009. We did not make any changes to the rule in response to this comment.

Sec. 1400.501 Determination of Adjusted Gross Income

Comments: Make it clear that wages from a farming operation or other entity is considered farm income for AGI purposes.

Specifically reference IRS Schedule T for forest activities.

Take into account that the IRS limits losses that can be claimed if a producer receives benefits, which could understate a producer's losses while exaggerating AGI, unfairly resulting in program ineligibility.

Are dividends from the activities listed here considered farm income?

Include farm income, wages, and dividends as farm income for the purpose of the AGI rule.

Are profits and losses from LLCs involved in the activities listed here considered farm income?

If entities are involved in the list in § 1400.501 and other activities, how are the dividends or profits allocated between farm and non-farm income?

What about income derived or received from interests held in ethanol plants and processing facilities?

Response: The provisions in the previous rule relating the determination of average adjusted gross farm income are based on the provisions in the 2008 Farm Bill. The rule also indicated that the determination of average adjusted gross farm income would include any other activity related to farming, ranching, or forestry, as determined by the Deputy Administrator. Accordingly, the issue on wages and related issues in these comments will be addressed in handbook procedure.

Comment: If a farmer sold some land, there could be a very large income in that year. Use at least a 5 year average AGI instead of a 3 year average AGI to

avoid penalizing people in that example.

Response: The 3 year average AGI provision was specified in the 2008 Farm Bill, as were the general categories of what will be considered farm income. Therefore, we did not make any changes to the rule in response to the comments.

Sec. 1400.502 Compliance and Enforcement

Comment: A farmer should not have to certify my AGI every year, nor should the FSA office be reviewing tax returns. Farmers generally do not employ certified tax accountants for preparation of tax returns and that AGI certification would create undue hardship; third party verifiers (CPAs & lawyers) may be reluctant to assume liability for providing certifications.

Response: The requirement to certify average AGI as required by CCC is not new and does not represent an unreasonable requirement. CCC believes that such certification is necessary to ensure that payments are made to persons and legal entities that qualify under the AGI limits set by Congress, and that payments are not made based on fraudulent AGI statements. We did not make any changes to the rule in response to the comment.

Comments: Handle AGI verification in house, by sharing data with IRS. County offices should not be storing AGI records locally for everyone; have county offices verify only those records that do not pass the first screen against IRS data.

Do not let the USDA have access to our IRS files. That is a clear violation of privacy, and the information will somehow, inevitably end up publicly available. Personal IRS data should not end up on an interest group Web site.

Information obtained by USDA from the IRS should not be subject to FOIA.

Investigation of IRS "red flagged" files should be done at a central FSA office, not at the county level, for reasons of expertise and confidentiality.

Response: We are currently working with the Treasury Department to improve our methods for AGI verification while maintaining full privacy and confidentiality of this sensitive information. As in the previous rule, any information gathered for average AGI verification and compliance purposes is not subject to disclosure under FOIA.

Comments: Let farmers use IRS enrolled agents to certify.

Let farmers use tax preparers who are not IRS enrolled agents, attorneys, or CPAs to certify.

Response: For average AGI certification purposes, both the 2002 and 2008 Farm Bill allow a statement from a certified public accountant or from a third party acceptable to the Secretary. The decision was made that only an attorney is an acceptable third party qualified to provide such a statement.

General Comments Received

Some comments received on the previous rule provided general comments not related to any specific subpart or section of the interim rule.

- Some of the general comments supported or opposed alternative proposals to the 2008 Farm Bill. In response, CCC is implementing the 2008 Farm Bill and will implement any amendments if and when those amendments become law.
- Some comments expressed general disapproval with the entire farm program, or with certain aspects of the program. In response, CCC does not have the authority to end the direct payments program, or any other program authorized by Congress.
- Some comments expressed general views, rather than making specific suggestions for changes to this rule. In response, CCC welcomes the input but cannot make specific changes to the rule based on general views.
- Some comments suggested changes to USDA programs outside the scope of CCC programs. In response, CCC does not have authority to make changes to rules for non-CCC programs. Also, we cannot change the DCP program or forms for DCP enrollment with this rule, because that is outside the scope of 7 CFR part 1400.
- Some comments and questions were about the forms used to apply for payments or verify income. While the forms were re-numbered in 2008 and have a different appearance than previously, the questions and information requested are essentially the same as for the past twenty years. We will address some of these comments by clarifying and updating our handbooks.

The following comments, which generally fit into the categories just discussed, are outside the scope of this rule:

- Bring back the CRC Plus program.
- Strongly opposed to the current administration's proposal to cap payments based on $500,000 gross farm revenue.
- Strongly support the current administration's proposal to cap payments based on $500,000 gross farm revenue.
- Strongly oppose the proposal to phase out DCP and change the crop insurance program.
- ACRE should be a one year commitment, and not require that the landlord agree.
- New farm land should be eligible for DCP.
- Farmers' health insurance is increasing 40–50 percent this year.
- Write gardening into the school curriculum.
- A guaranteed farmer bailout every year is no less wrong than two or three bailouts for banks. Allowance to fail is part of capitalism.
- Government should not be a reason that children are fat and unhealthy.
- Do something about abuse of downer cows at slaughterhouses.
- Do all you can to help factory farm animals.
- Extend subsidies to farmers who grow vegetables, particularly those grown sustainably. Favor farms that sell locally and sustainably grown vegetables over farmers who sell too much grain that ends up in the international marketplace, devastating farmers in developing nations.
- Create a simple system for vendors at farmers' markets to accept the supplemental nutrition assistance program.
- Help real farmers, not megafarms with investors.
- Support local organic farmers.
- Support community supported agriculture.
- Farmers who are entities should not be banned from receiving USDA low interest loans.
- CCC–509 does not work for Native Americans.
- A guaranteed payment regardless of crop price or profit is not a safety net. With crop insurance, disaster assistance, and price support now in place, direct payments should be phased out.
- Oppose direct payments because they distort the playing field in favor of large corporate farms. Eliminate all direct payments to farmers, and keep in place the price support programs.
- Consider ways that the farm payments program can promote an increase in the acreage of deep-rooted grassland plant cover, preferably native grassland species.
- The government should not be helping any farmer, large or small. Let the free market take place. This would allow small family farms to have a fighting chance against corporate farms.
- Offer tax breaks or subsidies for organic farming or moving away from non-edible corn and into growing fruits and vegetables.
- Re-direct subsidies to support insect, wildlife, and human communities.

Summary of Changes to the Rule

As discussed above, in response to the comments, we made changes to the rule. Also, we made a number of additional technical corrections and minor clarifications. The changes are summarized below.

We added an exception for smaller operations to the requirement that every interest holder in a legal entity must provide active personal labor or active personal management. We clarified provisions concerning CRP and other conservation programs, so that the rule is consistent with current practice.

We made the date for minor child determination consistent with the date for payment attribution.

We corrected and clarified cross-references between this part and other parts in this chapter, and corrected and clarified cross-references between sections in this part. We also fixed inconsistent terminology. We removed § 1400.7, "Commensurate Contributions and Risk," from subpart A because all of the provisions are duplicated in subpart C and to clarify that the provisions apply only to programs to which subpart C applies. We clarified the provisions for trusts and estates to make them consistent with other sections in this part regarding contributions.

On other topics on which we received comments, we did not change the rule, but we provided additional clarification in the preamble and plan to add additional detail to our handbooks. These topics include:

- Spousal eligibility for different types of joint operations,
- Substantive change rules,
- Financing of capital, land, and equipment contributions,
- Withdrawal and resubmission of farm operating plans, and
- The tax status of entities and income that is not relevant for the purposes of this part.

Executive Order 12866

The Office of Management and Budget (OMB) designated this final rule as significant and it was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. A Cost Benefit Analysis is summarized below and is available from the contact information listed above.

Summary of Economic Impacts

The 2008 Farm Bill requires major revisions of payment eligibility and payment limit regulations, which were implemented with the interim rule.

The exception made by this rule to the requirement that all stockholders, partners, or members in an entity have to contribute personal labor or active personal management is expected to impact fewer than a thousand entities. The monetary impact is not substantial. Although those entities were impacted by the requirement imposed by the interim rule, they were still eligible for reduced payments based on the percentage of stockholders, partners, or members in the entity making the required contributions. The change made by this rule will allow full payment.

This rule also implements minor technical corrections, such as correcting internal paragraph references, which are expected to have no substantive cost or benefit.

There is estimated to be minimal cost to the government in implementing this regulation because the forms and procedures for determining payment eligibility are not changing.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since CCC is not required to publish a notice of proposed rulemaking for this rule. CCC is authorized by section 1601 of the 2008 Farm Bill to issue an interim rule effective on publication with an opportunity for comment, which was done.

Environmental Review

CCC received one comment on the previous rule stating an EIS is needed to comply with NEPA.

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), and FSA's regulations for compliance with NEPA (7 CFR part 799). The changes to Payment Limitation and Payment Eligibility required by the 2008 Farm Bill that are identified in this rule are non-discretionary. Therefore, FSA has determined that NEPA does not apply to this rule and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. *See* the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

The final rule has been reviewed in accordance with Executive Order 12988. This rule is not retroactive and does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian Tribal governments or have Tribal implications that preempt Tribal law.

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local or Tribal governments, or the private sector. In addition, CCC is not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Federal assistance programs in the Catalog of Federal Domestic Assistance to which this final rule applies are:

10.055—Direct and Counter-Cyclical Payments Program.
10.069—Conservation Reserve Program.
10.072—Wetlands Reserve Program.
10.082—Tree Assistance Program.
10.912—Environmental Quality Incentives Program.
10.914—Wildlife Habitat Incentive Program.
10.917—Agricultural Management Assistance.
10.918—Ground and Surface Water Conservation—Environmental Quality.

Incentives Program

10.920—Grassland Reserve Program.

This final rule also applies to the following Federal assistance programs that are not in the Catalog of Federal Domestic Assistance:

- ACRE,
- Emergency Assistance Program for Livestock, Honey Bees, and Farm-raised Fish (ELAP),
- Livestock Forage Disaster Program (LFP),
- Livestock Indemnity Program (LIP),
- Supplemental Revenue Assistance Program (SURE),
- Agricultural Water Enhancement Program (AWEP),
- Chesapeake Bay Watershed Program (CBWP),
- Conservation Stewardship Program (CSTP),
- Cooperative Conservation Partnership Initiative (CCPI), and
- Farm and Ranchland Protection Program (FRPP).

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in Section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and the programs administered without regard to the Paperwork Reduction Act.

We received comments on the previous rule that the forms require disclosure of information that should not be required and the burden for AGI compliance is excessive. The requirement to certify average AGI as required by CCC is not new and does not represent an inappropriate requirement. While the forms were re-numbered in 2008 and have a different appearance than previously, the questions and information requested is essentially the same as for the last 20 years. Therefore, the AGI certification is necessary to ensure that payments are made to persons and legal entities that qualify under the AGI limits set by Congress, and that payments are not made based on fraudulent AGI statements.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 1400

Agriculture, Loan programs—agriculture, Conservation, Price support programs, Reporting and recordkeeping requirements.

For the reasons discussed above, this rule amends 7 CFR part 1400 as follows:

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY FOR 2009 AND SUBSEQUENT CROP, PROGRAM, OR FISCAL YEARS

1. The authority citation continues to read as follows:

Authority: 7 U.S.C. 1308, 1308–1, 1308–2, 1308–3, 1308–3a, 1308–4, and 1308–5.

2. Amend § 1400.1 as follows:

a. In paragraph (a), introductory text, remove the words "parts 1421 and", and add, in their place, the words "parts 1421, 1430, and",

b. In paragraph (a)(2), add the words "with respect to contracts approved on or after October 1, 2008 " at the end, before the semicolon,

c. Add paragraph (a)(8) to read as set forth below, and

d. Revise paragraph (f) to read as set forth below.

§ 1400.1 Applicability.

(a) * * *

(8) Subparts C and D of this part do not apply to the programs listed in paragraphs (a)(2) through (a)(7) of this section.

* * * * *

(f) The following amounts are the limitations on payments per person or legal entity for the applicable period for each payment or benefit.

Payment or benefit	Limitation per person or legal entity, per crop, program, or fiscal year
(1) Direct Payments for covered commodities [1]	$40,000
(2) Direct Payments for peanuts [1]	40,000
(3) CRP annual rental payments [2]	50,000
(4) GRP	50,000
(5) WHIP	50,000
(6) WRP [3]	50,000
(7) Counter-Cyclical Payments for covered commodities [3]	65,000
(8) Counter-Cyclical Payments for peanuts [3]	65,000
(9) NAP payments	100,000
(10) Supplemental Agricultural Disaster Assistance [4]	100,000
(11) TAP	100,000
(12) CSTP [5]	200,000
(13) EQIP	300,000

[1] If the person or legal entity has a direct or indirect interest in payments earned on a farm that is in ACRE, this limitation will reflect a 20 percent reduction in direct payments on each farm that is participating in ACRE.

[2] Limitation is applicable to annual rental payments received directly and indirectly from all CRP contracts regardless of contract approval date, except payments received directly and indirectly under CRP contracts approved prior to October 1, 2008, may exceed the limitation, subject to payment limitation rules in effect on the date of contract approval.

[3] The payment limit does not apply to payments for perpetual or 30 year easements or under 30 year contracts.

[4] Under ACRE, this amount will be a combined limitation for counter-cyclical and ACRE payments. If a person or legal entity has a direct or indirect interest in payments earned on a farm that is participating in ACRE, this limitation will reflect an increase for the amount that the direct payments were reduced.

[5] Total payments received under Supplemental Agricultural Disaster Assistance through SURE, LIP, LFP, and ELAP may not exceed $100,000.

[6] The $200,000 limit is the total limit for 2009 through 2012.

Note: AMA, AWEP, CBWP, CCPI, and FRPP are all limited by available funding rather then an amount by participant.

§ 1400.2 [Amended]

3. Amend § 1400.2 in paragraph (g) by removing the words "will not be made by a county FSA office" and adding, in their place, the words "will be made by the FSA State office".

§ 1400.6 [Amended]

4. Amend § 1400.6 in paragraph (a) by removing the words "joint ventures and general partnerships" and adding, in their place, the words "joint operations".

§ 1400.7 [Removed and Reserved]

5. Remove and reserve § 1400.7.

§ 1400.101 [Amended]

6. Amend § 1400.101, paragraph (a), by removing the date "April 1" and replacing it with the date "June 1".

7. Amend § 1400.102 as follows:

a. In paragraph (a), remove the reference to "§ 1400.1" and add, in its place, a reference to "§ 1400.1(a)(1)" and

b. Revise paragraph (c) to read as set forth below.

§ 1400.102 States, political subdivisions, and agencies thereof.

* * * * *

(c) The total payments described in paragraph (b) of this section cannot exceed $500,000 annually except for States with a population less than 1,500,000, as established by the most recent U.S. Census Bureau annual estimate of such State's resident population.

§ 1400.104 [Amended]

8. Amend § 1400.104 as follows:

a. In paragraphs (a)(1) and (a)(2) add the word "or" at the end of the paragraph.

b. In paragraphs (a)(3)(ii) and (a)(4)(v), remove the period at the end of the paragraph, and add a semicolon and the word "; or" in its place.

c. In paragraphs (a)(4)(iii) and (a)(5)(iii), add the words "direct or indirect" before the word "control".

9. Amend § 1400.105 by adding paragraphs (d)(1) and (d)(2) to read as follows:

§ 1400.105 Attribution of payments.

* * * * *

(d) * * *

(1) If the change in ownership interest is due to the death of an interest holder in the legal entity or the legal entity did not exist on June 1 of the applicable year, the Deputy Administrator may determine that a change after June 1 is considered relevant or effective for the current year.

(2) Changes that occur after June 1 cannot be used to increase the amount of program payments a legal entity, or its members, is eligible to receive directly or indirectly for the applicable year.

* * * * *

§ 1400.106 [Amended]

10. Amend § 1400.106, paragraph (b), by removing the words "joint venture or general partnership" both times they appear and adding, in their place, the words "joint operation" and by removing the words "joint ventures or general partnerships" and adding, in their place, the words "joint operations".

§ 1400.202 [Amended]

11. Amend § 1400.202 as follows:

a. In paragraph (c)(1) introductory text, remove the word "Must", and add, in its place, the words "To meet the requirements of paragraph (a)(1)(i) of this section, must" at the beginning of the paragraph, and

b. In paragraph (c)(2) introductory text, remove the word "If", and add, in its place, the words "To meet the requirements of paragraphs (a)(2) and (a)(3) of this section, and if" at the beginning of the paragraph.

§ 1400.203 [Amended]

12. Amend § 1400.203 as follows:

a. In paragraph (b)(1) introductory text, remove the words "Must be", and add, in its place, the words "To meet the requirements of paragraph (a)(1)(i) of this section, and if" at the beginning of the paragraph, and

b. In paragraph (b)(2) introductory text, remove the word "If", and add, in its place, the words "To meet the requirements of paragraphs (a)(2) and (a)(3) of this section, and if" at the beginning of the paragraph.

13. Amend § 1400.204 as follows:

a. In paragraph (a)(2) introductory text, add the words "or their spouse with an ownership interest" after the words "ownership interest",

b. In paragraph (a)(3), add the word "collective" before the word "contribution",

c. Redesignate paragraph (c) as paragraph (d),

d. Add new paragraph (c) to read as set forth below,

e. In newly redesignated paragraph (d)(1) introductory text, remove the word "Must", and add, in its place, the words "To meet the requirements of paragraph (a)(1) of this section, must" at the beginning of the paragraph,

f. In newly redesignated paragraph (d)(1)(ii), remove the words "Such joint operation" and add, in their place, the words "Such legal entity", and

g. In newly designated paragraph (d)(2) introductory text, remove the word "If", and add, in its place, the words "To meet the requirements of paragraphs (a)(4) and (a)(5) of this section, and if" at the beginning of the paragraph.

§ 1400.204 Limited partnerships, limited liability partnerships, limited liability companies, corporations, and other similar legal entities.

* * * * *

(c) An exception to paragraph (b) of this section will apply if:

(1) At least 50 percent of the stock is held by partners, stockholders, or members that are actively providing labor or management and

(2) The partners, stockholders, or members are collectively receiving, directly or indirectly, total payments equal to or less than one payment limitation.

* * * * *

14. Amend § 1400.205 as follows:

a. Redesignate paragraphs (e) and (f) as (f) and (g) and

b. Add new paragraph (e) to read as set forth below:

§ 1400.205 Trusts.

* * * * *

(e) For a farming operation conducted by a trust in which the capital, land, or equipment is contributed by the trust, such capital, land, or equipment:

(1) To meet the requirements of paragraph (a) of this section, must be contributed directly by the trust and must not be acquired as a loan made to, guaranteed, co-signed, or secured by:

(i) Any person, legal entity, or joint operation that has an interest in such farming operation, including the trust's income beneficiaries;

(ii) Such joint operation by any person, legal entity, or other joint operation that has an interest in such farming operation; or

(iii) Any person, legal entity, or joint operation in whose farming operation such trust has an interest, and

(2) To meet the requirements of paragraphs (c) and (d) of this section and if land, capital or equipment is acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations as defined, the loan must:

(i) Bear the prevailing interest rate; and

(ii) Have a repayment schedule considered reasonable and customary for the area.

* * * * *

15. Amend § 1400.206 as follows:

a. Redesignate paragraph (b) as (c) and

b. Add paragraph (b) to read as set forth below:

§ 1400.206 Estates.

* * * * *

(b) For a farming operation conducted by an estate in which the capital, land, or equipment is contributed by the estate, such capital, land, or equipment:

(1) To meet the requirements of paragraph (a) of this section, must be contributed directly by the estate and must not be acquired as a loan made to, guaranteed, co-signed, or secured by:

(i) Any person, legal entity, or joint operation that has an interest in such farming operation, including the estate's heirs;

(ii) Such joint operation by any person, legal entity, or other joint operation that has an interest in such farming operation; or

(iii) Any person, legal entity, or joint operation in whose farming operation such an estate has an interest; and

(2) To meet the requirements of paragraphs (c)(3)and (a)(4) of this section, and if land, capital or equipment is acquired as a result of a loan made to, guaranteed, co-signed, or secured by the persons, legal entities, or joint operations as defined, the loan must:

(i) Bear the prevailing interest rate; and

(ii) Have a repayment schedule considered reasonable and customary for the area.

* * * * *

§ 1400.301 [Amended]

16. Amend § 1400.301, in paragraph (d), by adding the words "or their spouse" after the word "member".

Signed in Washington, DC, on December 30, 2009.

Chris P. Beyerhelm,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2010–7 Filed 1–6–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0096; Directorate Identifier 2007–NE–39–AD; Amendment 39–16141; AD 2009–26–06]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. ALF502 Series and LF507 Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Honeywell International Inc. ALF502 series and LF507 series turbofan engines with certain fuel manifold assemblies installed. That AD currently requires initial and repetitive on-wing eddy current or in-shop fluorescent penetrant inspections of certain part number (P/N) fuel manifold assemblies for cracks, and replacement of cracked fuel manifolds with serviceable manifolds. This AD continues to require inspecting those fuel manifolds for cracks, adds leak checks of certain additional P/N fuel manifolds, and specifies replacement of the affected manifolds as an optional terminating action in lieu of the repetitive inspections. This AD results from reports of fire in the engine nacelle. We are issuing this AD to detect cracks in certain fuel manifolds and fuel leaks from other fuel manifolds, which could result in a fire in the engine nacelle and a hazard to the aircraft.

DATES: This AD becomes effective February 11, 2010. The Director of the Federal Register approved the incorporation by reference of AlliedSignal Service Bulletin (SB) ALF/LF 73–1002, Revision 1, dated March 24, 1997, listed in this AD as of February 11, 2010. The Director of the Federal Register previously approved the incorporation by reference of SB ALF/LF 73–1002, dated December 22, 1995, listed in this AD as of July 28, 1997 (62 FR 28994, May 29, 1997).

ADDRESSES: You can get the service information identified in this AD from Honeywell International Inc., P.O. Box 52181, Phoenix, AZ 85072–2181; telephone (800) 601–3099 (U.S.A.) or (602) 365–3099 (International); or go to: *https://portal.honeywell.com/wps/portal/aero.*

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; e-mail: *robert.baitoo@faa.gov;* telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 97–11–05, Amendment 39–10034 (62 FR 28994, May 29, 1997), with a proposed AD. The proposed AD applies to Honeywell International Inc. ALF502 series and LF507 series turbofan engines with certain fuel manifold assemblies installed. We published the proposed AD in the **Federal Register** on April 13, 2009 (74 FR 16803). That action proposed to continue to require inspecting those fuel manifolds for cracks, would also add leak checks of certain additional P/N fuel manifolds, and would specify replacement of the affected manifolds as an optional terminating action in lieu of the repetitive inspections.

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 provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

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

Clarification in Optional Terminating Action Paragraph

Paragraph (i) of this AD is partially revised from, "* * * terminates the repetitive inspection requirement specified in paragraphs (f)(1)(iii), (f)(2)(iii), (g), and (h) of this AD." to "* * * terminates the inspection requirement of this AD." This change was made because replacing a fuel manifold assembly that has a P/N specified in paragraph (i) of this AD, or an FAA-approved equivalent part, terminates all inspection requirements of this AD.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 156 engines installed on airplanes of U.S. registry. We also estimate that it will take about 7 work-hours per engine to perform the required actions, and that the average labor rate is $80 per work-hour. Required parts will cost about $50,000 per engine. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $7,887,360.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a 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

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration 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 removing Amendment 39–10034 (62 FR 28994, May 29, 1997), and by adding a new airworthiness directive, Amendment 39–16141, to read as follows:

2009–26–06 Honeywell International Inc. (Formerly AlliedSignal and Textron-Lycoming): Amendment 39–16141. Docket No. FAA–2007–0096; Directorate Identifier 2007–NE–39–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 11, 2010.

Affected ADs

(b) This AD supersedes AD 97–11–05, Amendment 39–10034.

Applicability

(c) This AD applies to Honeywell International Inc. ALF502L and ALF502R series, and LF507–1F and LF507–1H turbofan engines with fuel manifolds, part numbers (P/Ns) 2–163–620–9, 2–163–620–10, 2–163–620–17, 2–163–620–18, 2–163–620–23, 2–163–620–24, 2–163–620–25, 2–163–620–26, 2–163–620–27, 2–163–620–28, 2–163–620–33, 2–163–620–34, 2–163–620–35, 2–163–620–36, 2–163–620–37, or 2–163–620–38, installed. These engines are installed on, but not limited to, Bombardier CL–600–1A11 and BAE Systems 146–100/A, –200/A, and –300/A, and AVRO 146–RJ70A, –RJ85A, and –RJ100A airplanes.

Unsafe Condition

(d) This AD results from reports of fire in the engine nacelle. We are issuing this AD to detect cracks in certain fuel manifolds and fuel leaks from other fuel manifolds, which could result in a fire in the engine nacelle and a hazard to the aircraft.

Compliance

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

Initial Inspection for Cracks in Fuel Manifold Assemblies That Have a P/N Listed in Paragraph (c) of This AD, Except P/Ns 2–163–620–37 or 2–163–620–38

(f) Using the following compliance times, perform initial and repetitive on-wing eddy current inspections (ECI) or in-shop fluorescent penetrant inspections (FPI) of fuel manifold assemblies having a P/N listed in the paragraph (c) of this AD, except P/Ns 2–163–620–37 or 2–163–620–38. Use paragraphs 2.A.(1) through 2.A.(3)(d) of the accomplishment instructions of AlliedSignal Service Bulletin ALF/LF 73–1002, Revision 1, dated March 24, 1997 or original issue dated December 22, 1995, to perform the inspections.

(1) For ALF502L series engines:

(i) For fuel manifold assemblies with 3,250 or more cycles since new (CSN) or unknown CSN on July 28, 1997 (the effective date of AD 97–11–05), inspect at the next hot section inspection (HSI), or 2,000 cycles-in-service (CIS) after July 28, 1997, whichever occurs first.

(ii) For fuel manifold assemblies with less than 3,250 CSN on July 28, 1997, inspect at the next HSI or before accumulating 5,250 CSN, whichever occurs first.

(iii) Thereafter, inspect at HSI intervals not to exceed 2,000 cycles-since-last inspection (CSLI).

(iv) If a fuel manifold assembly is found cracked, prior to further flight, replace the fuel manifold assembly with an FAA-approved serviceable assembly.

(2) For ALF502R and LF507 series engines:

(i) For fuel manifold assemblies with 3,250 or more CSN, or unknown CSN, on July 28, 1997, inspect within 1,250 CIS after July 28, 1997.

(ii) For fuel manifold assemblies with less than 3,250 CSN on July 28, 1007, inspect prior to accumulating 4,500 CSN.

(iii) Thereafter, inspect at intervals not to exceed 1,250 CSLI.

(iv) If a fuel manifold assembly is found cracked, before further flight replace the fuel manifold assembly with an FAA-approved serviceable assembly.

Initial Inspection for Fuel Leaks, Fuel Manifold Assemblies, P/Ns 2–163–620–37 or 2–163–620–38

(g) For fuel manifold assemblies, P/Ns 2–163–620–37 or 2–163–620–38, with 1,800 or more CSN or cycles-since-overhaul (CSO), inspect for leaks within 300 CIS after the effective date of this AD as follows:

(1) Start engine and let stabilize at ground idle.

(2) With the engine operating, look for fuel leaking from the fuel manifold assembly to the fire shield interface area (see Figure 1 of this AD). No leaks allowed.

(3) If you find any leaks, shutdown the engine and replace the fuel manifold assembly with an FAA-approved serviceable assembly.

(4) Shut down engine.

(5) Look for fuel leaking from the fuel manifold assembly to the fire shield interface area (see Figure 1 of this AD). No leaks allowed.

(6) If you find any leaks, replace the fuel manifold assembly with an FAA-approved serviceable assembly.

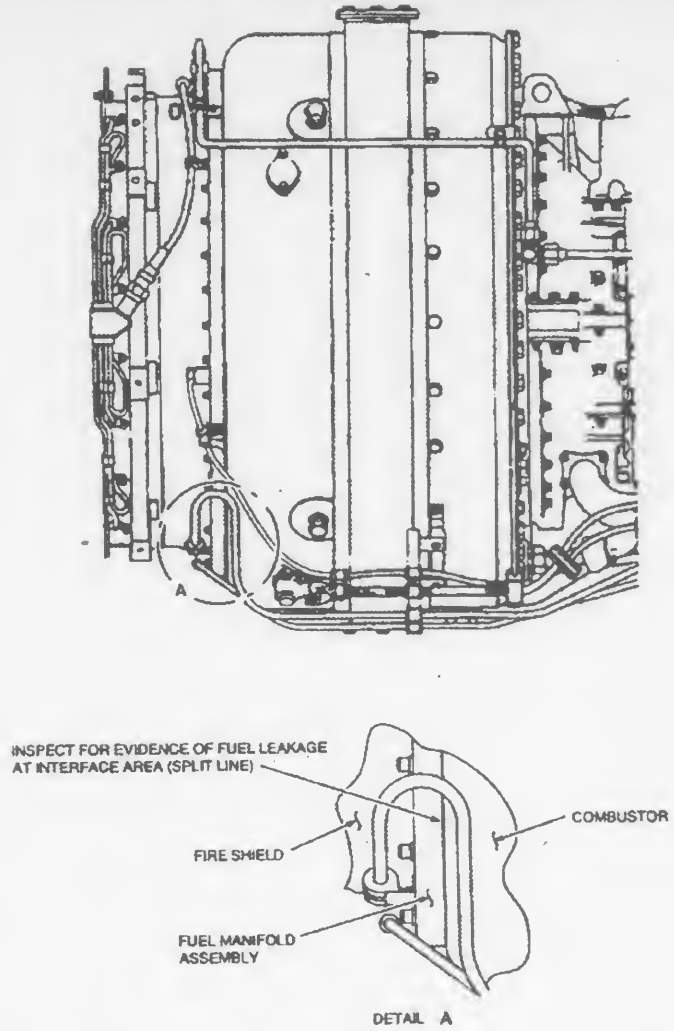

Figure 1 - Fuel Manifold Assembly-to-Fire Shield Interface Area

Repetitive Inspection for Fuel Leaks, Fuel Manifold Assemblies P/Ns 2–163–620–37 and 2–163–620–38

(h) Thereafter, within 600 CSLI, inspect fuel manifold assemblies, P/Ns 2–163–620–37 and 2–163–620–38, for leaks as specified in paragraphs (g)(1) through (g)(6) of this AD.

Optional Terminating Action

(i) Replacing a fuel manifold assembly that has a P/N specified in paragraph (c) of this AD with a fuel manifold assembly, P/N 2–163–620–39, 2–163–620–40, 2–163–620–41, or 2–163–620–42, or an FAA-approved equivalent part, terminates the inspection requirement of this AD.

Alternative Methods of Compliance

(j) The Manager, Los Angeles 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

(k) Contact Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood CA 90712–4137; e-mail: *robert.baitoo@faa.gov;* telephone (562) 627–5245; fax (562) 627–5210, for more information about this AD.

Material Incorporated by Reference

(l) You must use AlliedSignal Service Bulletin (SB) ALF/LF 73–1002, Revision 1, dated March 24, 1997 or SB ALF/LF 73–1002, dated December 22, 1995, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of AlliedSignal SB ALF/LF 73–1002, Revision 1, dated March 24, 1997, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The Director of the Federal Register previously approved the incorporation by reference of AlliedSignal SB ALF/LF 73–1002, dated December 22, 1995 on July 28, 1997 (62 FR 28994, May 29, 1997). Contact Honeywell International Inc., P.O. Box 52181, Phoenix, AZ 85072–2181; telephone (800) 601–3099 (U.S.A.) or (602) 365–3099 (International); or go to: *https://portal.honeywell.com/wps/portal/aero*, 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 December 10, 2009.

Peter A. White,

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

[FR Doc. E9–29987 Filed 1–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0699 Directorate Identifier 2009–CE–042–AD; Amendment 39–16169; AD 2009–21–08 R1]

RIN 2120–AA64

Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 Airplanes

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

ACTION: Final rule.

SUMMARY: We are clarifying information contained in Airworthiness Directive (AD) 2009–21–08, which applies to PIAGGIO AERO INDUSTRIES S.p.A. (Piaggio) Model PIAGGIO P–180 airplanes. AD 2009–21–08 currently requires repetitive functional tests of the manifold system and replacement of any system that does not pass the functional tests (*i.e.*, movement of the steering system). The language in AD 2009–21–08 incorrectly references not passing the functional tests as "movement of the manifold," and it should read "movement of the steering system" as specified in the service bulletin. The notice of proposed rulemaking (NPRM) referenced it as specified in the service bulletin. This document incorporates the intent of the action as already proposed in the NPRM. We are issuing this AD to prevent a potentially dangerous veer along the runway. The steering system must be in the 'off' position during landing and takeoff (in this case when airspeed is higher than 60 knots) according to the aircraft flight manual limitations.

DATES: The effective date of this AD is December 14, 2009, which is the same as AD 2009–21–08.

As of December 14, 2009 (74 FR 57561, November 9, 2009), the Director of the Federal Register approved the incorporation by reference of the following documents listed in this AD:

Service information title	Page(s)	Revision	Date
PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N. 80–0249.	1 through 9	Rev. 1	May 27, 2009.
PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N. 80–0249.	CONFIRMATION SLIP	Rev. 1	Not Dated.
PIAGGIO AERO PIAGGIO P.180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00.	Cover	No. D2	Revised June 16, 2008.
PIAGGIO AERO PIAGGIO P.180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00.	1 through 8	Not Applicable	March 1, 2006.
PIAGGIO AERO PIAGGIO P.180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00.	201, 202, 204, and 206 through 216.	Not Applicable	June 16, 2008.
PIAGGIO AERO PIAGGIO P.180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00.	203 and 205	Not Applicable	March 1, 2006.
PIAGGIO AERO PIAGGIO P.180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00.	501 through 506	Not Applicable	March 1, 2006.
PIAGGIO AERO PIAGGIO P.180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	Cover	No. A3	Revised December 19, 2008.
PIAGGIO AERO PIAGGIO P.180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	1 through 8	Not Applicable	June 30, 2005.
PIAGGIO AERO PIAGGIO P.180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	201, 202, and 207 through 209.	Not Applicable	December 19, 2008.
PIAGGIO AERO PIAGGIO P.180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	203 and 205	Not Applicable	June 30, 2005.
PIAGGIO AERO PIAGGIO P.180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	204, 206, and 210 through 216.	Not Applicable	September 14, 2007.
PIAGGIO AERO PIAGGIO P.180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	501 through 506	Not Applicable	June 30, 2005.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

On October 7, 2009, we issued AD 2009–21–08, Amendment 39–16047 (74 FR 57561, November 9, 2009), to require repetitive functional tests of the manifold system and replacement of any system that does not pass the functional

tests (*i.e.*, movement of the steering system) on Piaggio Model PIAGGIO P–180 airplanes.

The language in AD 2009–21–08 incorrectly references not passing the functional tests as "movement of the manifold," and it should read "movement of the steering system" as specified in the service bulletin. The NPRM referenced it as specified in the service bulletin. This document incorporates the intent of the action as already proposed in the NPRM.

Consequently, the FAA sees a need to clarify AD 2009–21–08 to assure that the proper criteria are utilized for the required functional test and is revising the AD to incorporate the language discussed above and to add the amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

Since this action only clarifies the intent of what was originally proposed in the NPRM, it has no adverse economic impact and imposes no additional burden on any person than was already proposed. Therefore, the FAA has determined that prior notice and opportunity for public comment are unnecessary.

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 removing Airworthiness Directive (AD) 2009–21–08, Amendment 39–16047 74 FR 57561, November 9, 2009), and adding the following new AD:

2009–21–08 R1 PIAGGIO AERO INDUSTRIES S.p.A.: Amendment 39–16169; Docket No. FAA–2009–0699; Directorate Identifier 2009–CE–042–AD.

Effective Date

(a) The effective date of this AD is December 14, 2009, which is the same as AD 2009–21–08.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model PIAGGIO P–180 airplanes, all serial numbers (S/N), certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

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

Some cases of uncommanded steering action were observed, while the steering system was switched off.

A leakage in the Steering Select/Bypass Valve, installed in the Steering Manifold, when closed, is suspected to have caused the uncommanded steering.

If left uncorrected, this condition could lead to a potentially dangerous veer along the runway; in fact, according to the Aircraft Flight Manual limitations, the steering system must be in 'off' position during landing and takeoff (in this case when airspeed is higher than 60 knots). For the reasons stated above, this new AD mandates repetitive inspections for leakage of the Nose Landing Gear steering manifold.

The MCAI requires, if any inspection finds internal leakage of the steering manifold, the replacement of the steering manifold.

Actions and Compliance

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

(1) Within the next 6 months after December 14, 2009 (the effective date of this AD and AD 2009–21–08) or within the next 100 hours time-in-service (TIS) after December 14, 2009 (the effective date of this AD and AD 2009–21–08), whichever occurs first, and repetitively thereafter at intervals not to exceed every 165 hours TIS, do a functional test of the nose landing gear (NLG) steering manifold. Follow the accomplishment instructions of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N. 80–0249 (includes CONFIRMATION SLIP), Rev. 1, dated May 27, 2009.

(2) Upon installation of a NLG steering manifold on any airplane, do a functional test of the NLG steering manifold. Repetitively thereafter at intervals not to exceed every 165 hours TIS, do a functional test of the NLG steering manifold. Follow the accomplishment instructions of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N. 80–0249 (includes CONFIRMATION SLIP), Rev. 1, dated May 27, 2009.

(3) If during any inspection required in paragraphs (f)(1) and (f)(2) of this AD, any manifold system does not pass the functional tests (*i.e.*, movement of the steering system), using the compliance times in the accomplishment instructions of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N. 80–0249 (includes CONFIRMATION SLIP), Rev. 1, dated May 27, 2009, replace the NLG steering manifold following (for S/N 1004 through 1104) pages 1 through 8 dated March 1, 2006; 201, 202, 204, and 206 through 216, dated June 16, 2008; 203 and 205, dated March 1, 2006; and 501 through 506, dated March 1, 2006, of PIAGGIO AERO PIAGGIO P.180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00, Revision No. D2, revised June 16, 2008; or (for S/N 1105 and greater) pages 1 through 8, dated June 30, 2005; 201, 202, and 207 through 209, dated December 19, 2008; 203 and 205, dated June 30, 2005; 204, 206, and 210 through 216, dated September 14, 2007; and 501 through 506, dated June 30, 2005, of PIAGGIO AERO PIAGGIO P.180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00, Revision No. A3, revised December 19, 2008.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, 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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090. 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 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA AD 2009–0129, dated June 19, 2009; PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N. 80–0249 (includes CONFIRMATION SLIP), Rev. 1, dated May 27, 2009; PIAGGIO AERO PIAGGIO P. 180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00, revised June 16, 2008, pages 1 through 8, 201 through 216, and 501 through 506; and PIAGGIO AERO PIAGGIO P. 180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00, revised December 19, 2008, pages 1 through 8, 201 through 216, and 501 through 506, for related information.

Material Incorporated by Reference

(i) You must use the service information specified in Table 1 of this AD to do the

actions required by this AD, unless the AD specifies otherwise.

(1) On December 14, 2009 (74 FR 57561, November 9, 2009), the Director of the Federal Register previously approved the incorporation by reference of the service information listed in Table 1 of this AD.

(2) For service information identified in this AD, contact Piaggio Aero Industries S.p.a., Via Cibrario, 4—16154 Genoa, Italy; telephone +39 010 06481 741; fax: +39 010 6481 309; Internet: *http://www.piaggioaero.com*, or e-mail: *MMicheli@piaggioaero.it*.

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD 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 1—MATERIAL INCORPORATED BY REFERENCE

Service information title	Page(s)	Revision	Date
PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N. 80–0249.	1 through 9	Rev. 1	May 27, 2009.
PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N. 80–0249.	CONFIRMATION SLIP	Rev. 1	Not Dated.
PIAGGIO AERO PIAGGIO P. 180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00.	Cover	No. D2	Revised June 16, 2008.
PIAGGIO AERO PIAGGIO P. 180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00.	1 through 8	Not Applicable	March 1, 2006.
PIAGGIO AERO PIAGGIO P. 180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00.	201, 202, 204, and 206 through 216.	Not Applicable	June 16, 2008.
PIAGGIO AERO PIAGGIO P. 180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00.	203 and 205	Not Applicable	March 1, 2006.
PIAGGIO AERO PIAGGIO P. 180 AVANTI Maintenance Manual, Report No. 9066, 32–50–00.	501 through 506	Not Applicable	March 1, 2006.
PIAGGIO AERO PIAGGIO P. 180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	Cover	No. A3	Revised December 19, 2008.
PIAGGIO AERO PIAGGIO P. 180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	1 through 8	Not Applicable	June 30, 2005.
PIAGGIO AERO PIAGGIO P. 180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	201, 202, and 207 through 209.	Not Applicable	December 19, 2008.
PIAGGIO AERO PIAGGIO P. 180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	203 and 205	Not Applicable	June 30, 2005.
PIAGGIO AERO PIAGGIO P. 180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	204, 206, and 210 through 216.	Not Applicable	September 14, 2007.
PIAGGIO AERO PIAGGIO P. 180 AVANTI II Maintenance Manual, Report No. 180–MAN–0200–01105, 32–50–00.	501 through 506	Not Applicable	June 30, 2005.

Issued in Kansas City, Missouri, on December 30, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–31364 Filed 1–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1222; Directorate Identifier 2009–NM–153–AD; Amendment 39–16160; AD 2008–10–06 R1]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–400, –400D, and –400F Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD), which applies to certain Model 747–400, –400D, and –400F series airplanes. That AD currently requires revising the FAA-approved maintenance program by incorporating new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also requires phasing in certain repetitive AWL inspections, and repair if necessary. This AD clarifies the intended effect of the AD on spare and on-airplane fuel tank system components. This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective January 22, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 22, 2010.

On June 12, 2008 (73 FR 25990, May 8, 2008), the Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD.

We must receive any comments on this AD by February 22, 2010.

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.*

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: Judy Coyle, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6497; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On April 28, 2008, we issued AD 2008–10–16, Amendment 39–15512 (73 FR 25990, May 8, 2008). That AD applied to certain Model 747–400, –400D, and –400F series airplanes. That AD required revising the FAA-approved maintenance program by incorporating new airworthiness limitations (AWLs) for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. That AD also required the phasing in of certain repetitive AWL inspections, and repair if necessary. That AD resulted from a design review of the fuel tank systems. The actions specified in that AD are intended to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Critical design configuration control limitations (CDCCLs) are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Actions Since AD Was Issued

Since we issued that AD, we have determined that it is necessary to clarify the AD's intended effect on spare and on-airplane fuel tank system components, regarding the use of maintenance manuals and instructions for continued airworthiness.

Section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)) specifies the following:

> No person may operate an aircraft for which a manufacturer's maintenance manual or instructions for continued airworthiness has been issued that contains an airworthiness limitation section unless the mandatory * * * procedures * * * have been complied with.

Some operators have questioned whether existing components affected by the new CDCCLs must be reworked. We did not intend for the AD to retroactively require rework of components that had been maintained using acceptable methods before the effective date of the AD. Owners and operators of the affected airplanes therefore are not required to rework affected components identified as airworthy or installed on the affected airplanes before the required revisions of the FAA-approved maintenance program. But once the CDCCLs are incorporated into the FAA-approved maintenance program, future maintenance actions on components must be done in accordance with those CDCCLs.

Relevant Service Information

AD 2008–10–06 cites Boeing Temporary Revision 09–010, dated March 2008, to the Boeing 747–400 Maintenance Planning Data (MPD) Document, D621U400–9. Since we issued that AD, Boeing has revised the referenced service information. We have reviewed Revisions April 2008, and March 2009, to Section 9 of the Boeing 747–400 Maintenance Planning Data (MPD) Document, D621U400–9. The revised MPDs add no new procedures, and revise certain others.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to revise AD 2008–10–06. This new AD retains the requirements of the existing AD, and adds a new note to clarify the intended effect of the AD on spare and on-airplane fuel tank system components.

Explanation of Additional Changes to AD

AD 2008–10–06 allowed the use of later revisions of the FAA-approved maintenance program. That provision has been removed from this AD. Allowing the use of "a later revision" of specific service documents violates Office of the Federal Register regulations for approving materials that are incorporated by reference. Affected operators, however, may request approval to use a later revision of the referenced service documents as an alternative method of compliance, under the provisions of paragraph (l) of this AD.

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Costs of Compliance

This revision imposes no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

We estimate that this AD affects 596 airplanes of U.S. registry. We also estimate that it takes about 48 work-hours per product to comply with 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 $2,288,640, or $3,840 per product.

FAA's Justification and Determination of the Effective Date

This revision merely clarifies the intended effect on spare and on-airplane fuel tank system components, and makes no substantive change to the AD's requirements. For this reason, it is found that notice and opportunity for prior public comment for this action are unnecessary, and 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–2009–1222; Directorate Identifier 2009–NM–153–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 FAA amends § 39.13 by removing amendment 39–15512 (73 FR 25990, May 8, 2008) and adding the following new AD:

2008–10–06 R1 The Boeing Company: Amendment 39–16160. Docket No. FAA–2009–1222; Directorate Identifier 2009–NM–153–AD.

Effective Date

(a) This airworthiness directive (AD) is effective January 22, 2010.

Affected ADs

(b) This AD revises AD 2008–10–06, Amendment 39–15512.

Applicability

(c) This AD applies to The Boeing Company Model 747–400, –400D, and –400F series airplanes, certificated in any category; with an original standard airworthiness certificate or original export certificate of airworthiness issued before April 12, 2006.

Note 1: Airplanes with an original standard airworthiness certificate or original export certificate of airworthiness issued on or after April 12, 2006, must be already in compliance with the airworthiness limitations specified in this AD because those limitations were applicable as part of the airworthiness certification of those airplanes.

Note 2: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (l) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Service Information Reference

(f) The term "Revision March 2008 of the MPD," as used in this AD, means Boeing Temporary Revision (TR) 09–010, dated March 2008. Boeing TR 09–010 is published as Section 9 of the Boeing 747–400 Maintenance Planning Data (MPD) Document, D621U400–9, Revision March 2008.

Restatement of AD 2008–10–06, With Revised Compliance Method

Maintenance Program Revision

(g) Before December 16, 2008, revise the FAA-approved maintenance program by incorporating the information in the subsections specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD; except that the initial inspections specified in Table 1 of this AD must be done at the compliance times specified in Table 1.

(1) Subsection B, "AIRWORTHINESS LIMITATIONS (AWLs)—SYSTEMS," of Boeing TR 09–010, dated March 2008; or Section 9, Revision April 2008, or March 2009, of the Boeing 747–400 Maintenance Planning Data (MPD) Document, D621U400–9.

(2) Subsection C, "PAGE FORMAT: FUEL SYSTEMS AIRWORTHINESS

LIMITATIONS," of Boeing TR 09–010, dated March 2008; or Section 9, Revision April 2008, or March 2009, of the Boeing 747–400 MPD, Document, D621U400–9.

(3) Subsection D, "AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS," AWLs No. 28–AWL–01 through No. 28–AWL–23 inclusive, of Boeing TR 09–010, dated March 2008; or Section 9, Revision April 2008, or March 2009, of the Boeing 747–400 MPD Document, D621U400–9. As an optional action, AWLs No. 28–AWL–24 through No. 28–AWL–29 inclusive, as identified in Subsection D of Boeing TR 09–010, Revision March 2008; or Section 9, Revision April 2008, or March 2009, of the Boeing 747–400 MPD Document, D621U400–9; also may be incorporated into the FAA-approved maintenance program.

Initial Inspections and Repair if Necessary

(h) Do the inspections specified in Table 1 of this AD at the compliance time specified in Table 1 of this AD, and repair any discrepancy, in accordance with Subsection D of Boeing TR 09–010 dated March 2008; or Section 9, Revision April 2008, or March 2009, of the Boeing 747–400 MPD Document, D621U400–9. The repair must be done before further flight. Accomplishing the inspections identified in Table 1 of this AD as part of an FAA-approved maintenance program before the applicable compliance time specified in Table 1 of this AD constitutes compliance with the requirements of this paragraph.

Note 3: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Note 4: For the purposes of this AD, a special detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedure may be required."

TABLE 1—INITIAL INSPECTIONS

AWL No.	Description	Compliance time (whichever occurs later)	
		Threshold	Grace period
28–AWL–01	A detailed inspection of external wires over the center fuel tank for damaged or loose clamps, wire chafing, and wire bundles in contact with the surface of the center fuel tank.	Within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 72 months after June 12, 2008 (the effective date of AD 2008–10–06).
28–AWL–03	A special detailed inspection of the lightning shield to ground termination on the out-of-tank fuel quantity indicating system to verify functional integrity.	Within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 24 months after June 12, 2008 (the effective date of AD 2008–10–06).
28–AWL–10	A special detailed inspection of the fault current bond of the fueling shutoff valve actuator of the center wing tank to verify electrical bond.	Within 144 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.	Within 60 months after June 12, 2008 (the effective date of AD 2008–10–06).

Incorporation of Additional AWLs for Certain Airplanes

(i) For Model 747–400 series airplanes equipped with an auxiliary fuel tank: Before December 16, 2008, revise the FAA-approved maintenance program by incorporating AWLs No. 28–AWL–30, No. 28–AWL–31, and No. 28–AWL–32 of Subsection D of Boeing TR 09–010, dated March 2008; or Section 9, Revision April 2008, or March 2009, of the Boeing 747–400 MPD Document, D621U400–9.

No Alternative Inspections, Inspection Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

(j) After accomplishing the applicable actions specified in paragraphs (g), (h), and (i) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (l) of this AD.

Credit for Actions Done According to Previous Revisions of the MPD

(k) Actions done before June 12, 2008, in accordance with Section 9 of the Boeing 747–400 MPD Document, D621U400–9, Revision 23, dated March 2006; Revision 24, dated June 2006; Revision November 2006; Revision December 2006; Revision December 2006 R1; Revision May 2007; Revision October 2007; or Revision November 2007; are acceptable for compliance with the corresponding requirements of paragraphs (g) and (h) of this AD.

New Information

Explanation of CDCCL Requirements

Note 5: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the FAA-approved maintenance program, as required by paragraph (g) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the FAA-approved maintenance program has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle Aircraft Certification Office, 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: Judy Coyle, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6497; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(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 2008–10–06, are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

(m) You must use Boeing Temporary Revision 09–010, dated March 2008, to the Boeing 747–400 Maintenance Planning Data (MPD) Document D621U400–9; Section 9, Revision April 2008, of the Boeing 747–400 Maintenance Planning Data (MPD) Document, D621U400–9; or Section 9, Revision March 2009, of the Boeing 747–400 Maintenance Planning Data (MPD) Document, D621U400–9; 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 Section 9, Revision April 2008, of the Boeing 747–400 Maintenance Planning Data (MPD) Document D62U400–9; and Section 9, Revision March 2009, of the Boeing 747–400 Maintenance Planning Data (MPD) Document, D621U400–9; under 5 U.S.C. 522(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Boeing Temporary Revision 09–010, dated March 2008, to the Boeing 747–400 MPD Document D621U400–9, on June 12, 2008 (73 FR 25990, May 8, 2008).

(3) 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.*

(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 December 21, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–31070 Filed 1–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27687; Directorate Identifier 2000–NE–42–AD; Amendment 39–16144; AD 2009–26–09]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for General Electric Company (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines. That AD currently requires a onetime visual and tactile inspection of certain areas of certain P/N and SN fan disks for an arc-out defect, within 20 engine flight hours after the effective date of that AD. This AD requires inspecting certain fan disks for electrical arc-out indications, removing from service fan disks with electrical arc-out indications, performing tactile and enhanced visual (TEV) inspections, fluorescent penetrant inspections (FPI), and eddy current inspections (ECI) on certain disks that have already had a shop-level inspection, and repetitive FPI and ECI on certain fan disks. This AD results from an updated risk analysis by GE that shows we need to take corrective action that is more stringent. We are issuing this AD to prevent an uncontained failure of the fan disk, which could result in damage to the airplane.

DATES: This AD becomes effective February 11, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 11, 2010.

ADDRESSES: You can get the service information identified in this AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215; telephone (513) 672–8400; fax (513) 672–8422.

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 2007–07–07R1, Amendment 39–15179 (72 FR 49183, August 28, 2007) and AD 2007–05–16, Amendment 39–14977 (72 FR 10054, March 7, 2007), with a proposed AD. The proposed AD applies to GE CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines. We published the proposed AD in the **Federal Register** on April 17, 2009 (74 FR 17799). That action proposed to require:

- Replacing certain fan disks installed on regional jets within 15 days after the effective date of the proposed AD, and
- On-wing and shop-level inspections of fan disks for electrical arc-out defects on fan disks installed on regional jets, and
- Shop-level inspections of fan disks for electrical arc-out defects on fan disks installed on business jets.

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 provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

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

Request To Change the Compliance Requirements for Previously Inspected CF34–3B Tier 3 Disks

Two commenters, GE and Bombardier Flex, ask us to change the compliance requirements for previously inspected CF34–B tier 3 disks from "within 3,500 cycles-since-last inspection (CSLI), but no later than March 19, 2012" to "at the next shop visit." The commenters state that requiring "within 3,500 CSLI, but no later than March 19, 2012," make the requirements more conservative than the tier 1 and tier 2 disk reinspection programs.

We agree. We have changed paragraph (m)(2) of this AD from "within 3,500 CSLI, but no later than March 19, 2012" to "at the next shop visit."

Request To Include Table 2 of GE ASB CF34–BJ S/B 72–A0212, Revision 04, dated October 27, 2008

One commenter asks us to include Table 2 of GE ASB CF34–BJ S/B 72–A0212, Revision 04, dated October 27, 2008, in the AD. The commenter states that many owners, lessors, or their respective representatives are routinely denied access to the manufacturer's Web site where the referenced SBs are archived. The commenter states that this makes it very difficult, if not impossible, to evaluate and schedule compliance with this AD.

We don't agree. If operators and others who need the service information can't get the service information from the manufacturer, they can contact the individual or office identified in

paragraph (p) of this AD. We didn't change the AD.

Request To Allow an Alternative Method of Compliance (AMOC) for the Inspection Requirements of This AD

One commenter, Air Wisconsin, asks us to allow using the inspections specified in 72–21–00, Inspection, as specified in AD 2002–05–02. The commenter states that this is the same requirement as specified in the accomplishment instructions of the proposed AD.

We disagree. AD 2002–05–02 requires adding the specified inspections to the airworthiness limitation section of the engine manual and to the operators approved maintenance program. We do agree that actions performed under one AD may result in credit for actions performed in another AD. We didn't change this AD.

Request To Add a Drawdown to Paragraph (g) of the Proposed AD

The same commenter asks us to change paragraph (g) of the proposed AD from "within 8,000 CSN" to "before accumulating 8,000 CSN or within 15 days after the effective date of this AD, whichever is later." Paragraph (g) currently requires replacing the disks before accumulating 8,000 CSN. The commenter stated that he would like the same 15-day allowance that we provided in paragraph (f) for parts that have close to 8,000 CSN on the effective date of this AD.

We don't agree. The new life limit is 8,000 CSN on the effective date of this AD. We removed the 15-day allowance in paragraph (f) so that both groups use the new life limit.

Request To Use SEI–756, 72–00–00, Special Procedure 60

The same commenter requests that eddy current inspections (ECIs) performed using SEI–756, 72–21–00, Special Procedure 60 or GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, be acceptable in addition to GE ASB CF34–AL S/B 72A–0252, Dated October 27, 2008. The commenter states that paragraphs (h)(1)(ii), (h)(2)(iii), (l)(1)(ii), and (l)(2)(iii) all say "Use paragraph 3.A. of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0252, dated October 27, 2008, to perform the repetitive ECI."

The instructions for performing the repetitive ECI in GE ASB CF34–AL S/B 72–A0252, dated October 27, 2008, and ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, refer to SEI–756, 72–00–00, SPECIAL PROCEDURE 60—EDDY CURRENT INSPECTION (ECI) PROCEDURES AND REQUIREMENTS OF CRITICAL HARDWARE."

The commenter wants to be able to track all the requirements to one service bulletin or specific procedure instead of several different service bulletins.

We don't agree. The ECI referenced in the three documents above are not the same. The ASBs mandated by this AD provide a more rigorous ECI. We didn't change the AD.

Request To Use a Single ASB for Each Set of Engine Models

The same commenter requests that TEV inspections, FPIs, and ECIs performed using GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, be acceptable to meet the requirements of GE ASB CF34–AL S/B 72A–0253, dated October 27, 2008. The commenter wants to be able to track all the requirements to one service bulletin or specific procedure instead of several different service bulletins. The commenter notes that the instructions for performing the ECI are the same in all three documents.

We partially agree. The procedures for performing the TEV inspection, the FPI, and the ECI are the same in the two ASBs referenced above. We changed paragraphs (h)(1)(i), (i)(1)(i), (j)(1), and (j)(2) of the proposed AD as follows:

- Paragraph (h)(1)(i) from "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, * * *" to "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0253, dated October 27, 2008, * * *"
- Paragraph (i)(1)(i) from "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, * * *" to "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0253, dated October 27, 2008, * * *"
- Paragraph (j)(1) from "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, * * *" to "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0253, dated October 27, 2008, * * *"
- Paragraph (j)(2) from "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, * * *" to "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0253, dated October 27, 2008, * * *"

Since the accomplishment procedures in GE ASB CF34–BJ S/B 72–A0212, Revision 04, dated October 27, 2008, and the procedures in GE ASB CF34–BJ S/B 72–0234, dated October 27, 2008, are also the same, we changed paragraphs (k)(1)(i), (l)(1)(i), (m)(1), and (m)(2) of the proposed AD as follows:

- Paragraph (k)(1)(i) from "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0212, Revision 04, dated October 27, 2008, * * *" to "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0212, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0234, dated October 27, 2008, * * *"
- Paragraph (l)(1)(i) from "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0212, Revision 04, dated October 27, 2008, * * *" to "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0212, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0234, dated October 27, 2008, * * *"
- Paragraph (m)(1) from "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0212, Revision 04, dated October 27, 2008, * * *" to "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0212, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0234, dated October 27, 2008, * * *"
- Paragraph (m)(2) from "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0212, Revision 04, dated October 27, 2008, * * *" to "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–BJ S/B 72–A0212, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE

ASB CF34–BJ S/B 72–A0234, dated October 27, 2008, * * *"

Request To Change Paragraph (j)(2) of the Proposed AD

The same commenter requests that we preface paragraph (j)(2) of the proposed AD with "Unless already done." We believe the commenter wants to avoid having to perform the same inspection more than once on a disk.

We don't agree that the change is needed. Paragraph (e) of the proposed AD states, "You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done."

Request To Correct a Typographical Error in Paragraph (j)(1) of the Proposed AD

Two commenters, GE and Air Wisconsin, ask us to correct a typographical error in paragraph (j)(1) of the proposed AD. The commenters inform us that the reference to GE ASB CF34–AL S/B 72–A0253, Revision 4, dated October 27, 2008, is not correct. The commenters inform us that GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, is the correct reference.

We agree. We have changed paragraph (j)(1) of this AD from "GE ASB CF34–AL S/B 72–A0253, Revision 4, dated October 27, 2008" to "GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008."

Recommendation To Add Removal Requirements to Paragraphs (h), (i), (k), and (l) of the Proposed AD

One commenter, GE, recommends adding an additional, repeat section to paragraphs (h), (i), (k), and (l) of the proposed AD. The commenter feels adding the removal requirements to the paragraphs will enhance clarity of the AD.

We don't agree. The mandatory terminating actions are already specified in paragraph (o) of the proposed AD and don't need to be repeated. We didn't change the AD.

Request To Correct an Engine Model Reference in Paragraphs (k), (l), and (m) of the Proposed AD

One commenter, GE, informs us that paragraphs (k), (l), and (m) in the proposed AD omit reference to the CF34–3A1 application and that the fan drive shaft life limit is incorrectly applied to the CF34–1A application. The commenter states that this is the same requirement as specified in the accomplishment instructions of the proposed AD.

We agree. We changed paragraphs (k), (l), and (m) of the proposed AD from "For CF34–1A turbofan engines with fan drive shaft, P/N 6036T78P02, and airworthiness limitation section life limit of 15,000 CSN, CF34–3A, CF34–3A2, and CF34–3B turbofan engines * * *" to "For CF34–3A1 turbofan engines with fan drive shaft, P/N 6036T78P02, and airworthiness limitation section life limit of 15,000 CSN, CF34–1A, CF34–3A, CF34–3A2, and CF34–3B turbofan engines * * *"

Request To Reference to FPI and ECI in Paragraphs (k)(1)(i) of the Proposed AD

The same commenter asks us to change paragraphs (k)(1)(i) to add a reference to the FPI and ECI. The commenter states that the paragraph currently requires TEV inspection, FPI, and ECI, but the last sentence says only "to perform the TEV inspection." The commenter feels the paragraph will be more clear by saying "To perform the TEV inspection, FPI, and ECI."

We agree. We changed paragraph (k)(1)(i) of the proposed AD from "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0212, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0234, dated October 27, 2008, to perform the TEV inspection" to "Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0212, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0234, dated October 27, 2008, to perform the TEV inspection, FPI, and ECI."

Request To Correct a Typographical Error in Paragraphs (l)(1)(i) of the Proposed AD

The same commenter asks us to correct the typographical error of "CIS" in paragraph (l)(1)(i) to "CSN". The commenter states that the paragraph should be changed to be consistent with the risk assessment.

We agree. We changed paragraph (l)(1)(i) of the proposed AD from "or within 3,500 CIS after September 12, 2007," to "or within 3,500 CSN after September 12, 2007,".

Request To Change Paragraphs (h), (i), (j), (k), (l), and (m) of the Proposed AD to Specify RJ and BJ Model Engines

The same commenter asks us to revise paragraphs (h), (i), (j), (l), and (m) to clarify the instructions related to operators who fly a regional jet (RJ) with the CF34–3A1 engine as a business jet (BJ) application. The commenter states that GE ASBs CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008; CF34–AL S/B 72–A0252, dated October 27, 2008; CF34–AL S/B 72–A0253, dated October 27, 2008; apply to both RJ operators and also to a small number of BJ operators who fly under the RJ manual. These BJ applications may include both CF34–3B1 and CF34–3A1 models. The proposed AD distinguishes between RJ and BJ applications based on engine model, and in the case of the CF34–3A1 model, the life limit of the fan drive shaft, P/N 6036T78P02. Modifying the proposed AD to identify the applications as RJ and BJ, and defining the RJ and BJ designations, would more clearly identify affected populations and still meet the FAA's purpose in issuing ADs.

We don't agree. The CF34–1A is used on both the RJ airplane and the BJ airplane. The engine is modified by service bulletins to allow it to be used on one configuration or the other. There is nothing to prevent an engine that was installed on a BJ airplane from being modified and installed on an RJ airplane: By designating the inspection criteria based on the life limit of the fan drive shaft, we are making the regulatory requirements of the proposed AD specific to the engine configuration instead of the operational configuration. We didn't change the proposed AD.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 18 engines installed on airplanes of U.S. registry. We also estimate that it would take about 2 work-hours per engine to perform the required actions, and that the average labor rate is $80 per work-hour. No parts are required, so parts would cost about $0. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $2,880.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a 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

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration 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 removing Amendment 39–15179 (72 FR 49183, August 28, 2007), and by adding a new airworthiness directive, Amendment 39–16144, to read as follows:

2009–26–09 General Electric Company: Amendment 39–16144. Docket No. FAA–2007–27687; Directorate Identifier 2000–NE–42–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 11, 2010.

Affected ADs

(b) This AD supersedes AD 2007–05–16, Amendment 39–14977 and AD 2007–07–07R1, Amendment 39–15179.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines, with fan disks part numbers (P/Ns) 5921T18G01, 5921T18G09, 5921T18G10, 5921T54G01, 5922T01G02, 5922T01G04, 5922T01G05, 6020T62G04, 6020T62G05, 6078T00G01, 6078T57G01, 6078T57G02, 6078T57G03, 6078T57G04, 6078T57G05, and 6078T57G06 installed. These engines are installed on, but not limited to, Bombardier Canadair airplane models CL–600–2A12, –2B16, and –2B19.

Unsafe Condition

(d) This AD results from an updated risk analysis by GE that shows we need to take corrective action that is more stringent. We are issuing this AD to prevent an uncontained failure of the fan disk, which could result in damage to the airplane.

Compliance

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

Removing Certain Fan Disks From Service

(f) For fan disks listed by P/N and serial number (SN) in Table 2 of GE Alert Service Bulletin (ASB) CF34–BJ S/B 72–A0212, Revision 04, dated October 27, 2008; or in Table 2 of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, that have 8,000 CSN or more on the effective date of this AD, remove fan disks from service.

(g) For fan disks listed by P/N and serial number (SN) in Table 2 of GE Alert Service Bulletin (ASB) CF34–BJ S/B 72–A0212, Revision 04, dated October 27, 2008; or in Table 2 of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, that have fewer than 8,000 CSN on the effective date of this AD, remove fan disks from service before accumulating 8,000 CSN.

Inspections of Tier 1 Fan Disks

(h) For CF34–3A1 engines with fan drive shaft, P/N 6036T78P02, and airworthiness limitation section life limit of 22,000 CSN, and CF34–3B1 turbofan engines with Tier 1 fan disks listed by P/N, SN, and Tier in Table 1 of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, do the following:

Tactile and Enhanced Visual (TEV) Inspections, Fluorescent Penetrant Inspections (FPI), and Eddy Current Inspections (ECI)

(1) For Tier 1 fan disks not already inspected using GE ASB CF34–AL S/B 72–A0233, Revision 03, dated June 27, 2007, or earlier issue, do the following:

(i) Perform a TEV inspection, an FPI, and an ECI on the Tier 1 fan disks within 650 cycles-in-service (CIS) after the effective date of this AD. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0253, dated October 27, 2008, to perform the TEV inspection, FPI, and ECI.

(ii) Thereafter, perform repetitive ECI on the Tier 1 fan disks within intervals of 3,000 cycles-since-last inspection (CSLI). Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0252, dated October 27, 2008, to perform the repetitive ECI.

(2) For Tier 1 fan disks, listed by P/N, SN, and Tier in Table 1 of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008; already inspected using GE ASB CF34–AL S/B 72–A0233, Revision 03, dated June 27, 2007, or earlier issue, do the following:

(i) For Tier 1 fan disks with 2,500 or more CSLI on the effective date of this AD, perform an ECI on the Tier 1 fan disks within 500 CIS after the effective date of this AD. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0252, dated October 27, 2008, to perform the ECI.

(ii) For Tier 1 fan disks with fewer than 2,500 CSLI on the effective date of this AD, perform an ECI on the Tier 1 fan disks within 3,000 CSLI. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0252, dated October 27, 2008, to perform the ECI.

(iii) Thereafter, perform repetitive ECI on the Tier 1 fan disks within intervals of 3,000 CSLI. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0252, dated October 27, 2008, to perform the repetitive ECI.

Inspections of Tier 2 Fan Disks

(i) For CF34–3A1 engines with fan drive shaft, P/N 6036T78P02, and airworthiness limitation section life limit of 22,000 CSN, and CF34–3B1 turbofan engines with Tier 2 fan disks listed by P/N, SN, and Tier in Table 1 of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, do the following:

TEV Inspections, FPI, and ECI

(1) For Tier 2 fan disks not already inspected using GE ASB CF34–AL S/B 72–A0233, Revision 03, dated June 27, 2007, or earlier issue, do the following:

(i) Perform a TEV inspection, an FPI, and an ECI on the Tier 2 fan disks within 2,000 CIS after the effective date of this AD, or within 5,000 CIS after September 12, 2007, or by March 19, 2012, whichever occurs first. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0253, dated October 27, 2008, to perform the TEV inspection, FPI, and ECI.

(ii) Thereafter, perform repetitive eddy current inspections on the Tier 2 fan disks within intervals of 3,000 CSLI. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0252, dated October 27, 2008, to perform the repetitive ECI.

(2) For Tier 2 fan disks, listed by P/N, SN, and Tier in Table 1 of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008; already inspected using GE ASB CF34–AL S/B 72–A0233, Revision 03, dated June 27, 2007, or earlier issue, do the following:

(i) For Tier 2 fan disks with 2,500 or more CSLI on the effective date of this AD, perform an ECI on the Tier 2 fan disks within 500 CIS after the effective date of this AD. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0252, dated October 27, 2008, to perform the ECI.

(ii) For Tier 2 fan disks with fewer than 2,500 CSLI on the effective date of this AD, perform an ECI on the Tier 2 fan disks within 3,000 CSLI. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0252, dated October 27, 2008, to perform the ECI.

(iii) Thereafter, perform repetitive ECI on the Tier 2 fan disks within intervals of 3,000 CSLI. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0252, dated October 27, 2008, to perform the repetitive ECI.

Inspections of Tier 3 Fan Disks

(j) For CF34–3A1 engines with fan drive shaft, P/N 6036T78P02, and airworthiness limitation section life limit of 22,000 CSN, and CF34–3B1 turbofan engines with Tier 3 fan disks, listed by P/N, SN, and Tier in Table 1 of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, do the following:

TEV Inspections, FPI, and ECI

(1) For Tier 3 fan disks not already inspected using GE ASB CF34–AL S/B 72–A0233, Revision 03, dated June 27, 2007, or earlier issue, perform a TEV inspection, an FPI, and an ECI on the Tier 3 fan disks within 5,000 CIS after September 12, 2007, or by March 19, 2012, whichever is earlier. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0253, dated October 27, 2008, to perform the TEV inspection, FPI, and ECI.

(2) For Tier 3 fan disks, listed by P/N, SN, and Tier in Table 1 of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008; already inspected using GE ASB CF34–AL S/B 72–A0233, Revision 03, dated June 27, 2007, or earlier issue, perform a TEV inspection and an ECI on the Tier 3 fan disks at the next shop visit. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0253, dated October 27, 2008, to perform the TEV inspection and ECI.

(3) Repetitive ECI on the Tier 3 fan disks are not required.

Inspections of Tier 1 Fan Disks

(k) For CF34–3A1 turbofan engines with fan drive shaft, P/N 6036T78P02, and airworthiness limitation section life limit of 15,000 CSN, CF34–1A, CF34–3A, CF34–3A2, and CF34–3B turbofan engines with Tier 1 fan disks listed by P/N, SN, and Tier in Table 1 of GE ASB CF34–BJ S/B 72–A0212, Revision 04, dated October 27, 2008, do the following:

TEV Inspections, FPI, and ECI

(1) For Tier 1 fan disks not already inspected using GE ASB CF34–BJ S/B 72–A0212, Revision 03, dated June 27, 2007, or earlier issue:

(i) Perform a TEV inspection, FPI, and ECI on the Tier 1 fan disks within 350 CIS after the effective date of this AD. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0212, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0234, dated October 27, 2008, to perform the TEV inspection, FPI, and ECI.

(ii) Thereafter, perform repetitive ECI on the Tier 1 fan disks within intervals of 3,000 CSLI. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–BJ S/B 72–A0235, dated October 27, 2008, to perform the repetitive ECI.

(2) For Tier 1 fan disks, listed by P/N, SN, and Tier in Table 1 of GE ASB CF34–BJ S/B 72–A0212, Revision 04, dated October 27, 2008; already inspected using GE ASB CF34–BJ S/B 72–A0212, Revision 03, dated June 27, 2007, or earlier issue, do the following:

(i) For Tier 1 fan disks with 2,500 or more CSLI on the effective date of this AD, perform an ECI on the Tier 1 fan disks within 500 CIS after the effective date of this AD. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–BJ S/B 72–A0235, dated October 27, 2008, to perform the ECI.

(ii) For Tier 1 fan disks with fewer than 2,500 CSLI on the effective date of this AD, perform an ECI on the Tier 1 fan disks within 3,000 CSLI after the effective date of this AD. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–BJ S/B 72–A0235, dated October 27, 2008, to perform the ECI.

(iii) Thereafter, perform repetitive ECI on the Tier 1 fan disks within intervals of 3,000 CSLI. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0235, dated October 27, 2008, to perform the repetitive ECI.

Inspections of Tier 2 Fan Disks

(l) For CF34–3A1 turbofan engines with fan drive shaft, P/N 6036T78P02, and airworthiness limitation section life limit of 15,000 CSN, CF34–1A, CF34–3A, CF34–3A2, and CF34–3B turbofan engines with Tier 2 fan disks listed by P/N, SN, and Tier in Table 1 of GE ASB CF34–AL S/B 72–A0212, Revision 04, dated October 27, 2008, do the following:

TEV Inspections, FPI, and ECI

(1) For Tier 2 fan disks not already inspected using GE ASB CF34–AL S/B 72–A0212, Revision 03, dated June 27, 2007, or earlier issue, do the following:

(i) Perform a TEV inspection, FPI, and ECI on the Tier 2 fan disks within 2,000 CIS after the effective date of this AD, or within 3,500 CSN after September 12, 2007, or by March 19, 2012, whichever occurs first. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0212, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0234, dated October 27, 2008, to perform the TEV inspection, FPI, and ECI.

(ii) Thereafter, perform repetitive ECI on the Tier 2 fan disks within intervals of 3,000 CSLI. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–BJ S/B 72–A0235, dated October 27, 2008, to perform the repetitive ECI.

(2) For Tier 2 fan disks, listed by P/N, SN, and Tier in Table 1 of GE ASB CF34–BJ S/B 72–A0212; Revision 04, dated October 27, 2008; already inspected using GE ASB CF34–BJ S/B 72–A0212, Revision 03, dated June 27, 2007, or earlier issue, do the following:

(i) For Tier 2 fan disks with 2,500 or more CSLI on the effective date of this AD, perform an ECI on the Tier 2 fan disks within 500 CIS after the effective date of this AD. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–BJ S/B 72–A0235, dated October 27, 2008, to perform the ECI.

(ii) For Tier 2 fan disks with fewer than 2,500 CSLI on the effective date of this AD, perform an ECI on the Tier 2 fan disks within 3,000 CSLI. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–BJ S/B 72–A0235, dated October 27, 2008, to perform the ECI.

(iii) Thereafter, perform repetitive ECI on the Tier 2 fan disks within intervals of 3,000 CSLI. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–BJ S/B 72–A0235, dated October 27, 2008, to perform the repetitive ECI.

Inspections of Tier 3 Fan Disks

(m) For CF34–3A1 turbofan engines with fan drive shaft, P/N 6036T78P02, and airworthiness limitation section life limit of 15,000 CSN, CF34–1A, CF34–3A, CF34–3A2, and CF34–3B turbofan engines with Tier 3 fan disks listed by P/N, SN, and Tier in Table 1 of GE ASB CF34–BJ S/B 72–A0212, Revision 04, dated October 27, 2008, do the following:

TEV Inspections, FPI, and ECI

(1) For Tier 3 fan disks not already inspected using GE ASB CF34–AL S/B 72–A0212, Revision 03, dated June 27, 2007, or earlier issue, perform a TEV inspection, FPI, and ECI on the Tier 3 fan disks within 3,500 CIS after September 12, 2007, or by March 19, 2012, whichever is earlier. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0212, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–AL S/B 72–A0234, dated October 27, 2008, to perform the TEV inspection, FPI, and ECI.

(2) For Tier 3 fan disks, listed by P/N, SN, and Tier in Table 1 of GE ASB CF34–BJ

S/B 72–A0212, Revision 04, dated October 27, 2008; already inspected using GE ASB CF34–BJ S/B 72–A0212, Revision 03, dated June 27, 2007, or earlier issue, perform a TEV inspection and an ECI on the Tier 3 fan disks at the next shop visit. Use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–BJ S/B 72–A0212, Revision 04, dated October 27, 2008, or use paragraph 3.A of the Accomplishment Instructions of GE ASB CF34–BJ S/B 72–A0234, dated October 27, 2008, to perform the TEV inspection and ECI.

(3) Repetitive ECI on the Tier 3 fan disks are not required.

Alternative Methods of Compliance

(n) The Manager, Engine 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.

Mandatory Terminating Action

(o) Remove from service, Tier 1 and Tier 2 fan disks listed by P/N, SN, and Tier in Table 1 of GE ASB CF34–AL S/B 72–A0233, Revision 04, dated October 27, 2008; or CF34–BJ S/B 72–0212, Revision 04, dated October 27, 2008, before they exceed their limited life cycles or September 30, 2018, whichever occurs first.

Related Information

(p) Contact Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(q) You must use the service information specified in the following Table 1 to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in the following Table 1 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215; telephone (513) 672–8400; fax (513) 672–8422, 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.*

TABLE 1—INCORPORATION BY REFERENCE

Service Bulletin No.	Page	Revision	Date
CF34–AL S/B 72–A0233. Total Pages—107	ALL	04	October 27, 2008.
CF34–AL S/B 72–A0252. Total Pages—22	ALL	Original	October 27, 2008.
CF34–AL S/B 72–A0253. Total Pages—77	ALL	Original	October 27, 2008.
CF34–BJ S/B 72–A0212. Total Pages—111	ALL	04	October 27, 2008.
CF34–BJ S/B 72–A0234. Total Pages—82	ALL	Original	October 27, 2008.
CF34–BJ S/B 72–A0235. Total Pages—20	ALL	Original	October 27, 2008.

Issued in Burlington, Massachusetts, on December 11, 2009.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–30471 Filed 1–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30704; Amdt. No. 3355]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective January 7, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 7, 2010.

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

For Examination—

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

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

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1

CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on December 25, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
14–Jan–10	TX	Longview	East Texas Rgnl	9/5041	12/16/09	VOR/DME or TACAN Rwy 31, Amdt 7.
11–Feb–10	WA	Seattle	Seattle-Tacoma Intl	9/5533	12/18/09	ILS or LOC Rwy 16R, Orig-B; ILS Rwy 16R (Cat II), Orig-B; ILS Rwy 16R (Cat III), Orig-B.

[FR Doc. E9–31311 Filed 1–6–10; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30703 Amdt. No 3354]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

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

DATES: This rule is effective January 7, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 7, 2010.

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

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

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

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP.

Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on December 25, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

Effective 11 FEB 2010

Bethel, AK, Bethel, LOC/DME BC RWY 1L, Amdt 6, CANCELLED
Clarks Point, AK, Clarks Point, RNAV (GPS) RWY 18, Orig
Clarks Point, AK, Clarks Point, RNAV (GPS) RWY 36, Orig
Clarks Point, AK, Clarks Point, Takeoff Minimums and Obstacle DP, Orig
Elim, AK, Elim, RNAV (GPS) RWY 1, Orig
Elim, AK, Elim, RNAV (GPS) RWY 19, Orig
Unalaska, AK, Unalaska, Takeoff Minimums and Obstacle DP, Amdt 4
El Dorado, AR, South Arkansas Rgnl at Goodwin Field, ILS OR LOC RWY 22, Amdt 2
Auburn, CA, Auburn Muni, GPS RWY 7, Orig-A, CANCELLED
Auburn, CA, Auburn Muni, RNAV (GPS) RWY 7, Orig
Lancaster, CA, General WM J. Fox Airfield, RNAV (GPS) RWY 24, Orig
Marina, CA, Marina Muni, RNAV (GPS) RWY 11, Amdt 1
Marina, CA, Marina Muni, RNAV (GPS) RWY 29, Amdt 1
Marina, CA, Marina Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Marina, CA, Marina Muni, VOR RWY 11, Amdt 1

Marina, CA, Marina Muni, VOR/DME RWY 29, Amdt 1
New Haven, CT, Tweed-New Haven, Takeoff Minimums and Obstacle DP, Amdt 5
Dunnellon, FL, Dunnellon/Marion Co and Park of Commerce, Takeoff Minimums and Obstacle DP, Orig
Bainbridge, GA, Decatur Co Industrial Air Park, LOC/NDB RWY 27, Orig, CANCELLED
Bainbridge, GA, Decatur Co Industrial Air Park, RNAV (GPS) RWY 9, Amdt 1
Bainbridge, GA, Decatur Co Industrial Air Park, RNAV (GPS) RWY 27, Amdt 1
Greensboro, GA, Green County Rgnl, LOC RWY 25, Amdt 3
Greensboro, GA, Green County Rgnl, RNAV (GPS) RWY 7, Amdt 1
Greensboro, GA, Green County Rgnl, RNAV (GPS) RWY 25, Amdt 1
Greensboro, GA, Green County Rgnl, VOR/DME–B, Amdt 2
Hilo, HI, Hilo Intl, PARIS FOUR Graphic Obstacle DP
Clarinda, IA, Schenck Field, GPS RWY 2, Orig-A, CANCELLED
Clarinda, IA, Schenck Field, GPS RWY 20, Orig-B, CANCELLED
Clarinda, IA, Schenck Field, RNAV (GPS) RWY 2, Orig
Clarinda, IA, Schenck Field, RNAV (GPS) RWY 20, Orig
Eagle Grove, IA, Eagle Grove Muni, NDB RWY 13, Amdt 2
Eagle Grove, IA, Eagle Grove Muni, RNAV (GPS) RWY 13, Orig
Eagle Grove, IA, Eagle Grove Muni, RNAV (GPS) RWY 31, Amdt 1
Eagle Grove, IA, Eagle Grove Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Eagle Grove, IA, Eagle Grove Muni, VOR/DME–A, Amdt 2
Webster City, IA, Webster City Muni, GPS RWY 32, Orig, CANCELLED
Webster City, IA, Webster City Muni, RNAV (GPS) RWY 32, Orig
Webster City, IA, Webster City Muni, Takeoff Minimums and Obstacle DP, Orig
Topeka, KS, Philip Billard Muni, ILS OR LOC RWY 13, Amdt 33
Millinocket, ME, Millinocket Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Granite Falls, MN, Granite Falls Muni/Lenzen-Roe Memorial Fld, GPS RWY 33, Orig-B, CANCELLED
Granite Falls, MN, Granite Falls Muni/Lenzen-Roe Memorial Fld, RNAV (GPS) RWY 33, Orig
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 5, Amdt 38
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 18C, Amdt 10
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 18L, Amdt 7
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 18R, ILS RWY 18R (CAT II), ILS RWY 18R (CAT III), Orig
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 23, Amdt 3
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 36C, ILS RWY 36C (CAT II), ILS RWY 36C (CAT III), Amdt 16
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 36L, ILS RWY 36L (CAT II), ILS RWY 36L (CAT III), Orig
Charlotte, NC, Charlotte/Douglas Intl, ILS OR LOC RWY 36R, ILS RWY 36R (CAT II), ILS RWY 36R (CAT III), Amdt 11
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) Y RWY 5, Amdt 3
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) Y RWY 18C, Amdt 3
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) Y RWY 18L, Amdt 3
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) Y RWY 18R, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) Y RWY 23, Amdt 1
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) Y RWY 36C, Amdt 3
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) Y RWY 36L, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (GPS) Y RWY 36R, Amdt 3
Charlotte, NC, Charlotte/Douglas Intl, RNAV (RNP) Z RWY 5, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (RNP) Z RWY 18C, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (RNP) Z RWY 18L, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (RNP) Z RWY 18R, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (RNP) Z RWY 23, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (RNP) Z RWY 36C, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (RNP) Z RWY 36L, Orig
Charlotte, NC, Charlotte/Douglas Intl, RNAV (RNP) Z RWY 36R, Orig
Concord, NC, Concord Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3
Monroe, NC, Charlotte-Monroe Executive, Takeoff Minimums and Obstacle DP, Amdt 1
Gastonia, NC, Gastonia Muni, Takeoff Minimums and Obstacle DP, Amdt 5
Kindred, ND, Hamry Field, Takeoff Minimums and Obstacle DP, Orig
Ithaca, NY, Ithaca Tompkins Rgnl, RNAV (GPS) Y RWY 14, Orig
Ithaca, NY, Ithaca Tompkins Rgnl, RNAV (GPS) Z RWY 14, Orig
Ithaca, NY, Ithaca Tompkins Rgnl, VOR RWY 14, Amdt 14
Ithaca, NY, Ithaca Tompkins Rgnl, VOR RWY 32, Amdt 2
Isla De Vieques, PR, Antonio Rivera Rodriquez, Takeoff Minimums and Obstacle DP, Amdt 2
Rock Hill, SC, Rock Hill/York Co/Bryant Field, Takeoff Minimums and Obstacle DP, Amdt 1
Walterboro, SC, Lowcountry Rgnl, GPS RWY 5, Orig-B, CANCELLED
Walterboro, SC, Lowcountry Rgnl, GPS RWY 17, Orig-A, CANCELLED
Walterboro, SC, Lowcountry Rgnl, GPS RWY 35, Orig-A, CANCELLED
Walterboro, SC, Lowcountry Rgnl, ILS OR LOC/DME RWY 23, Orig
Walterboro, SC, Lowcountry Rgnl, NDB RWY 23, Amdt 12
Walterboro, SC, Lowcountry Rgnl, RNAV (GPS) RWY 5, Orig
Walterboro, SC, Lowcountry Rgnl, RNAV (GPS) RWY 17, Orig
Walterboro, SC, Lowcountry Rgnl, RNAV (GPS) RWY 23, Orig
Walterboro, SC, Lowcountry Rgnl, RNAV (GPS) RWY 35, Orig
Graford, TX, Possum Kingdom, NDB OR GPS–A, Amdt 1, CANCELLED
Graford, TX, Possum Kingdom, RNAV (GPS) RWY 2, Orig
Graford, TX, Possum Kingdom, RNAV (GPS) RWY 20, Orig
Graford, TX, Possum Kingdom, Takeoff Minimums and Obstacle DP, Orig
Houston, TX, Sugar Land Rgnl, NDB RWY 17, Orig, CANCELLED
Salt Lake City, UT, Salt Lake City Intl, Takeoff Minimums and Obstacle DP, Amdt 11
Martinsville, VA, Blue Ridge, Takeoff Minimums and Obstacle DP, Amdt 3
Riverton, WY, Riverton Rgnl, GPS RWY 28, Orig-A, CANCELLED
Riverton, WY, Riverton Rgnl, ILS OR LOC RWY 28, Amdt 2
Riverton, WY, Riverton Rgnl, RNAV (GPS) RWY 10, Amdt 1
Riverton, WY, Riverton Rgnl, RNAV (GPS) RWY 28, Orig
Riverton, WY, Riverton Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Riverton, WY, Riverton Rgnl, VOR RWY 10, Amdt 9
Riverton, WY, Riverton Rgnl, VOR RWY 28, Amdt 9

On Monday, November 23, 2009 (74 FR 224) The FAA published an Amendment in Docket No. 30697; Amdt No. 3348 to Part 97 of the Federal Aviation Regulations under section 97.23. The following entry should not have been published:

Wrangell AK, Wrangell, VOR/DME–B, Amdt 1, CANCELLED

[FR Doc. E9–31309 Filed 1–6–10; 8:45 am]
BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R10–RCRA–2009–0766; FRL–9098–6]

Oregon: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Oregon has applied to EPA for final authorization of certain changes to its hazardous waste management program under the Resource Conservation and Recovery Act, as amended (RCRA). On November 18, 2009, EPA published a proposed rule to authorize the changes and opened a public comment period under Docket ID No. EPA–R10–RCRA–2009–0766. The comment period closed on December 18, 2009. EPA has decided that the revisions to the Oregon hazardous waste management program satisfy all of the requirements necessary to qualify for final authorization and EPA is authorizing these revisions to Oregon's

authorized hazardous waste management program in this final rule.

DATES: *Effective Date:* Final authorization for the revisions to the hazardous waste management program in Oregon shall be effective at 1 p.m. EST on January 7, 2010.

ADDRESSES: EPA established a docket for this action under Docket ID No. EPA–R10–RCRA–2009–0766. All documents in the docket are available electronically on the Web site *http://www.regulations.gov*. A hard copy of the authorization application is also available for viewing, during normal business hours, at the U.S. Environmental Protection Agency Region 10, Office of Air Waste and Toxics, 1200 Sixth Avenue., Suite 900, Seattle, Washington 98101, contact Nina Kocourek at (206) 553–6502; or at the Oregon Department of Environmental Quality, 811 SW Sixth, Portland, Oregon 97204, contact Scott Latham at (503) 229–5953.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, U.S. Environmental Protection Agency, Region 10, Office of Air, Waste & Toxics (AWT–122), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, phone number: (206) 553–6502, e-mail: *kocourek.nina@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste management program that is equivalent to and consistent with the Federal program. States are required to have enforcement authority which is adequate to enforce compliance with the requirements of the hazardous waste management program. Under section 3009, States are not allowed to impose any requirements which are less stringent than the Federal program. 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 EPA's regulations codified in Title 40 of the Code of Federal Regulations (CFR) Parts 124, 260 through 268, 270, 273, and 279.

B. What Decisions Have We Made in This Rule?

EPA has made a final determination that Oregon's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are granting Oregon final authorization to operate its hazardous waste management program with the changes described in the authorization application. Oregon will have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian country (18 U.S.C. 1151), 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 EPA promulgates under the authority of HSWA, and which are not less stringent than existing requirements, take effect in authorized States before the States are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Oregon, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of This Authorization Decision?

The effect of this action is that a facility in Oregon subject to RCRA will have to comply with the authorized State requirements in lieu of the corresponding Federal requirements in order to comply with RCRA. Additionally, such persons will have to comply with any applicable Federal requirements, such as, for example, HSWA regulations issued by EPA for which the State has not received authorization, and RCRA requirements that are not supplanted by authorized State-issued requirements. Oregon has enforcement responsibilities under its State hazardous waste management program for violations of its currently authorized program and will have enforcement responsibilities for the revisions which are the subject of this final rule. EPA continues to have independent enforcement authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, among others, the authority to:

- Conduct inspections; require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements, including State program requirements that are authorized by EPA and any applicable Federally-issued statutes and regulations; suspend, terminate, modify or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action approving these revisions will not impose additional requirements on the regulated community because the regulations for which Oregon's program is being authorized are already effective under State law.

D. What Were the Comments on EPA's Proposed Rule?

On November 18, 2009 (74 FR 59497), EPA published a proposed rule to grant authorization of changes to Oregon's hazardous waste management program subject to public comment. The public comment period opened November 18, 2009 and ended on December 18, 2009. The Agency did not receive any comments on the proposed rule.

E. What Has Oregon Previously Been Authorized for?

Oregon initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3779), to implement the RCRA hazardous waste management program. EPA granted authorization for changes to Oregon's program on March 30, 1990, effective on May 29, 1990 (55 FR 11909); August 5, 1994, effective October 4, 1994 (59 FR 39967); June 16, 1995, effective August 15, 1995 (60 FR 31642); October 10, 1995, effective December 7, 1995 (60 FR 52629); September 10, 2002, effective September 10, 2002 (67 FR 57337); and June 26, 2006 effective June 26, 2006 (71 FR 36216).

F. What Changes Are We Authorizing With This Action?

EPA is authorizing revisions to Oregon's authorized hazardous waste management program described in Oregon's official program revision application, submitted to EPA on October 15, 2009 and deemed complete by EPA on October 23, 2009. EPA has determined that Oregon's hazardous waste management program revisions, as described in the State's authorization revision application dated October 15, 2009 satisfy the requirements necessary to qualify for final authorization. The following table identifies those equivalent and more stringent State regulatory analogues to the Federal regulations which will be authorized with this action. The referenced analogous State authorities were legally adopted and effective as of June 25, 2009.

Description of Federal requirements CL[1]	Federal Register reference	Analogous State authority (Oregon administrative rules (OAR 340–* * *)
Land Disposal Restrictions: Treatment Variance for Radioactively Contaminated Batteries, CL 201.	67 FR 62618, 11/21/2002	–100–0002.
NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors-Corrections, CL 202.	67 FR 77687, 12/19/2002	–100–0002.
Hazardous Waste Management System; Identification and Listing of hazardous Waste; Used Oil Management Standards, CL 203.	68 FR 44659, 7/30/2003	–100–0002.
NESHAP: Surface Coating of Automobiles and Light-Duty Trucks, CL 205.	69 FR 22601, 4/26/2004	–100–0002.
Non-wastewaters from Dyes and Pigments, CL 206	70 FR 9138, 2/24/2005	–100–0002.
Non-wastewaters from Dyes and Pigments Correction, CL 206.1	70 FR 35032, 6/13/2005	–100–0002.
Uniform Hazardous Waste Manifest, CL 207 [2]	70 FR 10776, 3/4/2005	–100–0002.
Uniform Hazardous Waste Manifest Correction, CL 207.1.[3]	70 FR 35034, 6/16/2005	–100–0002.
Methods Innovation; SW–846, CL 208	70 FR 34538, 6/14/2005	–100–0002.
Methods Innovation; SW–846 Correction, CL 208.1	70 FR 44150, 8/1/2005	–100–0002.
Mercury Containing Equipment, CL 209	70 FR 45508, 8/5/2005	–100–0002.
Headworks Exemption, CL 211	70 FR 57769, 10/4/2005	–100–0002.
NESHAP: Phase I Final Replacement Standards, CL 212	70 FR 59402, 10/12/2005	–100–0002.
Burden Reduction Rule, CL 213 [3]	71 FR 16862, 4/4/2006	–100–0002; –104–0021(1), (2) and (3); –105–0140(1), (2), (3), (4) and (5).
CFR Corrections Rule 1, CL 214	71 FR 40254, 7/14/2006	–100–0002.
CRT Exclusion, CL 215	71 FR 42928, 7/28/2006	–100–0002.

[1] CL (Checklist) is a document that addresses the specific changes made to the Federal regulations by one or more related final rules published in the **Federal Register**. EPA develops these checklists as tools to assist States in developing their authorization application and in documenting specific State regulations analogous to the Federal regulations. For more information see EPA's RCRA State Authorization Web page at *http://www.epa.gov/epawaste/osw/laws-regs/state/index.htm.*

[2] Concurrent with the incorporation by reference of this rule package on June 18, 2009, the Environmental Quality Commission repealed a State-only hazardous waste manifest rule (OAR–34–102–0060) that had previously been authorized by EPA. The State took this action to avoid any potential conflict with the Federal Uniform Hazardous Waste Manifest Rules (CL 207 and 207.1) which are incorporated by reference into Oregon's hazardous waste rules and effective state law as of June 25, 2009.

[3] State rule contains some more stringent provisions. For identification of the more stringent State provisions refer to the authorization revision application and the discussion in Section G of this rule.

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

This section discusses differences between Oregon's authorized revisions and the Federal regulations. EPA has made a final determination that the State does have more stringent requirements related to the Federal Burden Reduction Rule (70 FR 16862, April 4, 2006).

In 1999, EPA initiated a new Federal program, National Environmental Performance Track. This was a voluntary program designed to recognize facilities that had a sustained record of compliance and implemented high quality environmental management systems. EPA provided exclusive regulatory and administrative benefits to the Performance Track member facilities. The State of Oregon did not participate in the Federal National Environmental Performance Track Program. In May 2009, EPA terminated the Federal National Performance Track Program (74 FR 22742, May 14, 2009); therefore there are no current Federal Performance Track member facilities. However, EPA did not remove the Federal rules applicable to the Performance Track member facilities from its regulations, and if EPA's Performance Track Program were reinstated these Federal rules would continue to be applicable to future member facilities.

The State incorporated by reference the Federal Burden Reduction Rule (70 FR 16862, April 4, 2006), which included special allowances to lower priorities on routine inspections for Performance Track member facilities. The State also adopted rules which deleted those portions of the rule that referenced Federal Performance Track member facilities. The effect of deleting those references is that the State's rules do not allow any special or administrative benefits for Performance Track member facilities. Therefore, the State's rules found at OAR 340–104–0021(1), (2) and (3); OAR 340–105–0140(1), (2), (3), (4) and (5) are more stringent than those corresponding federal counterparts found at 40 CFR 264.15(b)(4) and (5); 40 CFR 264.174; 40 CFR 264.195(e)(1); 40 CFR 265.15(b)(4) and (5); 40 CFR 265.174; 40 CFR 265.195(d); and 40 CFR 265.201(e).

H. Who Handles Permits After the Authorization Takes Effect?

Oregon will continue to issue permits for all the provisions for which it is authorized and administer the permits it issues. If EPA issued permits prior to authorizing Oregon for these revisions, these permits would continue in force until the effective date of the State's issuance or denial of a State hazardous waste permit, at which time EPA would modify the existing EPA permit to expire at an earlier date, terminate the existing EPA permit for cause, or allow the existing EPA permit to otherwise expire by its terms, except for those facilities located in Indian Country. EPA will not issue new permits or new portions of permits for provisions for which Oregon is authorized after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Oregon is not yet authorized.

Oregon will have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian country (18 U.S.C. 1151), 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 EPA promulgates under the authority of HSWA, and which are not less stringent than existing requirements, take effect in authorized States before the States are

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

I. What Is Codification and Is EPA Codifying Oregon's Hazardous Waste Management 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 management program into the Code of Federal Regulations. This is done by referencing the authorized State rules in 40 CFR Part 272. EPA is reserving the amendment of 40 CFR Part 272, Subpart MM for codification to a later date.

J. How Does This Action Affect Indian Country (18 U.S.C. 1151) in Oregon?

EPA's decision to authorize the Oregon hazardous waste management program does not include any land that is, or becomes after the date of this authorization "Indian Country," as defined in 18 U.S.C. 1151. This includes: (1) All lands within the exterior boundaries of Indian reservations within or abutting the State of Oregon; (2) Any land held in trust by the U.S. for an Indian tribe; and (3) Any other land, whether on or off an Indian reservation, that qualifies as Indian country. Therefore, this action has no effect on Indian country. EPA retains jurisdiction over "Indian Country" as defined in 18 U.S.C. 1151, and EPA will continue to implement and administer the RCRA program on these lands.

K. Statutory and Executive Order Reviews

This final rule revises the State of Oregon's authorized hazardous waste management program pursuant to section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. This final rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant", and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

2. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this final rule does not establish or modify any information or recordkeeping requirements for the regulated community and only seeks to authorize the pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing, and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR are listed in 40 CFR Part 9.

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. As part of the State's rule development process, the State of Oregon prepared a "Department of Environmental Quality (DEQ) Chapter 340, Proposed Rulemaking Statement of Need and Fiscal and Economic Impact" which included an analysis on impacts to small businesses. The state concluded that there are no economic or fiscal impacts resulting from DEQ's proposed rulemaking. See the Oregon Environmental Quality Commission Agenda, dated June 19, 2009, Action Item N—Hazardous Waste Omnibus Rulemaking, Attachment E, for the DEQ "Impact to Small Business Analysis" *http://www.deq.state.or.us/about/eqc/agendas/2009/2009juneEQCagenda.htm.* I certify that this final rule will not have a significant economic impact on a substantial number of small entities because the final rule will only have the effect of authorizing pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law.

4. Unfunded Mandates Reform

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed section 205

of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this action contains no regulatory requirements that might significantly or uniquely affect small government entities. Therefore, today's action is not subject to the requirements of sections 202 and 203 of the UMRA.

5. Executive Order 13132: Federalism

This final rule does not have federalism implications. It 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 various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This final rule authorizes pre-existing State rules. Therefore, Executive Order 13132 does not apply to this final rule.

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175 because EPA retains its authority over Indian Country. Therefore, Executive Order 13175 does not apply to this final rule.

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it approves a state program.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final 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" as defined under Executive Order 12866.

9. National Technology Transfer and Advancement Act

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), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rulemaking does not involve technical standards. Therefore, EPA will not be considering the use of any voluntary consensus standards.

10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This final rule does not affect the level of protection provided to human health or the environment because this rule authorizes pre-existing State rules which are equivalent to, and no less stringent than existing federal requirements.

List of Subjects in 40 CFR Part 271

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

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

Dated: December 23, 2009.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2010–13 Filed 1–6–10; 8:45 am]

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NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Final rule.

SUMMARY: The NTSB is amending its regulations concerning notification and reporting requirements regarding aircraft accidents or incidents. In particular, the NTSB is adding regulations to require operators to report certain incidents to the NTSB. The NTSB is also amending existing regulations to provide clarity and ensure that the appropriate means for notifying the NTSB of a reportable incident is listed correctly in the regulation.

DATES: The revisions and additions published in this final rule will become effective March 8, 2010.

ADDRESSES: A copy of the notice of proposed rulemaking (NPRM), published in the **Federal Register** (FR), is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza, SW., Washington, DC 20594–2000. Alternatively, a copy of the NPRM is available on the government-wide Web site on regulations at *http://www.regulations.gov.*

FOR FURTHER INFORMATION, CONTACT: Deepak Joshi, Lead Aerospace Engineer (Structures), Office of Aviation Safety, (202) 314–6348.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 7, 2008, the NTSB published an NPRM titled "Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records" in 73 FR 58520. This NPRM proposed and the final rule herein codifies the addition of five reportable incidents, the reporting of which the NTSB believes will improve aviation safety. In particular, the new subsections within 49 CFR 830.5(a) will require operators to report the following: failure of any internal turbine engine component that results in the escape of debris other than out the exhaust path; release of all or a portion of a propeller blade from an aircraft, excluding release caused solely by ground contact; a complete loss of information, excluding flickering, from more than 50 percent of an aircraft's cockpit displays, known as Electronic Flight Instrument System displays, Engine Indication and Crew Alerting System displays, Electronic Centralized Aircraft Monitor displays, or other such displays; Airborne Collision Avoidance System (ACAS) resolution advisories issued either (1) when an aircraft is being operated on an instrument flight rules (IFR) flight plan and compliance with the advisory is necessary to avert a substantial risk of collision between two or more aircraft, or (2) to an aircraft operating in class A airspace; damage to helicopter tail or main rotor blades, including ground damage, that requires major repair or replacement of the blade(s); and any event in which an aircraft operated by an air carrier lands or departs on a taxiway, incorrect runway, or other area not designed as a runway, or experiences a runway incursion that requires the operator or the crew of another aircraft or vehicle to take immediate corrective action to avoid a collision. The NPRM also proposed certain wording changes to other existing subsections within 49 CFR 830.5(a) for clarity and proposed a change in the footnote that provides the locations of NTSB regional offices.

The NTSB notes that it further analyzed the potential application of the Regulatory Flexibility Act, as published in Title 5 *United States Code* (U.S.C.), sections 601–612, to this rule. Prior to publishing the NPRM, the NTSB considered whether this rule would have a significant economic impact on a substantial number of small entities and certified under 5 U.S.C. 605(b) that this rule would not have such an impact. The NTSB verifies this assessment and notes that while this rule will require some affected individuals to complete NTSB Form 6120.1, "Pilot/Operator Accident/Incident Report," the cost to complete this form is nominal. Therefore, the NTSB verifies that its certification under 5 U.S.C. 605(b) was valid.

In response to the publication of this NPRM, the NTSB received and carefully considered six comments. The NTSB did not receive any requests for a public meeting; therefore, the NTSB did not hold a public meeting on the NPRM. Below is a summary of and response to each concern that commenters raised, arranged by issue.

Discussion of Comments and Changes

In the interest of ensuring that the provisions of 49 CFR 830.5 are complete, comprehensible, and enforceable, the NTSB's final rule herein includes revisions to three new subsections of 49 CFR 830.5 that the NTSB proposed, including subsections (a)(9), (a)(10), and (a)(12), which proposed requiring reports of a complete loss of information from certain electronic displays, certain types of resolution advisories, and certain runway incursions, respectively. These changes are described in the sections below.

Proposed Revision to Section 830.5(a)(3)

The NPRM proposed to amend 49 CFR 830.5(a)(3) to require notification of incidents in which "[f]ailure of any internal turbine engine component that results in the escape of debris other than out the exhaust path" occurs. The NTSB received two comments on this proposed addition.

One commenter, an aviation industry manufacturing association, objected to the requirement that the NTSB be notified immediately for the following proposed events: Failure of any internal turbine engine component that results in the escape of the debris other than out the exhaust path and release of all or a portion of a propeller blade from an aircraft, excluding release caused solely by ground contact. The commenter stated that, in accordance with 14 CFR 21.3(c), operators are already required to report such failures to the Federal Aviation Administration (FAA). The commenter further stated that the requirement to report these events to the NTSB would put an additional burden on the operator by requiring duplicate reporting of events. The commenter suggested the development of a joint FAA/NTSB reporting system that would alert both agencies concurrently when one of the reportable events occurs.

The NTSB disagrees with these comments. The NTSB is aware that 14 CFR 21.3 requires holders of type certificates, supplemental type certificates, and parts manufacturing approval to notify the FAA within 24 hours, or the next business day on weekends or holidays, of an engine or component failure. But the NTSB also notes that 14 CFR 21.3(d)(1)(iii) states that a report to the FAA is not required if the event has been reported to the NTSB. The NTSB needs immediate notification of a reportable event to determine the appropriate level of response, which might include immediately dispatching an investigator to the scene. The NTSB continues to believe that utilizing the 14 CFR 21.3 notification system alone that initially reports failures to the FAA presents an unacceptable delay in the notification to the NTSB and the initiation of a response. The NTSB reiterates that it has investigated catastrophic engine failures after being belatedly notified, and critical evidence was lost as a result of the delay in notification, thus hampering the investigation. The NTSB also notes that 49 CFR 830.10 requires the operator of an aircraft involved in a reportable event to preserve the wreckage and all pertinent records until the NTSB takes custody or until the wreckage and records have been released pursuant to 49 CFR 831.12. The NTSB believes that relying on 14 CFR 21.3 reports that would initially be sent to the FAA would delay not only the NTSB's response to the event but also the return of custody of the airplane and/or engine to the operator, thus delaying their repair and return to service. The NTSB is aware that 14 CFR 121.703 and 135.415 require those respective Part 121 or 135 certificate holders to notify their FAA certificate-holding district offices of an engine failure within 24 hours, or the next business day on weekends or holidays. While engine or component failures are

relatively rare, the NTSB is not concerned with every engine or component failure that occurs; therefore, this rule will not materially affect operators. However, the NTSB is very concerned about engine failures that result in debris coming out of the engine through a path other than the exhaust, also referred to as uncontained engine failures. These failures can and have liberated debris, resulting in damage to the airplane or its systems and/or injured passengers. Fortunately, these types of reportable events are very rare. Thus, the NTSB does not expect that it will be unduly burdensome for Part 121 and 135 operators who experience engine failures resulting in debris exiting the engine through a path other than the exhaust or one of the other previously reportable events to make the dual notification to their FAA certificate-holding district offices as well as the NTSB.

The commenter also suggested that a system be developed so that the FAA-required 14 CFR 21.3 data would be shared concurrently with the NTSB. While the NTSB appreciates the commenter's suggestion, the NTSB believes that situations could occur in which the notification that the NTSB receives would be delayed, such as occurrences under 14 CFR 21.3 in which notification occurs within 24 hours, or the next business day if the event occurred on the weekend or a holiday.

One commenter, a professional pilots' union, fully concurred with the proposed rule requiring the NTSB to be notified immediately of an event where debris exited an engine through some other path besides the engine's exhaust. The NTSB appreciates the commenter's support on this proposed immediate notification requirement.

In summary, the NTSB understands that this new rule will require Part 121 and 135 operators who, in accordance with 14 CFR 121.703 and 135.415, respectively, must report any engine or component malfunctions or failures to both their FAA certificate-holding district offices and the NTSB. The NTSB continues to believe, however, that the language of the reporting requirement will result in timely notification of incidents in which a failure of an internal engine component resulted in the escape of debris from an exit other than out the exhaust path. Therefore, the NTSB has not amended this addition.

Proposed Addition of Section 830.5(a)(8)

The NPRM proposed to add section 830.5(a)(8) to 49 CFR Part 830 to require the reporting of any "release of all or a portion of a propeller blade from an aircraft, excluding release caused solely by ground contact." One commenter, a professional pilots' union, dissented with the NTSB regarding the exclusion of a structural failure of a propeller or portion of a propeller caused solely by ground contact. The NTSB disagrees with the commenter's position that the NTSB should broaden the section to include all incidents in which propeller blades or blade sections have separated from an aircraft. The commenter stated that liberated propeller blades or blade segments pose a significant hazard to the crew, passengers, and bystanders.

The NTSB agrees with the commenter regarding the hazards that liberated propeller blades or segments of propeller blades pose to crews, passengers, and bystanders. However, the NTSB notes that propeller blades are designed and certified to operate within the atmosphere and, as such, the expectation is that they remain intact and in place during normal operation. Propeller blades are not designed or expected to continue to remain intact and in place following contact with the ground. The NTSB continues to believe that the language of the reporting requirement will achieve the NTSB's objective of receiving notification of any release of all or a portion of a propeller blade from an aircraft, inconsistent with its design parameters and certification, thus excluding releases caused solely by ground contact. Therefore, the NTSB has not amended this addition.

Proposed Addition of Section 830.5(a)(9)

The NPRM proposed to add section 830.5(a)(9) to 49 CFR Part 830 to require the reporting of "[a] complete loss of information, excluding flickering, from more than 50 percent of an aircraft's certified electronic primary displays." The NTSB has carefully reviewed the comments received concerning this section and has concluded that the language should be amended to require notification of "[a] complete loss of information, excluding flickering, from more than 50 percent of an aircraft's cockpit displays known as: (A) Electronic Flight Instrument System (EFIS) displays; (B) Engine Indication and Crew Alerting System (EICAS) displays; (C) Electronic Centralized Aircraft Monitor (ECAM) displays; or (D) Other displays of this type, which generally include a primary flight display (PFD), primary navigation display (PND), and other integrated displays."

The NTSB now recognizes the need to revise the proposed language to avoid capturing an excessive number of failures. For example, under the proposed language, a failed electronic exhaust gas temperature (EGT) gauge that is the only means of monitoring EGT would have been reportable. However, the NTSB would not likely be concerned with collecting data concerning or investigating such events; therefore, the NTSB has narrowed the language of this section. The NTSB maintains that this change in the proposed regulatory language is a logical outgrowth of the proposed rule and therefore does not violate the rulemaking requirements of the Administrative Procedure Act (APA).

The NTSB received three comments that addressed this notification requirement. Two commenters stated that they had difficulty determining exactly what types of failures for which notification was required. One commenter provided an example of an electronic display on a general aviation aircraft where a mechanical indication was also included. This commenter was concerned that when the electronic display failed, this event would have to be reported even though a mechanical display of the information was still available. The other commenter stated that the criteria for reporting should be based on the aircraft's certification requirements.

Based on these comments and the NTSB's careful review of the proposed language of the notification requirement, the NTSB decided that some adjustment of the language of this section was required to ensure that the relevant failures will be reported, as described above. The NTSB's principal goal in promulgating this requirement is to capture "display blanking" events in which many of the newer "glass cockpit" type displays have gone blank. The proposed language of this requirement was intended to capture this type of failure, but the NTSB recognizes that a revision specifically mentioning the various types of displays would be advantageous. Therefore, the NTSB has changed the language of this subsection to require the reporting of any "complete loss of information, excluding flickering, from more than 50 percent of an aircraft's cockpit displays known as: (A) Electronic Flight Instrument System (EFIS) displays; (B) Engine Indication and Crew Alerting System (EICAS) displays; (C) Electronic Centralized Aircraft Monitor (ECAM) displays; or (D) Other displays of this type, which generally include a primary flight display (PFD), primary navigation display (PND), and other integrated displays."

Furthermore, another commenter disagreed with the exclusion of "flickering" of instrument displays when considering the reporting requirements in this section. The commenter felt that the "flickering" of displays could be an indication of underlying hardware or software problems. The NTSB considered this potential meaning of "flickering" when it originally defined the language of this section. After reviewing this concept, the NTSB has decided against revising the language of this section. While the NTSB agrees that "flickering" can be a symptom of underlying problems, the NTSB feels that the operator's maintenance organization is best equipped to deal with this type of symptom. If the "flickering" becomes so severe that the display is unusable, then it should be reported under this section (providing that over 50 percent of the displays were similarly unusable).

One commenter stated that the requirement to report these types of failures to the NTSB constituted a duplicative reporting requirement, as failures are already required to be reported to the FAA. The NTSB feels that the requirement to report these types of failures directly to the NTSB is essential to aviation safety because it ensures that these events will be investigated by NTSB personnel as quickly as possible. In addition, duplicative notifications are not required because the regulations state that any incident reported to the NTSB does not have to be reported separately to the FAA.

As described above, the NTSB continues to believe that it is in the best interest of aviation safety to receive reports of a complete loss of information from certain types of electronic displays. After carefully considering all comments that addressed this section, the NTSB has determined that it must receive notification of complete losses of information, as described above. Consistent with the above discussion, the NTSB has amended this addition.

Proposed Addition of Section 830.5(a)(10)

The NPRM proposed to add section 830.5(a)(10) to 49 CFR Part 830 to require the reporting of the following: Airborne Collision and Avoidance System (ACAS) resolution advisories issued either: When an aircraft is being operated on an instrument flight rules flight plan and corrective or evasive action is required to maintain a safe distance from other aircraft; or to an aircraft operating in class A airspace.

The intent of this requirement is for the NTSB to be notified of incidents where ACAS-equipped aircraft must actively maneuver to avert a substantial risk of collision with another aircraft and to be notified of incidents where the stringent separation requirements inherent in operations within class A airspace may have been compromised. The NTSB has carefully reviewed the comments received concerning this requirement and amends the language of this requirement to require reports of ACAS resolution advisories issued either (A) when an aircraft is being operated on an IFR flight plan and compliance with the advisory is necessary to avert a substantial risk of collision between two or more aircraft; or (B) to an aircraft operating in class A airspace.

Five commenters were concerned that the original proposed requirement would result in an unmanageable number of reports. In general, regarding the proposed rule's effect outside class A airspace, commenters placed most of their emphasis on the "corrective or evasive action" language, despite the language that a report would be necessary only when such maneuvers are "* * * required to maintain a safe distance from other aircraft." The NTSB fully recognizes that when a resolution advisory occurs, it does not necessarily follow that an unsafe encounter is about to occur. The NTSB intends to require reports only when failure to comply with a resolution advisory would lead to an unsafe encounter with another aircraft, that is, an encounter presenting a substantial risk of collision. The NTSB's expectation is that there are not an unmanageable number of such encounters occurring in the air traffic control (ATC) system. However, if reports show that a large number of these incidents are occurring, the circumstances leading up to the incidents would certainly be a safety issue of major interest to the NTSB. Concern about dealing with the associated reports is not a persuasive rationale for not requiring them, especially if the number of serious incidents is unexpectedly high. The NTSB believes that by further clarifying the definition of incidents to be reported, the burden on both aircraft operators and the NTSB will be limited to addressing high-risk events that warrant further examination and potentially full investigation.

The NTSB recognizes that "substantial risk of collision" is somewhat subjective, but the infinite variety of encounter geometries does not lend itself to specific guidance that would apply to every possible scenario. The FAA's definition of a near midair collision is "an incident associated with the operation of an aircraft in which a possibility of collision occurs as a result of proximity of less than 500 feet to another aircraft, or a report is received from a pilot or a flight crew member stating that a collision hazard existed between two or more aircraft." This definition is not incorporated to limit or precisely define the reports desired, but it may be useful in illustrating the nature of the types of incidents for which the NTSB will require notification. Resolution advisories that command maximum vertical speed, "reversal" advisories that require a change in vertical direction after the initial advisory is issued, or encounters that result in zero vertical separation between the aircraft involved are all examples of the types of advisories that the NTSB believes may be indicative of substantial collision risk. Conversely, resolution advisories issued to aircraft operating on closely spaced parallel approaches or in other circumstances where there is no substantial risk of collision need not be reported under this rule.

Four commenters stated that this requirement would effectively mandate the reporting of all resolution advisories. As stated above, the NTSB does not intend for all resolution advisories to be reported. The NTSB expects that the revised language fully addresses this concern and explicitly limits the need for reporting to situations where compliance with a resolution advisory is necessary to avert a significant risk of collision.

Two commenters expressed concern about the potential need to download flight recorder data or remove recorders from aircraft, thereby incurring expense and potential schedule disruption to the aircraft operator. As the NTSB has previously noted, requiring an operator to provide flight recorder data can be disruptive and burdensome. The NTSB carefully considers the need for such information in determining how to investigate serious incidents properly and limits requests to situations where the data is clearly required to understand the sequence of events because other available information, such as recorded radar data, is inadequate. Unless a large number of unreported serious incidents occur, the NTSB does not expect to substantially increase the number of recorder requests made to support this reporting requirement.

Two commenters stated that the NTSB should rely on the FAA for reports of traffic alert and collision avoidance system (TCAS) events. The NTSB does not believe that the FAA's processes for assessing and reporting

incidents, particularly those involving losses of separation, are sufficiently reliable. Recent Department of Transportation Inspector General investigations have documented repeated failures to report incidents, misclassification of incidents, and other circumstances which lead the NTSB, as an independent agency, to seek additional means of monitoring the performance of the ATC system. The NTSB expects that information provided by aircraft operators under this reporting requirement will help validate the effectiveness of the FAA's reporting process, especially relating to more serious incidents occurring in the system. One of the commenters noted that the NTSB should, in lieu of the proposed reporting requirement, correct the FAA's procedures. The NTSB does occasionally interact with the FAA regarding the efficacy of its internal processes. However, the NTSB has no authority to direct changes to FAA procedures. The NTSB believes that for the significant types of incidents the NTSB expects to investigate under this requirement, occasional duplicative reports are worthwhile to ensure that a complete examination of the circumstances takes place.

Five commenters stated that the proposed reporting requirement should be dropped in favor of existing voluntary confidential data collection systems such as the Aviation Safety Action Program (ASAP), Flight Operational Quality Assurance (FOQA) programs, and the MITRE-operated Aviation Safety Information Analysis and Sharing program. While the NTSB does support such programs in principle, the de-identified and otherwise filtered information available through them is not useful for investigative purposes. The NTSB's duty is to define the types of events that may warrant a safety investigation, evaluate those events as they occur, and investigate as necessary. Existing NTSB reporting requirements predated and, to a large extent, overlap with the types of incidents and accidents for which reports are made to these programs. Nonetheless, the NTSB continues to define reporting requirements and investigate safety incidents as necessary to protect the public interest. The NTSB cannot delegate such responsibilities to external organizations, become wholly dependent on information such organizations may or may not see fit to share, or limit the investigative use of that information to comply with accompanying restrictions. Therefore, the NTSB does not view the data collection programs suggested by the commenters as an adequate substitute for the proposed reporting requirement.

One commenter noted that pilots may not report incidents without the protection of an ASAP or FOQA program and further inquired about the possible consequences of failing to report such incidents. While a pilot's decision to disregard a reporting requirement is an unfortunate possibility, it is beyond the control of the NTSB. The NTSB presumes good faith on the part of professional aviators with regard to reporting, and the NTSB does not intend to use this requirement to prompt enforcement actions.

The NTSB emphasizes that the intent of this reporting requirement is to identify, evaluate, and investigate (when appropriate) serious incidents where aircraft maneuvers were required to avert substantial risk of collision between TCAS-equipped aircraft and other aircraft in the system and to evaluate situations where resolution advisories occur between aircraft under positive control in class A airspace. The NTSB's intent is not to require the reporting of all resolution advisories or, outside of class A airspace, to require the reporting of any resolution advisory resulting from an encounter between aircraft where no substantial risk of collision exists.

In summary, the NTSB continues to believe that this reporting requirement will achieve the NTSB's objective of receiving notification of aircraft encounters that present a significant risk of collision. The NTSB, however, has determined that amending the language will provide further clarity and assist operators, crews, and other individuals and entities affected by this rule in recognizing that the NTSB seeks notification of the category of occurrences in which hazardous encounters involving ACAS-equipped aircraft occur. As such, the NTSB will require notification of the following: Airborne Collision and Avoidance System (ACAS) resolution advisories issued either: when an aircraft is being operated on an instrument flight rules flight plan and compliance with the advisory is necessary to avert a substantial risk of collision between two or more aircraft; or to an aircraft operating in class A airspace.

Proposed Addition of Section 830.5(a)(11)

The NPRM proposed to add section 830.5(a)(11) to 49 CFR Part 830 to require that the public report "[d]amage to helicopter tail or main rotor blades, including ground damage, that requires major repair or replacement of the blade(s)." The NTSB did not receive any comments concerning this proposed requirement. Moreover, the NTSB continues to believe that the proposed reporting requirement will achieve the NTSB's objective of receiving notification of all rotor blade strikes that result in damage, regardless of what the blades strike. Therefore, the NTSB has not amended this addition and will require notification of any damage to helicopter tail or main rotor blades that requires major repair or replacement of the blade(s).

Proposed Addition of Section 830.5(a)(12)

The NPRM proposed to add section 830.5(a)(12) to 49 CFR Part 830 to require that the public report the following: Any runway incursion event in which an operator, when operating an aircraft as an air carrier: lands or departs on a taxiway, incorrect runway, or other area not designed as a runway; or experiences a reduction in separation that requires the operator or another aircraft or vehicle to take immediate corrective action to avoid a collision.

The NTSB received one comment on this section, which partially concurred with the proposal and provided suggestions. The commenter stated that the phrase "runway incursion" in the qualifying statement should be deleted because landing and taking off on a taxiway is not a runway incursion. Additionally, the commenter stated that the reporting requirements should include nonrevenue operations (such as ferry flights, maintenance flights/taxi, and reposition flights/taxi). Finally, the commenter believed that events resulting in a go-around should be excluded because that would require a report each time a go-around was conducted if an aircraft or vehicle was on the runway. Although the commenter believed that the events as stated should be reportable, the commenter felt that the language should be clarified.

The NTSB agrees that the term "runway incursion" should be deleted from the beginning of the statement for the reasons provided by the commenter. However, to clarify that the NTSB is requesting reports of separation issues on the runway, the NTSB hereby amends subsection (B) to restrict reports to runway operations. The NTSB also agrees with the commenter's suggestion to include nonrevenue flights because the same pilots fly both revenue and nonrevenue flights.

Finally, the commenter opined that all go-around maneuvers conducted because the runway was not clear would need to be reported. The NTSB disagrees with this assessment. For

example, if a controller instructs the pilot to go around because an aircraft or vehicle is on the runway, that is a controlled situation. The tower controller was aware of the situation and directed a go around. However, if the pilot had to execute a go-around on his own and the tower controller was not aware of the situation, the NTSB would want to know about that event because it may go unreported. Similarly, a tower controller could clear an aircraft to land and inadvertently clear another aircraft onto the runway; if the arriving pilot has to conduct a go-around because of the airplane on the runway, the NTSB should receive a report of the incident.

Based on the NTSB's careful review of the above commentary, the NTSB will now require the reporting of "[a]ny event in which an aircraft operated by an air carrier: (A) [l]ands or departs on a taxiway, incorrect runway, or other area not designed as a runway; or (B) [e]xperiences a runway incursion that requires the operator or the crew of another aircraft or vehicle to take immediate corrective action to avoid a collision."

The NTSB has concluded that this clarification in the regulatory language is a logical outgrowth of the proposed language and is therefore consistent with the rulemaking requirements of the APA.

List of Subjects in 49 CFR Part 830

Aircraft accidents, Aircraft incidents, Aviation safety, Overdue aircraft notification and reporting, Reporting and recordkeeping requirements.

In conclusion, for the reasons discussed in the preamble, the NTSB amends 49 CFR Part 830 as follows:

PART 830—NOTIFICATION AND REPORTING OF AIRCRAFT ACCIDENTS OR INCIDENTS AND OVERDUE AIRCRAFT, AND PRESERVATION OF AIRCRAFT WRECKAGE, MAIL, CARGO, AND RECORDS

1. The authority citation for 49 CFR Part 830 is revised to read as follows:

Authority: Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101–1155); Federal Aviation Act of 1958, Public Law 85–726, 72 Stat. 731 (codified as amended at 49 U.S.C. 40101).

2. Section 830.5 is amended as follows:

A. The section introductory text, paragraph (a) introductory text, paragraphs (a)(3) through (a)(5), and footnote 1 are revised.

B. Paragraphs (a)(8) through (a)(12) are added.

§ 830.5 Immediate notification.

The operator of any civil aircraft, or any public aircraft not operated by the Armed Forces or an intelligence agency of the United States, or any foreign aircraft shall immediately, and by the most expeditious means available, notify the nearest National Transportation Safety Board (NTSB) office,[1] when:

(a) An aircraft accident or any of the following listed serious incidents occur:

* * * * *

(3) Failure of any internal turbine engine component that results in the escape of debris other than out the exhaust path;

(4) In-flight fire;

(5) Aircraft collision in flight;

* * * * *

(8) Release of all or a portion of a propeller blade from an aircraft, excluding release caused solely by ground contact;

(9) A complete loss of information, excluding flickering, from more than 50 percent of an aircraft's cockpit displays known as:

(i) Electronic Flight Instrument System (EFIS) displays;

(ii) Engine Indication and Crew Alerting System (EICAS) displays;

(iii) Electronic Centralized Aircraft Monitor (ECAM) displays; or

(iv) Other displays of this type, which generally include a primary flight display (PFD), primary navigation display (PND), and other integrated displays;

(10) Airborne Collision and Avoidance System (ACAS) resolution advisories issued either:

(i) When an aircraft is being operated on an instrument flight rules flight plan and compliance with the advisory is necessary to avert a substantial risk of collision between two or more aircraft; or

(ii) To an aircraft operating in class A airspace.

(11) Damage to helicopter tail or main rotor blades, including ground damage, that requires major repair or replacement of the blade(s);

(12) Any event in which an aircraft operated by an air carrier:

(i) Lands or departs on a taxiway, incorrect runway, or other area not designed as a runway; or

(ii) Experiences a runway incursion that requires the operator or the crew of another aircraft or vehicle to take immediate corrective action to avoid a collision.

Dated: December 16, 2009.

Deborah A. P. Hersman,

Chairman.

[FR Doc. E9–30398 Filed 1–6–10; 8:45 am]

BILLING CODE 7533–01–P

[1] NTSB regional offices are located in the following cities: Anchorage, Alaska; Atlanta, Georgia; West Chicago, Illinois; Denver, Colorado; Arlington, Texas; Gardena (Los Angeles), California; Miami, Florida; Parsippany, New Jersey (metropolitan New York City); Seattle, Washington; and Ashburn, Virginia. In addition, NTSB headquarters is located at 490 L'Enfant Plaza, SW., Washington, DC 20594. Contact information for these offices is available at *http://www.ntsb.gov.*

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 21 and 22

[FWS–R9–MB–2009–0002; 91200–1231–9BPP]

RIN 1018–AW44

Migratory Bird Permits; Changes in the Regulations Governing Falconry

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, published a final rule in the **Federal Register** on October 8, 2008, to revise our regulations governing falconry in the United States. With this action, we make several changes to those regulations to correct inconsistencies and oversights and make the regulations clearer.

DATES: This regulations change will be effective on February 8, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 2008, we published a final rule in the **Federal Register** (73 FR 59448) to revise our regulations governing falconry in the United States. We eliminated the requirement for a Federal permit to practice falconry, and made other changes to make it easier to understand the requirements for the practice of falconry, including take of raptors from the wild, and the procedures for obtaining a falconry permit. The rule also added a provision allowing us to approve falconry regulations that Indian Tribes, States, or U.S. territories adopt. The rule became effective November 7, 2008, and changed the Code of Federal Regulations (CFR) at 50 CFR parts 21 and 22.

After publication of the rule, we received questions from the public

about some aspects of the final rule. On July 22, 2009, we proposed revisions to the falconry rule in the **Federal Register** (75 FR 36158) to clarify or correct some provisions in the rule.

Comments on the Proposed Rule

We received 13 comments on the proposed rule. Several of the comments were about provisions in the falconry regulations for which we did not propose changes, and therefore are not summarized here.

Comment. "With one exception the changes are well thought out and will improve the regulations. The exception is your plan to now cite for the first time the Birds of Conservation Concern 2008 as restricting the take of raptors for falconry. I am not in favor of citing or using this document to place further restrictions on the take of raptors for falconry. The Federal lists of endangered and threatened wildlife, including raptors, currently place appropriate restrictions on the take of raptors by falconers. Your agency's environmental assessments have repeatedly shown that the take of raptors for falconry has no measurable environmental impact on wild raptor populations. Past Federal Falconry Regulations have not cited the Birds of Conservation Concern 2008. Therefore, citing the Birds of Conservation Concern 2008 in the new Federal Falconry Regulations does not seem necessary or justified from a biological standpoint.

Furthermore, the thrust of the new Federal Falconry Regulations is to turn the regulation of falconry over to the States. States do monitor non-game wildlife and have and will in the future place restriction of the take of raptors for falconry when there is a biological reason to do so. It seems reasonable to let the States address the take of Federally non-threatened and non-endangered raptors for falconry without a new layer of Federal restrictions. Adding the Birds of Conservation Concern 2008 to the new Federal Falconry Regulations will have the effect of adding a new layer of restrictions that are simply not needed or justified."

Response. We have removed the reference to the Birds of Conservation Concern (BCC) list, and have specified the raptor species that may not be taken from the wild by Apprentices. The listing may appear to add a new restriction to the falconry rules, but it does not. With the exceptions of eagles and threatened or endangered species, the species that Apprentices may take from the wild are already based on the status of raptors in the 2002 BCC list, although the regulations did not explicitly cite the BCC list. This regulations change is made to make the list better match the status of raptor species found in the United States. We may change the regulations at a later date if any raptor species is added to, or removed from, the BCC list of species of national concern.

Comment. "The prohibition of a threatened or endangered species is unnecessary. This blocks possession of a bird which could come from many sources, including rehabilitation where a bird could be flown for a season to be trained to survive in the wild. Since the States are effectively applying this limitation, this is unnecessary language. At the least the prohibition should be for take of these species, not for possession."

Response. We believe that this comment is about the prohibition on possession of threatened or endangered species by Apprentice falconers. The list of species available to Apprentices was expanded considerably when we revised the falconry regulations. However, because they are learning care of raptors and the practice of falconry, we do not believe it is advisable for Apprentices to possess threatened or endangered species. Apprentices are precluded from possessing only six species of threatened or endangered Falconiformes or Strigiformes—only one of which is suitable for falconry.

Comment. "This proposed change remains unclear regarding '*organizations*' [sic] use of falconry raptors. NAFA and other associations as well as State falconry associations appear to be negatively impacted by this proposed language. An interpretation of this regulation could mean that falconry associations may not use a depiction of a falconry raptor in a pamphlet, brochure, video, or other medium promoting its organization * * *. We respectfully request this be clarified to permit falconry organizations the use of depictions of falconry raptors for purposes directly related to falconry and the promotion of falconry associations and organizations.

"While I appreciate enabling the use of a falconry bird for demonstrating and advertising falconry equipment, this is still more constrictive than necessary, and certainly more restrictive than other countries who are also party to our treaties. This would still block use of a falconry bird to photograph for education, such as illustrating a medical condition. It would block the photography of a bird and the videotaping of the bird to demonstrate training, flying, or hunting. And much of the sport is about enjoyment—of our birds, our relationship, and the activities. Just filming them for our own enjoyment or even profit. As long as these birds held under a falconry permit are used primarily for falconry, there is nothing wrong with allowing them to be used for many other purposes. I applaud the efforts to allow their use for education, abatement, breeding, and even rehabilitation (such as parenting orphaned raptors). However this section can be interpreted to make anything from falconry catalogs to training videos illegal. It appears aimed to ensure no falconer uses their bird in a Harry Potter movie, but the potential problems in that space are so incredibly minor compared to the risk this introduces to activities at the core of falconry. I support erasing the entire section which is ill conceived and poorly formed."

Response. We agree with some of the concerns expressed by commenters, and we have changed the provisions in this paragraph. For example, it is acceptable to use a falconry bird in a publication about the care or health of raptors. However, we continue to disallow the use of falconry raptors in purely commercial endeavors.

Comment. "'[I]mprint' definition—I certainly do not try to isolate an 'imprint' falconry bird from other raptors during the period as described in proposed definition. In order to raise a successful imprint, one that is not adversely affected by 'new' objects & circumstance, many feel that it is important to expose the bird to as much of the world as one might encounter after training, while out hunting, and while in the mew or weathering, & while traveling. Being able to raise & train as a falconer deems necessary is important to the continued success of the raptor's integration into a different aspect of the taking of prey—that means exposure to other raptors (to be seen & to see). This is a normal part of a raptor's world and part of a falconry bird's learning process. This definition is simply not the truth and may be construed to mean that when one trains an imprint, they must isolate the bird and part of that is not to allow the bird to see other raptors. I understand the need for discussing imprints however in truth all birds are imprints. This is not what I believe the regulations are speaking to. Encarta dictionary uses a definition for imprint as 'zoology intransitive verb to learn an attraction to members of the same species or substitutes very early in life.' Clearly the terminology as correctly used in the course of falconry is that an imprint is denoted as a hand raised raptor meaning raising by or assisted by human contact * * * [T]he restriction and definition provided is invalid and unnecessary

and that the reason for hand raising is, for the young raptor to have an attraction for or to bond with others, the falconer especially."

Response. We believe that the point of this comment is that falconry birds need not be isolated from other raptors to imprint on humans. We changed the definition accordingly.

Revisions to the Falconry Regulations

We make the following significant changes to the proposed rule in paragraphs (d)(1)(ii)(A)(4), (e)(3), and (f)(9)(ii). In addition to these changes, we implement numerous small clarifications or changes to make the information or requirements in the regulations consistent.

(1) We clarify the definition of the term "imprint" in 50 CFR 21.3 by changing the definition to mean a bird that is hand-raised from 2 weeks of age until it has fledged, and has identified itself with humans rather than its own species.

(2) After publishing the final rule in October 2008, we received inquiries about the prohibition in 50 CFR 21.29(c)(3)(i)(E) on possession of captive-bred raptors by Apprentice falconers. We neglected to clearly prohibit possession of wild raptors of threatened or endangered species in this subsection of our final rule. We continue to disallow take and possession of eagles and of threatened and endangered species by Apprentice falconers, as well as take of raptor species of conservation concern, though Apprentice falconers may possess lawfully acquired BCC species. We revise paragraph (c)(3)(i)(E) to clarify this issue for the public and to clarify that an Apprentice falconer may have a hybrid raptor of most species.

(3) In our October 2008 final rule, we stated in § 21.29(c)(3)(ii)(C) that, to advance to the level of General Falconer, an Apprentice Falconer must "have practiced falconry with wild raptor(s) at the Apprentice Falconer level or equivalent for at least 2 years, including maintaining, training, flying, and hunting the raptor(s) for at least 4 months in each year." However, because apprentices need not use wild raptors to advance to the General Falconer level, we remove the word "wild" from this requirement. Likewise, we correct § 21.29(g)(5)(ii), to make the requirements listed match those in § 21.29(c)(3)(ii)(C). Finally, for the same reason, we remove the word "wild" from § 21.29(d)(1)(ii)(A).

(4) We revise paragraph (c)(7)(i) to require banding by replacing the words "in lieu of a" with the words "in addition to the" in the second sentence. The four species named in that paragraph must be banded with a nonreusable band that we will provide to the State, tribe, or territory.

(5) In our October 2008 final rule, we stated in § 21.29(d)(1)(ii)(A)(4) that for housing falconry raptors that "[e]ach raptor must have a pan of clean water available." In cold weather conditions and with some perch types, this requirement is impractical, and potentially harmful. We change the requirement to clarify that, if practical, a water pan should be made available for a falconry bird.

(6) In an oversight, our October 2008 final rule stated at § 21.29(e)(3)(ii) that General or Master falconers "may take raptors less than 1 year of age from the wild during any period or periods specified by the State, tribe, or territory." We clarify § 21.29(e)(3)(i) to disallow take of nestlings by Apprentice falconers.

(7) We correct language in § 21.29(e)(iii) to clarify take of golden eagles by Master falconers.

(8) After our October 2008 final rule was published, we were asked about the use of falconry birds in demonstrating or advertising falconry-related items such as hoods and telemetry equipment. We add a sentence to § 21.29(f)(9)(ii) clarifying that filming, photography, or illustration of falconry birds to demonstrate or advertise falconry equipment or educational materials, for scientific purposes, and for the purposes of nonprofit falconry organizations is allowed.

(9) We revise the language in paragraph 22.24(b) to make it clear that a federal permit is required to take golden eagles under a Federal depredation permit or under a depredation control order.

(10) Finally, we also correct paragraph designations for several subparagraphs by indicating that the designations should have published in italics to conform with style requirements of the Office of the Federal Register, which requires that paragraph designations in the CFR follow this order: (a), (1), (i), (A), (*1*), and (*i*).

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant under Executive Order 12866. OMB bases its determination upon the following four criteria:

a. Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

b. Whether the rule will create inconsistencies with other Federal agencies' actions.

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (that is, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities because the changes we are proposing are intended primarily to clarify and correct small problems with the published regulations.

Consequently, we certify that because this proposed rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). It will not have a significant economic impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of $100 million or more. There are no costs to permittees or any other part of the economy associated with these regulation changes.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions. The practice of falconry does not significantly affect costs or prices in any sector of the economy.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Falconry is an endeavor of private individuals. Neither regulation nor practice of falconry significantly affects business activities.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule will not "significantly or uniquely" affect small governments. A small government agency plan is not required. Neither regulation nor practice of falconry affects small government activities.

b. This rule will not produce a Federal mandate of $100 million or greater in any year; i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. Though States may have to revise their falconry regulations to comply with the proposed revisions, nearly every State already has falconry regulations in place. Therefore, revisions of the State regulations should not be significant.

Takings

In accordance with E.O. 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It will not interfere with the States' ability to manage themselves or their funds. No significant economic impacts are expected to result from the regulation of falconry. However, this rule provides the opportunity for States to cooperate in management of falconry permits and to ease the permitting process for permit applicants.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined this rule under the Paperwork Reduction Act of 1995. OMB has approved the information collection requirements of the Migratory Bird Permits Program and assigned OMB control number 1018–0022, which expires November 30, 2010. This regulation change does not add to the approved information collection. Information from the collection is used to document take of raptors from the wild for use in falconry and to document transfers of raptors held for falconry between permittees. A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We evaluated the environmental impacts of the significant changes to these regulations, and determined that the clarifications and corrections in this rule do not have any environmental impacts. Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, we determined that these regulatory changes do not have a significant effect on the human environment.

Under the guidance in Appendix 1 of the Department of the Interior Manual at 516 DM 8, we conclude that the regulatory changes are categorically excluded because they "have no or minor potential environmental impact" (516 DM 8.5(A)(1)). No more comprehensive NEPA analysis of the regulations change is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that this rule will not interfere with tribes' ability to manage themselves or their funds or to regulate falconry on Tribal lands.

Energy Supply, Distribution, or Use

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only affects the practice of falconry in the United States, it is not a significant regulatory action under E.O. 12866, and will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Environmental Consequences of the Proposed Action

The changes we propose are primarily in the combining, reorganizing, and rewriting of the regulations. The environmental impacts of this action are negligible.

Socioeconomic. The proposed action will have no socioeconomic impacts.

Raptor populations. This rule will not change the effects of falconry on raptor populations.

Endangered and Threatened Species. This proposed rule has language additions or changes that clarify protections for endangered and threatened species. The rule does not itself make any changes to those protections.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter" (16 U.S.C. 1536(a)(1)). It further states that the Secretary must "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat" (16 U.S.C. 1536(a)(2)). These regulatory corrections and clarifications will not affect threatened or endangered species or their habitats in the United States.

List of Subjects

50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 22

Exports, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we amend part 21 of subpart C, subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

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

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

§ 21.3 [Amended]

2. Amend § 21.3 in the definition of the term "Imprint" by removing the first sentence and adding in its place the sentence "*Imprint*, for the purposes of falconry, means a bird that is hand-raised, from 2 weeks of age until it has fledged, and has identified itself with humans rather than its own species."

§ 21.29 [Amended]

3. Amend § 21.29 as follows:

a. Redesignate paragraphs (c)(3)(i)(C)(1), (2), and (3) as paragraphs (c)(3)(i)(C)(1), (2), and (3);

b. Revise paragraph (c)(3)(i)(E) to read as set forth below;

c. Amend paragraph (c)(3)(ii)(C) by removing the word "wild" from the first sentence;

d. Amend paragraph (c)(3)(iii) (C) by adding the words "for use in falconry" at the end of the paragraph;

e. Redesignate paragraphs (c)(3)(iv)(A)(1) and (2) as paragraphs (c)(3)(iv)(A)(1) and (2);

f. Amend newly redesignated paragraph (c)(3)(iv)(A)(2) by removing the words "(*Buteo regalis*)" from the first sentence;

g. Amend paragraph (c)(3)(iv)(B) by adding the words "for use in falconry" at the end of the paragraph;

h. Revise paragraphs (c)(7)(i) and (ii) to read as set forth below;

i. Amend paragraph (c)(7)(iii)(A) by removing the words "immediately upon" and adding in their place the words "within 10 days of";

j. Amend paragraph (d)(1)(ii)(A) by removing the word "wild";

k. Redesignate paragraphs (d)(1)(ii)(A)(1), (2), (3), and (4) as paragraphs (d)(1)(ii)(A)(1), (2), (3), and (4);

l. Revise newly redesignated paragraph (d)(1)(ii)(A)(4) to read as set forth below;

m. Redesignate paragraphs (d)(1)(ii)(B)(1) and (2) as paragraphs (d)(1)(ii)(B)(1) and (2) and paragraphs (d)(1)(ii)(D)(1), (2), and (3) as paragraphs (d)(1)(ii)(D)(1), (2), and (3);

n. Revise paragraph (d)(2)(ii) to read as set forth below;

o. Amend paragraph (d)(4) by, in the last sentence, removing the words "your home" and adding in their place the words "the permanent facility where it is housed";

p. Revise paragraphs (d)(9), (e)(1)(v), and (e)(3)(i) to read as set forth below;

q. Amend paragraph (e)(3)(ii) by adding the word "only" between the words "take" and "raptors" in the first sentence;

r. Remove paragraphs (e)(3)(iii) and (e)(3)(iii)(A) and (B); redesignate paragraphs (e)(3)(iii)(C), (D), and (E) as paragraphs (e)(3)(iii)(E), (F), and (G); and add new paragraphs (e)(3)(iii) and (e)(3)(iii)(A) through (D) to read as set forth below;

s. Redesignate paragraphs (e)(3)(vi)(C)(1) and (2) as paragraphs (e)(3)(vi)(C)(1) and (2);

t. Amend the heading of paragraph (e)(6) by removing the word "release";

u. Amend paragraph (e)(8) by removing the words "at least two attached" and adding in their place the words "attached at least two functioning";

v. Amend paragraph (e)(9)(i) by removing the word "species" and adding in its place the word "raptor" and by adding the word "permanently" between the words "not" and "release";

w. Remove paragraph (e)(9)(iv);

x. Amend paragraph (f)(5)(ii)(A) by removing the words "When you transfer the bird" and adding in their place the words "Within 10 days of transferring the bird";

y. Amend paragraph (f)(9)(ii) by revising the text and adding paragraphs (A) and (B) to read as set forth below; and

z. Amend paragraph (g)(5)(ii) by removing the words "taken from the wild" and "an average of 6 months per year, with."

§ 21.29 Falconry standards and falconry permitting.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(E) You may possess a raptor of any Falconiform or Strigiform species, including wild, captive-bred, or hybrid individuals, except a federally listed threatened or endangered species, a bald eagle (*Haliaeetus leucocephalus*), a white-tailed eagle (*Haliaeetus albicilla*), a Steller's sea-eagle (*Haliaeetus pelagicus*), or a golden eagle (*Aquila chrysaetos*).

* * * * *

(7) * * *

(i) If you take a goshawk, Harris's hawk (*Parabuteo unicinctus*), peregrine falcon (*Falco peregrinus*), or gyrfalcon (*Falco rusticolus*) from the wild or acquire one from another falconer or a rehabilitator, and if the raptor is not already banded, you must band it with a permanent, nonreusable, numbered U.S. Fish and Wildlife Service leg band that your State, tribal, or territorial agency will supply. If you wish, you may purchase and implant an ISO (International Organization for Standardization)-compliant (134.2 kHz) microchip in addition to the band. You must report the band number when you report your acquisition of the bird. Contact your State, tribal, or territorial agency for information on obtaining and disposing of bands. Within 10 days from the day on which you take the raptor from the wild, you must report take of the bird by entering the required information (including the band number) in the electronic database at *http://permits.fws.gov/186A* or, if required by your permitting agency, by submitting a paper form 3–186A to your State, tribal, or territorial agency that governs falconry. You may request an appropriate band from your State, tribal, or territorial agency in advance of any effort to capture a raptor. Your State, tribe, or territory may require that you band other species taken from the wild.

(ii) A raptor bred in captivity must be banded with a seamless metal band (*see* § 21.30). If you must remove a seamless band or if it is lost, within 10 days from the day you remove or note the loss of the band, you must report it and request a replacement U.S. Fish and Wildlife Service nonreusable band from your State, tribe, or territory. You must submit the required information electronically immediately upon rebanding the raptor at *http://permits.fws.gov/186A* or, if required by your permitting agency, by submitting a paper form 3–186A to your State, tribal, or territorial agency that governs falconry. You must replace a seamless band that is removed or lost. You may implant an ISO-compliant (134.2 kHz) microchip in a falconry raptor in addition to the seamless band.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(A) * * *

(4) Each falconry bird must have access to a pan of clean water unless weather conditions, the perch type used, or some other factor makes access to a water pan unsafe for the raptor.

* * * * *

(2) * * *

(ii) You must submit to your State, tribal, or territorial agency that regulates falconry a signed and dated statement showing that you agree that the falconry facilities and raptors may be inspected without advance notice by State, tribal (if applicable), or territorial authorities at any reasonable time of day, but you must be present. If your facilities are not on property that you own, you must submit a signed and dated statement

showing that the property owner agrees that the falconry facilities and raptors may be inspected by State, tribal (if applicable), or territorial authorities at any reasonable time of day in the presence of the property owner; except that the authorities may not enter the facilities or disturb the raptors unless you are present.

* * * * *

(9) Falconry equipment and records may be inspected in the presence of the permittee during business hours on any day of the week by State, tribal, or territorial officials.

* * * * *

(e) * * *

(1) * * *

(v) If you are a Master Falconer and your State, tribe, or territory allows you to possess golden eagles, in any year you may take up to two golden eagles from the wild and only in a livestock depredation area during the time the depredation area and associated depredation permit or depredation control order are in effect. A livestock depredation area is declared by USDA Wildlife Services and permitted under § 22.23, or upon the request of a State governor and authorized by the Service Director pursuant to §§ 22.31 and 22.32.

* * * * *

(3) * * *

(i) If you are an Apprentice Falconer, you may take raptors less than 1 year old, except nestlings, from the wild during any period or periods specified by the State, tribe, or territory. You may take any raptor species from the wild except a federally listed threatened or endangered species or the following species: Bald eagle (*Haliaeetus leucocephalus*), white-tailed eagle (*Haliaeetus albicilla*), Steller's sea-eagle (*Haliaeetus pelagicus*), golden eagle (*Aquila chrysaetos*), American swallow-tailed kite (*Elanoides forficatus*), Swainson's hawk (*Buteo swainsoni*), peregrine falcon (*Falco peregrinus*), flammulated owl (*Otus flammeolus*), elf owl (*Micrathene whitneyi*), and short-eared owl (*Asio flammeus*).

* * * * *

(iii) If you are a Master Falconer authorized to possess golden eagles for use in falconry, you may capture a golden eagle in a livestock or wildlife depredation area during the time the depredation area and associated depredation permit or depredation control order are in effect.

(A) You may capture an immature or subadult golden eagle.

(B) You may take a nestling from its nest in a livestock depredation area if a biologist representing the agency responsible for declaring the depredation area has determined that the adult eagle is preying on livestock or wildlife.

(C) You may take a nesting adult golden eagle only if a biologist representing the agency responsible for declaring the depredation area has determined that the adult eagle is preying on livestock or wildlife and that any nestling of the adult will be taken by a falconer authorized to possess it or by the biologist and transferred to an individual authorized to possess it.

(D) You must determine the locations of the livestock or wildlife depredation areas declared by USDA Wildlife Services, or published in the **Federal Register** by the Service in response to a State governor's request. We will not notify you about them.

* * * * *

(f) * * *

(9) * * *

(ii) You may not use falconry raptors for commercial entertainment; for advertisements; as a representation of any business, company, corporation, or other organization; or for promotion or endorsement of any products, merchandise, goods, services, meetings, or fairs, with the following exceptions:

(A) You may use a falconry raptor to promote or endorse a nonprofit falconry organization or association.

(B) You may use a falconry raptor to promote or endorse products or endeavors related to falconry, including, but not limited to items such as hoods, telemetry equipment, giant hoods, perches, materials for raptor facilities, falconry training and education materials, and scientific research and publication.

* * * * *

PART 22—EAGLE PERMITS

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

Authority: 16 U.S.C. 668–668d; 16 U.S.C. 703–712; 16 U.S.C. 1531–1544.

5. Revise § 22.24(b) as follows:

§ 22.24 Permits for falconry purposes.

* * * * *

(b) *Transfer of golden eagles trapped by government employees to other permittees.* If you have the necessary permit(s) from your State, tribe, or territory, a government employee who has trapped a golden eagle under a Federal depredation permit or under a depredation control order may transfer the bird to you if he or she cannot release the eagle in an appropriate location. A golden eagle may only be taken from a livestock or wildlife depredation area declared by USDA Wildlife Services and permitted under § 22.23, or from a livestock depredation area authorized in accordance with Subpart D, Depredation Control Orders on Golden Eagles.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–12 Filed 1–6–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.0909111273–91431–02]

RIN 0648–XR09

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the annual harvest guideline (HG) for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2009, through June 30, 2010. This HG has been determined according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific mackerel off the Pacific coast. The total HG for the 2009–2010 fishing year is 10,000 metric tons (mt) and is divided into a directed fishery HG of 8,000 mt and an incidental fishery of 2,000 mt.

DATES: Effective February 8, 2010 through June 30, 2010.

ADDRESSES: Copies of the report *Pacific Mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2009–2010 Fishing Year* may be obtained from the Southwest Regional Office by contacting Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: The CPS FMP, which is implemented by regulations at 50 CFR part 660, subpart I, divides management unit species into two categories: actively managed and

monitored. The HGs for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates.

During public meetings each year, the biomass for each actively managed species within the CPS FMP is presented to the Pacific Fishery Management Council's (Pacific Council) Coastal Pelagic Species Management Team (Team), the Council's Coastal Pelagic Species Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC). At that time, the biomass, maximum HG and the status of the fisheries are reviewed and discussed. This information is then presented to the Council along with annual HG recommendations and comments from the Team and Subpanel. Following review by the Council and after hearing public comments, the Council makes its HG recommendation to NOAA's National Marine Fisheries Service (NMFS). The annual HG is published in the **Federal Register** as close as practicable to the start of the fishing season.

For the 2009–2010 Pacific mackerel management season a full assessment for Pacific mackerel was conducted and then reviewed by a Stock Assessment Review (STAR) Panel in May 2009. This most recent full assessment for Pacific mackerel estimates the current biomass to be 282,049 mt. Applying this biomass estimate to the harvest control rule (established in the CPS FMP) a maximum HG of 55,408 mt is produced.

At the June 2009 Pacific Council Meeting, the Council reviewed the current Pacific mackerel stock assessment, biomass numbers, ABC and STAR Panel Report, as well as heard statements/reports from the SSC, Team and Subpanel. Although the assessment for Pacific mackerel was reviewed by a STAR Panel and was approved by the SSC as the best available science for use in management, concerns were expressed by all the advisory groups regarding the data sources that informed the assessment and the uncertainty in the assessment results. Taking into consideration these reports and statements, the Council adopted and NMFS approved the most recent assessment for Pacific mackerel along with the calculated ABC, but recommended setting an overall HG for the July 1, 2009, through June 30, 2010, fishing season at 10,000 mt. The Council also recommended and NMFS approved that 8,000 mt of this total HG be allocated for a directed fishery and 2,000 mt be set aside for incidental Pacific mackerel landings in other fisheries should the 8,000 mt directed fishery HG be attained. Should the directed Pacific mackerel fishery attain landings of 8,000 mt NMFS will close the directed fishery and establish a 45 percent incidental catch allowance when Pacific mackerel are landed with other CPS (no more than 45% by weight of the CPS landed per trip may be Pacific mackerel), except that up to 1 mt of Pacific mackerel can be landed without landing any other CPS.

On September 29, 2009, a proposed rule was published for this action that solicited public comments (74 FR 4845). One comment was received, which was in support of the proposed action.

Information on the fishery and the stock assessment can be found in the report *Pacific mackerel (Scomber japonicus) Stock Assessment for U.S. Management in the 2009–10 Fishing Season* (see ADDRESSES).

Classification

The Administrator, Southwest Region, NMFS, determined that this final rule is necessary for the conservation and management of the CPS fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule is exempt from Office of Management and Budget review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule (74 FR 4845) and is not repeated here.

No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Dated: December 31, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–21 Filed 1–6–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 4
Thursday, January 7, 2010

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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AD55

Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After March 31, 2010

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is issuing this Advance Notice of Proposed Rulemaking to solicit public comment regarding proposed amendments regarding the treatment by the FDIC, as receiver or conservator of an insured depository institution, of financial assets transferred by the institution in connection with a securitization or a participation after March 31, 2010 (the "ANPR"). In November 2009, the FDIC issued an Interim Final Rule amending its regulation, Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation, to provide for safe harbor treatment for participations and securitizations until March 31, 2010 (the "Interim Rule"). The ANPR requests comments on the standards that should be adopted to provide safe harbor treatment in connection with participations and securitizations issued after March 31, 2010.

The ANPR seeks comment for forty-five (45) days on a range of issues that are implicated by proposed standards for a safe harbor for participations and securitizations issued after March 31, 2010. To provide a basis for consideration of the questions and the relationship of different conditions for such a safe harbor, the ANPR includes preliminary regulatory text that could be considered to set specific standards for such a safe harbor. This draft of regulatory text should be considered as one example of regulatory text, and not the only option to be considered. The Board's approval of the ANPR should not be considered as signifying adoption or recommendation of the preliminary regulatory text, but the text does provide context for response to the questions.

DATES: Comments on this ANPR must be received by February 22, 2010.

ADDRESSES: You may submit comments on the ANPR, by any of the following methods:

- *Agency Web Site: http://www.FDIC.gov/regulations/laws/federal/notices.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include RIN # 3064–AD55 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Michael Krimminger, Office of the Chairman, 202–898–8950; George Alexander, Division of Resolutions and Receiverships, (202) 898–3718; Robert Storch, Division of Supervision and Consumer Protection, (202) 898–8906; or R. Penfield Starke, Legal Division, (703) 562–2422, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

In 2000, the FDIC clarified the scope of its statutory authority as conservator or receiver to disaffirm or repudiate contracts of an insured depository institution ("IDI") with respect to transfers of financial assets by an IDI in connection with a securitization or participation when it adopted a regulation codified at 12 CFR 360.6 ("the Securitization Rule"). This rule provided that the FDIC as conservator or receiver will not use its statutory authority to disaffirm or repudiate contracts to reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by an IDI in connection with a securitization or in the form of a participation, provided that such transfer meets all conditions for sale accounting treatment under generally accepted accounting principles ("GAAP"). The rule was a clarification, rather than a limitation, of the repudiation power because such power authorizes the conservator or receiver to breach a contract or lease entered into by an IDI and be legally excused from further performance but it is not an avoiding power enabling the conservator or receiver to recover assets that were previously sold off balance sheet by the IDI.

The Securitization Rule provided a "safe harbor" by confirming "legal isolation" if all other standards for sale accounting treatment, along with some additional conditions focusing on the enforceability of the transaction, were met by the transfer. Satisfaction of "legal isolation" was vital to securitization transactions because of the risk that the pool of financial assets transferred into the securitization trust could be recovered in bankruptcy or in a bank receivership. Generally, to satisfy the legal isolation condition, the transferred financial asset must have been presumptively placed beyond the reach of the transferor, its creditors, a bankruptcy trustee, or in the case of an IDI, the FDIC as conservator or receiver. The Securitization Rule provided the necessary confirmation of "legal isolation" and has served as a central component of securitization by providing assurance that investors could look to securitized financial assets for payment without concern that the financial assets would be interfered with by the FDIC as conservator or receiver.

Recently, the implementation of new accounting rules has created uncertainty for securitization participants. On June 12, 2009, the Financial Accounting Standards Board ("FASB") finalized modifications to GAAP through Statement of Financial Accounting Standards No. 166, *Accounting for Transfers of Financial Assets, an*

Amendment of FASB Statement No. 140 ("FAS 166") and Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* ("FAS 167") (the "2009 GAAP Modifications"). The 2009 GAAP Modifications are effective for annual financial statement reporting periods that begin after November 15, 2009. For most IDIs, the 2009 GAAP Modifications will be effective for reporting periods beginning after January 1, 2010. The 2009 GAAP Modifications made changes that affect whether a special purpose entity ("SPE") must be consolidated for financial reporting purposes, thereby subjecting many SPEs to GAAP consolidation requirements. These accounting changes will require some IDIs to consolidate an issuing entity to which financial assets have been transferred for securitization on to their balance sheets for financial reporting purposes.[1] Given the likely accounting treatment, securitizations could be considered to be an alternative form of secured borrowing. As a result, the safe harbor provision of the Securitization Rule may not apply to the transfer.

As a result of the changes by FASB, most securitizations will not be treated as sales for accounting purposes. Given this likely accounting treatment, securitizations alternatively could be considered to be a form of secured financing. In 2005 Congress enacted 11(e)(13)(C) of the FDI Act. In relevant part, this provision requires the consent of the conservator or receiver for 45 or 90 days, respectively, before any action can be taken by a secured creditor against collateral pledged by the IDI. If a securitization is not given sale accounting treatment under the changes to GAAP, but is treated as a secured financing, section 11(e)(13)(C) could prevent the security holders from recovering monies due to them by up to 90 days in a receivership. During that time, interest on the securitized debt theoretically could remain unpaid.

The FDIC has been advised that this 90-day delay would cause substantial downgrades in the ratings provided on existing securitizations and could prevent planned securitizations for multiple asset classes, such as credit cards, automobile loans, and other credits, from being brought to market. The changes in GAAP may also affect the ratings of securitizations that qualify under the Federal Reserve's Term Asset-Backed Securities Loan Facility.

FAS 166 also affects the treatment of participations issued by an IDI, in that it defines participating interests as pari-passu pro-rata interests in a financial assets, and subjects the sale of a participation interest to the same conditions as the sale of financial assets. FAS 166 provides that transfers of participation interests that do not qualify for sale treatment will be viewed as secured borrowings. While the GAAP Modifications have some effect on participations, most participations are likely to continue to meet the conditions for sale accounting treatment under GAAP.

The 2009 GAAP Modifications affect the way securitizations are viewed by the rating agencies and whether they can achieve ratings that are based solely on the credit quality of the financial assets, independent from the rating of the IDI. Rating agencies are concerned with several issues, including the ability of a securitization transaction to pay timely principal and interest in the event the FDIC is appointed receiver or conservator of the IDI. Moody's, Standard & Poor's, and Fitch have expressed the view that because of the 2009 GAAP Modifications and the extent of the FDIC's rights and powers as conservator or receiver, bank securitization transactions are unlikely to receive AAA ratings and would have to be linked to the rating of the IDI. Securitization practitioners have asked the FDIC to provide assurances regarding the position of the conservator or receiver as to the treatment of both existing and future securitization transactions to enable securitizations to be structured in a manner that enables them to achieve de-linked ratings.

The FDIC believes that several of the issues of concern for securitization participants regarding the impact of the 2009 GAAP Modifications can be addressed simply by clarifying the position of the conservator or receiver under established law. The ability of the FDIC as conservator or receiver to reach financial assets transferred by an IDI to an issuing entity in connection with a securitization is limited by the statutory provision prohibiting the conservator or receiver from avoiding a legally enforceable or perfected security interest, except where such an interest is taken in contemplation of insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution.[2] Accordingly, in the case of a securitization that satisfies the standards set by the FDIC, the conservator or receiver will not, in the exercise of its statutory repudiation power, attempt to reclaim or recover financial assets transferred by an IDI in connection with a securitization if the financial assets are subject to a legally enforceable and perfected security interest under applicable law.

Pursuant to 12 U.S.C. 1821(e)(13)(C), no person may exercise any right or power to terminate, accelerate, or declare a default under a contract to which the IDI is a party, or to obtain possession of or exercise control over any property of the IDI, or affect any contractual rights of the IDI, without the consent of the conservator or receiver, as appropriate, during the 45-day period beginning on the date of the appointment of the conservator or the 90-day period beginning on the date of the appointment of the receiver. In order to address concerns that the statutory stay could delay repayment of investors in a securitization or delay a secured party from exercising its rights with respect to securitized financial assets, the FDIC may provide by regulation for the consent by the conservator or receiver, subject to certain conditions, to the continued payment of regularly scheduled payments under the securitization documents and continuing servicing of the assets, as well as the ability to exercise self-help remedies ten (10) days after a payment default by the FDIC or the repudiation of a transfer agreement during the stay period of 12 U.S.C. 1821(e)(13)(C).

Purposes of the ANPR. The FDIC, as deposit insurer and receiver for failed insured depository institutions, has a unique responsibility and interest in ensuring that loans and other financial assets, as described in the ANPR, made by insured banks and thrifts are originated for long-term sustainability. The supervisory interest in origination of quality loans and other financial assets is shared with other bank and thrift supervisors. However, the FDIC's responsibilities to protect insured depositors and resolve failed insured banks and thrifts, and its fiduciary responsibility to the Deposit Insurance Fund, require it to ensure that, where it provides consent to special relief from the application of its receivership powers, it should do so in a manner that fulfills these responsibilities.

Securitization can be a valuable tool for liquidity for insured banks and thrifts and other financial institutions if it is supported by properly underwritten

[1] Of particular note, Paragraph 26A of FAS 166 introduces a new concept that was not in FAS 140, as follows: "* * * The transferor must first consider whether the transferee would be consolidated by the transferor. Therefore, if all other provisions of this Statement are met with respect to a particular transfer, and the transferee would be consolidated by the transferor, then the transferred financial assets would not be treated as having been sold in the financial statements being presented."

[2] 12 U.S.C. 1821(e)(11).

loans or other financial assets and structured to align incentives among all parties to the transactions for long-term sustainable lending. The FDIC supports sustainable securitization to provide balance sheet liquidity and, where appropriate, off balance sheet transactions that enhance prudent credit availability. Securitization, properly structured, can play an important role in recovery from the financial crisis.

However, the evident defects in many subprime and other mortgages originated and sold into securitizations requires attention by the FDIC to fulfill its responsibilities as deposit insurer and receiver in addition to its role as a supervisor. The defects and misalignment of incentives in the securitization process for residential mortgages was a significant contributor to the erosion of underwriting standards throughout the mortgage finance system. While many of the troubled mortgages were originated by non-bank lenders, insured banks and thrifts also made many troubled loans as underwriting standards declined under the competitive pressures created by the returns achieved by lenders, and service providers, through the "originate to distribute" model.

Securitizations of other asset classes have not suffered the dramatic declines in issuance experienced by securitizations of newly originated mortgages. While mortgage securitizations have been extremely limited during 2009, and exclusively focused on seasoned mortgages, securitizations of credit card and other consumer loans have continued. However, securitizations of all asset classes are affected by the accounting changes and the changes in the application of the Securitization Rule consequent upon them.

Nonetheless, defects in the incentives provided by securitization through immediate gains on sale for transfers into securitizations and fee income directly led to material adverse consequences for insured banks and thrifts. Among these consequences were increased repurchase demands under representations and warranties contained in securitization agreements, losses on purchased mortgage- and asset-backed securities, severe declines in financial asset values and in asset and asset-backed security values due to spreading market uncertainty about the value of structured finance investments, and impairments in overall financial prospects due to the accelerated decline in housing values and overall economic activity. These consequences, and the overall economic conditions, directly led to the failures of many insured depository institutions and to significant losses to the Deposit Insurance Fund. In this context, it would be imprudent for the FDIC to provide consent or other clarification of its application of its receivership powers without imposing certain conditions on securitizations designed to realign incentives. Additional considerations are present in connection with residential mortgage loan securitizations ("RMBS") to avoid the devastating effects witnessed in the financial crisis.

The FDIC's adoption of 12 CFR 360.6 in 2000 provided clarification of "legal isolation" and facilitated legal and accounting analyses that supported securitization. In view of the accounting changes and the effects they have upon the application of the Securitization Rule, it is crucial that the FDIC provide clarification of the future application of its receivership powers in a way that reduces the risks to the Deposit Insurance Fund by better aligning the incentives in securitization to support sustainable lending and structured finance transactions.

II. Request for Comments

The FDIC has included preliminary regulatory text to provide context for the responses to the questions posed in the ANPR. We believe that inclusion of the preliminary text will assist responders by offering a possible approach to integrating the potential conditions into a regulation and by providing context to how different conditions could be related to each other in a complete regulation. This does not imply that the Board will not make significant changes to the preliminary regulatory text at a later stage of the rulemaking.

An overall consideration is whether any future regulation should apply different conditions to different asset classes. There appears to be a need for greater transparency and clarity in all securitizations, but there is no question that greater difficulties have been demonstrated in residential mortgage-backed securities. With this background, it may be appropriate to make the conditions applicable to RMBS more detailed and explicit to address these issues. The preliminary regulatory text takes this approach and may be a useful contextual document for comparing how different standards could be applied.

General Questions

1. Do the changes to the accounting rules affect the application of the pre-existing Securitization Rule to participations? If so, are there changes to the Securitization Rule that are needed to protect different types of participations issued by IDIs?

2. If the FDIC were to adopt changes to the conditions required for the safe harbor similar to those contained in the preliminary regulatory text, what transition period would be required to permit implementation? Do you have other comments on the transitional safe harbor current in place until March 31, 2010?

The following sections of this document identify different issues that could be addressed by a final rule, and follow the subdivisions within the preliminary regulatory text.

Capital Structure

For all securitizations, the FDIC believes that the benefits of a future safe harbor rule should only be available to securitizations that are readily understood by the market, increase liquidity of the financial assets and reduce consumer costs. A consideration is that lenders may have greater incentives to originate well underwritten loans and sponsors may have greater incentives to participate in securitizations of such loans if payments of principal and interest on the obligations are primarily dependent on the performance of the financial assets supporting the securitization. In this context, it is appropriate to consider whether external credit support, beyond loan-specific guarantees or other credit support, should be allowed.

Specific Questions on Capital Structure

3. Should certain capital structures be ineligible for the future safe harbor? For example, should securitizations that include leveraged tranches that introduce market risks (such as leveraged super senior tranches) be ineligible?

4. For RMBS specifically, in order to limit both the complexity and the leverage of RMBS, and therefore the systemic risk introduced by them in the market, should the capital structure of the securitization be limited to a specified number of tranches? If so, how many, and why? If no more than six tranches were permitted, what would be the potential consequence?

5. Should there be similar limits to the number of tranches that can be used for other asset classes? What are the benefits and costs of taking this approach?

6. Should re-securitizations (securitizations supported by other securitization obligations) be required to include adequate disclosure of the obligations including the structure and asset quality supporting each of the underlying securitization obligations

and not just the obligations that are transferred in the re-securitization?

7. Should securitizations that are unfunded or synthetic securitizations that are not based on assets transferred to the issuing entity or owned by the sponsor be eligible for expedited consent?

8. Should all securitizations be required to have payments of principal and interest on the obligations primarily dependent on the performance of the financial assets supporting the securitization? Should external credit support be prohibited in order to better realign incentives between underwriting and securitization performance? Are there types of external credit support that should be allowed? Which and why?

Disclosures

For all securitizations, disclosure serves as an effective tool for increasing the demand for high quality financial assets and thereby establishing incentives for robust financial asset underwriting and origination practices. By increasing transparency in securitizations, investors (which may include banks) can decide whether to invest in a securitization based on full information with respect to the quality of the asset pool and provide additional liquidity only for sustainable origination practices.

Specific Questions on Disclosure

9. What are the principal benefits of greater transparency for securitizations? What data is most useful to improve transparency? What data is most valuable to enable investors to analyze the credit quality for the specific assets securitized? Does this differ for different asset classes that are being securitized? If so, how?

10. Should disclosures required for private placements or issuances that are not otherwise required to be registered include the types of information and level of specificity required under Securities and Exchange Commission Regulation AB, 17 CFR 229.1100–1123, or any successor disclosure requirements?

11. Should qualifying disclosures also include disclosure of the structure of the securitization and the credit and payment performance of the obligations, including the relevant capital or tranche structure? How much detail should be provided regarding the priority of payments, any specific subordination features, as well as any waterfall triggers or priority of payment reversal features?

12. Should the disclosure at issuance also include the representations and warranties made with respect to the financial assets and the remedies for such breach of representations and warranties, including any relevant timeline for cure or repurchase of financial assets.

13. What type of periodic reports should be provided to investors? Should the reports include detailed information at the asset level? At the pool level? At the tranche level? What asset level is most relevant to investors?

14. Should reports included detailed information on the ongoing performance of each tranche, including losses that were allocated to such tranche and remaining balance of financial assets supporting such tranche as well as the percentage coverage for each tranche in relation to the securitization as a whole? How frequently should such reports be provided?

15. Should disclosures include the nature and amount of broker, originator, rating agency or third-party advisory, and sponsor compensation? Should disclosures include any risk of loss on the underlying financial assets is retained by any of them?

16. Should additional detailed disclosures be required for RMBS? For example should property level data or data relevant to any real or personal property securing the mortgage loans (such as rents, occupancy, etc.) be disclosed?

17. For RMBS, should disclosure of detailed information regarding underwriting standards be required? For example, should securitizers be required to confirm that the mortgages in the securitization pool are underwritten at the fully indexed rate relying on documented income,[3] and comply with existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such additional guidance applicable at the time of loan origination?

18. What are the primary benefits and costs of potential approaches to these issues?

[3] Institutions should verify and document the borrower's income (both source and amount), assets and liabilities. For the majority of borrowers, institutions should be able to readily document income using recent W–2 statements, pay stubs, and/or tax returns. Stated income and reduced documentation loans should be accepted only if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. Reliance on such factors also should be documented. Mitigating factors might include situations where a borrower has substantial liquid reserves or assets that demonstrate repayment capacity and can be verified and documented by the lender. A higher interest rate is not considered an acceptable mitigating factor.

Documentation and Recordkeeping

For all securitizations, the operative agreements should define all necessary rights and responsibilities of the parties, including but not limited to representations and warranties consistent with industry best practices and ongoing disclosure requirements. It must include appropriate measures to avoid conflicts of interest. The contractual rights and responsibilities of each party to the transactions must provide each party with sufficient authority and discretion for such party to fulfill its respective duties under the securitization contracts.

Additional requirements could be applied to RMBS to address a significant issue that has been demonstrated in the mortgage crisis by improving the authority of servicers to mitigate losses on mortgage loans consistent with maximizing the net present value of the mortgages, as defined by a standardized net present value analysis. In addition, there has been considerable criticism of securitizations that give control of servicing discretion to a particular class of investors. Many have urged that future securitizations require that the servicer act for the benefit of all investors rather than maximizing the value of to any particular class of investors. There have also been concerns expressed that a prolonged period of servicer advances in a market downturn misaligns servicer incentives with those of the RMBS investors. Servicing advances also serve to aggravate liquidity concerns, exposing the market to greater systemic risk. These and other issues related to the contractual provisions, and allocations of responsibilities in securitizations, may create significant risks, and in some cases rewards, for different parties to securitizations.

Specific Questions on Documentation and Recordkeeping

19. With respect to RMBS, a significant issue that has been demonstrated in the mortgage crisis is the authority of servicers to mitigate losses on mortgage loans consistent with maximizing the net present value of the mortgages, as defined by a standardized net present value analysis. For RMBS, should contractual provisions in the servicing agreement provide for the authority to modify loans to address reasonably foreseeable defaults and to take such other action as necessary or required to maximize the value and minimize losses on the securitized financial assets?

20. Loss mitigation has been a significant cause of friction between

servicers, investors and other parties to securitizations. Should particular contractual provisions be required? Should the documents allow allocation of control of servicing discretion to a particular class of investors? Should the documents require that the servicer act for the benefit of all investors rather than maximizing the value of to any particular class of investors?

21. In mitigating losses, should a servicer specifically be required to commence action to mitigate losses no later than a specified period, *e.g.*, ninety (90) days after an asset first becomes delinquent unless all delinquencies on such asset have been cured?

22. To what extent does a prolonged period of servicer advances in a market downturn misalign servicer incentives with those of the RMBS investors? To what extent to servicing advances also serve to aggravate liquidity concerns, exposing the market to greater systemic risk? Should the servicing agreement for RMBS restrict the primary servicer advances to cover delinquent payments by borrowers to a specified period, *e.g.*, three (3) payment periods, unless financing facilities to fund or reimburse the primary servicers are available? Should limits be placed on the extent to which foreclosure recoveries can serve as a "financing facility" for repayment of advances?

23. What are the primary benefits and costs of potential approaches to these issues?

Compensation

Due to the demonstrated issues in the compensation incentives in RMBS, the FDIC has concerns that compensation to all parties involved in the RMBS issuance should provide incentives for sustainable credit and the long-term performance of the financial assets and securitization. This has been of particular concern in the compensation provided to servicers for RMBS with some arguing that the compensation structure for servicers provides perverse incentives contrary to the interests of effective action to mitigate losses.

In this regard, please note that the preliminary regulatory text on compensation would apply only to RMBS. This does not mean that compensation issues may not be of concern in other asset classes.

Specific Questions on Compensation

24. Should requirements be imposed so that certain fees in RMBS may only be paid out over a period of years? For example, should any fees payable to the lender, sponsor, credit rating agencies and underwriters be payable in part over the five (5) year period after the initial issuance of the obligations based on the performance of those financial assets? Should a limit be set on the total estimated compensation due to any party at that may be paid at closing? What should that limit be?

25. Should requirements be imposed in RMBS to better align incentives for proper servicing of the mortgage loans? For example, should compensation to servicers be required to take into account the services provided and actual expenses incurred and include incentives for servicing and loss mitigation actions that maximize the value of the financial assets in the RMBS?

26. What are the primary benefits and costs of potential approaches to these issues?

27. Should similar or different provisions be applied to compensation for securitizations of other asset classes?

Origination and Retention Requirements

The FDIC also is concerned that further incentives for quality origination practices may be appropriate conditions for any future safe harbor treatment. In particular, if a sponsor were required to retain an economic interest in the asset pool without hedging the risk of such portion, the sponsor would be less likely to originate low quality financial assets. Many proposals have required retention of some percentage, usually five or ten percent, of the credit risk of the financial assets. Limiting the ability to hedge this risk has also been proposed, but this raises issues as well.

Another issue raised in securitizations has been the high number of early payment defaults in some securitizations of RMBS during the crisis. One way to address this would be to require that mortgage loans be seasoned, i.e., originated more than twelve (12) months prior to the initial issuance of the RMBS. Of course, this raises issues for both originators and sponsors of securitizations.

An alternative to accomplish the goals of ensuring quality mortgages go into securitizations would be to require, at a minimum, representations and warranties on legal enforceability of the mortgage loan, verification of borrower income, occupancy status and compliance with the requirement of an underlying property appraisal. The securitization documents could then designate a contract party to verify these specific representations and warranties, as well as any additional representations and warranties so designated by the documentation, within a specified period after issuance of obligations under the securitization. The documentation could also require the sponsor to repurchase any financial assets that breach such representation and warranties within thirty (30) days of notice thereof from the Trustee and/or Custodian. To support this requirement, the possible approach would hold five (5) percent of the proceeds due to the sponsor back for twelve (12) months to fund any repurchases required after this review.

In addition, it may be appropriate to require originations of residential mortgage loans in an RMBS to comply with all statutory and regulatory standards in effect at the time of origination. This could also reduce potential future problems with repurchases of securitized loans.

Specific Questions on Origination and Retention Requirements

28. For all securitizations, should the sponsor retain at least an economic interest in a material portion of credit risk of the financial assets? If so, what is the appropriate risk retention percentage? Is five percent appropriate? Should the number be higher or lower? Should this vary by asset class or the size of securitization? If so how?

29. Should additional requirements to incentivize quality origination practices be applied to RMBS? Is the requirement that the mortgage loans included in the RMBS be originated more than 12 months prior to any transfer for the securitization an effective way to align incentives to promote sound lending? What are the costs and benefits of this approach? What alternatives might provide a more effective approach? What are the implications of such a requirement on credit availability and institutions' liquidity?

30. Would the alternative outlined above, which would require a review of specific representations and warranties after 180 days and the repurchase of any mortgages that violate those representations and warranties, better fulfill the goal of aligning the sponsor's interests toward sound underwriting? What would be the costs and benefits of this alternative?

31. Should all residential mortgage loans in an RMBS be required to comply with all statutory and regulatory standards and guidance in effect at the time of origination? Where such standards and guidance involve subjective standards, how will compliance with the standards and guidance be determined? How should the FDIC treat a situation where a very small portion of the mortgages backing an RMBS do not meet the applicable standards and guidance?

32. What are appropriate alternatives? What are the primary benefits and costs of potential approaches to these issues?

Additional Questions

In looking at the preliminary regulatory text provided for context, the FDIC would like to pose the following additional questions:

33. Do you have any other comments on the conditions imposed by paragraphs (b) and (c) of the preliminary regulatory text?

34. Is the scope of the safe harbor provisions in paragraph (d) of the preliminary regulatory text adequate? If not, what changes would you suggest?

35. Do the provisions of paragraph (e) of the preliminary regulatory text provide adequate clarification of the receiver's agreement to pay monies due under the securitization until monetary default or repudiation? If not, why not and what alternatives would you suggest?

Paperwork Reduction Act

At this stage of the rulemaking process it is difficult to determine with precision whether any future regulations will impose information collection requirements that are covered by the Paperwork Reduction Act ("PRA") (44 U.S.C. 3501 *et seq.*). Following the FDIC's evaluation of the comments received in response to this ANPR, the FDIC expects to develop a more detailed description regarding the treatment of participations and securitizations issued after March 31, 2010, and, if appropriate, solicit comment in compliance with PRA.

List of Subjects in 12 CFR Part 360

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Participations, Reporting and recordkeeping requirements, Savings associations, Securitizations.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend title 12 CFR part 360 as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority citation for part 360 continues to read as follows:

Authority: 12 U.S.C. 1821(d)(1), 1821(d)(10)(C), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

2. Section 360.6 is revised to read as follows:

§ 360.6 Treatment of financial assets transferred in connection with a securitization or participation.

(a) *Definitions.* (1) *Financial asset* means cash or a contract or instrument that conveys to one entity a contractual right to receive cash or another financial instrument from another entity.

(2) *Investor* means a person or entity that owns an obligation issued by an issuing entity.

(3) *Issuing entity* means an entity created at the direction of a sponsor that owns a financial asset or financial assets or has a perfected security interest in a financial asset or financial assets and issues obligations supported by such asset or assets. Issuing entities may include, but are not limited to, corporations, partnerships, trusts, and limited liability companies and are commonly referred to as special purpose vehicles or special purpose entities. To the extent a securitization is structured as a two-tier transfer, the term issuing entity would include both the issuer of the obligations and any intermediate entities that may be a transferee.

(4) *Monetary default* means a default in the payment of principal or interest when due following the expiration of any cure period.

(5) *Obligation* means a security that is primarily serviced by the cash flows of one or more financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders issued by an issuing entity. The term does not include any instrument that evidences ownership of the issuing entity, such as LLC interests, common equity, or similar instruments.

(6) *Participation* means the transfer or assignment of an undivided interest in all or part of a financial asset, that has all of the characteristics of a "participating interest," from a seller, known as the "lead," to a buyer, known as the "participant," without recourse to the lead, pursuant to an agreement between the lead and the participant. "Without recourse" means that the participation is not subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying obligation.

(7) *Securitization* means the issuance by an issuing entity of obligations collateralized by, or representing interests in, one or more specific financial assets where the payments on the obligations are generated by such financial assets and the investors are relying on the cash flow or market value characteristics and the credit quality of such financial assets (together with any identified external credit support) to repay the obligations. To qualify as a securitization the transaction must properly identify and segregate the financial assets that are being securitized with appropriate provisions to accommodate revolving structures for certain asset pools.

(8) *Servicer* means any entity responsible for the management or collection of some or all of the financial assets on behalf of the issuing entity or making allocations or distributions to holders of the obligations, including reporting on the overall cash flow and credit characteristics of the financial assets supporting the securitization to enable the issuing entity to make payments to investors on the obligations.

(9) *Sponsor* means a person or entity that organizes and initiates a securitization by transferring financial assets, either directly or indirectly, including through an affiliate, to an issuing entity, whether or not such person owns an interest in the issuing entity or owns any of the obligations issued by the issuing entity.

(10) *Transfer* means:

(i) The conveyance of a financial asset or financial assets to an issuing entity; or

(ii) The creation of a security interest in such asset or assets for the benefit of the issuing entity.

(b) *Coverage.* This section shall apply to securitizations that meet the following criteria:

(1) *Capital Structure and Financial Assets.*

(i) The following requirements apply to all securitizations:

(A) The securitization shall not consist of re-securitizations of obligations unless the disclosures required in paragraph (b)(2) of this section are available to investors for the underlying assets supporting the securitization at initiation and while obligations are outstanding. For re-securitizations which include financial assets that were not originated by the sponsor, disclosures provided by the originator of such financial assets that meet the standards in paragraph (b)(2) of this section will comply with this paragraph (b)(1); and

(B) The payment of principal and interest on the securitization obligation must be primarily based on the performance of financial assets that are transferred to the issuing entity or owned by the sponsor and, except for interest rate risk or currency risk, shall not be contingent on market or credit events that are independent of such

financial assets. The securitization may not be unfunded or synthetic.

(ii) The following requirements apply only to securitizations in which the financial assets include residential mortgage loans:

(A) The capital structure of the securitization shall be limited to no more than six credit tranches and cannot include "sub-tranches," grantor trusts or other structures designed to further increase the leverage in the capital structure. Notwithstanding the foregoing, the most senior credit tranche may include time-based sequential pay sub-tranches; and

(B) The credit quality of the obligations cannot be enhanced at the issuing entity or pool level through external credit support or guarantees. However, the temporary payment of principal and interest may be supported by liquidity facilities. Individual financial assets transferred into a securitization may be guaranteed, insured or otherwise benefit from credit support at the loan level through mortgage and similar insurance or guarantees, including by private companies, agencies or other governmental entities, or government-sponsored enterprises, and/or through co-signers or other guarantees.

(2) *Disclosures.* The sponsor, issuing entity, and/or servicer, as appropriate, shall make available to investors, information describing the financial assets, obligations, capital structure, compensation of relevant parties, and relevant historical performance data as follows:

(i) The following requirements apply to all securitizations:

(A) Prior to issuance of obligations and monthly while obligations are outstanding, information about the obligations and the securitized financial assets shall be disclosed to all potential investors at the financial asset, pool, and security-level sufficient to permit evaluation and analysis of the credit risk and performance of the obligations and financial assets. Information shall be presented in such detail and in such format so as to facilitate investor evaluation and analysis of the obligations and financial assets securitized and, at a minimum, shall comply with the requirements of Securities and Exchange Commission Regulation AB, 17 CFR 229.1100 through 229.1123, or any successor disclosure requirements for public issuances, even if the obligations are issued in a private placement or are not otherwise required to be registered. Information that is unknown or not available to the issuer without unreasonable effort or expense, may be omitted if the issuer includes a statement in the offering document verifying that the specific information is otherwise unavailable;

(B) Prior to issuance of obligations, the structure of the securitization and the credit and payment performance of the obligations shall be disclosed, including the capital or tranche structure, the priority of payments and specific subordination features; representations and warranties made with respect to the financial assets, the remedies for and the time permitted for cure of any breach of representations and warranties, including the repurchase of financial assets, if applicable; liquidity facilities and any credit enhancements, any waterfall triggers or priority of payment reversal features; and policies governing delinquencies, servicer advances, loss mitigation, and write-offs of financial assets;

(C) While obligations are outstanding, information shall be made available on the performance of the obligations, including periodic and cumulative financial asset performance data, delinquency and modification data for the financial assets, substitutions and removal of financial assets, servicer advances, as well as losses that were allocated to such tranche and remaining balance of financial assets supporting such tranche, if applicable; and the percentage of each tranche in relation to the securitization as a whole; and

(D) In connection with the issuance of obligations, and thereafter if the information changes, information shall be made available on the nature and amount of compensation paid to the originator, sponsor, rating agency or third-party advisory, and any mortgage or other broker, compensation and expenses of servicer(s), and the extent to which any risk of loss on the underlying assets is retained by any of them for such securitization.

(ii) The following requirements apply only to securitizations in which the financial assets include residential mortgage loans:

(A) Prior to issuance of obligations, sponsors shall disclose loan level information about the financial assets including, but not limited to, loan type, loan structure (for example, fixed or adjustable, resets, interest rate caps, balloon payments, *etc.*), maturity, interest rate and/or Annual Percentage Rate, and location of property; and

(B) Prior to issuance of obligations, sponsors shall affirm compliance with all applicable statutory and regulatory standards for origination of mortgage loans and shall include loan level data to confirm that the mortgages in the securitization pool are underwritten at the fully indexed rate relying on documented income, and comply with existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such additional guidance applicable at the time of loan origination. Sponsors shall also identify the percentage of financial assets in the pool that are underwritten using underwriter discretion or similar qualitative application of the underwriting criteria, and a third party due diligence report confirming compliance with such standards.

(3) *Documentation and Recordkeeping.* The documentation creating the securitization must clearly define the respective contractual rights and responsibilities of all parties as described below and use as appropriate any available standardized documentation for each different asset class.

(i) The following requirements apply to all securitizations:

(A) The documentation must define all necessary rights and responsibilities of the parties, including but not limited to representations and warranties consistent with industry best practices, ongoing disclosure requirements, and appropriate measures to avoid conflicts of interest.

(B) The contractual rights and responsibilities of each party to the transaction, including but not limited to the originator, sponsor, issuing entity, servicer, and investors, must provide sufficient authority for the parties to fulfill their respective duties and exercise their rights under the contracts and clearly distinguish between any multiple roles performed by any party.

(C) The sponsor must maintain records of its securitizations separate from records of its other business operations. The sponsor shall make these records readily available for review by the FDIC promptly upon written request.

(ii) The following requirements apply only to securitizations in which the financial assets include residential mortgage loans:

(A) Servicing and other agreements must provide servicers with full authority, subject to contractual oversight by any master servicer or oversight advisor, if any, to mitigate losses on financial assets consistent with maximizing the net present value of the financial asset, as defined by a net present value analysis. Servicers shall

have the authority to modify assets to address reasonably foreseeable default, and to take such other action as necessary or required to maximize the value and minimize losses on the securitized financial assets applying industry best practices for asset management and servicing. The documents shall require the servicer to act for the benefit of all investors, and not for the benefit of any particular class of investors. The servicer must commence action to mitigate losses no later than ninety (90) days after an asset first becomes delinquent unless all delinquencies on such asset have been cured. A servicer must maintain sufficient records of its actions to permit appropriate review; and

(B) The servicing agreement shall not require a primary servicer to advance delinquent payments of principal and interest for more than three payment periods, unless financing or reimbursement facilities are available, which may include, but are not limited to, the obligations of the master servicer or issuing entity to fund or reimburse the primary servicer, are available. Such "financing or reimbursement facilities" under this paragraph shall not depend on foreclosure proceeds.

(4) *Compensation.* The following requirements apply only to securitizations in which the financial assets include residential mortgage loans. Compensation to parties involved in the securitization of such financial assets must be structured to provide incentives for sustainable credit and the long-term performance of the financial assets and securitization as follows:

(i) Any fees or other compensation for services payable to the lender, sponsor, credit rating agencies, and underwriters shall be payable, in part, over the five (5) year period after the first issuance of the obligations based on the performance of those financial assets, with no more than eighty (80) percent of the total estimated compensation due to any party at closing; and

(ii) Compensation to servicers shall provide incentives for servicing and loss mitigation actions that maximize the value of the financial assets as shown by a net present value analysis, and may be provide payment for any of services provided and reimbursement of actual expenses, an incentive fee structure, or any combination of the foregoing that provides such incentives.

(5) *Origination and Retention Requirements.*

(i) The following requirements apply to all securitizations:

(A) The sponsor must retain at least an economic interest in a material portion, defined as not less than five (5) percent, of the credit risk of the financial assets. This retained interest may be either in the form of an interest in each of the credit tranches of the securitization or in a representative sample of the securitized financial assets equal to at least five (5) percent of the principal amount of the financial assets at transfer.

(B) This retained interest may not be transferred or hedged during the term of the securitization.

(ii) The following requirements apply only to securitizations in which the financial assets include residential mortgage loans:

(A) All residential mortgage loans transferred into the securitization must be seasoned loans that were originated not less than twelve (12) months prior to such transfer;

(B) All assets shall have been originated in compliance with all statutory, regulatory, and originator underwriting standards in effect at the time of origination. Residential mortgages included in the securitization shall be underwritten at the fully indexed rate, based upon the borrowers' ability to repay the mortgage according to its terms, and rely on documented income and comply with all existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such additional guidance applicable to insured depository institutions at the time of loan origination. Residential mortgages originated prior to the issuance of such guidance shall meet all supervisory guidance governing the underwriting of residential mortgages then in effect at the time of loan origination.

(c) *Other requirements.*

(1) The transaction should be an arms length, bona fide securitization transaction, and the obligations shall not be sold predominately to an affiliate or insider;

(2) The securitization agreements are in writing, approved by the board of directors of the bank or its loan committee (as reflected in the minutes of a meeting of the board of directors or committee), and have been, continuously, from the time of execution in the official record of the bank;

(3) The securitization was entered into in the ordinary course of business, not in contemplation of insolvency and with no intent to hinder, delay or defraud the bank or its creditors;

(4) The transfer was made for adequate consideration;

(5) The transfer and/or security interest was properly perfected under the UCC or applicable State law;

(6) The transfer and duties of the sponsor as transferor must be evidenced in a separate agreement from its duties, if any, as servicer, custodian, paying agent, credit support provider or in any capacity other than the transferor; and

(7) The bank properly segregates any financial assets and records that relate to the securitization from the general assets and records of the bank.

(d) *Safe Harbor.*

(1) *Participations.* With respect to transfers of financial assets made in connection with participations, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership any such transferred financial assets provided that such transfer satisfies the conditions for sale accounting treatment set forth by generally accepted accounting principles, except for the "legal isolation" condition that is addressed by this paragraph (d).

(2) *Transition Period Safe Harbor.* With respect to any participation or securitization for which transfers of financial assets were made or, for revolving trusts, for which obligations were issued on or before March 31, 2010, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership any such transferred financial assets notwithstanding that such transfer does not satisfy all conditions for sale accounting treatment under generally accepted accounting principles as effective for reporting periods after November 15, 2009, provided that such transfer satisfied the conditions for sale accounting treatment set forth by generally accepted accounting principles in effect for reporting periods before November 15, 2009, except for the "legal isolation" condition that is addressed by this section.

(3) *For Securitizations Meeting Sale Accounting Requirements.* With respect to any securitization for which transfers of financial assets were made, or for revolving trusts for which obligations were issued, after March 31, 2010, and which complies with the requirements applicable to that securitization as set forth in paragraphs (b) and (c) of this section, the FDIC as conservator or receiver shall not, in the exercise of its

statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership such transferred financial assets, provided that such transfer satisfies the conditions for sale accounting treatment set forth by generally accepted accounting principles in effect for reporting periods after November 15, 2009, except for the "legal isolation" condition that is addressed by this rule.

(4) *For Securitization Not Meeting Sale Accounting Requirements.* With respect to any securitization for which transfers of financial assets were made, or for revolving trusts for which obligations were issued, after March 31, 2010, and which complies with the requirements applicable to that securitization as set forth in paragraphs (b) and (c) of this section, but where the transfer does not satisfy the conditions for sale accounting treatment set forth by generally accepted accounting principles in effect for reporting periods after November 15, 2009, the FDIC as conservator or receiver consents to the exercise of the rights and powers listed in 12 U.S.C. 1821(e)(13)(C), and will not assert any rights to which it may be entitled pursuant to 12 U.S.C. 1821(e)(13)(C), after the expiration of the specified time, and the occurrence of the following events:

(i) If at any time after appointment, the FDIC as conservator or receiver is in a monetary default under a securitization, as defined above, and remains in monetary default for ten (10) business days after actual delivery of a written request to the FDIC pursuant to paragraph (d) of this section to exercise contractual rights because of such monetary default, the FDIC hereby consents pursuant to 12 U.S.C. 1821(e)(13)(C) to the exercise of any such contractual rights, including obtaining possession of the financial assets, exercising self-help remedies as a secured creditor under the transfer agreements, or liquidating properly pledged financial assets by commercially reasonable and expeditious methods taking into account existing market conditions, provided no involvement of the receiver or conservator is required.

(ii) If the FDIC as conservator or receiver of an insured depository institution provides a written notice of repudiation of the securitization agreements, and the FDIC does not pay the damages due pursuant to 12 U.S.C. 1821(e) by reason of such repudiation within ten (10) business days after the effective date of the notice, the FDIC hereby consents pursuant to 12 U.S.C. 1821(e)(13)(C) for the exercise of any contractual rights, including obtaining possession of the financial assets, exercising self-help remedies as a secured creditor under the transfer agreements, or liquidating properly pledged financial assets by commercially reasonable and expeditious methods taking into account existing market conditions, provided no involvement of the receiver or conservator is required.

(e) *Consent to certain actions.* During the stay period imposed by 12 U.S.C. 1821(e)(13)(C), the FDIC as conservator or receiver of the sponsor consents to the payment of regularly scheduled payments to the investors made in accordance with the securitization documents and to any servicing activity with respect to the financial assets included in securitizations that meet the requirements applicable to that securitization as set forth in paragraphs (b) and (c) of this section.

(f) *Notice for Consent.* Any party requesting the FDIC's consent as conservator or receiver under 12 U.S.C. 1821(e)(13)(C) pursuant to paragraph (d)(4)(i) of this section shall provide notice to the Deputy Director, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation, 550 17th Street, NW., F–7076, Washington, DC 20429–0002, and a statement of the basis upon which such request is made, and copies of all documentation supporting such request, including without limitation a copy of the applicable agreements and of any applicable notices under the contract.

(g) *Contemporaneous Requirement.* The FDIC will not seek to avoid an otherwise legally enforceable agreement that is executed by an insured depository institution in connection with a securitization or in the form of a participation solely because the agreement does not meet the "contemporaneous" requirement of 12 U.S.C. 1821(d)(9), 1821(n)(4)(I), or 1823(e).

(h) *Limitations.* The consents set forth in this section do not act to waive or relinquish any rights granted to the FDIC in any capacity, pursuant to any other applicable law or any agreement or contract except the securitization transfer agreement or any relevant security agreements. Nothing contained in this section alters the claims priority of the securitized obligations.

(i) *No waiver.* This section does not authorize, and shall not be construed as authorizing the waiver of the prohibitions in 12 U.S.C. 1825(b)(2) against levy, attachment, garnishment, foreclosure, or sale of property of the FDIC, nor does it authorize nor shall it be construed as authorizing the attachment of any involuntary lien upon the property of the FDIC. Nor shall this section be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically mentioned, including but not limited to any rights, powers or remedies of the FDIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

(j) *No assignment.* The right to consent under 12 U.S.C. 1821(e)(13)(C) may not be assigned or transferred to any purchaser of property from the FDIC, other than to a conservator or bridge bank.

(k) *Repeal.* This section may be repealed by the FDIC upon 30 days notice provided in the **Federal Register**, but any repeal shall not apply to any issuance made in accordance with this section before such repeal.

Dated at Washington, DC, this 17th day of December 2009.

By Order of the Board of Directors.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. E9–30540 Filed 1–6–10; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27, 29, 91, 121, 125, and 135

[Docket No. FAA–2005–20245; Notice No. 10–01]

RIN 2120–AJ65

Extension of the Compliance Date for Cockpit Voice Recorder and Digital Flight Data Recorder Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: On March 7, 2008, the FAA published a final rule titled "Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations." The rule required certain upgrades of digital flight data recorder and cockpit voice recorder equipment on certain aircraft beginning April 7, 2010. The FAA is proposing to change that compliance date for some aircraft as outlined in this notice. This action follows petitions from several aircraft manufacturers and

industry organizations indicating an inability to comply with the April 2010 requirement.

DATES: Send your comments on or before February 8, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2005–20245 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov*.

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket, or, Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions contact: Timothy W. Shaver, Avionics Maintenance Branch, Flight Standards Service, AFS–360, Federal Aviation Administration, 950 L'Enfant Plaza, SW., Washington, DC 20024; telephone (202) 385–4292; facsimile (202) 385–4651; e-mail *tim.shaver@faa.gov*. For legal questions contact: Karen L. Petronis, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073; facsimile (202) 267–3073; e-mail *karen.petronis@faa.gov*.

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of related rulemaking documents.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701. Under that section, the FAA is charged with prescribing regulations providing minimum standards for other practices, methods and procedures necessary for safety in air commerce. This regulation is within the scope of that authority since flight data recorders are the only means available to account for aircraft movement and flight crew actions critical to finding the probable cause of incidents or accidents, including data that could prevent future incidents or accidents.

Background

A. History of the Regulatory Requirements

In February 2005, the FAA issued a notice of proposed rulemaking proposing to amend the digital flight data recorder (DFDR) and cockpit voice recorder (CVR) regulations for much of the U.S. fleet of aircraft (70 FR 9752; February 28, 2005) (NPRM). The changes proposed were based on recommendations from the National Transportation Safety Board (NTSB or Board) that were issued as a result of the Board's investigations of several aircraft accidents and incidents. A full discussion of the NTSB's recommendations and the FAA's proposed changes can be found in the NPRM.

In March 2008, the FAA issued a final rule adopting many of those proposals (73 FR 12541; March 7, 2008). The requirements were adopted as aircraft certification or operating rules, some of which take effect on April 7, 2010, and include:

- The recording of datalink communications (DLC), when the communications equipment is installed after April 7, 2010;
- Wiring requirements related to single electrical failures and their effect on the DFDR and CVR systems;
- The addition of a 10-minute independent power source for the CVR;
- Requirements regarding the CVR location and housing;
- Requirements for the duration of DFDR recording;
- Requirements for the duration of CVR recording;
- Increased sampling rates for certain DFDR parameters.

A detailed discussion of the individual requirements and where they appear in the regulations can be found in the preamble to the 2008 final rule, beginning at page 12556 (Section-By-Section Analysis). Some of the requirements are effective two years from the April 7, 2008 effective date while others are required within four years of that date.

The preamble to the 2008 final rule also contains a discussion of the comments received in response to the NPRM. A total of 53 commenters responded, but only three of them included any comment about compliance time. Most comments focused on technical considerations or the cost of compliance rather than the time proposed.

Of the few comments regarding compliance time, one came from Airbus concerning the installation of the CVR independent power source for aircraft to be manufactured beginning in April 2010, requesting an increase from two to four years. We replied that Airbus was the only manufacturer that indicated that the proposed compliance time was a problem, and that Airbus did not provide us with any data to support its position that integration of the power source into newly manufactured aircraft could not be accomplished in two years. Airbus also commented that the proposed two-year time frame for integration of increased recording rates of 16 Hertz (Hz) for certain parameters was unrealistic. The FAA received numerous comments regarding technical considerations of the increased recording rates (not the compliance time). In the final rule, we adopted a lower (8 Hz) sampling rate in response to these comments. The FAA believed that incorporating the 8 Hz rate into newly manufactured aircraft was achievable in the two-year compliance time.

With regard to DLC recording capability, the NTSB commented that two years was too much delay for incorporation of the recording system. Northwest Airlines, Inc. requested that the time for integration be two to four years to ensure time for approval of the message sets and creation of ground infrastructure. Several commenters discussed the compliance time as it related to technical considerations, but no comments regarding DLC recording equipment availability were received.

B. Recent Industry Petitions

Beginning in May 2009, the FAA began to receive requests for relief from various requirements adopted in the 2008 final rule. Those requests are summarized below:

1. In a letter dated May 1, 2009, Boeing petitioned the FAA on behalf of operators that would be taking delivery of new Boeing Model 777 airplanes between April 7, 2010, and December 21, 2013 (docket number FAA–2009–0438). Boeing sought exemption relief for these operators from compliance with the requirements for DLC recordation and for increased sampling rates for certain DFDR parameters. The requirements would be effective on airplanes manufactured after April 7, 2010. Its petition stated that "[D]ue to the complexity and high level of integration of the underlying avionics systems, Boeing has determined that type certificate design changes, certification, and implementation in production are not feasible" for the 777 by the date in the regulation. As a result, Boeing would not be able to offer the DLC capability it does now, and its customers would be unable to achieve the increased quality of controller-pilot communications that leads to more efficient routing, less fuel burn and reduced emissions. Boeing also noted that an increased time for compliance would allow Boeing to harmonize its offered DLC equipment packages with the requirements of the European Aviation Safety Agency (EASA). Boeing indicated that there is no negative effect on safety with a delay, since it would allow the current DLC equipment to be used.

Boeing's petition also included a request for relief from the increased sampling rates for certain DFDR parameters. Boeing stated that the DLC recording and sampling upgrades both require changes to its large-scale integrated avionics platform, the Aircraft Information Management System (AIMS). Granting the exemption would allow several AIMS changes to be bundled into a single upgrade, reducing the economic and operational impact on the operators.

2. In a letter dated May 1, 2009, Bombardier, Inc. (Bombardier) petitioned the FAA to change the part 135 requirements adopted in the 2008 final rule that require increased sampling rates for two DFDR parameters (docket number FAA–2009–0441). Bombardier noted that, although as a manufacturer it is not subject to part 135 since it is an operating rule, it considers itself responsible to deliver part 135 compliant aircraft to its U.S. customers. Because the FAA does not grant operational relief to manufacturers, Bombardier presented its request as a petition for rulemaking to change the regulatory requirement for its aircraft. Bombardier found that the increased rates required by the regulation for two parameters could not be integrated into its BD–700 Model aircraft by the compliance date without significant system modifications. Bombardier requested relief for the BD–700 until it is able to introduce a new avionics suite that is scheduled for installation beginning in 2011. The relief requested is a footnote change to part 135 Appendix F for the BD–700. Bombardier noted that its current installation records at 5 Hz rather than the 8 Hz required after April 7, 2010, making the required modification change significant in cost, but not the quality of information since it will affect only a few aircraft before the new avionics suite is installed.

3. By letter dated July 16, 2009, Boeing again petitioned the FAA for an exemption, this time on behalf of the operators of all Boeing airplanes (Models 737, 747, 767 and 777) manufactured between April 7, 2010 and April 7, 2011, to operate without DLC recording capability, without the increased sampling rates, and without the independent power source for the CVR as required by the 2008 final rule (docket number FAA–2009–0672).

Boeing cited essentially the same reasons as in its first petition, "that type certificate design changes, certification, and implementation in production are not feasible" for all its models by the 2010 date. Boeing noted that the rule requires the development of new equipment or modifications to existing equipment from multiple suppliers, including significant lead time necessary to certify and implement design changes. Boeing concluded that the "development schedules for the new and modified equipment either do not support the compliance date or have an unacceptable amount of risk." [1] Boeing's discussion goes on to note that the interrelationship and dependence between various system components "prevents compliance with the rules until all of the components of the system are available."

Boeing stated that if relief is not granted, it will be unable to offer even the current level of DLC capability.

4. By letter dated June 11, 2009, Airbus petitioned the FAA on behalf of the operators of 15 Airbus airplanes to be manufactured between April 7, 2010 and December 31, 2011, to operate without the DLC recording capability required by the 2008 final rule (docket number FAA–2009–0665). Airbus cited the same reasons for its request as appear in the Boeing petitions, that certification and implementation of the design changes necessary are not feasible by April 7, 2010. Airbus cited the same justifications for its position as Boeing, some in identical language, including the fact that the use of DLC results in environmentally cleaner aircraft operations. Airbus's petition does not include any relief from the increased data rates requested by Boeing and Bombardier.

5. On September 30, 2009, Gulfstream Aerospace Corporation (Gulfstream) petitioned the FAA on behalf of the U.S. operators of its GIV–X and GV–SP Model airplanes that would be manufactured between April 7, 2010 and April 7, 2012, including Gulfstream itself (docket number FAA–2009–0933). The 160 airplanes Gulfstream expects to produce during that period would require relief to operate without DLC recording capability, increased DFDR sampling rates, or the independent power source for the CVR required by the 2008 final rule. Gulfstream's petition also stated that the development and integration of the necessary changes "are not feasible" by April 7, 2010, using much of the same language common to the Boeing and Airbus petitions. Gulfstream indicated that the equipment for its PlaneView software is based on Honeywell architecture, and will not be available until 2011.

6. On October 8, 2009, the General Aviation Manufacturers Association (GAMA) petitioned the FAA to amend parts 91 and 135 to the extent necessary to extend the implementation date for some of the requirements in the 2008 final rule (docket number FAA–2009–0963). The GAMA stated that "[F]or a number of reasons, a large segment of

[1] We note that the petition does not define the type of risk cited, whether safety or commercial or the criteria under which the petitioner determined it to be unacceptable.

the general aviation business aircraft industry will not be in a position to comply with all aspects of the new requirements" by April 7, 2010. It cited equipment availability, resource constraints and greater technical impact than initially considered. The GAMA sought regulatory relief from the requirements for DLC recording and for increased DFDR sampling rates.

The GAMA petition stated that "supplier and company resources necessary to make these changes have been significantly diminished by the faltering economy," noting a 15 percent reduction in the general aviation manufacturing industry workforce. It estimated that "the majority of business jet manufacturers will be in a position to deliver aircraft which capture the appropriate parameters at 8 Hz by April 2012." The GAMA also noted that the use of DLC is so limited in domestic airspace that there would be no impact on safety to extend the recording requirement.

7. By letter dated October 23, 2009, the Aerospace Industries Association (AIA) and the Air Transport Association of America (ATA) petitioned jointly to extend the compliance dates for several of the CVR and DFDR regulations adopted in 2008 (docket number FAA–2009–1017). The AIA and ATA sought to extend by two years the requirement for DLC recording, the increased rate for certain DFDR parameters, and the CVR independent power supply. The joint petition also requested that the compliance date for all of these items be extended three and one-half years (to 2013) for the Boeing 777 model aircraft. This relief is the same as that requested in the petitions already discussed. In addition, the AIA/ATA petition sought to extend the DLC recording requirement by four years for in-service airplanes that have DLC equipment installed on or after April 7, 2010. The AIA and ATA characterized their petition as "consolidat[ing] those previous submissions in to a single proposal that meets the collective intent" of the previous petitioners.

The joint petition stated that the changes required by the regulation are "not feasible" by April 7, 2010, citing back to the petitions discussed above. It also said that the risk is unacceptable, and described it as a risk of "certainty of meeting a compliance date." The petition noted that even more time is needed for the incorporation of DLC recording on in-service airplanes because the primary efforts by equipment and airframe manufacturers are toward newly manufactured airplanes. Approval of supplemental type certificates for in-service airplanes would not begin until after efforts for the newly manufactured airplanes are completed.

The joint petition stated that failure to change the regulations would result in a "one to two-year halt in the deliveries of numerous new aircraft due to production issues" and a "one- to four-year suspension of datalink installations on new and in-service aircraft." The joint petition also predicted that a "break" in the manufacturing and delivery cycle for new airplanes "could result in a smaller usable fleet or require the use of older, stored airplanes."

8. By letter dated November 23, 2009, Dassault Aviation (Dassault) petitioned for exemption relief on behalf of its operators for all Falcon series airplanes (estimated at 50) produced between April 7, 2010 and April 7, 2012 (docket number FAA–2009–1173). Dassault requested that these airplanes be allowed to operate without the increased sampling rates, the 10-minute independent power supply for CVRs, or the datalink communications recording requirements adopted in the 2008 final rule. Dassault noted that its U.S. subsidiary, Dassault Falcon Jet, is an operator of these airplanes in the United States as an "interim step" in its sale of airplanes in the United States.

Dassault stated that compliance requires "the development of new equipment or modifications to existing equipment from multiple suppliers." It also stated that "significant lead time [is] necessary to develop design requirements and to implement and certify the design changes on multiple airframes. The development schedules for the new and modified equipment do not support the compliance date." Dassault noted the interrelationship and dependence between the various parts of the CVR and DFDR systems required by the 2008 final rule.

Dassault stated that exemption would be in the public interest because the inability to operate newly manufactured airplanes in the United States "would have a significant economic burden on both the owner/operators and Dassault Aviation." Denial of its petition would "relegate these business aircraft to a state of reduced capability" and would force "operators not to upgrade their avionics load" with other avionics equipment that is bundled into its manufacturing upgrades.

Similar to other petitioners, Dassault requests a "time-limited exemption that allows aircraft to be delivered and operated" without meeting the regulatory requirements. There is no indication that Dassault intends to upgrade these aircraft after the exemption would expire, leaving the FAA to presume that it is petitioning for permanent exemption for its airplanes, not something time-limited.

9. By petition dated December 14, 2009, Embraer Empresa Brasileira de Aeronautica, S.A. (Embraer) requested an exemption that would be applicable to 5 EMB–145 series and 40 ERJ 170/190 series airplanes that would be produced between April 7, 2010 and April 6, 2011 (docket number FAA–2009–1204). Embraer requested exemptions for these newly manufactured airplanes from the increased DFDR sampling rates, the datalink recordation requirements, and the 10-minute independent power supply requirement for CVRs adopted in 2008.

Embraer stated that neither it nor its recorder system suppliers will be able to complete the development, testing, and certification programs for new recorder systems before the April 2010 regulatory deadline. Embraer supports its petition by stating that the current DFDR and CVR systems on its airplanes provide an acceptable level of safety. It also said that a grant of exemption would be in the public interest because the interrupted delivery of airplanes would cause business disruptions that would outweigh "the small benefit that would accrue from the increase in design and performance level of the DFDR and CVR systems." The petition did not include any information as to what it has accomplished toward regulatory compliance thus far. The FAA presumes that Embraer is asking for permanent exemption for its aircraft since it did not submit a schedule when the 45 affected airplanes would be upgraded once a one-year exemption expired, nor did it request a permanent change to the regulation.

C. FAA Response to Petitions

The FAA is seriously disappointed with the manufacturers and other facets of the industry. The identicality and scope of the various petitions appears as a decision by industry not to comply with the April 2010 date, a decision that was made some time ago.

Through contact with the petitioners, the FAA was made aware that one of the current circumstances appears to be the lack of equipment design and integration that begins with avionics equipment manufacturers. Most glaringly, in none of the petitions do the airframe manufacturers indicate that they had properly planned for regulatory compliance and are petitioning now because they are unable to obtain timely delivery of the necessary equipment. Nor is there any evidence that the airframe manufacturers have pressed the

suppliers for timely delivery of either design modifications or equipment. None of the petitions addresses the clear failure to plan for and implement a regulatory requirement that was first proposed in 2005. Only the GAMA petition states that economic circumstances have changed enough to warrant a change to the compliance time.

Despite a dearth of specific comment to the proposed rule on compliance time, the FAA is now faced with the discovery by six major airframe manufacturers that compliance "is not feasible" less than a year before it is due. There is nothing to indicate what, if any, efforts the petitioners made in the 13 months between the publication of the final rule and the FAA's receipt of the first petition. Nor is there any indication by the petitioners that they have accelerated any effort to comply in the time since they petitioned. It appears they have chosen to use that time to seek a change to the rule and to rely on the consequences of their inaction falling on the FAA. In at least one instance, it is clear that the manufacturer simply decided to stay with its original timing for a planned upgrade even though it is well after the compliance time mandated in the 2008 final rule.

The FAA has been put in an untenable position with these petitions. The option of granting exemptions to every new aircraft produced and delivered to U.S. operators between April 7, 2010, and as late as 2013 would present a huge burden on the agency and the affected operators. Such exemptions would have to be granted to operators on an individual aircraft basis when each aircraft is delivered. According to the manufacturers' petitions received thus far, this effort would involve over 400 airplanes. Further, these airplanes would be granted exemption only until they could be modified with the upgraded equipment. As we noted in the regulatory evaluation in the NPRM, such retrofits are expensive and time consuming, resulting in additional aircraft downtime and maintenance expenses for the operator.

The FAA is unable to conclude from the information presented in the petitions that another two to three years is necessary to incorporate the changes in newly manufactured aircraft. The petitions contain little indication that any concerted effort was undertaken to comply, nor was the agency presented evidence as to dates or time of equipment delivery that supports the requested extensions. At best, the petitions contain reasoning why it is important to get the equipment coordinated between aircraft systems, not acceptable reasons why efforts have been lacking thus far.

The FAA is quite aware that the parties that will suffer the effect of these failures are the purchasers of new airplanes. Accordingly, the FAA is proposing to extend certain compliance dates for the regulations adopted in the 2008 final rule.

This notice proposes extension of the following sections of the regulations:

1. For increased DFDR sampling rates, the compliance date for newly manufactured airplanes operated under part 121, 125, or 135 would be extended until December 6, 2010.

2. For airplanes operating under parts 121, 125 or 135, datalink communications would have to be recorded when datalink communication equipment is installed after December 6, 2010.

3. For the ten-minute backup power source for CVRs, the compliance date for part 91 operators (only) would be extended to April 6, 2012.

4. For increased DFDR sampling rates, the compliance date for newly manufactured airplanes operated under part 91would be extended until April 6, 2012.

5. For airplanes operating under part 91, datalink communications would have to be recorded when datalink communication equipment is installed after April 6, 2012.

These proposed changes to the compliance date are the only ones the FAA found to be potentially justified by the petitions submitted. If adopted, which is by no means certain, they would provide an additional eight months to two years to accomplish what should have been in the planning and implementation phases for the 19 months preceding this action.

All other compliance dates established in the 2008 final rule remain as originally promulgated. These include the wiring requirements for CVRs and DFDRs; 25-hour solid state memory DFDRs; 2-hour solid state memory CVRs; the CVR and DFDR housing requirements; and the ten-minute backup power source for CVRs on aircraft operated under part 121, 125, or 135.

We invite comment from the manufacturers and affected operators that may not consider this sufficient even with a renewed devotion of time and resources. Comments that include specific, realistic examples of equipment availability will be considered. These comments should include detailed information describing the reason for the lack of equipment availability, other options that have been considered and the efforts that have been taken to achieve compliance. Generalized statements, such as the ones presented in the petitions, are not valid evidence that the industry is unable to comply, only that it has chosen not to.

The request regarding additional time for in-service airplanes made in AIA/ATA petition, is unsupported by any data on the impact of a failure to extend the rule an additional four years. The AIA/ATA petition presumes that the regulation will have an impact on all in-service airplanes, but presented no evidence that the in-service fleet will be significantly affected by anything other than the failure of manufacturers to comply with the regulations for new aircraft, pushing the in-service fleet to the end of the line. We do not accept this reasoning, especially for a voluntary equipment installation.

Accordingly, all of the petitions referenced in this rule are denied.[2]

Included in this proposed rule are corrections to certain DFDR and CVR regulations in which errors were inadvertently introduced by other amendments. Those sections include §§ 27.1457(d)(1)(ii), 27.1459(a)(3)(ii), 29.1457(d)(1)(ii), and 29.1459(a)(3)(ii). These are rotorcraft certification rules in which reference is made to airplanes rather than rotorcraft.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no new information collection requirement associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

[2] Docket numbers: FAA–2009–0438, FAA–2009–0441, FAA–2009–0665, FAA–2009–0672, FAA–2009–0933, FAA–2009–0963, FAA–2009–1017, FAA–2009–1173, FAA–2009–1204.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it is to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

This proposed rule acknowledges that recent economic conditions have made it technically and economically difficult for manufacturers to certificate and install certain equipment to meet the current regulatory compliance dates. If the compliance dates are not extended, manufacturers will be unable to deliver aircraft produced after April 7, 2010 that can be flown under parts 91, 121, 125 or 135. While the FAA could issue temporary operating exemptions for these aircraft until the equipment becomes available for operators to retrofit, that action would involve a significant increase in workload for both the FAA and the industry and additional retrofit costs. As the FAA determined in the Regulatory Evaluation of the 2008 final rule, the costs of retrofitting this equipment (except for the two-hour CVR), including the increased downtime, could be greater than the potential benefits resulting from the retrofit. Thus, this proposed rule would generate positive net benefits in comparison to the options of maintaining the existing compliance dates or of granting temporary exemptions and retrofitting airplanes with the equipment as it becomes available.

The FAA has determined that this proposed rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures. The FAA requests comments with supporting justification about the determination of minimal impact.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

The proposed compliance date extension will allow newer and safer aircraft to enter the fleet to replace older aircraft more rapidly than if the existing compliance date is enforced. The expected outcome would be a benefit to small operators that would purchase new aircraft.

Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and has determined that it would reduce costs on both domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and, therefore, would not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if

adopted, affect intrastate aviation in Alaska. The FAA, therefore, specifically requests comments on whether there is justification for applying the proposed rule differently in intrastate operations in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph Chapter 3, paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant regulatory action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866 and DOT's Regulatory Policies and Procedures, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include detailed supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects

14 CFR Part 27

Aircraft, Aviation safety.

14 CFR Part 29

Aircraft, Aviation safety.

14 CFR Part 91

Aircraft, Aviation safety.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 27, 29, 91, 121, 125, and 135 of Title 14, Code of Federal Regulations, as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

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

2. Amend § 27.1457 by revising paragraph (d)(1)(ii) to read as follows:

§ 27.1457 Cockpit voice recorders.

* * * * *

(d) * * *

(1) * * *

(ii) It remains powered for as long as possible without jeopardizing emergency operation of the rotorcraft.

* * * * *

3. Amend § 27.1459 by revising paragraph (a)(3)(ii) to read as follows:

§ 27.1459 Flight data recorders.

(a) * * *

(3) * * *

(ii) It remains powered for as long as possible without jeopardizing emergency operation of the rotorcraft.

* * * * *

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

4. The authority citation for part 29 continues to read as follows:

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

5. Amend § 29.1457 by revising paragraph (d)(1)(ii) to read as follows:

§ 29.1457 Cockpit voice recorders.

* * * * *

(d) * * *

(1) * * *

(ii) It remains powered for as long as possible without jeopardizing emergency operation of the rotorcraft.

* * * * *

6. Amend § 29.1459 by revising paragraph (a)(3)(ii) to read as follows:

§ 29.1459 Flight data recorders.

(a) * * *

(3) * * *

(ii) It remains powered for as long as possible without jeopardizing emergency operation of the rotorcraft.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

7. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

8. Amend § 91.609 by revising paragraphs (i) and (j) to read as follows:

§ 91.609 Flight data recorders and cockpit voice recorders.

* * * * *

(i) All airplanes or rotorcraft required by this section to have a cockpit voice recorder and flight data recorder, that are manufactured on or after April 7, 2010, must have a cockpit voice recorder installed that also—

(1) Meets the requirements of § 23.1457(a), (b), (c), (d)(1), (2), (3), (4) and (6), (e), (f) and (g); § 25.1457(a), (b), (c), (d)(1), (2), (3), (4) and (6), (e), (f) and (g); § 27.1457(a), (b), (c), (d)(1), (2), (3), (4) and (6), (e), (f), (g) and (h); or § 29.1457(a), (b), (c), (d)(1), (2), (3), (4) and (6), (e), (f), (g) and (h) of this chapter, as applicable; and

(2) Retains at least the last 2 hours of recorded information using a recorder that meets the standards of TSO–C123a, or later revision.

(3) For all airplanes or rotorcraft manufactured on or after April 6, 2012, meets the requirements of § 23.1457(d)(5), § 25.1457(d)(5), § 27.1457(d)(5) or § 29.457(d)(5) of this chapter, as applicable.

(j) All airplanes or rotorcraft required by this section to have a cockpit voice recorder and a flight data recorder, that install datalink communication equipment on or after April 6, 2012, must record all datalink messages as required by the certification rule applicable to the aircraft.

* * * * *

9. Amend appendix E to part 91 by revising footnote 5 to read as set forth below.

Appendix E to Part 91—Airplane Flight Recorder Specifications

* * * * *

[5] For Pitch Control Position only, for all aircraft manufactured on or after April 6, 2012, the sampling interval (per second) is 8. Each input must be recorded at this rate. Alternately sampling inputs (interleaving) to meet this sampling interval is prohibited.

10. Amend appendix F to part 91 by revising footnote 4 to read as set forth below.

Appendix F to Part 91—Helicopter Flight Recorder Specifications

* * * * *

[4] For all aircraft manufactured on or after April 6, 2012, the sampling interval per second is 4.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

11. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

12. Amend § 121.359 by revising paragraph (k) to read as follows:

§ 121.359 Cockpit voice recorders.

* * * * *

(k) All airplanes required by this part to have a cockpit voice recorder and a flight data recorder, that install datalink communication equipment on or after December 6, 2010, must record all datalink messages as required by the certification rule applicable to the airplane.

13. Amend appendix M to part 121 by revising footnote 18, to read as follows:

Appendix M to Part 121—Airplane Flight Recorder Specifications

* * * * *

[18] For all aircraft manufactured on or after December 6, 2010, the seconds per sampling interval is 0.125. Each input must be recorded at this rate. Alternately sampling inputs (interleaving) to meet this sampling interval is prohibited.

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

14. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

15. Amend § 125.227 by revising paragraph (i) to read as follows:

§ 125.227 Cockpit voice recorders.

* * * * *

(i) All turbine engine-powered airplanes required by this part to have a cockpit voice recorder and a flight data recorder, that install datalink communication equipment on or after December 6, 2010, must record all datalink messages as required by the certification rule applicable to the airplane.

16. Amend appendix E to part 125 by revising footnote 18, to read as set forth below.

Appendix E to Part 125—Airplane Flight Recorder Specifications

* * * * *

[18] For all aircraft manufactured on or after December 6, 2010, the seconds per sampling interval is 0.125. Each input must be recorded at this rate. Alternately sampling inputs (interleaving) to meet this sampling interval is prohibited.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

17. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

18. Amend § 135.151 by revising paragraph (h) to read as follows:

§ 135.151 Cockpit voice recorders.

* * * * *

(h) All airplanes or rotorcraft required by this part to have a cockpit voice recorder and a flight data recorder, that install datalink communication equipment on or after December 6, 2010, must record all datalink messages as required by the certification rule applicable to the aircraft.

19. Amend appendix C to part 135 by revising footnote 4 to read as set forth below.

Appendix C to Part 135—Helicopter Flight Recorder Specifications

* * * * *

[4] For all aircraft manufactured on or after December 6, 2010, the sampling interval per second is 4.

20. Amend appendix E to part 135 by revising footnote 3 to read as set forth below.

Appendix E to Part 135—Helicopter Flight Recorder Specifications

* * * * *

[3] For all aircraft manufactured on or after December 6, 2010, the sampling interval per second is 4.

21. Amend appendix F to part 135 by revising footnote 18 to read as set forth below.

Appendix F to Part 135—Airplane Flight Recorder Specifications

* * * * *

[18] For all aircraft manufactured on or after December 6, 2010, the seconds per sampling interval is 0.125. Each input must be recorded at this rate. Alternately sampling inputs (interleaving) to meet this sampling interval is prohibited.

Issued in Washington, DC, on January 4, 2010.

John M. Allen,

Director, Flight Standards Service.

[FR Doc. 2010–31 Filed 1–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1249; Directorate Identifier 2009–NM–100–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 777 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 777 airplanes. This proposed AD would require inspecting the bolt, nut, and downstop of the slat track assembly to determine if the bolt, nut, or stops are missing and to determine if the thread protrusion of the bolt from the nut is within specified limits and parts are correctly installed, and related investigative and corrective actions if necessary. For certain airplanes, this proposed AD would also require inspecting the slat cans at the outboard slat number 3 and 12 outboard main track locations for holes and wear damage, and corrective actions if necessary; and replacing the downstop hardware for the outboard slats number 3 and 12 outboard and inboard main track locations. This proposed AD results from a report of a hole in the inboard main track slat can for outboard slat number 12 on a Model 777 airplane. The hole was caused when the bolt securing the downstop migrated out of the fitting and contacted the slat can. We are proposing this AD to detect and correct damage to the outboard slat main track slat cans, which can allow fuel leakage into the fixed wing leading edge in excess of the capacity of the draining system. Excess fuel leakage could result in an uncontained fire.

DATES: We must receive comments on this proposed AD by February 22, 2010.

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 proposed 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: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6452; 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–2009–1249; Directorate Identifier 2009–NM–100–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received a report of a hole in the inboard main track slat can for outboard slat number 12 on a Model 777 airplane. The hole was caused when the bolt securing the downstop migrated out of the fitting and contacted the slat can. Each outboard slat main track has a downstop attached to the aft end of the slat track assembly. The downstop consists of two fittings that are secured to the track with a bolt and nut. The main tracks travel through holes in the front spar web when the slat is retracted. In areas of the wing where fuel is stored, a slat can is installed on the fuel side of the spar to surround the main track and contain the fuel. It is believed that the locking element of the nut was not fully engaged, and the nut securing the bolt backed off and allowed the bolt to migrate out of the fitting and contact the slat can. In addition, in production it was discovered that a downstop was contacting the weld on a slat can at the outboard main track location on slat numbers 3 and 12. This contact could cause wear damage and eventually a hole in the slat can. This condition, if not corrected, could result in fuel leakage into the fixed wing leading edge in excess of the capacity of the draining system. Fuel leakage could result in an uncontained fire.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 777–57A0064, dated March 26, 2009. The service bulletin describes procedures for doing a detailed inspection of the slat main track stop hardware to determine if the bolt, nut, or stops are missing and to determine if the thread protrusion of the

bolt from the nut is within specified limits. For airplanes on which hardware is missing or the thread protrusion is not within limits, the service bulletin describes procedures for doing applicable related investigative and corrective actions. These related investigative actions include measuring torque of the nuts of the slat main track stop hardware, and doing a detailed inspection of the slat can inside of the slat can for holes and gouges. The corrective actions include repairing or replacing the slat can and replacing the slat main track stop hardware.

The service bulletin also describes procedures for Group 2 airplanes for doing a detailed inspection of the slat cans at the outboard slat number 3 and 12 outboard main track locations for holes and wear damage, and corrective actions if necessary; and for replacing the downstop hardware for the outboard slats number 3 and 12 outboard and inboard main track locations. The corrective actions include replacing the slat main track stop hardware, and repairing or replacing the slat can.

The service bulletin specifies that the compliance time for the detailed inspections and the replacement is within 6 months after the issue date of the service bulletin. The compliance times for the related investigative actions range between before further flight and within 1,125 days or 6,000 flight cycles after the issue date of the service bulletin (whichever occurs first), depending on whether hardware is missing or whether damage is within the specified limits. The compliance times for the corrective actions range between before further flight and within 1,125 days after wear damage is found, depending on the severity of the damage.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

We estimate that this proposed AD would affect 129 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspection for Group 1 airplanes.	39	$80	$0	$3,120 per inspection cycle.	127	$396,240 per inspection cycle.
Inspection for Group 2 airplanes.	55	80	0	$4,400 per inspection cycle.	2	$8,800 per inspection cycle.
Replacement for Group 2 airplanes.	8	80	9,267	$9,907	2	$19,814.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

The Boeing Company: Docket No. FAA–2009–1249; Directorate Identifier 2009–NM–100–AD.

Comments Due Date

(a) We must receive comments by February 22, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 777–200, –200LR, –300, and –300ER airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 777–57A0064, dated March 26, 2009.

Subject

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

Unsafe Condition

(e) This AD results from a report of a hole in the inboard main track slat can for outboard slat number 12 on a Model 777 airplane. The Federal Aviation Administration is issuing this AD to detect and correct damage to the outboard slat main track slat cans, which can allow fuel leakage into the fixed wing leading edge in excess of the capacity of the draining system. Excess fuel leakage could result in an uncontained fire.

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.

Inspect the Slat Track Stop Hardware and Measure the Torque of the Slat Main Track Stop Hardware

(g) At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 777–57A0064, dated March 26, 2009, except as required by paragraph (h) of this AD: Do the applicable actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) *For all airplanes:* Do a detailed inspection of the slat main track stop hardware to determine if the bolt, nut, or stops are missing and to determine if the thread protrusion of the bolt from the nut is within specified limits, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0064, dated March 26, 2009. Do all applicable related investigative and corrective actions at the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 777–57A0064, dated March 26, 2009, except as required by paragraph (h) of this AD.

(2) For airplanes identified as Group 2 airplanes in Boeing Alert Service Bulletin 777–57A0064, dated March 26, 2009: Do a detailed inspection of the slat cans at the outboard slat number 3 and 12 outboard main track locations for holes and wear damage and all applicable corrective actions, and replace the downstop hardware for the outboard slats number 3 and 12 outboard and inboard main track locations. Do all applicable corrective actions at the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 777–57A0064, dated March 26, 2009.

Exception to the Service Bulletin

(h) Where Boeing Alert Service Bulletin 777–57A0064, dated March 26, 2009, specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6452; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(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 the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on December 23, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–31431 Filed 1–6–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Draft Marine Sanitation Device Discharge Regulations for the Florida Keys National Marine Sanctuary; Public Meetings

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meetings.

SUMMARY: This notice advises the public that NOAA has scheduled three public meetings to obtain comments on the proposed rule, issued on November 16, 2009 (74 FR 58923), to amend the regulations implementing the Florida Keys National Marine Sanctuary (FKNMS or sanctuary) to eliminate the exemption that allows discharges of biodegradable effluent incidental to vessel use and generated by marine sanitation devices, and to require marine sanitation devices be locked to prevent discharges into the sanctuary.

DATES: Three meetings will be held where the public will have opportunities to ask questions about the proposed rule to amend the vessel discharge regulations and provide formal comments. The meetings will be held from 4:30 p.m. to 6:30 p.m. on the following dates and at the indicated locations:

- *January 21, 2010:* Marathon Garden Club, 5270 Overseas Hwy (Mile Marker 50), Marathon, FL 33050.
- *January 25, 2010:* Florida Keys Eco-Discovery Center, 35 East Quay Road, Key West, FL 33040.
- *January 27, 2010:* Islamorada Public Library, Mile Marker 81.5 Bayside, Islamorada, FL 33036.

ADDRESSES: The proposed rule is available on the FKNMS Web site *http://floridakeys.noaa.gov*. NOAA is currently accepting comments on the proposed rule if they are received by February 17, 2010. Please see the proposed rule for further details and instructions on submitting written comments on the proposed rule.

FOR FURTHER INFORMATION CONTACT: Sean Morton, Acting Superintendent, Florida Keys National Marine Sanctuary; 33 East Quay Road, Key West, FL 33040; (305) 809–4770.

SUPPLEMENTARY INFORMATION:

Sanctuary Background

The FKNMS was designated by Congress in 1990 through the Florida Keys National Marine Sanctuary Protection Act (FKNMSPA, Pub. L. 101–605) and extends approximately 220 nautical miles southwest from the southern tip of the Florida peninsula, and is composed of both State and Federal waters. The sanctuary's marine ecosystem supports over 6,000 species of plants, fishes, and invertebrates, including the Nation's only living coral reef that lies adjacent to the continent. The area includes one of the largest seagrass communities in this hemisphere. The primary goal of the sanctuary is to protect the marine resources of the Florida Keys. Other goals of the sanctuary include facilitating human uses that are consistent with the primary objective of resource protection as well as educating the public about the Florida Keys marine environment. Attracted by this subtropical diversity, tourists spend more than thirteen million visitor days in the Florida Keys each year. In addition, the region provides recreation and livelihoods for approximately 80,000 residents.

Location and Size of Resource Management

FKNMS is 2,900 square nautical miles of coastal waters, including the 2001 addition of the Tortugas Ecological

Reserve. The sanctuary overlaps four national wildlife refuges, six State parks, three State aquatic preserves and incorporates two of the earliest national marine sanctuaries to be designated, Key Largo and Looe Key National Marine Sanctuaries. Three national parks have separate jurisdictions, and share a boundary with the sanctuary. The region also has some of the most significant maritime heritage and historical resources of any coastal community in the nation.

Proposed Regulatory Amendment

On November 16, 2009, NOAA issued a proposed rule to amend the FKNMS regulations to eliminate the exemption that allows discharges of biodegradable effluent incidental to vessel use and generated by marine sanitation devices, and to require marine sanitation devices be locked to prevent discharges (74 FR 58923). The meetings described in the **DATES** section above are intended to provide the public with additional opportunities to ask questions and provide formal comment about this proposed regulation. Written comments will be collected on note cards and verbal comments will be recorded and transcribed.

Dated: December 29, 2009.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries.

[FR Doc. E9–31407 Filed 1–6–10; 8:45 am]

BILLING CODE 3510–NK–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0956; FRL–9101–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; 2002 Base Year Emission Inventory, Reasonable Further Progress Plan, Contingency Measures, Reasonably Available Control Measures, and Transportation Conformity Budgets for the Philadelphia 1997 8-Hour Moderate Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Maryland State Implementation Plan (SIP) to meet the 2002 base year emissions inventory, the reasonable further progress (RFP) plan, RFP contingency measure, and reasonably available control measure (RACM) requirements of the Clean Air Act (CAA) for the Maryland portion of the Philadelphia moderate 1997 8-hour ozone nonattainment area. EPA is also proposing to approve the transportation conformity motor vehicle emissions budgets (MVEBs) and associated with this revision. EPA is proposing to approve the SIP revision because it satisfies the emission inventory, RFP, RACM, and RFP contingency measures, transportation conformity requirements for areas classified as moderate nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS) and demonstrates further progress in reducing ozone precursors. EPA is proposing to approve the SIP revision pursuant to section 110 and part D of the CAA and EPA's regulations.

DATES: Written comments must be received on or before February 8, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0956 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2009–0956, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2009–0956. 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 electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by e-mail at *pino.maria@epa.gov.*

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

The following is provided to aid in locating information in this document.

I. What Action Is EPA Taking?

EPA is proposing to approve a revision to the Maryland SIP submitted by the Maryland Department of the Environment (MDE) on June 4, 2007 to meet the emissions inventory and RFP requirements of the CAA for the Maryland portion of the Philadelphia-Wilmington-Atlantic City moderate 1997 8-hour ozone nonattainment area (Philadelphia NAA). EPA is proposing to approve the 2002 base year emissions inventory, the 15 percent RFP plan and

associated projected 2008 emission inventories, the contingency measures for failure to meet 2008 RFP, the RACM analysis, and the RFP 2008 MVEBs. The RFP plan demonstrates that emissions will be reduced 15 percent for the period of 2002 through 2008. The volatile organic compound (VOC) MVEB is 2.3 tons per day (tpd) and the nitrogen oxides (NO_X) MVEB is 7.9 tpd. EPA is proposing to approve the SIP revision because it satisfies RFP, contingency measure, RACM, RFP transportation conformity, and emissions inventory requirements for areas classified as moderate nonattainment for the 1997 8-hour ozone NAAQS and demonstrates further progress in reducing ozone precursors. EPA is proposing to approve the SIP revision pursuant to section 110 and part D of the CAA and EPA's regulations.

II. What Is the Background for This Action?

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. Among those nonattainment areas is the Philadelphia NAA. The Philadelphia NAA includes Cecil County, Maryland; five counties in Pennsylvania; nine counties in New Jersey; and the entire State of Delaware.

These designations triggered the CAA's section 110(a)(1) requirement that states must submit attainment demonstrations for their nonattainment areas to EPA by no later than three years after the promulgation of a NAAQS. Accordingly, EPA's Phase 1 8-hour ozone implementation rule (Phase 1 rule), published on April 30, 2004 (69 FR 23951), specifies that states must submit attainment demonstrations for their nonattainment areas to the EPA by no later than three years from the effective date of designation, that is, by June 15, 2007.

Pursuant to the Phase 1 rule, an area was classified under subpart 2 of the CAA based on its 8-hour design value if that area had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). Based on this criterion, the Philadelphia NAA was classified under subpart 2 as a moderate nonattainment area.

On November 29, 2005 (70 FR 71612), as revised on June 8, 2007 (72 FR 31727), EPA published the Phase 2 final rule for implementation of the 8-hour standard (Phase 2 rule). The Phase 2 rule addressed the RFP control and planning obligations as they apply to areas designated nonattainment for the 1997 8-hour ozone NAAQS.

Among other things, the Phase 1 and 2 rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. The rules further require that modeling and attainment demonstrations, reasonable further progress plans, reasonably available control measures, projection year emission inventories, motor vehicle emissions budgets, and contingency measures were all due by June 15, 2007 (40 CFR 51.908(a), (c)).

Section 182(b)(1) of the CAA and EPA's 1997 8-hour ozone implementation rule (40 CFR 51.910) require each 8-hour ozone nonattainment area designated moderate and above to submit an emissions inventory and RFP Plan, for review and approval into its SIP, that describes how the area will achieve actual emissions reductions of VOC and NO_X from a baseline emissions inventory.

III. What Is EPA's Evaluation of the Revision?

EPA's analysis and findings are discussed in this proposed rulemaking and a more detailed discussion is contained in the Technical Support Document for this Proposal which is available on line at *http://www.regulations.gov*, Docket number EPA–R03–OAR–2009–0956.

On June 4, 2007, Maryland submitted a comprehensive plan for the Maryland portion of the Philadelphia NAA (*i.e.*, Cecil County) to address the CAA's 8-hour ozone attainment requirements that were identified earlier (the Cecil County 8-hour ozone plan). The SIP submittal included an attainment demonstration plan, RFP plans for 2008 and 2009, a RACM analysis, contingency measures, on-road VOC and NO_X MVEBs, and the 2002 base year emissions inventory. These SIP revisions were subject to notice and comment by the public and the State addressed the comments received on the proposed SIPs. All sections of this SIP submittal with the exception of the attainment demonstration plan will be discussed in this rulemaking. The attainment demonstration plan sections of this SIP submittal will be discussed in a separate rulemaking.

A. Base Year Emissions Inventory

An emissions inventory is a comprehensive, accurate, current inventory of actual emissions from all sources and is required by section 172(c)(3) of the CAA. For ozone nonattainment areas, the emissions inventory needs to contain VOC and NO_X emissions because these pollutants are precursors to ozone formation. EPA recommended 2002 as the base year emissions inventory, and is therefore the starting point for calculating RFP. Maryland submitted its 2002 base year emissions inventory on June 4, 2007. A summary of Cecil County 2002 base year VOC and NO_X emissions inventories is included in Table 1, below.

TABLE 1—CECIL COUNTY 2002 BASE YEAR VOC & NO_X EMISSIONS IN TONS PER DAY (TPD)

Emission source category	VOC	NO_X
Point	0.28	0.02
Stationary Area	4.93	0.20
Non-Road Mobile	8.37	2.97
On-Road Mobile	4.00	14.22
Total (excluding Biogenics)	42.94	0
Biogenics	17.58	17.40

B. Adjusted Base Year Inventory and 2008 RFP Target Levels

The process for determining the emissions baseline from which the RFP reductions are calculated is described in section 182(b)(1) of the CAA and 40 CFR 51.910. This baseline value is the 2002 adjusted base year inventory. Sections 182(b)(1)(B) and (D) require the exclusion from the base year inventory of emissions benefits resulting from the Federal Motor Vehicle Control Program (FMVCP) regulations promulgated by January 1, 1990, and the Reid Vapor Pressure (RVP) regulations promulgated June 11, 1990 (55 FR 23666). The FMVCP and RVP emissions reductions are determined by the State using EPA's on-road mobile source emissions modeling software, MOBILE6. The FMVCP and RVP emission reductions are then removed from the base year inventory by the State, resulting in an adjusted base year inventory. The emission reductions needed to satisfy the RFP requirement are then calculated from the adjusted base year inventory.

These reductions are then subtracted from the adjusted base year inventory to establish the emissions target for the RFP milestone year (2008).

For moderate areas like the Philadelphia NAA, the CAA specifies a 15 percent reduction in ozone precursor emissions over an initial six-year period. In the Phase 2 Rule, EPA interpreted this requirement for areas that were also designated nonattainment and classified as moderate or higher for the 1-hour ozone standard. In the Phase 2 Rule, EPA provided that an area classified as moderate or higher that has the same boundaries as an area, or is entirely composed of several areas or portions of areas, for which EPA fully approved a 15 percent plan for the 1-hour NAAQS, is considered to have met the requirements of section 182(b)(1) of the CAA for the 8-hour NAAQS. In this situation, a moderate nonattainment area is subject to RFP under section 172(c)(2) of the CAA and shall submit, no later than 3 years after designation for the 8-hour NAAQS, a SIP revision that meets the requirements of 40 CFR 51.910(b)(2). The RFP SIP revision must provide for a 15 percent emission reduction (either NO_X and/or VOC) accounting for any growth that occurs during the six-year period following the baseline emissions inventory year, that is, 2002–2008.

The Maryland portion of the Philadelphia NAA under the 1-hour ozone standard had the same boundary as the Maryland portion of the Philadelphia NAA under the 1997 8-hour ozone standard. The Philadelphia NAA under the 1-hour ozone standard was classified as severe. EPA approved Maryland's 15% plan for its portion of the Philadelphia severe ozone nonattainment area on July 29, 1997 (62 FR 40457). Therefore, according to the Phase 2 Rule, the RFP plan for Cecil County may use either NO_X or VOC emissions reductions (or both) to achieve the 15 percent emission reduction requirement.

According to section 182(b)(1)(D) of the CAA, emission reductions that resulted from the FMVCP and Reid Vapor Pressure RVP rules promulgated prior to 1990 are not creditable for achieving RFP emission reductions. Therefore, the 2002 base year inventory is adjusted by subtracting the VOC and NO_X emission reductions that are expected to occur between 2002 and the future milestone years due to the FMVCP and RVP rules.

Maryland sets out its calculations for the adjusted base year inventory and 2008 RFP target levels in Section 5 of the Cecil County 8-hour ozone plan.

Step 1. Calculate the Cecil County 2002 anthropogenic base year inventory. This is found in Table 5–1 of the Cecil County 8-hour ozone plan, and shown in Table 2, below.

TABLE 2—CECIL COUNTY 2002 ANTHROPOGENIC BASE YEAR INVENTORY

[Ozone season tpd]

Source category	VOC	NO_X
Point	0.28	0.02
Area	4.93	0.20
Non-Road	8.37	2.97
On-Road	4.00	14.22
Total	17.58	17.40

Step 2. Maryland calculated the non-creditable emission reductions between 2002 and 2008 by modeling its 2002 and 2008 motor vehicle emissions with all post-1990 CAA measures turned off, and calculating the difference. See Table 3, below.

TABLE 3—CECIL COUNTY NON-CREDITABLE EMISSION REDUCTIONS

[Ozone season tpd]

Source category	VOC	NO_X
(i) 2002 On-Road	5.42	16.09
(ii) 2008 On-Road	4.73	13.90
Non-creditable Reductions (i)–(ii)	0.69	2.19

Step 3. Maryland's calculations of the Cecil County 2002 VOC and NO_X inventories adjusted relative to 2008 and VOC and NO_X target levels for 2008 are found in Table 5–4 and Appendix C of the Cecil County 8-hour ozone plan, and are summarized in Table 4, below.

TABLE 4—CECIL COUNTY 2008 RFP TARGET LEVEL CALCULATIONS

[Ozone season tpd]

	Description	Formula	VOC	NO_X
A	2002 Rate of Progress Base Year Inventory		17.58	17.40
B	FMVCP/RVP Reductions Between 2002 and 2008		0.69	2.19
C	2002 Adjusted Base Year Inventory Relative to 2008	A – B	16.89	15.21
D	RFP Reductions Totaling 15%		7	8
E	Emissions Reductions Required Between 2002 and 2008	C * D	1.18	1.22
F	Target Level for 2008	C – E	15.71	13.99

C. Projected Inventories and Determination of RFP

Maryland describes its methods used for developing its 2008 projected VOC and NO_X inventories in Section 4.0 and Appendix B of the Cecil County 8-hour ozone plan. Projected uncontrolled and controlled 2008 VOC and NO_X emissions are found in Appendix C of the Cecil County 8-hour ozone plan. EPA reviewed the procedures Maryland used to develop its projected inventories and found them to be reasonable.

Projected controlled 2008 emissions for Cecil County are summarized in Table 4–3 of the Cecil County 8-hour ozone plan. The data from Table 4–3 is presented below, in Table 5, below.

TABLE 5—CECIL COUNTY 2008 PROJECTED CONTROLLED VOC & NO_X EMISSIONS (TPD)

Emission source category	VOC emissions (tpd)	NO_X emissions (tpd)
Point	0.39	0.02
Area	4.75	0.23
Non-road	7.23	2.87

TABLE 5—CECIL COUNTY 2008 PROJECTED CONTROLLED VOC & NO_X EMISSIONS (TPD)—Continued

Emission source category	VOC emissions (tpd)	NO_X emissions (tpd)
Mobile	2.29	7.93
Total	14.65	11.05

To determine if 2008 RFP is met in Cecil County, the total projected controlled emissions must be compared to the target levels calculated in the

previous section of this document. As shown below in Table 6, the total VOC and NO_X emission projections meet the 2008 emission targets. Therefore, the 2008 RFP in Cecil County is demonstrated.

TABLE 6—DETERMINATION OF WHETHER RFP IS MET IN 2008 IN CECIL COUNTY

Description	VOC emissions (tpd)	NO_X emissions (tpd)
A Total 2008 Projected Controlled Emissions	14.65	11.05
B Target Level for 2008	15.71	13.99
RFP met if A < B	(1)	(1)

[1] Yes.

D. Control Measures and Emission Reductions for RFP

The control measures Maryland took credit for in order to meet the RFP requirement in Cecil County are described in Section 6.0 of the Cecil County 8-hour ozone plan. Maryland used a combination of on-road mobile, non-road mobile, and area source control measures to meet the RFP requirement for Cecil County.

The on-road mobile measures Maryland used to meet 2008 RFP in Cecil County include enhanced vehicle inspection and maintenance (enhanced I/M), Tier I vehicle emission standards and new federal evaporative test procedures (Tier I), reformulated gasoline, the national low emission vehicle (NLEV) program, and the federal heavy-duty diesel engine (HDDE) rule. Maryland calculated the emission reductions for 2008 RFP using the MOBILE model for these on-road mobile measures. EPA reviewed the procedures that MDE used to develop its projected inventories, including the use of the MOBILE model, and found them to be reasonable. Maryland calculated the on-road mobile 2008 emission reductions to be 1.75 tpd VOC and 3.78 tpd NO_X.

The non-road measures Maryland used to meet 2008 RFP in Cecil County include non-road small gasoline engines, non-road diesel engines (Tier I and Tier II), marine engine standards, emission standards for large spark engines, and reformulated gasoline used in non-road motor vehicles and equipment. Maryland used the NONROAD model to calculate emission reductions from these non-road measures. EPA reviewed the procedures that MDE used to develop its projected inventories, including the use of the NONROAD model, and found them to be reasonable. Maryland calculated the non-road mobile 2008 emission reductions to be 1.18 tpd VOC and 0.28 tpd NO_X.

The other measures that Maryland used to meet RFP in Cecil County are railroad engine standards (Tier 2), the consumer and commercial products rule (Phase I), the architectural and industrial (AIM) coatings rule, and the portable fuel containers rule (Phase I). In the Technical Support Document (TSD) for this action, EPA evaluates each of these measures and calculated the projected 2008 emission for each measure. For details, please refer to EPA's TSD.

The tier 2 railroad engine standards for newly manufactured and remanufactured diesel-powered locomotives and locomotive engines took effect in 2000. EPA calculated 2008 emission reductions from railroad engines to be 0.20 tpd NO_X.

A federal measure requires reformulation of AIM coatings, which are field-applied coatings used by industry, contractors, and homeowners to coat houses, buildings, highway surfaces, and industrial equipment for decorative or protective purposes. Maryland's AIM rule was effective on March 29, 2004. EPA calculated 2008 emission reductions from Maryland's AIM rule to be 0.39 tpd VOC.

The phase I commercial and consumer products rule requires the reformulation of certain consumer products to reduce their VOC content. Maryland's consumer products rule was effective on August 18, 2003. EPA calculated 2008 emission reductions from Maryland's consumer and commercial products rule to be 0.14 tpd VOC.

The phase I portable fuel containers rule introduces performance standards for portable fuel containers and spouts, and is intended to reduce emissions from storage, transport and refueling activities. Maryland's portable fuel container rule was effective on January 21, 2002. EPA calculated 2008 emission reductions from Maryland's portable fuel containers rule to be 0.32 tpd VOC.

Table 7 summarizes the emission reductions that Maryland claimed in the Cecil County 8-hour ozone plan to meet RFP in Cecil County. For certain control measures, the 2008 projected emission reductions calculated by EPA differ from the 2008 projected emission reductions that MDE is taking credit for in the Cecil County 8-hour ozone plan. The total 2008 projected emission reductions calculated by EPA are greater than the emission reductions claimed by MDE in the Cecil County 8-hour ozone plan. Therefore, the emission reductions claimed in the Cecil County 8-hour ozone plan are approvable.

TABLE 7—CONTROL MEASURES AND 2008 EMISSION REDUCTIONS IN CECIL COUNTY

Control measure	VOC (tpd)	NO_X (tpd)
On-road Mobile Measures	1.75	3.78
Non-road Model	1.18	0.28
Railroads (Tier 2)	0.00	0.15
OTC—Consumer Products Phase 1	0.14	0.00
OTC—AIM Coatings	0.39	0.00
OTC—Portable Fuel Containers Phase 1	0.26	0.00
Total	3.71	4.21

E. Contingency Measures

Section 172(c)(9) of the CAA requires a state with a moderate or above ozone nonattainment area to include sufficient additional contingency measures in its RFP plan in case the area fails to meet RFP. The same provision of the CAA also requires that the contingency measures must be fully adopted control measures or rules. Upon failure to meet an RFP milestone requirement, the state must be able to implement the contingency measures without any further rulemaking activities. Upon implementation of such measures, additional emission reductions of at least 3 percent of the adjusted 2002 baseline emissions must be achieved. For more information on contingency measures, see the April 16, 1992 General Preamble (57 FR 13512) and the November 29, 2005 Phase 2 8-hour ozone implementation rule (70 FR 71612).

To meet the requirements for contingency emission reductions, EPA allows states to use NO_X emission reductions to substitute for VOC emission reductions in their contingency plans. However, MDE chose to use only VOC reductions to meet the contingency measure requirement in Cecil County. MDE discusses its Cecil County contingency measures for failure to meet RFP in Section 10.2 of the Cecil County 8-hour ozone plan. MDE calculated the contingency VOC reduction for Cecil County as shown in Table 8, below. The RFP contingency requirement may be met by including in the RFP plan a demonstration of 18 percent VOC & NO_X RFP. The additional 3 percent reduction above the 15 percent requirement must be attributed to specific measures.

TABLE 8—CECIL COUNTY 2008 RFP CONTINGENCY MEASURE TARGET LEVEL CALCULATIONS

Description	Formula	VOC	NO_X
A 2002 Rate-Of Progress Base Year Inventory		17.58	17.40
B FMVCP/RVP Reductions Between 2002 And 2008		0.69	2.19
C 2002 Adjusted Base Year Inventory Relative To 2008	A – B	16.89	15.21
D RFP Reductions Totaling 15%		0.07	0.08
E RFP Emissions Reductions Required Between 2002 & 2008	C * D	1.18	1.22
F Contingency Percentage		[1]3	[1]0
G Contingency Emission Reduction Requirements	C * F	0.51	0
H Contingency Measure Target Level for 2008	C – E – G	15.20	13.99

[1] Percent.

To determine if Maryland met the three percent contingency measure requirement for Cecil County, the total projected controlled emissions must be compared to the contingency measure target levels calculated above. As shown below in Table 9, the total VOC and NO_X emission projections meet the 2008 contingency measure targets. Therefore, MDE has met the contingency measure requirement for Cecil County.

TABLE 9—EVALUATION OF THE CECIL COUNTY 2008 RFP CONTINGENCY MEASURE REQUIREMENT

Description	VOC (tpd)	NO_X (tpd)
A Total 2008 Projected Controlled Emissions	14.65	11.05
B Contingency Measure Target Level for 2008	15.20	13.99
Contingency measure requirement met if A < B	([1])	([1])

[1] Yes.

F. RACM Analysis

Pursuant to section 172(c)(1) of the CAA, states are required to implement all RACM as expeditiously as practicable for each nonattainment area. Specifically, section 172(c)(1) states the following: "In general—Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards." Furthermore, in EPA's Phase 2 Rule, EPA describes how states must include a RACM analysis with their attainment demonstration (70 FR 71659). The purpose of the RACM analysis is to determine whether or not reasonably available control measures exist that would advance the attainment date for nonattainment areas. Control measures that would advance the attainment date are considered RACM and must be included in the SIP. RACM are necessary to ensure that the attainment date is achieved "as expeditious as practicable." RACM is defined by the EPA as any potential control measure for application to point, area, on-road and non-road emission source categories that meets the following criteria:

- The control measure is technologically feasible.
- The control measure is economically feasible.
- The control measure does not cause "substantial widespread and long-term adverse impacts."
- The control measure is not "absurd, unenforceable, or impracticable."
- The control measure can advance the attainment date by at least one year.

MDE addresses the RACM requirement in Section 7.0 and Appendix E of the Cecil County 8-hour ozone plan. To meet the RACM requirement, Maryland must demonstrate that it has adopted all RACM necessary to move Cecil County and the Philadelphia NAA toward attainment as expeditiously as practicable and to meet all RFP requirements. As demonstrated above in Sections C and D of this document, Maryland has met the RFP requirements for Cecil County.

MDE used two independently developed lists of potential control measures for its RACM analysis. The first list consists of the RACM analysis performed for the Washington, DC NAA's 8-hour ozone plan. The second list of measures was developed by the Baltimore Metropolitan Council (BMC) with MDE in 2006. These measures are evaluated in Appendices E–1 and E–2 of the Cecil County 8-hour ozone plan.

EPA has reviewed MDE's RACM analysis in the TSD for this action. MDE evaluated all source categories that could contribute meaningful emission reductions, and evaluated an extensive list of potential control measures. MDE considered the time needed to develop and adopt regulations and the time it would take to see the benefit from these measures. EPA concurs with MDE's conclusion that there are no RACM that would have advanced the moderate area attainment date of 2010 for Cecil County and the Philadelphia NAA. Therefore, MDE's RACM analysis in the Cecil County 8-hour ozone plan is approvable.

G. Transportation Conformity Budgets

Transportation conformity is required by CAA section 176(c). EPA's conformity rule requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedure for determining whether or not they do. Conformity to a 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.

States must establish VOC and NO_X MVEBs for each of the milestone years up to the attainment year and submit the mobile budgets to EPA for approval. Upon adequacy determination or approval by EPA, states must conduct transportation conformity analysis for their Transportation Improvement Programs (TIPs) and long range transportation plans to ensure highway vehicle emissions will not exceed relevant MVEBs.

MDE discusses transportation conformity in Section 8.0 of the Cecil County 8-hour ozone plan. MDE describes the methods it used to calculate the 2008 mobile emissions inventory in Appendix F of the Cecil County 8-hour ozone plan. The Cecil County MVEB for the 2008 RFP is based on the projected 2008 mobile source emissions accounting for all mobile control measures. The MVEBs for the 2008 RFP are shown in Table 10, below.

TABLE 10—CECIL COUNTY 2008 RFP MVEBS

VOC (tpd)	NO_x (tpd)
2.3	7.9

In a March 27, 2009 **Federal Register** notice (74 FR 13433), EPA notified the public that EPA found that the 2008 RFP MVEBs in the Cecil County 8-hour ozone plan are adequate for transportation conformity purposes. In addition to the budgets being adequate for transportation conformity purposes, EPA found the procedures Maryland used to develop the MVEBs to be reasonable. The budgets are identical to the projected 2008 on-road mobile source emission inventories. Because the 2008 RFP MVEBs are adequate for transportation conformity purposes and the methods MDE used to develop them are correct, the 2008 RFP budgets are approvable.

V. What Are EPA's Conclusions?

EPA's review of the 2002 base year emissions inventory; the 2008 ozone projected emission inventory; the 2008 RFP plan; RFP contingency measures; Maryland's RACM analysis; and 2008 transportation conformity budgets contained in MDE's June 4, 2007 SIP revision submittal for Cecil County fully addressed the CAA's requirements. Therefore, EPA is proposing approval of those elements of MDE's June 4, 2007 Cecil County 8-hour ozone plan. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 CAA; 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 proposed rule pertaining to Cecil County's 2002 base year emissions inventory; 2008 ozone projected emission inventory; 2008 RFP plan; RFP contingency measures; RACM analysis; and 2008 transportation conformity budgets 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 23, 2009.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–15 Filed 1–6–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0957; FRL–9100–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; 2002 Base Year Emission Inventory, Reasonable Further Progress Plan, Contingency Measures, Reasonably Available Control Measures, and Transportation Conformity Budgets for the Baltimore 1997 8-Hour Moderate Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Maryland State Implementation Plan (SIP) to meet the 2002 base year emissions inventory, the reasonable further progress (RFP) plan, RFP contingency measure, and reasonably available control measure (RACM) requirements of the Clean Air Act (CAA) for the Baltimore moderate 1997 8-hour ozone nonattainment area. EPA is also proposing to approve the transportation conformity motor vehicle emissions budgets (MVEBs) and associated with this revision. EPA is proposing to approve the SIP revision because it satisfies the emission inventory, RFP, RACM, RFP contingency measures, and transportation conformity requirements for areas classified as moderate nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS) and demonstrates further progress in reducing ozone precursors. EPA is proposing to approve the SIP revision pursuant to section 110 and part D of the CAA and EPA's regulations.

DATES: Written comments must be received on or before February 8, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0957 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail:* *fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2009–0957, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such

deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2009–0957. 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 electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by e-mail at *pino.maria@epa.gov.*

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

The following is provided to aid in locating information in this document.

I. What Action is EPA Taking?

EPA is proposing to approve a revision to the Maryland SIP submitted by the Maryland Department of the Environment (MDE) on June 4, 2007 to meet the emissions inventory and RFP requirements of the CAA for the Baltimore moderate 1997 8-hour ozone nonattainment area (NAA). EPA is proposing to approve the 2002 base year emissions inventory, the 15 percent RFP plan and associated projected 2008 emission inventories, the contingency measures for failure to meet 2008 RFP, the RACM analysis, and the RFP 2008 MVEBs. The RFP plan demonstrates that emissions will be reduced 15 percent for the period of 2002 through 2008. The volatile organic compound (VOC) MVEB is 41.2 tons per day (tpd) and the nitrogen oxides (NO_X) MVEB is 106.8 tpd. EPA is proposing to approve the SIP revision because it satisfies RFP, contingency measure, RACM, RFP transportation conformity, and emissions inventory requirements for areas classified as moderate nonattainment for the 1997 8-hour ozone NAAQS and demonstrates further progress in reducing ozone precursors. EPA is proposing to approve the SIP revision pursuant to section 110 and part D of the CAA and EPA's regulations.

II. What is the Background for this Action?

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. Among those nonattainment areas is the Baltimore moderate NAA. This NAA includes Baltimore City and Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties, all in Maryland.

These designations triggered the CAA's section 110(a)(1) requirement that States must submit attainment demonstrations for their nonattainment areas to EPA by no later than three years after the promulgation of a NAAQS. Accordingly, EPA's Phase 1 8-hour ozone implementation rule (Phase 1 rule), published on April 30, 2004 (69 FR 23951), specifies that States must submit attainment demonstrations for their nonattainment areas to the EPA by no later than three years from the effective date of designation, that is, by June 15, 2007.

Pursuant to the Phase 1 rule, an area was classified under subpart 2 of the CAA based on its 8-hour design value if that area had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). Based on this criterion, the Baltimore ozone NAA was classified under subpart 2 as a moderate nonattainment area.

On November 29, 2005 (70 FR 71612), as revised on June 8, 2007 (72 FR 31727), EPA published the Phase 2 final rule for implementation of the 8-hour standard (Phase 2 rule). The Phase 2 rule addressed the RFP control and planning obligations as they apply to areas designated nonattainment for the 1997 8-hour ozone NAAQS.

Among other things, the Phase 1 and 2 rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. The rules further require that modeling and attainment demonstrations, reasonable further progress plans, reasonably available control measures, projection year emission inventories, motor vehicle emissions budgets, and contingency measures were all due by June 15, 2007 (40 CFR 51.908(a), (c)).

Section 182(b)(1) of the CAA and EPA's 1997 8-hour ozone implementation rule (40 CFR 51.910) require each 8-hour ozone nonattainment area designated moderate and above to submit an emissions inventory and RFP Plan, for review and approval into its SIP, that describes how the area will achieve actual emissions reductions of VOC and NO_X from a baseline emissions inventory.

III. What is EPA's Evaluation of the Revision?

EPA's analysis and findings are discussed in this proposed rulemaking and a more detailed discussion is contained in the Technical Support Document for this Proposal which is available on line at *http://www.regulations.gov*, Docket number EPA–R03–OAR–2009–0957.

On June 4, 2007, Maryland submitted a comprehensive plan for the Baltimore NAA to address the CAA's 8-hour ozone attainment requirements that were identified earlier (the Baltimore 8-hour ozone plan). The SIP submittal included an attainment demonstration plan, RFP plans for 2008 and 2009, a RACM analysis, contingency measures, on-road VOC and NO_X MVEBs, and the 2002 base year emissions inventory. These SIP revisions were subject to notice and comment by the public and the State addressed the comments received on the proposed SIPs. All sections of this SIP submittal with the exception of the attainment demonstration plan will be discussed in this rulemaking. The attainment demonstration plan sections of this SIP submittal will be discussed in a separate rulemaking.

A. Base Year Emissions Inventory

An emissions inventory is a comprehensive, accurate, current inventory of actual emissions from all sources and is required by section 172(c)(3) of the CAA. For ozone nonattainment areas, the emissions inventory needs to contain VOC and NO_X emissions because these pollutants are precursors to ozone formation. EPA recommended 2002 as the base year emissions inventory, and is therefore the starting point for calculating RFP. Maryland submitted its 2002 base year emissions inventory on June 4, 2007. A summary of the Baltimore NAA 2002 base year VOC and NO_X emissions inventories is included in Table 1, below.

TABLE 1—BALTIMORE NAA 2002 BASE YEAR VOC & NO_X EMISSIONS IN TONS PER DAY (TPD)

Emission source category	VOC	NO_X
Point	13.88	111.88
Stationary Area	116.81	8.18
Non-Road Mobile	70.22	40.96
On-Road Mobile	70.57	177.06
Total (excluding Biogenics)	271.48	338.08
Biogenics	223.20	0

B. Adjusted Base Year Inventory and 2008 RFP Target Levels

The process for determining the emissions baseline from which the RFP reductions are calculated is described in section 182(b)(1) of the CAA and 40 CFR 51.910. This baseline value is the 2002 adjusted base year inventory. Sections 182(b)(1)(B) and (D) require the exclusion from the base year inventory of emissions benefits resulting from the Federal Motor Vehicle Control Program (FMVCP) regulations promulgated by January 1, 1990, and the Reid Vapor Pressure (RVP) regulations promulgated June 11, 1990 (55 FR 23666). The FMVCP and RVP emissions reductions are determined by the State using EPA's on-road mobile source emissions modeling software, MOBILE6. The FMVCP and RVP emission reductions are then removed from the base year inventory by the State, resulting in an adjusted base year inventory. The emission reductions needed to satisfy the RFP requirement are then calculated from the adjusted base year inventory. These reductions are then subtracted from the adjusted base year inventory to establish the emissions target for the RFP milestone year (2008).

For moderate areas like the Baltimore NAA, the CAA specifies a 15 percent reduction in ozone precursor emissions over an initial six year period. In the Phase 2 Rule, EPA interpreted this requirement for areas that were also designated nonattainment and classified as moderate or higher for the 1-hour ozone standard. In the Phase 2 Rule, EPA provided that an area classified as moderate or higher that has the same boundaries as an area, or is entirely composed of several areas or portions of areas, for which EPA fully approved a 15 percent plan for the 1-hour NAAQS, is considered to have met the requirements of section 182(b)(1) of the CAA for the 8-hour NAAQS. In this situation, a moderate nonattainment area is subject to RFP under section 172(c)(2) of the CAA and shall submit, no later than 3 years after designation for the 8-hour NAAQS, a SIP revision that meets the requirements of 40 CFR 51.910(b)(2). The RFP SIP revision must provide for a 15 percent emission reduction (either NO_X and/or VOC) accounting for any growth that occurs during the six year period following the baseline emissions inventory year; that is, 2002–2008.

The Baltimore ozone NAA under the 1-hour ozone standard had the same boundary as the Baltimore NAA under the 1997 8-hour ozone standard. The Baltimore nonattainment area under the 1-hour ozone standard was classified as severe. EPA approved Maryland's 15% plan for the Baltimore severe ozone nonattainment area on February 2, 2000 (65 FR 5252). Therefore, according to the Phase 2 Rule, the RFP plan for the Baltimore NAA may use either NO_X or VOC emissions reductions (or both) to achieve the 15 percent emission reduction requirement.

According to section 182(b)(1)(D) of the CAA, emission reductions that resulted from the FMVCP and Reid Vapor Pressure RVP rules promulgated prior to 1990 are not creditable for achieving RFP emission reductions. Therefore, the 2002 base year inventory is adjusted by subtracting the VOC and NO_X emission reductions that are expected to occur between 2002 and the future milestone years due to the FMVCP and RVP rules.

Maryland sets out its calculations for the adjusted base year inventory and 2008 RFP target levels in Section 5 of the Baltimore 8-hour ozone plan.

Step 1. Calculate the Baltimore NAA 2002 anthropogenic base year inventory. This is found in Table 5–1 of the Baltimore 8-hour ozone plan, and shown in Table 2, below.

TABLE 2—BALTIMORE NAA 2002 ANTHROPOGENIC BASE YEAR INVENTORY

[Ozone season tpd]

Source category	VOC	NO_X
Point	13.88	111.88
Area	116.81	8.18
Non-Road	70.22	40.96
On-Road	70.57	177.06
Total	271.48	338.08

Step 2. Maryland calculated the non-creditable emission reductions between 2002 and 2008 by modeling its 2002 and 2008 motor vehicle emissions with all post-1990 CAA measures turned off, and calculating the difference. *See,* Table 3, below.

TABLE 3—BALTIMORE NAA NON-CREDITABLE EMISSION REDUCTIONS

[Ozone season tpd]

Source category	VOC	NO_X
(i) 2002 On-Road	101.876	211.145
(ii) 2008 On-Road	92.778	188.541
Non-creditable Reductions (i)–(ii)	9.10	22.60

Step 3. Maryland's calculations of the Baltimore NAA 2002 VOC and NO_X inventories adjusted relative to 2008 and VOC and NO_X target levels for 2008 are found in Table 5–4 and Appendix C

of the Baltimore 8-hour ozone plan, and are summarized in Table 4, below.

TABLE 4—BALTIMORE NAA 2008 RFP TARGET LEVEL CALCULATIONS

[Ozone season tpd]

Description	Formula	VOC	NO_X
A. 2002 Rate-Of Progress Base Year Inventory	.....	271.48	338.08
B. FMVCP/RVP Reductions Between 2002 And 2008	.....	9.10	22.60
C. 2002 Adjusted Base Year Inventory Relative To 2008	A – B	262.38	315.48
D. RFP Reductions Totaling 15%	.....	8	7
E. Emissions Reductions Required Between 2002 & 2008	C * D	20.99	22.08
F. Target Level for 2008	C – E	241.39	293.40

C. Projected Inventories and Determination of RFP

Maryland describes its methods used for developing its 2008 projected VOC and NO_X inventories in Section 4.0 and Appendix B of the Baltimore 8-hour ozone plan. Projected uncontrolled and controlled 2008 VOC and NO_X emissions are found in Appendix C of the Baltimore 8-hour ozone plan. EPA reviewed the procedures Maryland used to develop its projected inventories and found them to be reasonable.

Projected controlled 2008 emissions for the Baltimore NAA are summarized in Table 4–3 of the Baltimore 8-hour ozone plan. The data from Table 4–3 is presented below, in Table 5, below.

TABLE 5—BALTIMORE NAA 2008 PROJECTED CONTROLLED VOC & NO_X EMISSIONS (TPD)

Emission source category	VOC emissions (tpd)	NO_X emissions (tpd)
Point	15.63	122.64
Area	108.17	8.43
Non-road	54.21	39.60
Mobile	41.23	106.84
Total	219.25	277.50

To determine if 2008 RFP is met in the Baltimore NAA, the total projected controlled emissions must be compared to the target levels calculated in the previous section of this document. As shown below in Table 6, the total VOC and NO_X emission projections meet the 2008 emission targets. Therefore, the 2008 RFP in the Baltimore NAA is demonstrated.

TABLE 6—DETERMINATION OF WHETHER RFP IS MET IN 2008 IN THE BALTIMORE NAA

Description	VOC emissions (tpd)	NO_X emissions (tpd)
A. Total 2008 Projected Controlled Emissions	219.25	277.50
B. Target Level for 2008	241.39	293.40
RFP met if A < B	(1)	(1)

[1] Yes.

D. Control Measures and Emission Reductions for RFP

The control measure Maryland took credit for in order to meet the RFP requirement in the Baltimore NAA are described in Section 6.0 of the Baltimore 8-hour ozone plan. Maryland used a combination of on-road mobile, non-road mobile, and area source control measures to meet the RFP requirement for the Baltimore NAA.

The on-road mobile measures Maryland used to meet 2008 RFP in the Baltimore NAA include enhanced vehicle inspection and maintenance (enhanced I/M), Tier I vehicle emission standards and new Federal evaporative test procedures (Tier I), reformulated gasoline, the national low emission vehicle (NLEV) program, and the Federal heavy-duty diesel engine (HDDE) rule. Maryland calculated the emission reductions for 2008 RFP using the MOBILE model for these on-road mobile measures. EPA reviewed the procedures that MDE used to develop its projected inventories, including the use of the MOBILE model, and found them to be reasonable. Maryland calculated the on-road mobile 2008 emission reductions to be 42.45 tpd VOC and 59.10 tpd NO_X.

The non-road measures Maryland used to meet 2008 RFP in the Baltimore NAA include non-road small gasoline engines, non-road diesel engines (Tier I and Tier II), marine engine standards, emission standards for large spark engines, and reformulated gasoline used in non-road motor vehicles and equipment. Maryland used the NONROAD model to calculate emission reductions from these non-road measures. EPA reviewed the procedures that MDE used to develop its projected inventories, including the use of the NONROAD model, and found them to be reasonable. Maryland calculated the non-road mobile 2008 emission reductions to be 17.89 tpd VOC and 6.74 tpd NO_X.

The other measures that Maryland used to meet RFP in the Baltimore NAA are railroad engine standards (Tier 2), the consumer and commercial products rule (Phase I), the architectural and industrial (AIM) coatings rule, and the portable fuel containers rule (Phase I). In the Technical Support Document (TSD) for this action, EPA evaluates each of these measures and calculated the projected 2008 emission for each measure. For details, please refer to EPA's TSD.

The tier 2 railroad engine standards for newly manufactured and remanufactured diesel-powered locomotives and locomotive engines took effect in 2000. EPA calculated 2008 emission reductions from railroad engine to be 1.37 tpd NO_X.

A Federal measure requires reformulation of AIM coatings, which are field-applied coatings used by industry, contractors, and homeowners to coat houses, buildings, highway surfaces, and industrial equipment for decorative or protective purposes. Maryland's AIM rule was effective on March 29, 2004. EPA calculated 2008 emission reductions from Maryland's AIM rule to be 6.02 tpd VOC.

The phase I commercial and consumer products rule requires the reformulation of certain consumer products to reduce their VOC content. Maryland's consumer products rule was effective on August 18, 2003. EPA calculated 2008 emission reductions from Maryland's consumer and

commercial products rule to be 3.70 tpd VOC.

The phase I portable fuel containers rule introduces performance standards for portable fuel containers and spouts, and is intended to reduce emissions from storage, transport and refueling activities. Maryland's portable fuel container rule was effective on January 21, 2002. EPA calculated 2008 emission reductions from Maryland's portable fuel containers rule to be 8.13 tpd VOC.

Table 7 summarizes the emission reductions that Maryland claimed in the Baltimore 8-hour ozone plan to meet RFP in the Baltimore NAA. For certain control measures, the 2008 projected emission reductions calculated by EPA differ from the 2008 projected emission reductions that MDE is taking credit for in the Baltimore 8-hour ozone plan. The total 2008 projected emission reductions calculated by EPA are greater than the emission reductions claimed by MDE in the Baltimore 8-hour ozone plan. Therefore, the emission reductions claimed in the Baltimore 8-hour ozone plan are approvable.

TABLE 7—CONTROL MEASURES AND 2008 EMISSION REDUCTIONS IN THE BALTIMORE

Control measure	VOC (tpd)	NO_X (tpd)
On-road Mobile Measures	42.45	59.10
Non-road Model	17.89	6.74
Railroads (Tier 2)	0.00	1.18
OTC—Consumer Products Phase 1	3.70	0.00
OTC—AIM Coatings	6.03	0.00
OTC—Portable Fuel Containers Phase 1	6.71	0.00
Total	76.78	67.02

E. Contingency Measures

Section 172(c)(9) of the CAA requires a State with a moderate or above ozone nonattainment area to include sufficient additional contingency measures in its RFP plan in case the area fails to meet RFP. The same provision of the CAA also requires that the contingency measures must be fully adopted control measures or rules. Upon failure to meet an RFP milestone requirement, the State must be able to implement the contingency measures without any further rulemaking activities. Upon implementation of such measures, additional emission reductions of at least 3 percent of the adjusted 2002 baseline emissions must be achieved. For more information on contingency measures, see the April 16, 1992 General Preamble (57 FR 13512) and the November 29, 2005 Phase 2 8-hour ozone implementation rule (70 FR 71612).

To meet the requirements for contingency emission reductions, EPA allows States to use NO_X emission reductions to substitute for VOC emission reductions in their contingency plans. However, MDE chose to use only VOC reductions to meet the contingency measure requirement in the Baltimore NAA. MDE discusses its Baltimore NAA contingency measures for failure to meet RFP in Section 10.2 of the Baltimore 8-hour ozone plan. MDE calculated the contingency VOC reduction for the Baltimore NAA as shown in Table 8, below. The RFP contingency requirement may be met by including in the RFP plan a demonstration of 18 percent VOC & NO_X RFP. The additional 3 percent reduction above the 15 percent requirement must be attributed to specific measures.

TABLE 8—BALTIMORE NAA 2008 RFP CONTINGENCY MEASURE TARGET LEVEL CALCULATIONS

Description	Formula	VOC	NO_X
A. 2002 Rate-Of Progress Base Year Inventory		271.48	338.08
B. FMVCP/RVP Reductions Between 2002 And 2008		9.10	22.60
C. 2002 Adjusted Base Year Inventory Relative To 2008	A−B	262.38	315.48
D. RFP Reductions Totaling 15%		8	7
E. RFP Emissions Reductions Required Between 2002 & 2008	C * D	20.99	22.08
F. Contingency Percentage		3.00	0.00
G. Contingency Emission Reduction Requirements	C * F	7.87	0.00
H. Contingency Measure Target Level for 2008	C−E−G	233.52	293.40

To determine if Maryland met the three percent contingency measure requirement for the Baltimore NAA, the total projected controlled emissions must be compared to the contingency measure target levels calculated above. As shown below in Table 9, the total VOC and NO_X emission projections meet the 2008 contingency measure targets. Therefore, MDE has met the contingency measure requirement for the Baltimore NAA.

TABLE 9—EVALUATION OF THE BALTIMORE NAA 2008 RFP CONTINGENCY MEASURE REQUIREMENT

Description	VOC (tpd)	NO_X (tpd)
A. Total 2008 Projected Controlled Emissions	219.25	277.50
B. Contingency Measure Target Level for 2008	233.52	293.40
Contingency measure requirement met if A < B	(1)	(1)

[1] Yes.

F. RACM Analysis

Pursuant to section 172(c)(1) of the CAA, States are required to implement all RACM as expeditiously as practicable for each nonattainment area. Specifically, section 172(c)(1) states the following: "In general—Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards." Furthermore, in EPA's Phase 2 Rule, EPA describes how States must include a RACM analysis with their attainment demonstration (70 FR 71659). The purpose of the RACM analysis is to determine whether or not reasonably available control measures exist that

would advance the attainment date for nonattainment areas. Control measures that would advance the attainment date are considered RACM and must be included in the SIP. RACM are necessary to ensure that the attainment date is achieved "as expeditious as practicable." RACM is defined by the EPA as any potential control measure for application to point, area, on-road and non-road emission source categories that meets the following criteria:

- The control measure is technologically feasible.
- The control measure is economically feasible.
- The control measure does not cause "substantial widespread and long-term adverse impacts."
- The control measure is not "absurd, unenforceable, or impracticable."
- The control measure can advance the attainment date by at least one year.

MDE addresses the RACM requirement in Section 7.0 and Appendix E of the Baltimore 8-hour ozone plan. To meet the RACM requirement, Maryland must demonstrate that it has adopted all RACM necessary to move the Baltimore NAA toward attainment as expeditiously as practicable and to meet all RFP requirements. As demonstrated above in Sections C and D of this document, Maryland has met the RFP requirements for the Baltimore NAA.

MDE used two independently developed lists of potential control measures for its RACM analysis. The first list consists of the RACM analysis performed for the Washington, DC NAA's 8-hour ozone plan. The second list of measures was developed by the Baltimore Metropolitan Council (BMC) with MDE in 2006. These measures are evaluated in Appendices E–1 and E–2 of the Baltimore 8-hour ozone plan.

EPA has reviewed MDE's RACM analysis in the TSD for this action. MDE evaluated all source categories that could contribute meaningful emission reductions, and evaluated an extensive list of potential control measures. MDE considered the time needed to develop and adopt regulations and the time it would take to see the benefit from these measures. EPA concurs with MDE's conclusion that there are no RACM that would have advanced the moderate area attainment date of 2010 for the Baltimore NAA. Therefore, MDE's RACM analysis in the Baltimore 8-hour ozone plan is approvable.

G. Transportation Conformity Budgets

Transportation conformity is required by CAA section 176(c). EPA's conformity rule requires that transportation plans, programs and projects conform to State air quality implementation plans and establishes the criteria and procedure for determining whether or not they do. Conformity to a 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.

States must establish VOC and NOx MVEBs for each of the milestone years up to the attainment year and submit the mobile budgets to EPA for approval. Upon adequacy determination or approval by EPA, States must conduct transportation conformity analysis for their Transportation Improvement Programs (TIPs) and long range transportation plans to ensure highway vehicle emissions will not exceed relevant MVEBs.

MDE discusses transportation conformity in Section 8.0 of the Baltimore 8-hour ozone plan. MDE describes the methods it used to calculate the 2008 mobile emissions inventory in Appendix F of the Baltimore 8-hour ozone plan. The Baltimore NAA MVEB for the 2008 RFP is based on the projected 2008 mobile source emissions accounting for all mobile control measures. The MVEBs for the 2008 RFP are shown in Table 10, below.

TABLE 10—BALTIMORE NAA 2008 RFP MVEBS

VOC (tpd)	NO_X (tpd)
41.2	106.8

In a March 27, 2009 **Federal Register** notice (74 FR 13433), EPA notified the public that EPA found that the 2008 RFP MVEBs in the Baltimore 8-hour ozone plan are adequate for transportation conformity purposes. In addition to the budgets being adequate for transportation conformity purposes, EPA found the procedures Maryland used to develop the MVEBs to be reasonable. The budgets are identical to the projected 2008 on-road mobile source emission inventories. Because the 2008 RFP MVEBs are adequate for transportation conformity purposes and the methods MDE used to develop them are correct, the 2008 RFP budgets are approvable.

V. What are EPA's Conclusions?

EPA's review of the 2002 base year emissions inventory; the 2008 ozone projected emission inventory; the 2008 RFP plan; RFP contingency measures; Maryland's RACM analysis; and 2008 transportation conformity budgets contained in MDE's June 4, 2007 SIP revision submittal for the Baltimore NAA fully addressed the CAA's requirements. Therefore, EPA is proposing approval of those following elements of MDE's June 4, 2007 Baltimore 8-hour ozone plan. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. Accordingly, this action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed 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 CAA; 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 proposed rule pertaining to the Baltimore NAA's 2002 base year emissions inventory; 2008 ozone projected emission inventory; 2008 RFP plan; RFP contingency measures; RACM analysis; and 2008 transportation conformity budgets 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 23, 2009.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–17 Filed 1–6–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF ENERGY

48 CFR Parts 928, 931, 932, 933, 935, 936, 937, 941, 942, 949, 950, 951, and 952

RIN 1991–AB88

Acquisition Regulation: Subchapter E—General Contracting Requirements, Subchapter F—Special Categories of Contracting, and Subchapter G—Contract Management

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to amend the Department of Energy Acquisition Regulation (DEAR) Subchapters E—General Contracting Requirements, F—Special Categories of Contracting, and G—Contract Management to make changes to conform to the FAR, remove out-of-date coverage, and to update references. DOE will separately propose rules for changes to parts 927 and 945, respectively. Today's proposed rule does not alter substantive rights or obligations under current law.

DATES: Written comments on the proposed rulemaking must be received on or before close of business February 8, 2010.

ADDRESSES: This proposed rule is available and you may submit comments, identified by DEAR: Subchapters E, F, and G and RIN 1991–AB88, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail to: DEARrulemaking@hq.doe.gov.* Include: DEAR: Subchapters E, F and G and RIN 1991–AB88 in the subject line of the message.
- *Mail to:* U.S. Department of Energy, Office of Procurement and Assistance Management, MA–611, 1000 Independence Avenue, SW., Washington, DC 20585. Comments by e-mail are encouraged.

FOR FURTHER INFORMATION CONTACT: Barbara Binney at (202) 287–1340 or by e-mail, *barbara.binney@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The objective of this action is to update the existing Department of Energy Acquisition Regulation (DEAR). Subchapters E, F, and G have sections that need to be updated to conform to the FAR. None of the proposed changes are substantive or of a nature to cause any significant expense for DOE or its contractors.

II. Section-by-Section Analysis

Changes are proposed to DEAR parts 928, 931, 932, 933, 935, 936, 937, 941, 942, 949, 950, 951, and 952. No changes are proposed for DEAR parts 927, 929, 930, 934, 938, 939, 940, 943, 944, 945, 946, 947, and 948.

DOE proposes to amend the DEAR as follows:

1. Section 932.501–2 is amended in paragraph (a)(3) to reflect current procedures to state that all requests for unusual progress payments shall be sent to the DOE or the NNSA Senior Procurement Executive to approve or deny.

2. Subpart 932.6 is amended to update the DEAR to conform with FAR subpart 32.6 which was revised by Federal Acquisition Circular 2005–027 effective October 18, 2008.

3. Section 935.010 is amended by revising paragraphs (c) and (d). The report process has been changed to an electronic submission using the DOE Energy Link System (E-Link) at *http://www.osti.gov/elink.* The contracting officer shall require the contractors to use E-Link to submit an announcement record with each report.

4. Part 936 redesignates 936.202 to 936.202–70.

5. Part 937 is revised to add a new subpart, Subpart 937.2—Advisory and Assistance Services and section 937.204 Guidelines for determining availability of personnel. Sections 937.204(a), (b), (d) and (e) are added to conform to FAR 37.204 to provide the DOE guidelines for determining availability of sufficient personnel with the requisite training and capabilities to perform the evaluation or analysis of proposals. It also clarifies the DOE officials responsible for making the determinations prescribed at FAR 37.204 (a), (b), (d) and (e).

6. Section 941.201–70 is amended to update the DOE Order reference by removing the remainder of the sentence after the second "FAR" and adding in its place "part 41 and the Department of Energy (DOE) Order 430.2B, Departmental Energy, Renewable Energy and Transportation Management, or its successor."

7. Section 942.803 is amended at paragraph (c) by removing "as discussed in 942.70 Audit Services" which is no longer a subpart.

8. Section 949.101 is revised to add "Senior" before "Procurement Executive." to conform the use of the Procurement Executive title with the FAR.

9. Subpart 949.5 is removed and reserved. There is no longer a need for a DEAR termination clause for Architect-Engineer contracts.

10. Section 951.102 paragraph (e)(4) is amended to remove the "(iii)" in the paragraph numbering.

11. Section 952.247–70 is amended to remove repetitive language.

12. The rule text is amended as noted in the table at paragraph 16, by removing "FAR" or "FAR part" and adding "48 CFR" or "48 CFR part" or by updating other CFR citations. Section 931.205–47(h)(1) is amended by changing the capitalization of the word "part" in two places. Section 952 has

several changes in punctuation at 952.235–71 and 952.250–70.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice or proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). This rule updates references in the DEAR that apply to public contracts and does not impose any additional requirements on small businesses. Today's proposed rule does not alter any substantive rights or obligations and, consequently, today's proposed rule will not have a significant cost or administrative impact on contractors, including small entities. On the basis of the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

This proposed rule does not impose a collection of information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Existing burdens associated with the collection of certain contractor data under the DEAR have been cleared under OMB control number 1910–4100.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this proposed rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, this proposed rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order requires agencies to have an accountability process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined the proposed rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a written assessment of costs and benefits of any rule imposing a Federal mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking proposes changes that do not alter any substantive rights or obligations. This proposed rule does not impose any mandates.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rulemaking or policy that may affect family well-being. This rulemaking will have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355, (May 22, 2001), requires Federal agencies to prepare and submit to Office of Information and Regulatory Affairs of the Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to

promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's proposed rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed the proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Approval by the Office of the Secretary of Energy

Issuance of this proposed rule has been approved by the Office of the Secretary.

List of Subjects in 48 CFR Parts 928, 931, 932, 933, 935, 936, 937, 941, 942, 949, 950, 951, and 952

Government procurement.

Issued in Washington, DC, on December 16, 2009.

Edward R. Simpson,

Director, Office of Procurement and Assistance Management, Department of Energy.

David O. Boyd,

Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

For the reasons set out in the preamble, the Department of Energy is proposing to amend Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below.

1. The authority citations for parts 928, 931, 932, 933, 935, 936, 941, 942, and 951 continue to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PART 932—CONTRACT FINANCING

2. Section 932.501–2 is amended by revising paragraph (a)(3) to read as follows:

935.501–2 Unusual progress payments.

(a)(3) For DOE, the Head of the Contracting Activity shall forward all requests which are considered favorable, with supporting information, to the DOE Senior Procurement Executive, who, after coordination with the Chief Financial Officer, Headquarters, will approve or deny the request. For NNSA, the NNSA Senior Procurement Executive will coordinate with the NNSA Chief Financial Officer before approving or denying the request.

* * * * *

932.605 [Redesignated as 932.602]

3. Section 932.605 is redesignated as 932.602 and newly redesignated 932.602 is amended by:

a. Revising the section heading as set forth below; and

b. Removing the paragraph designation "(b)".

The revision reads as follows:

932.602 Responsibilities.

* * * * *

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

4. Revise section 935.010 to read as follows:

935.010 Scientific and technical reports.

(c) All research and development contracts which require reporting of research and development results conveyed in scientific and technical information (STI) shall include an instruction requiring the contractor to submit all STI, including reports and notices relating thereto, electronically to the U.S. Department of Energy (DOE), Office of Scientific and Technical Information (OSTI), using the DOE Energy Link System (E-link) at *http://www.osti.gov/elink*. The phrase "reports and notices relating thereto" does not include reports or notices concerning administrative matters such as contract cost or financial data and information. The DOE Order 241.1B Scientific and Technical Information Management, or its successor version, sets forth requirements for STI management.

(d) As prescribed in DOE Order 241.1B, the contracting officer shall ensure that the requirements of the attendant Contractor Requirements Document are included in applicable contracts.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

936.202 [Redesignated as 936.202–70]

5. Section 936.202 is redesignated as 936.202–70 and the section heading is revised to read as follows:

936.202–70 Specifications charges.

* * * * *

6. The authority citations for parts 937 and 949 are revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PART 937—SERVICE CONTRACTING

7. Add a new subpart 937.2, consisting of section 937.204, to read as follows:

Subpart 937.2—Advisory and Assistance Services

937.204 Guidelines for determining availabillty of personnel.

(a) The determination, that there is sufficient DOE personnel with the requisite training and capabilities for each evaluation or analysis of proposals, shall be determined in accordance with 915.207–70(f)(2)(i).

(b) If it is determined that there is no such DOE personnel available, then other Federal agencies may have the required personnel with the requisite training and capabilities for the evaluation or the analysis of proposals. The determination, to use employees of other Federal agencies for the evaluation or analysis of proposals, shall be in accordance with 915.207–70(f)(2)(ii).

(d) The determination, to employ non-Federal evaluators or advisors, shall be determined in accordance with 915.207–70(f)(3).

(e) The determination that covered personnel are unavailable for a class of proposals, necessitating employment of non-Federal evaluators or advisors, shall be determined in accordance with 915.207–70(f)(3).

PART 941—ACQUISITION OF UTILITY SERVICES

8. Section 941.201–70 is revised to read as follows:

941.201–70 DOE Directives.

Utility services (defined at 48 CFR 41.101) shall be acquired in accordance with 48 CFR part 41 and the Department of Energy (DOE) Order 430.2B, Departmental Energy, Renewable Energy and Transportation Management, or its successor.

PART 942—CONTRACT ADMINISTRATION

942.803 [Amended]

9. Amend section 942.803 by revising paragraph (c)(1) in the last sentence by removing the phrase ", as discussed in 942.70 Audit Services".

PART 949—TERMINATION OF CONTRACTS

949.101 [Amended]

10. Section 949.101 is amended by adding "Senior" before "Procurement Executive".

Subpart 949.5 [Removed and Reserved]

11. Subpart 949.5 is removed and reserved.

PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

12. The authority citation for part 950 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

951.102 [Amended]

13. Section 951.102 is amended by revising the paragraph designation "(e)(4)(iii)" to read "(e)(4)".

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. The authority citation for part 952 is revised to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

15. Section 952.247–70 is amended by:

a. Revising the date of the clause to read as set forth below; and

b. Removing "or its successor Official Foreign Travel, or any subsequent version of the order" in the clause and adding in its place "Official Foreign Travel, or its successor". The revision reads as follows:

952.247–70 Foreign travel.

* * * * *

FOREIGN TRAVEL (XXX 20XX) [INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF FINAL RULE PUBLICATION]

* * * * *

PARTS 928, 931, 932, 933, 936, 937, 941, 942, 950, 951, AND 952 [AMENDED]

16. In the table below, for each section indicated in the left column, remove the word indicated in the middle column from where it appears in the section, and add the word in the right column:

Section	Remove	Add
928.101–1	"FAR"	"48 CFR"
928.301	"FAR Part"	"48 CFR part"
931.102 in 2 places	"FAR"	"48 CFR"
931.102	"FAR Part 31"	"48 CFR part 31"
931.205–32(a)	"FAR"	"48 CFR"
931.205–47(h)(1), in the Employee whistleblower action definition.	"29 CFR Part 24,"	"29 CFR part 24,"
931.205–47(h)(1), in the Employee whistleblower action definition.	"10 CFR Part 708"	"10 CFR part 708"
932.006–4(a)	"FAR"	"48 CFR"
932.803(d)	"FAR"	"48 CFR"
932.7004–1 in 3 places	"FAR"	"48 CFR"
932.7004–3(a)	"FAR"	"48 CFR"
933.103(k)	"FAR"	"48 CFR"
933.104(b)	"FAR"	"48 CFR"
933.104(c)	"FAR"	"48 CFR"
933.104(g)	"FAR"	"48 CFR"
933.106(a)	"FAR"	"48 CFR"
936.602–10(a)(8)	"FAR"	"48 CFR"
936.609–3	"FAR"	"48 CFR"
936.7100	"FAR Part"	"48 CFR part"
937.7040	"FAR"	"48 CFR"
942.704(b) in 2 places	"FAR"	"48 CFR"
942.705–1(b)(1)	"FAR"	"48 CFR"
950.7003(a) in the first sentence	"(DOE)"	"DOE"
951.102(a)	"FAR Part"	"48 CFR part"
951.102(a)	"DOE PMR 41 CFR 109–26"	"DOE PMR 41 CFR 109"
952.233–2 in the introductory text	"FAR"	"48 CFR"
952.233–4(a)	"FAR"	"48 CFR"
952.233–4(b)	"FAR"	"48 CFR"
952.235–71(b)(1)	"warranted;"	"warranted."
952.250–70(e)(2)	"which:"	"which—"

[FR Doc. 2010–11 Filed 1–6–10; 8:45 am]
BILLING CODE 6450–01–P

Notices

Federal Register
Vol. 75, No. 4
Thursday, January 7, 2010

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before March 8, 2010.

ADDRESSES: Send comments via e-mail at *tHembry@usaid.gov* mail comments to: Tracy Hembry, Small Disadvantage Business Specialist, United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20523 (202–712–4983).

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC, 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov*.

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–0574.
Form No.: AID 321–1.
Title: Mentor-Protégé Program Application.
Type of Review: Revision to Information Collection.
Purpose: Entities interested in participating in the U.S. Agency for International Development's (USAID) Mentor-Protégé Program must apply in writing to the USAID Office of Small and Disadvantaged Business Utilization (OSDBU) by submitting the application form. The application will contain the Mentor-Protégé Agreement and will be evaluated for approval. Evaluations will consider the nature and extent of technical and managerial support as well as any proposed financial assistance in the form of equity investment, loans, joint-venture, and traditional subcontracting support. USAID's current policy on the Mentor-Protégé Program can be found in the AIDAR 719.273.

Annual Reporting Burden:
Respondents: 30.
Total Annual Responses: 30.
Total Annual Hours Requested: 360.

Dated: December 29, 2009.

Cynthia Staples,

Acting Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. E9–31398 Filed 1–6–10; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before March 8, 2010.

ADDRESSES: Send comments via e-mail at *tHembry@usaid.gov* or mail comments to: Tracy Hembry, Small Disadvantage Business Specialist, United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20523 (202–712–4983).

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov*.

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–New.
Form No.: N/A.
Title: Mentor-Protégé Program Post Agreement.
Type of Review: New.
Purpose: The required annual report will be used to determine if the mentor-protégé agreement is meeting its milestones outlined in the original agreement package, and the effect of the mentoring on the protégé.

Annual Reporting Burden

Respondents: 30.
Total annual responses: 30.
Total annual hours requested: 360.

Dated: December 29, 2009.

Cynthia Staples,

Acting Chief, Information and Records Division, Office of Administrative Services. Bureau for Management.

[FR Doc. E9–31400 Filed 1–6–10; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID

invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before March 8, 2010.

ADDRESSES: Send comments via e-mail at *tHembry@usaid.gov* mail comments to: Tracy Hembry, Small Disadvantage Business Specialist, United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20523 (202–712–4983).

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management. Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–New.

Form No.: N/A.

Title: Mentor-Protégé Program Annual Report.

Type of Review: New.

Purpose: The mentors are required to report on the progress made under each of active Mentor-Protégé Agreement annually throughout the term of the agreement. Each report is due 30 days after the end of each twelve-month period commencing with the start of the agreement.

Annual Reporting Burden:

Respondents: 30.

Total Annual Responses: 30.

Total Annual Hours Requested: 360.

Dated: December 29, 2009.

Cynthia Staples,

Acting Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. E9–31401 Filed 1–6–10; 8:45 am]

BILLING CODE 6116–01–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, January 15, 2010; 9:30 a.m. EST.

PLACE: 624 9th St., NW., Room 540, Washington, DC 20425.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda
II. Program Planning
- Approval of Briefing Report on the Impact of Illegal Immigration on the Wages and Employment of Black Workers
- Approval of Briefing Report on Covert Wiretapping in the War on Terror
- Multi-Ethnic Placement Act Briefing Report
- Consideration of Findings & Recommendations
- Motion to Approve MEPA Finding #9
- Motion to Approve MEPA Recommendation #3
- Motion to Approve MEPA Recommendation #8
- Consideration of Timeline for MEPA Concurring/Dissenting Opinions & Rebuttals
- Approval of Follow-up Letter regarding Louisiana Justice of the Peace
- Discussion and possible letter involving new SEC corporate disclosure rule re: diversity
- Update & Action on Status of Collection and Web Posting of Documents for Commission Clearinghouse Project
- Update on Status of the 2010 Enforcement Report
- Consideration of Reporting Procedures for the Discovery Subcommittee on the 2010 Enforcement Report
- Update on Status of Title IX Project

II. State Advisory Committee Issues
- Pennsylvania

IV. Approval of December 16, 2009 Meeting Minutes
V. Staff Director's Report
VI. Adjourn

FOR FURTHER INFORMATION CONTACT: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. *TDD:* (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: January 5, 2010.

David Blackwood,

General Counsel.

[FR Doc. 2010–141 Filed 1–5–10; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900, A–580–855]

Diamond Sawblades and Parts Thereof From the People's Republic of China and the Republic of Korea: Notice of Anniversary Month and First Opportunity To Request an Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 4, 2009, the Department of Commerce ("the Department") published antidumping duty orders and ordered the collection of cash deposits on subject merchandise in the antidumping duty investigations of diamond sawblades and parts thereof ("diamond sawblades") from the People's Republic of China ("PRC") and the Republic of Korea ("Korea"). *See Diamond Sawblades and Parts Thereof From the People's Republic of China and the Republic of Korea: Antidumping Duty Orders*, 74 FR 57145 (November 4, 2009) ("*Diamond Sawblades Orders*"). The first anniversary month for these orders will be November 2010, based on the November 4, 2009, publication date of the *Diamond Sawblades Orders*.

FOR FURTHER INFORMATION CONTACT: David Layton or Brandon Farlander, (202) 482–0371 or (202) 482–0182, respectively (Korea), AD/CVD Operations, Office 4; Alex Villanueva (202) 482–3208 (PRC), AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Diamond Sawblades Orders* on November 4, 2009, pursuant to instructions from the U.S. Court of International Trade ("CIT").[1] In the *Diamond Sawblades Orders*, the Department stated that the orders covering diamond sawblades from Korea and the PRC are effective as of

[1] *See Diamond Sawblades Manufacturers Coalition* v. *United States*, Nos. 06–247, 09–110, Slip Op. 09–107 (CIT Sept. 30, 2009).

January 23, 2009, because this is the date that suspension of liquidation went into effect for all subject entries of diamond sawblades, pursuant to the January 22, 2009, notification from the United States International Trade Commission ("ITC") that the CIT had sustained the ITC's redetermination of threat of material injury.[2] The Department provides a complete description of the sequence of events leading up to the issuance of the orders in the *Diamond Sawblades Orders* with references provided for the relevant decisions and notices issued by the ITC, the Department, and the CIT.

Anniversary Month of the Orders

Although the effective date of the orders is January 23, 2009, based on the date of the suspension of liquidation, the Department designates November as the anniversary month for these diamond sawblades orders because this is the month in which the Department published the notice for these orders. In its regulations, the Department defines the anniversary month as the calendar month in which the anniversary of the date of publication of an order or suspension of investigation occurs. *See* 19 CFR 351.102(b). Therefore, consistent with section 751(a)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(b), the first opportunity to request a review of the above-referenced orders will be in November 2010.

Dated: December 29, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–32 Filed 1–6–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for both primary and alternate members of the following seats on its Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council (council): Native Hawaiians, Fishing, Education, Research, Honolulu County, Hawaii County, Maui County, and Kauai County. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary.

Additionally, for the first time, the ONMS is seeking to fill a non-voting youth/student seat and alternate seat to represent the youth segment of the community, defined as ages 14–17. The interest and enthusiasm of youth under the age of 18 is very important to the sanctuary; these students are our future generation of ocean stewards and leaders. The ONMS wishes to foster and facilitate these links with youth in sanctuary communities and has added a non-voting youth seat to the advisory council. Applicants who are chosen as members should expect to serve 2-year terms, pursuant to the Council's Charter.

DATES: Applications are due by January 31, 2010.

ADDRESSES: Application kits may be obtained from Joseph Paulin, 6600 Kalanianaole Hwy, Suite 301, Honolulu, HI 96825 or *Joseph.Paulin@noaa.gov*. Completed applications should be sent to the same address. Applications are also available on line at *http://hawaiihumpbackwhale.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Naomi McIntosh, 6600 Kalanianaole Hwy, Suite 301, Honolulu, HI 96825 or *Naomi.McIntosh@noaa.gov* or 808.397.2651.

SUPPLEMENTARY INFORMATION: The Council was established in March 1996 to assure continued public participation in the management of the sanctuary. Since its establishment, the council has played a vital role in the decisions affecting the Sanctuary surrounding the main Hawaiian Islands.

The council's seventeen voting members represent a variety of local user groups, as well as the general public.

The council is supported by three committees: A Research Committee chaired by the Research Representative, an Education Committee chaired by the Education Representative, and a Conservation Committee chaired by the Conservation Representative, each respectively dealing with matters concerning research, education and resource protection.

The council represents the coordination link between the sanctuary and the State and Federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the humpback whale and its habitat around the main Hawaiian Islands.

The council functions in an advisory capacity to the sanctuary management and is instrumental in helping to develop policies and program goals, and to identify education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The council works in concert with the sanctuary management by keeping him or her informed about issues of concern throughout the sanctuary, offering recommendations on specific issues, and aiding in achieving the goals of the sanctuary within the context of Hawaii's marine programs and policies.

Authority: 16 U.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: December 20, 2009.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E9–31409 Filed 1–6–10; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XT58

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Observer Advisory Committee (OAC) will meet in Seattle, WA.

DATES: The meeting will be held on January 29, 2010, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center, 7600 Sand Point Way NE, Bldg 4, Traynor Conference Center, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Nicole Kimball, Council staff, telephone: (907) 271–2809.

[2] *See DSMC* v. *US*, No. 06–00247, Slip Op. 09–05 (CIT Jan. 13, 2009).

SUPPLEMENTARY INFORMATION: The primary purpose of the committee meeting is to review the next iteration of the Observer Restructuring Implementation Plan.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: December 31, 2009.

William D. Chappell,

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

[FR Doc. E9–31426 Filed 1–7–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XT59

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Salmon Amendment Committee (SAC) will hold a meeting to develop draft alternatives and plan analyses for an amendment to the Pacific Coast Salmon Fishery Management Plan (FMP) to address the Magnuson-Stevens Act (MSA) requirements for annual catch limits (ACL) and accountability measures (AM). This meeting of the SAC is open to the public.

DATES: The meeting will be held Tuesday, January 26, 2009, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Pacific Council Office, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The reauthorized MSA established new requirements to end and prevent overfishing through the use of ACLs and AMs. Federal FMPs must establish mechanisms for ACLs and AMs by 2010 for stocks subject to overfishing and by 2011 for all others, with the exceptions of stocks managed under an international agreement or stocks with a life cycle of approximately one year.

On January 16, 2009, NMFS published amended guidelines for National Standard 1 (NS1) of the MSA to provide guidance on how to comply with new ACL and AM requirements. The NS1 guidelines include recommendations for establishing several related reference points to ensure scientific and management uncertainty are accounted for when management measures are established.

The purpose of this meeting is to develop alternatives to address those issues, and to plan analyses that will be used to evaluate those alternatives in a National Environmental Policy Act (NEPA) analysis.

Although non-emergency issues not contained in the meeting agenda may come before the SAC for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: December 31, 2009.

William D. Chappell,

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

[FR Doc. E9–31427 Filed 1–6–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XT60

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Scientific and Statistical Committee, Coastal Pelagic Species Management Team, and Groundfish Management Team will hold a working meeting, which is open to the public.

DATES: The joint meeting will be held Tuesday, January 26 through Thursday, January 28, 2010. The meeting will begin each day at 8:30 a.m. and continue until business for each day is completed.

ADDRESSES: The meeting will be held at the Hotel Deca, 4507 Brooklyn Avenue Northeast, Seattle, WA 98105.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, Mr. John DeVore, or Ms. Kelly Ames, staff officers; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the working meeting is to review and further develop analyses relating to harvest control rules, allowable biological catch, annual catch limits, and accountability measures for coastal pelagic species and groundfish. The advisory bodies may also address other assignments relating to coastal pelagic species management or groundfish management. No management actions will be decided by the advisory bodies. The role of the advisory bodies will be to develop analyses and recommendations for harvest control rules, allowable biological catch, annual catch limits, and accountability measures for consideration by the Council at future Council meetings.

Although non-emergency issues not contained in the meeting agenda may come before the advisory bodies for discussion, those issues may not be the subject of formal action during this meeting. Advisory body actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice

that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the advisory bodies' intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: December 31, 2009.

William D. Chappell,

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

[FR Doc. E9–31428 Filed 1–6–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Nomination of Existing Marine Protected Areas to the National System of Marine Protected Areas

AGENCY: NOAA, Department of Commerce (DOC).

ACTION: Public notice and opportunity for comment on the list of nominations received from Federal, State and territorial marine protected area programs to join the National System of Marine Protected Areas.

SUMMARY: NOAA and the Department of the Interior (DOI) invited Federal, State, commonwealth, and territorial marine protected areas (MPA) programs with potentially eligible existing MPAs to nominate their sites to the National System of MPAs (national system). The national system and the nomination process are described in the Framework for the National System of Marine Protected Areas of the United States (Framework), developed in response to Executive Order 13158 on Marine Protected Areas. The final Framework was published on November 19, 2008, (73 FR 69608) and provides guidance for collaborative efforts among Federal, State, commonwealth, territorial, Tribal and local governments and stakeholders to develop an effective and well coordinated national system of MPAs that includes existing MPAs meeting national system criteria as well as new sites that may be established by managing agencies to fill key conservation gaps in important ocean areas.

DATES: Comments on the nominations to the national system of MPAs are due February 22, 2010.

ADDRESSES: Comments should be sent to Joseph A. Uravitch, National Oceanic and Atmospheric Administration, National Marine Protected Areas Center, 1305 East West Highway, N/ORM, Silver Spring, MD 20910. Fax: (301) 713–3110. E-mail: *mpa.comments@noaa.gov*. Comments will be accepted in written form by mail, e-mail, or fax.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, NOAA, at 301–713 3100, ext. 136 or via e-mail at *mpa.comments@noaa.gov*. An electronic copy of the list of nominated MPAs is available for download at *http://www.mpa.gov*.

SUPPLEMENTARY INFORMATION:

Background on National System

The national system of MPAs includes member MPA sites, networks and systems established and managed by Federal, State, Tribal and/or local governments that collectively enhance conservation of the nation's natural and cultural marine heritage and represent its diverse ecosystems and resources. Although participating sites continue to be managed independently, national system MPAs also work together at the regional and national levels to achieve common objectives for conserving the nation's important natural and cultural resources, with emphasis on achieving the priority conservation objectives of the Framework. Executive Order 13158 defines an MPA as: "any area of the marine environment that has been reserved by Federal, State, territorial, Tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein." As such, MPAs in the national system include sites with a wide range of protections, including multiple use areas that manage a broad spectrum of activities and no-take reserves where all extractive uses are prohibited. Although sites in the national system may include both terrestrial and marine components, the term MPA as defined in the Framework refers only to the marine portion of a site (below the mean high tide mark).

Benefits of joining the national system of MPAs, which are expected to increase over time as the system matures, include a facilitated means to work with other MPAs in the region, and nationally on issues of common conservation concern; fostering greater public and international recognition of MPAs, MPA programs, and the resources they protect; priority in the receipt of available technical support, MPA partnership grants with the National Fish and Wildlife Foundation, cooperative project participation, and other support for cross-cutting needs; and the opportunity to influence Federal and regional ocean conservation and management initiatives (such as integrated ocean observing systems, systematic monitoring and evaluation, targeted outreach to key user groups, and helping to identify and address MPA research needs). In addition, the national system provides a forum for coordinated regional planning about place-based conservation priorities that does not currently exist.

Joining the national system does not restrict or require changes affecting the designation process for new MPAs or management of existing MPAs. It does not bring State, territorial or local sites under Federal authority. It does not establish new regulatory authority or interfere with the exercise of existing agency authorities. The national system is a mechanism to foster great collaboration among participating MPA sites and programs to enhance stewardship in the waters of the United States.

Nomination Process

The Framework describes two major focal areas for building the national system of MPAs—a nomination process to allow existing MPAs that meet the entry criteria to become part of the system and a collaborative regional gap analysis process to identify areas of significance for natural or cultural resources that may merit additional protection through existing Federal, State, commonwealth, territorial, Tribal or local MPA authorities. The first call for nominations was issued in November 2008, resulting in the acceptance of 225 charter sites to the national system of MPAs in April 2009. The second nomination process for the national system began on August 7, 2009, when the National Marine Protected Areas Center (MPA Center) sent a letter to Federal, State, commonwealth, and territorial MPA programs inviting them to submit nominations of eligible MPAs to the national system. The initial deadline for nominations was November 6, 2009; this was extended to November 20, 2009.

There are three entry criteria for existing MPAs to join the national system, plus a fourth for cultural heritage. Sites that meet all pertinent criteria are eligible for the national system.

1. Meets the definition of an MPA as defined in the Framework.

2. Has a management plan (can be site-specific or part of a broader programmatic management plan; must have goals and objectives and call for monitoring or evaluation of those goals and objectives).

3. Contributes to at least one priority conservation objective as listed in the Framework.

4. Cultural heritage MPAs must also conform to criteria for the National Register for Historic Places.

The MPA Center used existing information in the MPA Inventory to determine which MPAs meet the first and second criteria. The inventory is online at *http://www.mpa.gov/helpful_resources/inventory.html*, and potentially eligible sites are posted online at *http://mpa.gov/pdf/national-system/allsitesumsheet8O9.pdf*. As part of the nomination process, the managing entity for each potentially eligible site is asked to provide information on the third and fourth criteria.

List of MPAs Nominated to the National System

The following 32 MPAs have been nominated by their managing programs to join the national system of MPAs. A list providing more detail for each site is available at *http://www.mpa.gov*.

Federal Marine Protected Areas

National Parks

Acadia National Park
Apostle Islands National Lakeshore
Buck Island Reef National Monument
Cabrillo National Monument
Canaveral National Seashore
Cape Cod National Seashore
Cape Hatteras National Seashore
Cape Lookout National Seashore
Fire Island National Seashore
Gateway National Recreation Area
Golden Gate National Recreation Area
Indiana Dunes National Lakeshore
Jean Lafitte National Historical Park and Preserve
Kalaupapa National Historical Park
Kaloko-Honokahau National Historical Park
National Park of American Samoa
Olympic National Park
Pictured Rocks National Lakeshore
Salt River Bay National Historical Park and Ecological Preserve
San Juan Islands National Historical Park
Sleeping Bear Dunes National Lakeshore

National Wildlife Refuges

Blackbeard Island National Wildlife Refuge
Harris Neck National Wildlife Refuge
Merritt Island National Wildlife Refuge
Pickney Island National Wildlife Refuge
Tybee National Wildlife Refuge
Wassaw National Wildlife Refuge
Wolf National Wildlife Refuge

Partnership Marine Protected Areas

Jobos Bay National Estuarine Research Reserve (Puerto Rico)

State Marine Protected Areas

North Carolina

Queen Anne's Revenge (Shipwreck)

Virgin Islands

East End Marine Park

Washington

San Juan County/Cypress Island Marine Biological Preserve

Review and Approval

Following this public comment period, the MPA Center will forward public comments to the relevant managing entity or entities, which will reaffirm or withdraw (in writing to the MPA Center) the nomination. After final MPA Center review, mutually agreed upon MPAs will be accepted into the national system and the List of National System MPAs will be posted at *http://www.mpa.gov*.

Dated: December 30, 2009.

David M. Kennedy,

Assistant Administrator for Ocean Service and Coastal Zone Management.

[FR Doc. E9–31406 Filed 1–6–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–810]

Certain Welded Stainless Steel Pipes From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain welded stainless steel pipes (WSSP) from the Republic of Korea (Korea) for the period of review (POR) December 1, 2007 through November 30, 2008. The review covers one respondent, SeAH Steel Corporation (SeAH).

We preliminarily determine that sales made by SeAH have been made at below normal value (NV). If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of SeAH's merchandise during the POR. Interested parties are invited to comment on the preliminary results.

DATES: *Effective Date:* January 7, 2010.

FOR FURTHER INFORMATION CONTACT: Holly Phelps or Elizabeth Eastwood, 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) 482–0656 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

In December 1992, the Department published in the **Federal Register** an antidumping duty order on certain WSSP from Korea. *See Antidumping Duty Order and Clarification of Final Determination: Certain Welded Stainless Steel Pipes from Korea*, 57 FR 62301 (Dec. 30, 1992), as amended in *Notice of Amended Final Determination and Antidumping Duty Order: Certain Welded Stainless Steel Pipe from the Republic of Korea*, 60 FR 10064 (Feb. 23, 1995) (*Amended Final Determination and Order*). On December 1, 2008, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of WSSP from Korea for the period December 1, 2007, through November 31, 2008. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 72764 (Dec. 1, 2008).

On December 29, 2008, the Department received a timely request from SeAH, in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), for an administrative review of the antidumping duty order on WSSP from Korea. On February 2, 2009, the Department published, in the **Federal Register**, the notice of initiation of the administrative review of the antidumping duty order on WSSP from Korea for SeAH. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 5821 (Feb. 2, 2009).

In February 2009, the Department issued the antidumping duty questionnaire to SeAH. SeAH timely submitted its response to section A of the questionnaire (*i.e.*, the section relating to general information about the company) on March 20, 2009, and its responses to sections B through D of its questionnaires (*i.e.*, the sections relating to sales to the home and U.S. markets and cost information) on April 20, 2009.

In August 2009, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.212(h)(2), we extended the deadline for the preliminary results of this review by 120 days until no later than December 31, 2009. *See Welded*

ASTM A–312 Stainless Steel Pipe from the Republic of Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review, 74 FR 39045 (Aug. 5, 2009).

During the period August 2009 through December 2009, we issued supplemental questionnaires to SeAH. We received responses to these questionnaires from September 2009 through December 2009.

Scope of the Order

The merchandise subject to the antidumping duty order is welded austenitic stainless steel pipe that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. The merchandise covered by the scope of the order also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A–312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for steel pipe include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines. Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of the antidumping duty order is limited to welded austenitic stainless steel pipes. The HTSUS subheadings are provided for convenience and customs purposes. However, the written description of the scope of the order is dispositive.

Normal Value Analysis

In accordance with section 777A(d)(2) of the Act, to determine whether sales of WSSP from Korea were made in the United States at less than NV, we compared the constructed export price (CEP) to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice.

Product Comparisons

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold by the respondent in the home market during the POR as described in the "Scope of the Order" section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales.

In accordance with section 771(16)(A) of the Act, we first attempted to compare products produced by the same company and sold in the U.S. and home markets that were identical with respect to the following characteristics: Specification and grade, hot or cold finish, size, wall thickness schedule, and end finish. Where there were no home market sales of foreign like product that were identical in these respects to the merchandise sold in the United States, in accordance with section 771(16)(B) and (C) of the Act, we compared U.S. products with the most similar merchandise sold in the home market based on the characteristics listed above, in that order of priority.

Constructed Export Price

Pursuant to section 772(b) of the Act, for sales to the United States, we preliminarily determine that all of SeAH's U.S. sales are CEP sales because all sales of subject merchandise to the United States were made by Pusan Pipe America (PPA), SeAH's U.S. sales subsidiary, to an unaffiliated customer in the United States. We based CEP on the packed prices charged to the first unaffiliated customer in the United States. To establish CEP, where appropriate, we made net price adjustments, as defined by 19 CFR 351.102(b)(38), to PPA's starting price to account for early payment discounts, pursuant to 19 CFR 351.401(c). We made deductions for movement expenses, in accordance with section 772(c)(2) of the Act; these adjustments included, where appropriate, foreign inland freight expenses, foreign brokerage and handling expenses, ocean freight expenses, marine insurance, U.S. brokerage and handling expenses, and U.S. customs duties. For further discussion of the changes made to SeAH's reported U.S. sales data, see the December 31, 2009, memorandum from Holly Phelps, Analyst, to the File, entitled "Calculations Performed for SeAH Steel Corporation for the Preliminary Results in the 2007–2008 Antidumping Duty Administrative Review of Certain Welded Stainless Steel Pipe from Korea" (SeAH Prelim Calc Memo).

In accordance with sections 772(d)(1) and (2) of the Act, we also deducted, where applicable, those selling expenses associated with economic activities occurring in the United States, including U.S. direct selling expenses (*i.e.*, warranty and imputed credit expenses), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses incurred in the United States).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act and 19 CFR 351.402(d), we calculated the CEP profit rate using the expenses incurred by SeAH and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

Normal Value

In accordance with section 773(a)(1)(B)(i) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities, in the ordinary course of trade, and, to the extent practicable, at the same level of trade (LOT) as the CEP sale. *See* "Level of Trade" section, below. After testing home market viability and whether home market sales were at below-cost prices, we calculated NV for SeAH as discussed in the following sections.

A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of SeAH's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Based on this comparison, we determined that SeAH had a viable home market during the POR. Consequently, we based NV on home market sales, pursuant to section 773(a)(1) of the Act and 19 CFR 351.404(b).

B. Affiliated-Party Transactions and Arm's-Length Test

During the POR SeAH made sales of WSSP in the home market to an affiliated party, as defined in section 771(33) of the Act. Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to the affiliate were made at arm's-length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing expenses.

Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same LOT, we determined that the sales made to the affiliated party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (Nov. 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent, inclusive, of prices to unaffiliated customers in order for sales to that affiliate to be considered in the ordinary course of trade and used in the NV calculation). Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade. *See* section 771(15) of the Act and 19 CFR 351.102(b).

C. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same LOT as CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id; see also Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997) (*Plate from South Africa*). In order to determine whether the home market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for export price (EP) and comparison market sales (*i.e.*, NV based on either home market or third country prices),[1] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Tech., Inc.* v. *United States*, 243 F.3d 1301, 1314–16 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was possible), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See, e.g., Plate from South Africa*, 62 FR at 61732–33.

In determining whether separate LOTs exist, we obtained information from SeAH regarding the marketing stages for the reported U.S. and home market sales, including a description of the selling activities performed for each channel of distribution. Generally, if the reported LOTs are the same, the functions and activities of the seller at each level should be similar. Conversely, if a party reports that LOTs are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar.

In the current review, SeAH reported that it made sales through a single channel of distribution in the home market (*i.e.*, direct sales to affiliated and unaffiliated customers). SeAH reported performing the following selling functions for its home market sales: Sales negotiation, sales personnel training, sales promotion, order input/processing, invoicing, collection of payment, sales forecasting, sales marketing support, market research, freight/delivery, warehouse operations, and inventory maintenance. These selling activities can be generally grouped into three selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; and (3) inventory management.

Accordingly, based on the selling functions noted above, we find that SeAH performed sales and marketing, freight and delivery services, and inventory management services for home market sales. Because all home market sales are made through a single distribution channel and the selling activities to SeAH's customers do not vary within the channel, we preliminarily determine that there is one LOT in the home market for SeAH.

With respect to the United States, SeAH reported that it made sales through one channel of distribution (*i.e.*, CEP sales via an affiliated reseller) and that the selling functions were performed at a lower level of intensity than in the home market. We examined the selling functions performed for U.S. sales and found that SeAH performed the following selling functions: order input/processing, invoicing, collection of payment, freight/delivery, and inventory maintenance. These selling activities can be generally grouped into three selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; and (3) inventory management.

Accordingly, based on the selling functions, we find that SeAH performed sales and marketing, freight and delivery services, warranty and technical services, and inventory management for all U.S. sales. Because all U.S. sales are made through a single distribution channel and the selling activities to SeAH's affiliated reseller do not vary within the channel, we preliminarily determine that there is one LOT to the U.S. market for SeAH.

SeAH stated that its U.S. sales were made at a different, less advanced LOT than its home market sales. SeAH is not seeking a LOT adjustment, however, because it had only one LOT in the home market. Instead, it claims that a CEP offset is warranted. As a result, we compared the U.S. LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers differ, as SeAH did not perform identical selling functions in both markets, and the selling functions for sales in the home market are at a greater intensity than for sales to the United States. Specifically, we determine that differences in sales negotiation, sales personnel training, warehousing, and advertising exist between sales to home market and U.S. customers. *See* SeAH's September 10, 2009, section A supplemental response at page 5 and Exhibit A–37.

In this case, because SeAH sold at one LOT in the home market, there is no basis upon which to determine whether there is a pattern of consistent price differences between LOTs. Therefore, we have not made a LOT adjustment.

Instead, in accordance with section 773(a)(7)(B) of the Act, we preliminarily determine that a CEP offset is appropriate to reflect that SeAH's home market sales are at a more advanced stage than the LOT of SeAH's CEP sales. We based the amount of the CEP offset on home market indirect selling

[1] Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

expenses and limited the deduction to the amount of the indirect selling expenses deducted from CEP under section 772(d)(1)(D) of the Act. We applied the CEP offset to the NV–CEP comparisons.

D. Cost of Production Analysis

Pursuant to section 773(b)(2)(A)(ii) of the Act, for SeAH there were reasonable grounds to believe or suspect that SeAH made home market sales at prices below its cost of production (COP) in this review because the Department had disregarded sales that failed the cost test for SeAH in the most recently completed segment of this proceeding in which SeAH participated (*i.e.*, the 1997–1998 administrative review) at the time of the initiation of this administrative review. *See Certain Welded ASTM A–312 Stainless Steel Pipe from Korea: Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 72645, 72647 (Dec. 28, 1999), unchanged in *Certain Welded ASTM A–312 Stainless Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 65 FR 30071 (May 10, 2000). As a result, the Department initiated an investigation to determine whether SeAH made home market sales during the POR at prices below their COPs.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of SeAH's cost of materials and fabrication for the foreign like product, plus amounts for G&A expenses and interest expenses. *See* the "Test of Home Market Sales Prices" section below for treatment of home market selling expenses.

We relied on the COP information provided by SeAH in its questionnaire response, except for the following instances where the information was not appropriately quantified or valued:

i. During the POR, SeAH purchased hot-rolled stainless steel coil from a Korean affiliate, Pohang Iron and Steel Company (POSCO). Stainless steel coil is a major input in the production of stainless steel pipe. In accordance with section 773(f)(3) of the Act, we evaluated transactions between SeAH and its affiliate using the transfer price, COP, and market price of stainless steel coils. We adjusted SeAH's reported costs to reflect the highest of these three values for SeAH's purchases of stainless steel coil from POSCO.

ii. We adjusted the numerator of SeAH's G&A expense ratio to include raw material and work-in-process inventory (WIP) valuation losses. We also adjusted the denominator of the G&A expense ratio to exclude these inventory valuation losses.

iii. We excluded the long-term interest income generated from retirement and severance deposits from the calculation of the interest expense ratio. We also adjusted the denominator of the financial expense ratio to exclude raw material and WIP inventory valuation losses.

iv. We replaced the negative labor cost reported for one product (or "control number") with the labor cost of the most similar control number.

For further discussion of these adjustments, see the memorandum from Laurens van Houten, Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—SeAH Steel Corporation," dated December 31, 2009.

2. Test of Home Market Sales Prices

To determine whether SeAH's home market sales had been made at prices below the COP, we computed weighted-average COPs during the POR, and compared the weighted-average COP figures to home market sales prices of the foreign like product as required under section 773(b) of the Act. On a product-specific basis, we compared the COP to the home market prices, net of billing adjustments, any applicable movement charges, selling expenses, and packing expenses.

3. Results of the COP Test

Pursuant to sections 773(b)(1)(A) and (b)(2)(C)(i) of the Act, where less than 20 percent of SeAH's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of SeAH's sales of a given product were at prices below the COP, we determined that sales of that model were made in "substantial quantities" within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) and (b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded these below-cost sales for SeAH and used the remaining sales as the basis for determining NV, in accordance with section 773(a)(1) of the Act.

E. Calculation of Normal Value

We calculated NV based on the starting prices to home market customers. We made adjustments, where appropriate, to the starting price for billing adjustments in accordance with 19 CFR 351.401(c). In addition, where appropriate, we made deductions for inland freight expenses, in accordance with section 773(a)(6)(B)(ii) of the Act.

Pursuant to section 773(a)(6)(C) of the Act, we made adjustments for credit expenses. We made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the home-market sales or the indirect selling expenses deducted from the starting price in calculating CEP. We deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Finally, we made an adjustment to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411(a).

Currency Conversion

In accordance with section 773A of the Act, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. *See http://www.ia.ita.doc.gov/exchange/index.html. See also* 19 CFR 351.415.

Preliminary Results of the Review

We preliminarily determine that the following margin exists for SeAH during the period December 1, 2007, through November 30, 2008:

Manufacturer/producer/exporter	Percent margin
SeAH Steel Corporation	5.15

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales and the total entered value of the examined sales. These rates

will be assessed uniformly on all entries of the respective importers made during the POR if these preliminary results are adopted in the final results of review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by SeAH for which SeAH did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for SeAH will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.00 percent, the all-others rate made effective by the LTFV investigation. *See Amended Final Determination and Order*, 60 FR 10061, 10065 (Feb. 23, 1995). These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs. *See* 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. *See* 19 CFR 351.309(c)(2) and (d)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Notification to Importers

This notice also serves as a preliminary 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 administrative review and notice are published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: December 31, 2009.

Susan Kuhbach,

Senior Director, Office 1, Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–29 Filed 1–6–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–839]

Carbazole Violet Pigment 23 From India: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of Alpanil Industries, Ltd. (Alpanil) under the countervailing duty order on carbazole violet pigment 23 (CVP–23) from India for the period January 1, 2007, through December 31, 2007. We preliminarily determine that subsidies are being provided to Alpanil on the production and export of CVP–23 from India. *See* "Preliminary Results of Administrative Review" section, below. If the final results remain the same as the preliminary results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties. Interested parties are invited to comment on the preliminary results of this administrative review. *See* the "Public Comment" section below.

DATES: *Effective Date:* January 7, 2010.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0197 or (202) 482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2004, the Department published in the **Federal Register** the countervailing duty (CVD) order on CVP–23 from India. *See Notice of Countervailing Duty Order: Carbazole Violet Pigment 23 from India*, 69 FR 77995 (December 29, 2004) (*CVP–23 Order*). On December 1, 2008, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 72764 (December 1, 2008).

On December 30, 2008, the Department received a timely request to conduct an administrative review from Alpanil, an Indian producer and

exporter of subject merchandise. On December 31, 2008, the Department received a timely request from the Government of India (GOI) also on behalf of Alpanil to conduct an administrative review. On February 2, 2009, the Department initiated an administrative review of the CVD Order on CVP–23 from India covering Alpanil for the period January 1, 2007, through December 1, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 5821 (February 2, 2009). On February 24, 2009, domestic interested parties Nation Ford Chemical Company and Sun Chemical Corporation, who were petitioners in the original investigation, entered an appearance (petitioners).

The Department issued a questionnaire to Alpanil and the GOI on February 17, 2009. On March 23, 2009, the GOI timely submitted its questionnaire response. Alpanil timely submitted its questionnaire response on April 8, 2009. The Department issued its first supplemental questionnaire to Alpanil on April 30, 2009; Alpanil submitted its response on June 2, 2009. Further, the Department issued a second supplemental questionnaire to Alpanil on November 6, 2009; Alpanil responded on December 1, 2009. On November 30, 2009, the Department issued a supplemental questionnaire to the GOI; the GOI responded on December 15, 2009.

On May 5, 2009, the Department received a timely request from petitioners to conduct verification pursuant to 19 CFR § 351.307(b)(1)(v).

On August 19, 2009, the Department extended the time limit for the preliminary results of this administrative review until December 31, 2009. *See Carbazole Violet Pigment 23 from India: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review*, 74 FR 41864 (August 19, 2009).

On December 11, 2009, Alpanil submitted a letter stating that it changed its name on April 9, 2009, to Meghmani Pigments. We are evaluating whether to consider this request in this administrative review.

Scope of the Order

The merchandise covered by this order is CVP–23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of *diindolo [3,2-b:3',2'-m] triphenodioxazine, 8,18-dichloro-5,15-diethy-5,15-dihydro-*, and molecular formula of $C_{34}H_{22}Cl_2N_4O_2$.[1] The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.*, pigments dispersed in oleoresins, flammable solvents, water) are not included within the scope of the review. The merchandise subject to this order is classifiable under subheading 3204.17.9040 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.

Subsidies Valuation Information

Benchmark Interest Rates

For programs requiring the application of a benchmark interest rate, 19 CFR 351.505(a)(1) states a preference for using an interest rate that the company could have obtained on a comparable commercial loan in the market. Also, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient "could actually obtain on the market" the Department will normally rely on actual short-term and long-term loans obtained by the firm. However, when there are no comparable commercial loans, the Department may use a national average interest rate, pursuant to 19 CFR 351.505(a)(3)(ii).

Pursuant to 19 CFR 351.505(a)(2)(iv), if a program under review is a government provided, short-term loan program, the preference would be to use a company-specific annual average of the interest rates on comparable commercial loans during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan. For this review, the Department required a rupee-denominated short-term loan benchmark rate to determine benefits received under the Pre-Shipment Export Financing program. For further information regarding this program, *see* the "Pre-Shipment Shipment Export Financing" section below.

Alpanil did not have any rupee-denominated short-term loans during the POR. Therefore, in accordance with 19 CFR 351.505(a)(3)(ii), the Department used a national average rupee-denominated short-term interest rate, as reported in the International Monetary Fund's publication International Financial Statistics (IMF Statistics) as the benchmark to determine if Alpanil received benefits under the pre-shipment export financing program.

A. Programs Preliminarily Determined To Be Countervailable

1. Pre-Shipment and Post-Shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or "packing credits," to exporters. Upon presentation of a confirmed export order or letter of credit to a bank, companies may receive pre-shipment loans for working capital purposes (*i.e.*, purchasing raw materials, warehousing, packing, transportation, *etc.*) for merchandise destined for exportation. Companies may also establish pre-shipment credit lines upon which they draw as needed. Limits on credit lines are established by commercial banks and are based on a company's creditworthiness and past export performance. Credit lines may be denominated either in Indian rupees or in a foreign currency. Commercial banks extending export credit to Indian companies must, by law, charge interest at rates determined by the RBI.

Post-shipment export financing consists of loans in the form of discounted trade bills or advances by commercial banks. Exporters qualify for this program by presenting their export documents to the lending bank. The credit covers the period from the date of shipment of the goods to the date of realization of the proceeds from the sale to the overseas customer. Under the Foreign Exchange Management Act of 1999, exporters are required to realize proceeds from their export sales within 180 days of shipment. Post-shipment financing is, therefore, a working capital program used to finance export receivables. In general, post-shipment loans are granted for a period of not more than 180 days.

The Department has previously determined that the pre-shipment and post-shipment export financing program conferred countervailable subsidies on the subject merchandise because: (1) The provision of the export financing constitutes a financial contribution pursuant to section 771(5)(D)(i) of the Act as a direct transfer of funds in the form of loans; (2) the provision of the export financing confers benefits on the respondents under section 771(5)(E)(ii) of the Act to the extent that the interest rates provided under these programs are lower than comparable commercial loan interest rates; and (3) these programs are specific under section 771(5A)(A) and

[1] The bracketed section of the product description, *[3,2-b:3',2'-m]*, is not business proprietary information; the brackets are simply part of the chemical nomenclature.

(B) of the Act because they are contingent upon export performance. *See Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 from India*, 69 FR 67321 (November 17, 2004), and accompanying *Issues and Decision Memorandum* (*CVP–23 Final Determination*), at "Pre-Shipment Export Financing." *See also Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) From India*, 67 FR 34905 (May 16, 2002), and accompanying *Issues and Decision Memorandum* (*PET Film Final Determination*), at "Pre-Shipment and Post-Shipment Financing." There is no new information or evidence of changed circumstances that would warrant reconsidering this finding. Therefore, we continue to find these programs countervailable.

In this review, Alpanil reported that it did not receive any loans under the post-shipment export financing program that were outstanding in the POR. Therefore, for purposes of the preliminary results, we find that Alpanil did not use the post-shipment export financing program. Furthermore, Alpanil reported that it did not use these programs with respect to sales destined to the United States. *See* Alpanil's questionnaire response dated April 8, 2009 at page 11. Alpanil explained that its pre-shipment export financing was tied to specific export orders and is repaid with either post-shipment export financing or export proceeds, whichever is received earlier. Further, Alpanil stated that the loans granted were provided at Alpanil's request to the bank by letter supported by the specific export order, based on which it was able to identify the market and, that the program was not used with respect to its sales destined for the United States. *See* Alpanil's supplemental questionnaire response dated June 2, 2009 at pages 3 and 4.

Although in the original investigation Alpanil was able to demonstrate that none of its pre-shipment loans were provided for exports to the United States,[2] in the documentation Alpanil provided in the instant review it did not demonstrate that the loans were only for shipments to countries other than the United States. The Department specifically asked Alpanil to tie its export orders on each borrowing during the POR and to identify the destination of the export sales. In response, Alpanil referred the Department to a sample document ("Form A," containing details of the specific export order) that, according to Alpanil, contained the relevant information upon which the pre-shipment loan was released by the bank. However, this document pertained to only one specific loan out of more than sixty loans during the period of review. Alpanil did not provide information with regard to the remaining loans. Alpanil further stated that the spreadsheet it provided contained details showing how the loans were tied to a particular export sale; however, in our review of the spreadsheet, we did not find sufficient detail to identify the export destination for all of these loans to confirm whether the destination for these loans was not the United States. *See* Alpanil's second supplemental response dated December 1, 2009 at pages 16, 18 and 19.

With regard to pre-shipment loans, the benefit conferred is the difference between the amount of interest the company paid on the government loan and the amount of interest it would have paid on a comparable commercial loan (*i.e.*, the short-term benchmark). Because Alpanil did not provide the information necessary to determine the markets for which the exports covered by the pre-shipment loans were destined, Alpanil did not demonstrate that these loans were tied to a particular market. We therefore find that the pre-shipment export loans reported by Alpanil are conferred on total exports and are not tied to particular markets. To calculate the benefit of the pre-shipment export loans, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the benchmark interest rate for short term loans. *See* "Benchmark Interest Rates" section, above. Since the interest that would be due at the benchmark interest rate exceeded the actual interest paid monthly by Alpanil, a benefit was conferred. We summed the differences and divided the total benefit by Alpanil's total exports during the POR. Accordingly, we preliminarily determine the net countervailable subsidy under the pre-shipment export financing program to be 0.80 percent *ad valorem* for Alpanil.

2. Duty Entitlement Passbook Scheme (DEPBS)

The DEPBS program enables exporting companies to earn import duty exemptions in the form of passbook credits rather than cash. All exporters are eligible to earn DEPBS credits on a post-export basis, provided that the GOI has established a Standard Input Output Norm (SION) for the exported product. DEPBS credits can be used to pay import duties for any subsequent imports, regardless of whether they are consumed in the production of an exported product. DEPBS credits are valid for twelve months and are transferable after the foreign exchange is realized from the export sales on which the DEPBS credits are earned. With respect to subject merchandise, the GOI has established a SION. *See CVP–23 Final Determination*, at "Duty Entitlement Passbook Scheme." Therefore, CVP–23 exporters were eligible to earn DEPBS credits. Alpanil reported that the rate at which they earned DEPBS credits was 5 percent for the January 1 through March 31, 2007 period and 7 percent for the April 1 through December 31, 2007, period.

In the CVP–23 Final Determination, the Department determined that, under the DEPBS, a financial contribution, as defined under section 771(5)(D)(ii) of the Act, is provided because the GOI provides credits for the future payment of import duties; and that a benefit is conferred pursuant to section 771(5)(E) of the Act in the total amount of the credits earned because the GOI does not have in place and does not apply a system that is reasonable and effective for the purposes intended to confirm which inputs, and in what amounts, are consumed in the production of the exported products. Therefore, under section 351.519(a)(4) of the Department's regulations and section 771(5)(E) of the Act, the entire amount of the credits earned during the POR constitutes a benefit. Finally, because this program is contingent upon export, it is specific under sections 771(5A)(A) and (B) of the Act. *See CVP–23 Final Determination. See also PET Film Final Determination*, at "DEPBS." No new information or evidence of changed circumstances has been presented since our final determination in CVP–23 to warrant reconsideration of this finding. Therefore, we continue to find the DEPBS program countervailable.

In accordance with past practice and pursuant to 19 CFR § 351.519(b)(2), we continue to find that benefits from the DEPBS are conferred as of the date of exportation of the shipment for which

[2] *See CVP–23 Final Determination* at "Pre-Shipment Financing." We note, however, that where a company is not able to demonstrate that its pre-shipment loans are tied to destinations other than the United States, we normally attribute all pre-shipment loans to total exports. *See* 19 CFR 351.525(b). *See also Polyethylene Terepthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008), and accompanying *Issues and Decision Memorandum* (*PET Film From India 2005 Review*) at "Pre- and Post-Shipment."

the pertinent DEPBS credits are earned. We calculated the benefit on an "as-earned" basis upon export because DEPBS credits are provided as a percentage of the value of the exported merchandise on a shipment-by-shipment basis and, as such, it is at this point that recipients know the exact amount of the benefit (*e.g.*, the available credits that amount to a duty exemption).

Alpanil reported and the GOI confirmed that Alpanil used this program during the POR. Alpanil reported that it received post-export credits on shipments of subject merchandise under the DEPBS program during the POR. Alpanil also reported that it paid required application fees for each DEPBS license associated with its export shipments made during the POR. We recognize that these fees provide an allowable offset to DEPBS benefits in accordance with section 771(6)(A) of the Act. Because DEPBS credits are earned on a shipment-by-shipment basis, we consider that the benefits are tied to particular products and markets, in accordance with 19 CFR 351.525(b)(5). As such, we measure the benefit by identifying all DEPBS credits granted on exports of subject merchandise to the United States during the POR. We calculated the subsidy rate by dividing the benefit (net of application fees) by total exports of subject merchandise to the United States during the POR. On this basis, we determine Alpanil's countervailable subsidy from the DEPBS program to be 6.99 percent *ad valorem*.

B. Programs Preliminarily Determined To Be Not Used

We preliminarily determine that Alpanil did not apply for or receive benefits during the POR under the programs listed below:

1. Export Promotion Capital Goods Scheme (EPCGS).
2. Export Processing Zones (EPZs)/ Export Oriented Units (EOUs) Programs.
3. Income Tax Exemption Scheme (Sections 10A and 10B).
4. Market Development Assistance.
5. Special Imprest Licenses.
6. Duty Free Replenishment Certificate.
7. Advance License Scheme.
8. State of Gujarat (SOG) Sales Tax Incentive Scheme.
9. State of Maharashtra (SOM) Sales Tax Incentive Scheme.

C. Programs Determined To Be Terminated

Income Tax Exemption Scheme 80 HHC

In the CVP–23 Final Determination, the Department had determined that deductions of profit derived from exports under section 80HHC of India's Income Tax Act are countervailable. *See CVP–23 Final Determination*, at "Programs Determined to Confer Subsidies." In this review, Alpanil states that the GOI has discontinued the income tax exemption scheme 80 HHC effective April 1, 2004. The GOI has reported that this scheme was available only up to March 31, 2004. In addition, Alpanil reported that this program has not been replaced by another program, and that there are no residual benefits accruing due to the exports of CVP–23 from India under this program. The Department found in another case that this program had been terminated effective March 31, 2004, and that no replacement program had been implemented. *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 72 FR 6530 (February 12, 2007), and accompanying *Issues and Decision Memorandum*, at "Income Tax Exemption Scheme 80HHC (80HHC)." There is no information on the record of this proceeding to contradict that determination. Therefore, pursuant to 19 CFR § 351.526(d) of the regulations, we find that this program has been terminated.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we have calculated an individual subsidy rate for Alpanil for the POR. We preliminarily determine the total countervailable subsidy to be 7.79 percent *ad valorem* for Alpanil.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or in the original countervailing duty investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 20.55 percent *ad valorem*, the all-others rate from the final determination in the CVD investigation. *See Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 From India*, 69 FR at 67321. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Assessment Rates

Upon publication of the final results of this review, the Department shall determine, and Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(2), the Department will instruct CBP to assess countervailing duties by applying the rates included in the final results of the review to the entered value of the merchandise. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review.

Disclosure and Public Hearing

We plan on disclosing the calculations from our preliminary results to parties to this segment of the proceeding within five days of the public announcement of this notice. *See* 19 CFR 351.224(b). Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results: The Department will notify interested parties of the deadlines for submitting case and rebuttal briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities cited. Case and rebuttal briefs must be served on interested parties, in accordance with 19 CFR 351.303(f).

Unless extended, the Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120

days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: December 31, 2009.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–27 Filed 1–6–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China: Notice of Rescission of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 7, 2010.

SUMMARY: On January 29, 2009, the Department of Commerce ("Department") published a notice of initiation and preliminary results of changed circumstance review ("CCR") of the antidumping duty order on certain activated carbon from the People's Republic of China ("PRC"). *See Certain Activated Carbon From the People's Republic of China: Notice of Initiation and Preliminary Results of Changed Circumstances Review, and Intend To Revoke Order in Part,* 74 FR 4736 (January 29, 2009) ("*Initiation and Preliminary Results*"). We are now rescinding this CCR because the Department, on December 7, 2009, resolved the underlying issue for the CCR in a parallel final scope ruling on the same matter.

FOR FURTHER INFORMATION CONTACT: Jerry Huang, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–4047.

Background

On November 14, 2008, the Department received a letter from Rolf C. Hagen (USA), Corp. ("Hagen") requesting a scope ruling that certain fish tank filter products imported by Hagen, that contain no more than 500 grams of activated carbon or a combination of activated carbon and zeolite, are outside the scope of the antidumping order on certain activated carbon from the PRC. *See Notice of Antidumping Duty Order: Certain Activated Carbon from the People's Republic of China,* 72 FR 20988 (April 27, 2007) ("*Order*"). On November 20, 2008, Calgon Carbon Corporation and Norit Americas Inc. (collectively, "Petitioners") submitted comments stating that they agreed with Hagen's scope ruling request. On December 15, 2008, the Department received a request from Hagen for a changed circumstance review and for the Department to revoke, in part, the *Order* pursuant to sections 751(b)(1) and 782(h)(2) of the Tariff Act of 1930, as amended ("the Act"), with respect to the same products covered by its scope request. On December 17, 2008, Petitioners again submitted comments stating that they agreed with the specific proposed exclusion language contained in Hagen's December 15, 2008, submission. The Department published the *Initiation and Preliminary Results* on January 29, 2009, and requested public comments on the proposed exclusion language. The Department also extended the deadline for the final results of this CCR. *See Certain Activated Carbon From the People's Republic of China: Extension of Time Limit for the Final Results of Changed Circumstances Review,* 74 FR 51257 (October 6, 2009).

On December 7, 2009, based on the Department's review of Hagen's scope request, in light of the scope language in the *Order*, the petition, and the ITC determination, the Department determined in accordance with 19 CFR 351.225(k)(1) that the commercial fish tank filter products described in the Hagen scope request are different from activated carbon which is covered by the scope of the *Order*. Because we determined the scope language to be dispositive, the Department found the fish tank filter products described in Hagen's request to be outside the scope of the *Order* pursuant to the criteria within 19 CFR 351.225(k)(1). *See* Memorandum for John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Jerry Huang, International Trade Compliance Analyst, regarding "Final Scope Ruling: Antidumping Duty Order on Certain Activated Carbon from the People's Republic of China," dated December 7, 2009 ("Final Scope Ruling").

Scope of Changed Circumstances Review

The merchandise subject to this order is certain activated carbon. Certain activated carbon is a powdered, granular, or pelletized carbon product obtained by "activating" with heat and steam various materials containing carbon, including but not limited to coal (including bituminous, lignite, and anthracite), wood, coconut shells, olive stones, and peat. The thermal and steam treatments remove organic materials and create an internal pore structure in the carbon material. The producer can also use carbon dioxide gas (CO_2) in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO_2 gas) activated process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon.

The scope of this order covers all forms of activated carbon that are activated by steam or CO_2, regardless of the raw material, grade, mixture, additives, further washing or post-activation chemical treatment (chemical or water washing, chemical impregnation or other treatment), or product form. Unless specifically excluded, the scope of this order covers all physical forms of certain activated carbon, including powdered activated carbon ("PAC"), granular activated carbon ("GAC"), and pelletized activated carbon.

Excluded from the scope of the order are chemically activated carbons. The carbon-based raw material used in the chemical activation process is treated with a strong chemical agent, including but not limited to phosphoric acid, zinc chloride sulfuric acid or potassium hydroxide, that dehydrates molecules in the raw material, and results in the formation of water that is removed from the raw material by moderate heat treatment. The activated carbon created by chemical activation has internal porosity developed primarily due to the action of the chemical dehydration agent. Chemically activated carbons are typically used to activate raw materials with a lignocellulosic component such as cellulose, including wood, sawdust, paper mill waste and peat.

To the extent that an imported activated carbon product is a blend of steam and chemically activated carbons, products containing 50 percent or more steam (or CO_2 gas) activated carbons are within this scope, and those containing more than 50 percent chemically activated carbons are outside this scope. This exclusion language regarding blended material applies *only* to mixtures of steam and chemically activated carbons.

Also excluded from the scope are reactivated carbons. Reactivated carbons are previously used activated carbons that have had adsorbed materials removed from their pore structure after

use through the application of heat, steam and/or chemicals.

Also excluded from the scope is activated carbon cloth. Activated carbon cloth is a woven textile fabric made of or containing activated carbon fibers. It is used in masks and filters and clothing of various types where a woven format is required.

Any activated carbon meeting the physical description of subject merchandise provided above that is not expressly excluded from the scope is included within this scope. The products subject to the order are currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 3802.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Rescission of Changed Circumstances Review

The Department initiated this changed circumstance review based on the same issue raised by Hagen in its scope ruling request. As the Department issued its final scope determination on December 9, 2009, that certain fish tank filter products imported by Hagen, that contain no more than 500 grams of activated carbon or a combination of activated carbon and zeolite, are outside the scope of the antidumping order on certain activated carbon from the PRC, the sole issue in this CCR is moot, as it has been resolved in the parallel scope proceeding. Accordingly, the Department is now rescinding this CCR. Hagen's request that its products are outside the scope of the *Order* and Petitioners' comments supporting that request are fully detailed in the Department's scope determination. *See* Final Scope Ruling.

This notice serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which may be subject to sanction.

This notice is issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.216.

Dated: December 22, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–31419 Filed 1–6–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 8, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 4, 2010.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: Revision.

Title: Grants to States for Workplace and Community Transition Training for Incarcerated Individuals.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 2,800.

Abstract: The Department of Education receives funding for the Grants to States for Workplace and Community Transition Training for Incarcerated Individuals Program (Title VIII, Part D of the Higher Education Amendments of 1998, as amended). The most recent amendment passed via Public Law 110–315 requires State Correctional Education Agencies to submit a proposal in order to be eligible. The law also requires that appropriated funds be allotted to each State in an amount that bears the same relationship to the total number of eligible students in each State. Therefore, States must submit data concerning the number of eligible students under the Program, so that the Department can run the State allocation formula. State Correctional Education Agencies (SCEA) are required to conduct an evaluation and to annually report to the Secretary and the Attorney General on the results of the evaluation.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4165. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who

use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–36 Filed 1–6–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

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), Savannah River Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Monday, January 25, 2010, 1 p.m.–5 p.m. Tuesday, January 26, 2010, 8:30 a.m.–4:30 p.m.

ADDRESSES: The Crowne Plaza Hotel, 130 Shipyard Drive, Hilton Head, SC 29928.

FOR FURTHER INFORMATION CONTACT: Sheron Smith, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–9480.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, January 25, 2010

1 p.m. Combined Committee Session.
5 p.m. Adjourn.

Tuesday, January 26, 2010

8:30 a.m. Approval of Minutes, Agency Updates.
Public Comment Session.
Chair and Facilitator Updates.
Waste Management Committee Report.
Nuclear Materials Committee Report.
Public Comment Session.
12 p.m. Lunch Break.
1 p.m. Strategic and Legacy Management Committee Report.
Facility Disposition and Site Remediation Committee Report.
Administrative Committee Report.
Public Comment Session..
4:30 p.m. Adjourn.

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, January 25, 2010.

Public Participation: The EM SSAB, Savannah River Site, 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 Sheron Smith 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 agenda items should contact Sheron Smith's office 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 comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Sheron Smith at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.srs.gov/general/outreach/srs-cab/srs-cab.html.*

Issued at Washington, DC, on December 30, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–9 Filed 1–6–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Re-Establishment of the National Petroleum Council

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Re-Establishment of the National Petroleum Council.

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, App., and section 102–3.65, Title 41, Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the National Petroleum Council has been re-established for a two-year period.

The Council will continue to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas, or the oil and natural gas industries. The Secretary of Energy has determined that renewal of the National Petroleum Council is essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Council will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Samuel at (202) 586–3279.

Issued at Washington, DC, on December 30, 2009.

Carol A. Matthews,

Acting Committee Management Officer.

[FR Doc. 2010–10 Filed 1–6–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9099–3]

Cross-Media Electronic Reporting Rule State Approved Program Revision/ Modification Approvals: State of Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval, under regulations for Cross-Media Electronic Reporting, of the State of Connecticut's request to revise/ modify programs to allow electronic reporting for certain of its EPA-authorized programs under title 40 of the CFR.

DATES: EPA's approval is effective January 7, 2010.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1697, *huffer.evi@epa.gov*, or David Schwarz, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1704, *schwarz.david@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as Part 3 of

title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Under Subpart D of CROMERR, state, tribe or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and get EPA approval. Subpart D also provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, in § 3.1000(b) through (e) of 40 CFR Part 3, Subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the Subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable Subpart D requirements.

On July 22, 2009, the State of Connecticut Department of Environmental Protection (CTDEP) submitted an application for its Net Discharge Monitoring Report (NetDMR) electronic document receiving system for revision or modification of EPA-authorized programs under title 40 CFR. EPA reviewed CTDEP's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Connecticut's request for revision/modification to certain of its authorized programs is being published in the **Federal Register**.

Specifically, EPA has approved CTDEP's request for revision/modification to the following authorized programs to allow electronic reporting for the specified reports: 40 CFR Part 123–NPDES State Program Requirements and Part 403—General Pretreatment Regulations For Existing And New Sources Of Pollution programs for electronic reporting of discharge monitoring report information submitted under 40 CFR Parts 122 and 403.

CTDEP was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: December 22, 2009.

Lisa Schlosser,

Director, Office of Information Collection.

[FR Doc. 2010–14 Filed 1–6–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2009–0907; FRL–9100–8]

RIN 2050–ZA05

Draft Recommended Interim Preliminary Remediation Goals for Dioxin in Soil at CERCLA and RCRA Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and announcement of public comment period.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is announcing a 50-day public comment period for draft recommended interim preliminary remediation goals (PRGs) developed in the *Draft Recommended Interim Preliminary Remediation Goals for Dioxin in Soil at Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA) Sites*. EPA's Office of Solid Waste and Emergency and Emergency Response (OSWER) has developed the draft recommended interim PRGs for dioxin in soil. These draft recommended interim PRGs were calculated using existing, peer-reviewed toxicity values and current EPA equations and default exposure assumptions.

This **Federal Register** notice is intended to provide an opportunity for public comment on the draft recommended interim PRGs. EPA will consider any public comments submitted in accordance with this notice and may revise the draft recommended interim PRGs thereafter.

DATES: Comments may be submitted in writing by February 26, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2009–0907, by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail: OSWER.Docket@epa.gov*.
- *Mail:* EPA Docket Center, Environmental Protection Agency, Mail Code: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center (EPA/DC), Room 3334, EPA West Building, 1301 Constitution Avenue NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–SFUND–2009–0907. Deliveries are only accepted from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2009–0907. 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 by statute 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: This **Federal Register** notice and supporting documentation are available in a docket EPA has established under Docket ID No. EPA–HQ–SFUND–2009–0907. 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 OSWER Docket, EPA West, Room 3334, 1301 Constitution Avenue,. 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 OSWER docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Marlene Berg, Office of Superfund Remediation and Technology Innovation, 1200 Pennsylvania Avenue, NW., Mail Code: 5204P, Washington, DC 20460; by telephone/voicemail at (703) 603–8701; Fax: (703) 603–9112; or via e-mail at *berg.marlene@epa.gov*.

SUPPLEMENTARY INFORMATION: Preliminary remediation goals (PRGs) generally are chemical-specific concentration goals for specific media (*e.g.*, soil, sediment, water and air) and land use combinations at CERCLA sites. They are intended to serve as a point of departure in the remedy selection process and generally are used as a target in conjunction with site-specific information (*e.g.*, exposure frequency) during the initial development, analysis, and selection of cleanup alternatives. As discussed in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR 300.430(e)(2)(i)) preliminary remediation goals are typically developed from readily available information. Preliminary remediation goals should be modified, as necessary, when more site-specific information becomes available (*e.g.*, exposure frequency).

In May 2009, EPA Administrator Lisa P. Jackson committed to accelerating the Agency's work currently underway to reassess the human health risks from exposures to dioxin. EPA's *Science Plan for Activities Related to Dioxins in the Environment* (*http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=209690*) details a plan, with interim milestones, for completion of the Agency's dioxin reassessment. By the end of 2010, EPA expects to complete the dioxin reassessment and release it to the public, subject to further consideration of the science and the scope and complexity of the revisions.

Several site-specific investigations and decisions involving dioxin may need to be made before the dioxin reassessment is finalized. Therefore, Administrator Jackson directed the Office of Solid Waste and Emergency Response (OSWER) to develop draft recommended interim PRGs by the end of 2009 that are informed by the best available peer-reviewed science. The recommended interim PRGs, when finalized, will allow EPA to continue to make progress on key site-specific investigations and decisions while the dioxin reassessment is on-going. Also, development of the recommended interim PRGs at this juncture allows EPA to include the dermal absorption pathway of dioxin. The information to estimate the dermal pathway was not available when EPA last recommended PRGs for dioxin in soil in 1998.

OSWER reviewed the Agency's current dioxin cleanup guidance and related work by other entities, including the states, other countries, and other federal agencies with the goal of developing guidance containing recommended interim PRGs informed by the best available peer-reviewed science. Once the recommended interim PRGs are finalized, they are intended to be considered by EPA regions until the Agency issues its final dioxin reassessment; at that time, OSWER may issue updated recommended PRGs based on the final dioxin reassessment. After publication of the final dioxin reassessment and any subsequent updated PRG guidance, EPA regions would then re-evaluate, as appropriate, cleanup decisions at CERCLA sites to ensure that cleanups are still protective. States which apply the final recommended interim PRGs to RCRA sites may choose to re-evaluate, as appropriate, cleanup decisions based on the recommended interim PRGs as well.

The draft guidance presents current OSWER technical and policy recommendations regarding PRGs for soil contaminated with dioxin. While OSWER developed the draft guidance for facility response actions under CERCLA and RCRA corrective action, other regulators, including the States, may find it useful in their programs, although they may choose to use alternative assessments consistent with their own programs and policies. In addition, EPA may use and accept other technically sound approaches after appropriate review, either at its own initiative or at the suggestion of other interested parties. The draft guidance does not impose any requirements or obligations on EPA, the States, other Federal agencies, or the regulated community. It is important to understand that the draft guidance does not substitute for statutes that EPA administers or their implementing regulations, nor is it a regulation itself. Thus, the draft guidance does not impose legally binding requirements on EPA, the States, or the regulated community, and may not apply to a particular situation based upon the specific circumstances. Rather, the draft guidance suggests approaches that may be used at particular sites as appropriate, given site-specific circumstances.

In developing these draft recommended interim PRGs, OSWER, EPA's Office of Research and Development and other EPA offices reviewed current soil cleanup levels and dioxin toxicity values used by the states, the U.S. Department of Health and Human Services' Agency for Toxic Substances and Disease Registry and other countries (*see* docket #EPA–HQ–SFUND–2009–0907 for *State Soil Cleanup Levels for Dioxin and Review of International Soil Levels for Dioxin*). Based on this evaluation, OSWER considered EPA's currently recommended PRGs for CERCLA and RCRA sites (*http://www.epa.gov/superfund/resources/remedy/pdf/92-00426-s.pdf*), which are 1 ppb (parts per billion) (or 1,000 ppt (parts per trillion)) for dioxin toxicity equivalents (TEQs) [1] in residential soil, and a level within the range of 5 ppb (or 5,000 ppt) and 20 ppb (or 20,000 ppt) in commercial/industrial soil, where exposure is due to direct contact. Three key components of EPA's current recommended PRGs were re-evaluated: available toxicity values, generic exposure assumptions and the cancer risk level.

These draft recommended interim PRGs are informed by the best available peer-reviewed science, as well as the work of states and other agencies. Based on a consideration of oral and dermal exposures to dioxin, EPA has developed the following draft recommended interim PRGs for dioxin in soil: 72 ppt for residential soil and 950 ppt for commercial/industrial soil. EPA believes that these draft recommended interim PRGs would generally provide adequate protection against non-cancer effects, and generally should protect against cancer effects at approximately the 1E–05 risk level (1 in 100,000). These recommended interim PRGs are within EPA's protective risk range of 1E–04 to 1E–06 (see 40 CFR 300.430(e)(2)(i)(A)), and are more protective than the 1998 PRGs.

In addition, consistent with the NCP (40 CFR 300.430(e)(2)(i)(A)), EPA is considering (and requesting comment

[1] Toxicity equivalents consider the toxicity of the less toxic dioxin-like compounds as fractions of the toxicity of the most toxic compound (2,3,7,8-TCDD). Each compound is attributed a specific "Toxic Equivalency Factor" (TEF). This factor indicates the degree of toxicity compared to 2,3,7,8-TCDD, which is given a reference value of 1.

on) an alternative concentration of 3.7 ppt TEQ in residential soil and 17 ppt TEQ in commercial/industrial soil as draft interim PRGs. These alternative draft interim PRGs would be protective for cancer and non-cancer effects and are consistent with the NCP provision for PRGs reflecting a 1E–06 risk level as a point of departure for determining remediation goals. OSWER notes that PRGs based on a 1E–06 cancer risk level would likely be within or possibly below the average concentration of dioxins in rural U.S. soils. Generally, it is OSWER's policy not to clean below background (for more information about this policy visit *http://cfpub.epa.gov/ncea/CFM/recordisplay.cfm?deid=150944*).

Dated: December 30, 2009.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2010–16 Filed 1–6–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
02–NOV–09	20100028	G	Compuware Corporation.
		G	Gomez, Inc.
		G	Gomez, Inc.
03–NOV–09	20100047	G	J&F Participacoes S.A.
		G	Controlling Holding.
		G	Controlling Holding.
	20100052	G	H.I.G. Bayside Debt and LBO Fund II, L.P.
		G	Dr. Rodolfo Gari and Mrs. Laurie Gari.
		G	Business IT Solutions of Tampa, Inc.
		G	Medical Billing Solutions, LLC.
		G	Sarasota Anesthesia Services, LLC.
		G	Surgery Partners of Coral Gables, LLC.
		G	Armenia Surgery Center, Inc.
		G	APS of Merritt Island, LLC.
		G	APS of Bradenton, LLC.
		G	Anesthesia Professional Services, Inc.
		G	Anesthesia Management Services, LLC.
		G	Surgery Partners of Lake Mary, LLC.
		G	Weschase Anesthesiology Professional Services, Inc.
		G	Tampa Pain Relief Center, Inc.
		G	Surgery Partners, LLC.
		G	Surgery Partners of Lake Worth, LLC.
		G	Surgery Partners of Merritt Island, LLC.
		G	Surgery Partners of Millenia, LLC.
		G	Surgery Partners of New Tampa, LLC.
		G	Surgery Partners of Park Place, LLC.
		G	Surgery Partners of Sarasota, LLC.
		G	Surgery Partners of Westchase, LLC.
		G	Surgery Partners of West Kendall, L.L.C.
	20100057	G	Berkshire Hathaway Inc.
		G	Capmark Financial Group Inc.
		G	Capmark Capital Inc.
		G	Capmark Finance Inc.
04–NOV–09	20100017	G	Rohm Co., Ltd.
		G	Kionix, Inc.
		G	Kionix, Inc.
	20100053	G	Occidental Petroleum Corporation.
		G	Citigroup Inc.
		G	Phibro, LLC.
05–NOV–09	20100058	G	Leucadia National Corporation.
		G	Capmark Financial Group Inc.
		G	Capmark Capital Inc.
		G	Capmark Finance Inc.
06–NOV–09	20100078	G	Kok Thay Lim.
		G	Empire Resorts, Inc.
		G	Empire Resorts, Inc.
	20100081	G	Carlyle Partners V L.P.
		G	TA IX L.P.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	OpenLink Financial, Inc.
	20100082	G	Dollar Financial Corp.
		G	The CVRF Trust.
		G	Military Financial Services, LLC.
09–NOV–09	20090760	G	CA, Inc.
		G	NetQoS, Inc.
		G	NetQoS, Inc.
	20100040	G	Riverside Capital Appreciation Fund V, L.P.
		G	Precision Wire Components, LLC.
		G	Precision Wire Components, LLC.
	20100050	G	FPL Group Limited.
		G	Babcock & Brown Limited (Liquidators Appointed).
		G	Babcock & Brown Limited (Liquidators Appointed).
	20100054	G	Ciena Corporation.
		G	Nortel Networks Corporation.
		G	Nortel Networks Corporation.
	20100064	G	GSI Commerce, Inc.
		G	Retail Convergence, Inc.
		G	Retail Convergence, Inc.
	20100071	G	Integrated Solutions, LLC.
		G	Coleman Technologies, Inc.
		G	Coleman Technologies, Inc.
	20100073	G	Invesco Ltd.
		G	Morgan Stanley.
		G	Van Kampen Investments, Inc.
	20100074	G	Morgan Stanley.
		G	Invesco Ltd.
		G	Invesco Ltd.
	20100080	G	Genstar Capital Partners V, L.P.
		G	FHME Holdings, Inc.
		G	Florida Home Medical Equipment, Inc.
10–NOV–09	20090629	G	Sierra Holdings Corp.
		G	Nortel Networks Corporation.
		G	Nortel Networks Limited.
		G	Nortel Government Solutions Incorporated.
		G	DiamondWare Ltd.
		G	NNC.
		G	Nortel Networks, Inc.
	20100059	G	Agropur Cooperative.
		G	Sjerp W. Ysselstein.
		G	Green Meadows Food, LLC.
	20100083	G	Tellabs, Inc.
		G	WiChorus, Inc.
		G	WiChorus, Inc.
	20100087	G	Steiner Leisure Limited.
		G	Starwood Hotels and Resorts Worldwide, Inc.
		G	Bliss World Holdings, Inc.
		G	Bliss World LLC.
12–NOV–09	20100072	G	EverBank Financial Corp.
		G	Tygris Commercial Finance Group, Inc.
		G	Tygris Commercial Finance Group, Inc.
	20100075	G	New Mountain Partners III, L.P.
		G	EverBank Financial Corp.
		G	EverBank Financial Corp.
	20100076	G	TPG Partners VI, L.P.
		G	EverBank Financial Corp.
		G	EverBank Financial Corp.
16–NOV–09	20100101	G	Markit Group Holdings Limited.
		G	Fidelity National Information Services, Inc.
		G	Clear Par, LLC.
		G	Fidelity Information Services, Inc.
	20100105	G	Groupe Aeroplan Inc.
		G	The Marilyn Carlson Nelson 1998 GST Family Trust.
		G	Carlson Marketing Worlwide, Inc.
	20100106	G	Groupe Aeroplan Inc.
		G	The Barbara Carlson Gage 1998 GST Family Trust.
		G	Carlson Marketing Worlwide, Inc.
	20100110	G	GS Capital Partners VI, L.P. G Compass Investors Inc.
		G	Compass Investors Inc.
	20100112	G	GS Capital Partners VI Offshore, L.P.
		G	Compass Investors Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Compass Investors Inc.
	20100115	G	Adecco S.A.
		G	MPS Group, Inc.
		G	MPS Group, Inc.
	20100116	G	Powdr Corp.
		G	Intrawest Cayman L.P.
		G	Copper Mountain Real Estate, Inc.
		G	Wheeler Junction Electric Company.
		G	CMH Corporation.
		G	Copper Mountain Inc.
17–NOV–09	20100044	G	Becton Dickinson and Company.
		G	HandyLab, Inc.
		G	HandyLab, Inc.
	20100086	G	Cisco Systems, Inc.
		G	ScanSafe, Inc.
		G	ScanSafe, Inc.
	20100107	G	United Refining Energy Corp.
		G	Chaparral Energy, Inc.
		G	Chaparral Energy, Inc.
	20100111	G	H.I.G. Bayside Debt& LBO Fund II, L.P.
		G	Allion Healthcare, Inc.
		G	Allion Healthcare, Inc.
19–NOV–09	20100048	G	Abbott Laboratories.
		G	Solvay SA.
		G	Sodufa BV.
		G	Solvay Pharmaceuticals Marketing & Licensing AG.
	20100096	G	MasTec, Inc.
		G	Michael Daniel Murphy.
		G	Precision Transport Company, LLC.
		G	Precision Pipeline, LLC.
	20100097	G	MasTec, Inc.
		G	Steven R. Rooney.
		G	Precision Pipeline, LLC.
		G	Precision Transport Company LLC.
	20100125	G	Nippon Oil Corporation.
		G	Nippon Mining Holdings, Inc.
		G	Nippon Mining Holdings, Inc.
	20100126	G	Nippon Mining Holdings, Inc.
		G	Nippon Oil Corporation.
		G	Nippon Oil Corporation.
20–NOV–09	20100068	G	RehabCare Group, Inc.
		G	TA IX L.P.
		G	Triumph HealthCare Holdings, Inc.
	20100069	G	TA IX L.P.
		G	RehabCare Group, Inc.
		G	RehabCare Group, Inc.
	20100084	G	MEMC Electronic Materials, Inc.
		G	Sun Edison LLC.
		G	Sun Edison LLC.
	20100122	G	United Health Group Incorporated.
		G	CareMedic Holdings, Inc.
		G	CareMedic Holdings, Inc.
	20100133	G	Heilman & Friedman Capital Partners Vt, L.P.
		G	Thoma Cressey Fund VII, L.P.
		G	Datatel Holdings, Inc.
23–NOV–09	20090265	G	Panasonic Corporation.
		G	SANYO Electric Co., Ltd.
		G	SANYO Electric Co., Ltd.
	20100135	G	GTCR Fund IX/A, L.P.
		G	BIT Systems, Inc.
		G	BIT Systems, Inc.
24–NOV–09	20100061	G	Advocate Health Care Network.
		G	BroMenn Healthcare System.
		G	BroMenn Healthcare Hospitals.
		G	BroMenn Physician Hospital Organization.
		G	BroMenn Physicians Management Corporation.
		G	BroMenn Foundation.
	20100062	G	Berry Plastics Group, Inc.
		G	JPMorgan Chase & Co.
		G	Pliant Corporation.
	20100123	G	Dassault Systemes.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	International Business Machines Corporation.
		G	International Business Machines Corporation.
25–NOV–09	20100088	G	The Southern Company.
		G	Broadway Generating Company, LLC.
		G	West Georgia Generating Company, LLC.
	20100089	G	Broadway Generating Company, LLC.
		G	Southern Power Company.
		G	DeSoto County Generating Company, LLC.
	20100117	G	Ameriprise Financial, Inc.
		G	Bank of America Corporation.
		G	Bank of America, N.A.
		G	Columbia Wanger Asset Management, L.P.
		G	WAM Acquisition GP, Inc.
27–NOV–09	20100154	G	ACS Actividades de Construccion y Servicios, S.A.
		G	William R. Pulice.
		G	Pulice Construction, Inc.

For Further Information Contact: Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9–31208 Filed 1–6–10; 8:45 am]

BILLING CODE 6750–01–M

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.

Method of Preventing and Treating Metastatic Disease

Description of Technology: Cancer that recurs as metastatic disease many years after primary tumor resection and adjuvant therapy appears to arise from tumor cells that disseminated early in the course of disease but did not develop into clinically apparent lesions. These long-term surviving, disseminated tumor cells maintain a state of dormancy, but may be triggered to proliferate through largely unknown factors. Inventors at the National Institutes of Health have discovered agents that prevent or treat recurrent metastatic cancer by inhibiting type I collagen production and downstream signaling through beta 1 integrin activation. Blocking activation of beta-1 integrin signaling using pharmacological approaches or using RNA interference was found to prevent reorganization of the cytoskeleton that is associated with proliferation of the dormant tumor cells. The technology provides compositions and methods for modulating the switch from tumor cell dormancy to proliferation clinical metastatic disease in a patient by administering beta-1 integrin signaling inhibitors.

Applications

- Method of treating metastatic disease by targeting components of the beta-1 integrin signaling pathway.
- Method of preventing metastatic disease after removal of primary tumors.

Advantage: Discovery of beta-1 integrin signaling pathway involvement provides a number of therapeutic targets for development of novel cancer therapeutics.

Market: In the U.S., it is estimated that 192,370 women will be diagnosed with and 40,170 women will die of cancer of the breast in 2009. Although improved detection and treatment of primary tumors has raised the rate of survival there remains a high probability of recurrence of metastatic disease leading to mortality.

Inventors: Dalit Barkan and Jeffrey E. Green (NCI).

Publications: None related to this technology.

Patent Status: U.S. Provisional Application No. 61/179,641 filed 19 May 2009 (HHS Reference No. E–192–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Surekha Vathyam, PhD, 301–435–4076; *vathyams@mail.nih.gov.*

Collaborative Research Opportunity: The Center for Cancer Research, Laboratory of Cancer Biology and Genetics, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Diamidine Inhibitors of Tdp1 as Anti-Cancer Agents

Description of Technology: Available for licensing and commercial development are methods and compositions for treating cancer, using novel compounds derived from diamidine. Diamidine and its derivatives are potent inhibitors of tyrosyl-DNA-phosphodiesterase (Tdp1). which may be useful in chemotherapy.

Camptothecins are effective Topoisomerase I (Top1) inhibitors, and two derivatives (Topotecan® and Camptosar®) are currently approved for treatment of ovarian and colorectal cancer. Camptothecins damage DNA by trapping covalent complexes between the Top1 catalytic tyrosine and the 3′-end of the broken DNA. Tdp1 repairs Top1–DNA covalent complexes by hydrolyzing the tyrosyl-DNA bond. Thus, the presence and activity of Tdp1 can reduce the effectiveness of camptothecins as anticancer agents. In addition, Tpd1 repairs free-radical-mediated DNA breaks.

Inhibition of Tpd1 using diamidine or its derivatives. may reduce repair of DNA breaks and increase the rate of apoptosis in cancer cells. In addition. diamidine derivatives have the potential to enhance the anti-neoplastic activity of Top1 inhibitors, by reducing repair of Top1–DNA lesions through inhibition of Tdp1.

Development Status: Pre-clinical stage.

Inventors: Yves G. Pommier and Christoph Marchand (NCI).

Publications

1. Z Liao *et al.* Inhibition of human tyrosyl-DNA phosphodiesterase by aminoglycoside antibiotics and ribosome inhibitors. Mol Pharmacol. 2006 Jul:70(1):366–372.

2. Y Pommier. Camptothecins and topoisomerase I: a foot in the door. Targeting the genome beyond topoisomerase I with camptothecins and novel anticancer drugs: importance of DNA replication. repair and cell cycle checkpoints. Curr Med Chem Anticancer Agents. 2004 Sep; 4(5):429–434. Review.

3. Y Pommier *et al.* Repair of and checkpoint response to topoisomerase I mediated DNA damage. Mutat Res. 2003 Nov 27;532(1–2):173–203. Review.

Patent Status: U.S. Patent Application No. 12/225,672 filed 26 Sep 2008 (HHS Reference No. E–165–2006/0–US–04).

Licensing Status: Available for licensing.

Licensing Contact: Betty Tong, PhD; 301–594–6565; *tongb@mail.nih.gov.*

Collaborative Research Opportunity: The Laboratory of Molecular Pharmacology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Tdp1 inhibitors for the treatment of cancers. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: December 23, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–31284 Filed 1–6–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

HHS Intent To Publish Grant and Contract Solicitations for Comparative Effectiveness Research (CER) Projects With Funds Allocated to the Office of the Secretary From the American Recovery and Reinvestment Act (ARRA)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of intent.

SUMMARY: The Department of Health and Human Services announces its intention to support new CER projects with funds allocated by the American Recovery and Reinvestment Act (ARRA). The ARRA appropriated $400 million to the Office of the Secretary for support of CER. AHRQ has been designated point of contact for management of these funds.

Prioritization of the OS ARRA CER allocation was determined by several factors: public input, the Comparative Effectiveness Research-Coordination Implementation Team, the Federal Coordinating Council for Comparative Effectiveness Research (FCC), and the Institute of Medicine Report on CER. OS ARRA CER projects will focus, initially, on either (1) one of the 14 priority conditions established by the Secretary of the Department of Health and Human Services under Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, (2) 100 Institute of Medicine topic recommendations, or (3) topics that fall into one of the AHRQ identified evidence gaps or are identified in the FCC report. An additional integral focus for these OS ARRA CER funds are the priority populations, which include low income groups; minority groups; women; children; the elderly; and individuals with special health care needs, including individuals with disabilities and individuals who need chronic care or end-of-life health care. The CER solicitations will come from a diverse set of divisions and agencies across the Department of Health and Human Services.

DATES: HHS anticipates grant and contract solicitations to be published over the next several months.

ADDRESSES: The future CER funding opportunity announcements will be published in the NIH Guide: *http://grants.nih.gov/grants/guide/index.html* and on *Grants.gov.: http://www.grants.gov/.* Contract solicitations can be found on the Federal Business Opportunity site at *https://www.fbo.gov/index?cck=1&au=&ck=.*

FOR FURTHER INFORMATION CONTACT: Until the solicitations are published, AHRQ cannot provide information on their contents.

Direct any general comments regarding the OS ARRA CER program to: Kathleen Kendrick, Deputy Director, Office of the Director, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850, Telephone: 301–427–1200, e-mail address: *ARRA Support@AHRQ.HHS.gov.*

SUPPLEMENTARY INFORMATION:

Background

The American Recovery and Reinvestment Act (ARRA) provided $1.1 billion for comparative effectiveness research (CER). The Act allocated $300 million to the Agency for Healthcare Research and Quality (AHRQ), $400 million to the National Institutes of Health (NIH), and $400 million to the Office of the Secretary (OS) of the Department of Health and Human Services (HHS). These funds are dedicated specifically towards CER and must be obligated by the end of fiscal year 2010.

Comparative Effectiveness Research Initiative Description

The Department of Health and Human Service's overall goal for the investment in comparative effectiveness research is to promote high quality care through broad availability of information that helps clinicians and patients match the best science to individual needs and preferences. Moreover, the investment can build a sustainable foundation for CER so that it will enable—now and in the future the United States healthcare system to deliver the highest quality and best value care to all Americans.

Funding Opportunity Announcements soliciting grant applications and Requests for Contracts for CER will provide $210.5 million for data infrastructure and related research, $89.5 million for dissemination and translation, $71 million for research, $7.6 million for inventory and evaluation projects and $4 million for

salary and benefits for ARRA-related staff and administrative support.

An additional, $17.4 million will be allocated to projects that address any gaps within the new and existing CER programs.

Dated: December 30, 2009.

Carolyn M. Clancy,

AHRQ, Director.

[FR Doc. E9–31340 Filed 1–6–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Meeting; National Commission on Children and Disasters

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of Meeting.

DATES: The meeting will be held on Monday, February 1, 2010, from 9 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036. To attend in person, please register by 5 p.m. Eastern Time, January 28, 2010. To register, please visit *http://www.childrenanddisasters.acf.hhs.gov.* If you experience technical difficulties, please contact *NCCDregister@theambitgroup.com.* If you require a sign language interpreter or other special assistance, please call Jacqueline Haye at (202) 205–9560 or e-mail *jacqueline.haye@acf.hhs.gov* as soon as possible and no later than 5 p.m. Eastern Time, January 19, 2010.

Agenda: The National Commission on Children and Disasters is hosting a Long-Term Disaster Recovery Workshop to explore challenges and solutions that impact the unique needs of children. This one day forum provides an opportunity for Federal, State, Tribal, local and non-governmental partners to inform the Commission as it prepares its Final Report to the President and the Congress, due October 2010. Key issues that will be discussed at the workshop include children's access to medical care, the provision of mental health services to children, and barriers to information and data sharing.

Additional Information: Contacts: Roberta Lavin, Office of Human Services Emergency Preparedness and Response, e-mail *Roberta.lavin@acf.hhs.gov* or (202) 401–9306.

SUPPLEMENTARY INFORMATION: The National Commission on Children and Disasters is an independent Commission that shall conduct a comprehensive study to examine and assess the needs of children as they relate to preparation for, response to, and recovery from all hazards, building upon the evaluations of other entities and avoiding unnecessary duplication by reviewing the findings, conclusions, and recommendations of these entities. The Commission shall then submit a report to the President and the Congress on the Commission's independent and specific findings, conclusions, and recommendations to address the needs of children as they relate to preparation for, response to, and recovery from all hazards, including major disasters and emergencies..

Dated: December 28, 2009.

David A. Hansell,

Principal Deputy Assistant Secretary for Children and Families.

[FR Doc. E9–31402 Filed 1–6–10; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: February 11–12, 2010.

Closed: February 11, 2010, 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and review the activities of the NIMH Intramural Research Programs.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Open: February 12, 2010, 8:30 a.m. to 12:30 p.m.

Agenda: Presentation of NIMH Director's report and discussion on NIMH program and policy issues.

Place: National Institutes of Health, Building 31, C Wing, 31 Center Drive, 6th Floor, Conference Room 6, Bethesda, MD 20892

Contact Person: Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nimh.nih.gov/about/advisory-boards-and-groups/namhc/index.shtml* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 29, 2009.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–26 Filed 1–6–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: February 4–5, 2010.

Open: February 4, 2010, 10:30 a.m. to 4:45 p.m.

Agenda: Report by the Director, NINDS; Report by the Associate Director for Extramural Research; Overview of the NINDS Intramural Program; and other Administrative and Program Developments.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: February 4, 2010, 4:45 p.m. to 5:15 p.m.

Agenda: To review and evaluate the Division of Intramural Research Board of Scientific Counselors' Reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: February 5, 2010, 8 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 30, 2009.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–28 Filed 1–6–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the *Contact Person* listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board; Ad Hoc Subcommittee on Experimental Therapeutics.

Open: February 8, 2010, 6:30 p.m. to 8 p.m.

Agenda: Discussion on cancer experimental therapeutics.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Dr. Joseph Tomaszewski, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 3A44, Bethesda, MD 20892, (301) 496–6711.

Name of Committee: National Cancer Advisory Board.

Open: February 9, 2010, 8:30 a.m. to 4:30 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Closed: February 9, 2010, 4:30 p.m. to 5:30 p.m.

Agenda: Review of grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: February 10, 2010, 8:30 a.m. to 12 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance

onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 30, 2009.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–37 Filed 1–6–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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: National Institute of Dental and Craniofacial Research Special Emphasis Panel Review R13.

Date: January 27, 2010.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, NIH 6701 Democracy Blvd., Room 672, MSC 4878, Bethesda, MD 20892–4878, 301–594–4809, *mary_kelly@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel Review R13.

Date: January 29, 2010.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, NIH 6701 Democracy Blvd., Room 672, MSC 4878, Bethesda, MD 20892–4878, 301–594–4809, *mary_kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 30, 2009.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–42 Filed 1–6–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Partnerships in Biodefense Food and Waterborne Diseases.

Date: January 27, 2010.

Time: 11:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call)

Contact Person: Gregory P. Jarosik, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892. 301–496–0695. *gjarosik@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, "Partnerships for Biodefense Viral Pathogens (Part I)."

Date: January 29, 2010.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call)

Contact Person: Frank S. De Silva, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–594–1009. *fdesilva@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Partnerships in Biodefense Food and Waterborne Diseases.

Date: January 29, 2010.

Time: 11:45 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call)

Contact Person: Gregory P. Jarosik, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892. 301–496–0695. *gjarosik@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, "Partnerships for Biodefense Viral Pathogens (Part II)."

Date: February 5, 2010.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call)

Contact Person: Frank S. De Silva, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–594–1009, *fdesilva@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 30, 2009.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–43 Filed 1–6–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Therapeutics Partnerships.

Date: January 26–27, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Lynn Rust, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 402–3938, *lr228v@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Diagnostics Partnerships.

Date: February 11, 2010.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Lynn Rust, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 402–3938, *lr228v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 30, 2009.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–41 Filed 1–6–10; 8:45 am]

BILLING CODE 4140–01–P

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: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology.

Date: January 26–27, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jonathan Arias, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; HT Member Conflict.

Date: January 28, 2010.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Delia Tang, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301–435–2506, *tangd@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training; Neurosciences Integrated Review Group. Neurotechnology Study Section.

Date: February 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

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.*

Name of Committee: Oncology 2—Translational Clinical Integrated; Review Group. Chemo/Dietary Prevention Study Section.

Date: February 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Sally A. Mulhern, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–5877, *mulherns@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Cellular Signaling and Regulatory Systems Study Section.

Date: February 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Elena Smirnova, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Language and Communication Study Section.

Date: February 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 237–9918, *niw@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review; Group Neurological, Aging and Musculoskeletal Epidemiology Study Section.

Date: February 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

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, 301–435–1721, *hfriedman@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Development, Risk and Prevention Study Section.

Date: February 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Washington, DC, 400 New Jersey Avenue, NW., Washington, DC 20001.

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.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.

Date: February 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109.

Contact Person: Pat Manos, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–408–9866, *manospa@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review; Group Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.

Date: February 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Coronado Island Marriott Resort & Spa, 2000 Second Street, Coronado, CA 92118.

Contact Person: Jose Fernando Arena, PhD, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–435–1735, *arenaj@mail.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics C Study Section.

Date: February 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Barbara Whitmarsh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301/435–4511, *whitmarshb@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neural Oxidative Metabolism and Death Study Section.

Date: February 4–5, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Carol Hamelink, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurogenesis and Cell Fate Study Section.

Date: February 4, 2010.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis Hotel, 335 Powell Street, San Francisco, CA 94102.

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, *baizerl@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Host Interactions with Bacterial Pathogens Study Section.

Date: February 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Molecular and Integrative Signal Transduction Study Section.

Date: February 4, 2010.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Raya Mandler, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7840, Bethesda, MD 20892, (301) 402–8228, *rayam@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review; Group Pathophysiological Basis of Mental Disorders and Addictions Study Section.

Date: February 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Boris P. Sokolov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review; Group Kidney, Nutrition, Obesity and Diabetes Study Section.

Date: February 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar Washington, DC, 2121 P Street, NW., Washington, DC 20037

Contact Person: Fungai Chanetsa, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review; Group Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

Date: February 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Julius Cinque, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252, *cinquej@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Behavioral Medicine, Interventions and Outcomes Study Section.

Date: February 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Catamaran Resort Hotel and Spa, 3999 Mission Boulevard, San Diego, CA 92109.

Contact Person: Lee S. Mann, JD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Cancer Genetics Study Section.

Date: February 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica, 530 West Pico Boulevard, Luna, Santa Monica, CA 90405.

Contact Person: Steven F. Nothwehr, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5183, MSC 7840, Bethesda, MD 20892, 301–435–2492, *nothwehrs@mail.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group Clinical Neuroimmunology and Brain Tumors Study Section.

Date: February 4–5, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109.

Contact Person: Jay Joshi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 408–9135, *joshij@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Pathogenic Eukaryotes Study Section.

Date: February 4–5, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Melrose Hotel, Washington, DC, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Tera Bounds, DVM, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, 301–435–2306, *boundst@csr.nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies; Community-Level Health Promotion Study Section.

Date: February 4–5, 2010.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 495 Geary Street, San Francisco, CA 94102.

Contact Person: Jacinta Bronte-Tinkew, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892. (301) 435–1503, *brontetinkewjm@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group Adult Psychopathology and Disorders of Aging Study Section.

Date: February 4–5, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

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*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurotechnology 2.

Date: February 5, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

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*.

(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: December 30, 2009.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–35 Filed 1–6–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Medicare Prescription Drug, Improvement, and Modernization Act of 2003 Section 1013: Request for Nominations—The Effective Health Care Stakeholder Group

AGENCY: Agency for Healthcare Research and Quality (AHRQ), DHHS.

ACTION: Notice of invitation to submit nominations for the Effective Health Care Stakeholder Group.

SUMMARY: The DHHS Agency for Healthcare Research and Quality (AHRQ) invites nominations from interested organizations and knowledgeable individuals for members of the Stakeholder Group to support the work of the Effective Health Care Program, established [for consultation] pursuant to Section 1013 of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003. The goals of this program are to develop evidence on the effectiveness and comparative effectiveness of different treatments and health care interventions of importance to the Medicare, Medicaid, and State Child Health Insurance programs. To achieve these goals, AHRQ supports projects to review, synthesize, generate, and translate scientific evidence, as well as identify important issues for which existing scientific evidence is insufficient to inform decisions about health care. The Effective Health Care Program makes the evidence information it develops readily available to health care decision makers. The Stakeholder Group is critical to the success of the Effective Health Care Program by providing input to improve the applicability and relevance of research products to health care decision makers. The Effective Health Care Program Stakeholder Group will be a part of the Citizen's Forum initiative, funded by the American Recovery and Reinvestment Act, to formally and broadly engage stakeholders, and to enhance and expand public involvement in the entire Effective Health Care enterprise.

The role of the Stakeholder Group will be to:

- Provide guidance on program implementation including:
  - i. Quality improvement.
  - ii. Opportunities to maximize impact and expand program reach.
  - iii. Ensuring stakeholder interests are considered and included.
  - iv. Evaluating success.
- Provide input on implementing Effective Health Care Program reports and findings in practice and policy settings.
- Identify options and recommend solutions to issues identified by Effective Health Care Program staff.
- Provide input on critical research information gaps for practice and policy, as well as research methods to address them. Specifically:
  - i. Information needs and types of products most useful to consumers, clinicians and policy makers.
  - ii. Feedback on Effective Health Care Program reports, reviews and summary guides.
  - iii. Scientific methods and applications.
- Champion objectivity, accountability and transparency in the Effective Health Care program.

Members will serve as volunteers for a two-year period from summer 2010 through summer 2012. Stakeholder Group members will attend 3–4 meetings per year in Rockville, MD, and possibly other cities to be determined. Meetings will be 1–2 days in length, and AHRQ or a group designated by AHRQ will be responsible for travel planning and expenses. The first meeting will be held in late summer or early fall 2010 in Rockville, MD.

Members are expected to actively participate in meetings and to engage in related activities by phone and e-mail between meetings. Between-meeting work may include reviewing and providing input on the overall product development strategy and direction for the Effective Health care program, consulting with AHRQ staff on constituency issues, and serving as a resource to the Program. It is anticipated that the Stakeholder Group member time commitment between meetings will not exceed 10 hours.

The Stakeholder Group will be composed of up to 20 members with a diversity of perspectives and opinions. The group will represent several broad constituencies of stakeholders and decision-makers at the policy, system, and clinical levels, which will include:

- Patient/caregiver/consumer.
- Consumers of Federal and State beneficiary programs.
- Healthcare providers.
- Third party healthcare payers (including, but not limited to public State or Federal Medicare or Medicaid programs, and private insurance health plans and Health Maintenance Organizations).
- Employers and health-related businesses.
- Pharmacy and therapeutic committees.

- Healthcare, industry, and professional organizations.
- Academic researchers (including, but not limited to, those with expertise in evidence-based methods and effectiveness and translational research).

Self-nominations are encouraged. Materials to be submitted include a cover letter and curriculum vitae or similar supportive documentation. The cover letter should provide information on how the nominee's experience, skills and roles would help to reflect the diverse perspectives and expertise of the group and help to address the functions and goals of the Stakeholder Group as described above. Specific information on nominee experience in the constituency groups described above is required. If nominating a second party, a statement of the nominee's permission and willingness to serve must be provided. Nominees chosen for the Stakeholder Group will be required to declare and submit conflict of interest documentation. Nominees may indicate their willingness to be considered in subsequent calls for nominations if not selected for this Stakeholder Group.

All nominations received by the submission deadline will be reviewed by a committee composed of representatives from AHRQ. Nominees who best represent the broad constituencies sought for composition of the Stakeholder Group as described above, will be selected and notified by May 7, 2010.

DATES: Nominations for the Effective Health Care Stakeholder Group must be received by February 8, 2010.

ADDRESSES: Nominations for consideration may be e-mailed to *EffectiveHealthCare@AHRQ.gov.*

FOR FURTHER INFORMATION CONTACT: Effective Health Care Program at (301) 427–1502 or *EffectiveHealthCare@AHRQ.gov.*

More information about the Effective Health Care Program is available at *http://www.EffectiveHealthCare.AHRQ.gov.*

SUPPLEMENTARY INFORMATION: Nominees not selected for the Stakeholder Group are invited to participate in the Effective Healthcare Program by making suggestions for research and providing comment on key questions and draft reviews. A listserv has been established and everyone interested may join to be notified when items become available for review or public comment. Opportunities for involvement in the Effective Health Care Program are described at *http://www.EffectiveHealthCare.AHRQ.gov.*

Dated: December 22, 2009.

Carolyn M. Clancy,

Director.

[FR Doc. E9–31341 Filed 1–6–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2007–28460]

Record of Decision (ROD) on the U.S. Coast Guard Long Range Aids to Navigation (Loran-C) Program

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Department of Homeland Security (DHS), United States Coast Guard (USCG), announces the availability of the Record of Decision (ROD) to decommission the USCG Loran-C Program and terminate transmission of the North American Loran-C Radionavigation Signal. The ROD is supported by the Final Programmatic Environmental Impact Statement (PEIS) addressing the future of the USCG Loran-C Program. The Final PEIS availability was announced by the Environmental Protection Agency (EPA) on June 12, 2009 (74 FR 28046).

DATES: The Final PEIS and ROD are now available in the docket. The USCG intends to begin termination of the broadcast of the North American Loran-C Radionavigation Signal beginning on or about February 8, 2010. Loran stations are expected to cease transmitting the Loran-C radionavigation signal by October 1, 2010.

ADDRESSES: To view the ROD or the Final PEIS, go to *http://www.regulations.gov*, insert USCG–2007–28460 in the "Keyword" box, and then click "Search." Project documents, including the Final PEIS, are also available on the "USCG Long Range Aids to Navigation (Loran-C) Program" Web site at *http://loranpeis.uscg.e2m-inc.com/*. If access to the Internet is not available, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If there are questions on this notice, call LCDR Robert Manning, Electronic Navigation Division, USCG, telephone 202–372–1560, or e-mail *robert.j.manning@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

Background and Purpose

Loran is a radionavigation system first developed during World War II and operated by the USCG. The current Loran-C system is a low frequency hyperbolic radionavigation system approved for use in the Coastal Confluence Zone and as a supplemental air navigation aid. The Loran-C radionavigation system provides navigation, location, and timing services for both civil and military air, land, and marine users in the continental United States (CONUS) and Alaska. The USCG operates 18 CONUS Loran Stations, 6 Alaska Loran Stations, and 24 monitoring sites.

On January 22, 2009 (74 FR 4047), the USCG made available the Draft PEIS. The USCG delivered the Final PEIS addressing the future of the USCG Loran-C Program to the EPA, and the EPA announced the availability of the Final PEIS on June 12, 2009 (74 FR 28046).

By separate notice published today in the **Federal Register**, the USCG advised the public of the USCG's intention to begin planning for the termination of the broadcast of the North American Loran-C Radionavigation Signal beginning on or about February 8, 2010. The USCG advised that if plans were implemented, Loran stations would cease transmitting the Loran-C radionavigation signal by October 1, 2010.

The Final PEIS on the future of the USCG Loran-C Program is a program-level document that provided the USCG with high-level analysis of the potential impacts on the human environment from the alternatives for the future of the USCG Loran-C Program. The Final PEIS evaluated the following five alternatives on the future of the USCG Loran-C Program:

(1) No Action Alternative. The No Action Alternative refers to the current, existing conditions without implementation of the Proposed Action.

(2) Decommission the USCG Loran-C Program and Terminate the North American Loran-C Radionavigation Signal.

(3) Automate, Secure, and Unstaff Loran-C Stations.

(4) Automate, Secure, Unstaff, and Transfer Management of the Loran-C Program to Another Government Agency.

(5) Automate, Secure, Unstaff, and Transfer Management of the Loran-C Program to Another Government Agency to Deploy an eLoran system.

The environmentally preferable alternatives selected in the ROD are (1) no action alternative and (2) to decommission the USCG Loran-C Program and terminate the North American Loran-C Radionavigation Signal. It is important to note that the Final PEIS did not obligate the USCG, DHS, or any other entity to undertake any specific course of action with respect to Loran.

This notice is issued under authority of the National Environmental Policy Act of 1969 (Section 102 (2)(c)), as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), USCG Commandant Instruction M16475.1D., and "Aids to Navigation Authorized," which appears at 14 U.S.C. 81.

Dated: January 4, 2010.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2010–84 Filed 1–6–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0299]

Terminate Long Range Aids to Navigation (Loran-C) Signal

AGENCY: U.S. Coast Guard, DHS.

ACTION: Notice.

SUMMARY: On October 28, 2009, the President signed into law the 2010 Department of Homeland Security Appropriations Act. The Act allows for the termination of the Loran-C system subject to the Coast Guard certifying that termination of the Loran-C signal will not adversely impact the safety of maritime navigation and the Department of Homeland Security certifying that the Loran-C system infrastructure is not needed as a backup to the GPS system or to meet any other Federal navigation requirement. Those certifications were made; and the U.S. Coast Guard will, commencing on or about February 8, 2010, implement plans to terminate the transmission of the Loran-C signal and commence a phased decommissioning of the Loran-C infrastructure. These plans include ending transmissions at 18 Loran stations located in the contiguous United States and 6 Loran stations in Alaska. The Department of Homeland Security anticipates that all Loran stations will cease transmitting the Loran-C signal by October 1, 2010.

DATES: Transmission of the Loran-C signal and phased decommissioning of the Loran-C infrastructure will commence on or about February 8, 2010. All Loran stations are expected to cease transmitting the Loran-C signal by October 1, 2010.

ADDRESSES: To view this notice go to *http://www.regulations.gov*, insert USCG–2009–0299 in the "Keyword" box, and then click "Search." If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact Mr. Mike Sollosi, U.S. Coast Guard, Department of Homeland Security, telephone (202) 372–1545, *Mike.M.Sollosi@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

The U.S. Loran-C system is a low frequency hyperbolic radionavigation system. A Loran-C receiver measures the slight difference in time it takes for pulsed signals to reach a ship or aircraft from the transmitting stations within a Loran-C chain to develop a navigational position. Loran-C is approved for use in the U.S. Coastal Confluence Zone and as a supplemental air navigation aid. Loran-C is operated and maintained by the U.S. Coast Guard.

The Loran-C system was a valuable position and navigation system when it was established in 1957. As a result of technological advancements over the last 20 years and the emergence of the U.S. Global Positioning System (GPS), Loran-C is no longer required by the armed forces, the transportation sector, or the nation's security interests, and is used only by a small segment of the population.

The Loran-C system was not established as, nor was it intended to be, a viable systemic backup for GPS. Backups to GPS for safety-of-life navigation applications, or other critical applications, can be other radionavigation systems, or operational procedures, or a combination of these systems and procedures. Backups to GPS for timing applications can be a highly accurate crystal oscillator or atomic clock and a communications link to a timing source that is traceable to Coordinated Universal Time.

With respect to transportation to include aviation, commercial maritime, rail, and highway, the Department of Transportation has determined that sufficient alternative navigation aids currently exist in the event of a loss of GPS-based services, and therefore Loran currently is not needed as a back-up navigation aid for transportation safety-of-life users.

The Department of Homeland Security will continue to work with other Federal agencies to look across the critical infrastructure and key resource sectors identified in the National Infrastructure Protection Plan assessment to determine if a single, domestic system is needed as a GPS backup for critical infrastructure applications requiring precise time and frequency. If a single, domestic national system to back up GPS is identified as being necessary, the Department of Homeland Security will complete an analysis of potential backups to GPS. The continued active operation of Loran-C is not necessary to advance this evaluation.

On January 22, 2009 (74 FR 4047), the U.S. Coast Guard began a public review process for its Draft Programmatic Environmental Impact Statement (PEIS), under the National Environmental Policy Act, which evaluated the environmental impacts of several alternatives for the Loran-C system, including termination of the Loran-C signal. The U.S. Coast Guard considered comments received in response to the Draft PEIS and released a Final PEIS on June 12, 2009 (USCG–2007–28046). A public notice will be issued to announce the Record of Decision.

This announcement is for the purpose of informing the public of the Coast Guard's intention to begin termination of the broadcast of the Loran-C signal starting on or about February 8, 2010. All Loran stations will cease transmission by October 1, 2010.

The Department of Transportation was consulted regarding the preparation of this notice. This notice is issued under the authority of 6 U.S.C. 111, 14 U.S.C. 81, and 5 U.S.C. 552.

Dated: January 4, 2009.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2010–83 Filed 1–6–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO620000.L18200000.XH0000]

Notice of Reestablishment of Bureau of Land Management Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reestablishment of Resource Advisory Councils.

SUMMARY: Notice is hereby given that the Secretary of the Interior (Secretary) has reestablished the Bureau of Land Management (BLM) Resource Advisory Councils for the States of Alaska, California, Colorado, Montana/Dakotas, New Mexico, Oregon/Washington, and Utah.

FOR FURTHER INFORMATION CONTACT: Allison Sandoval, Legislative Affairs and Correspondence (600), Bureau of Land Management, 1620 L Street, NW., MS–LS–401, Washington, DC 20036, telephone (202) 912–7434.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972, Public Law 92–463. The BLM has renewed the Alaska, Northwestern California, Northeastern California, Central California, Colorado Front Range, Southwest Colorado, Northwest Colorado, Central Montana, Eastern Montana. Western Montana, Dakotas, New Mexico, Southeast Oregon, Eastern Washington, John Day-Snake, and Utah Resource Advisory Councils.

Certification Statement: I hereby certify that the reestablishment of the BLM Resource Advisory Councils is necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the BLM.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2010–34 Filed 1–6–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0078]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Limited Permittee Transaction Record.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting 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 200, page 53519 on October 19, 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 February 8, 2010. 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 agencies 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:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Limited Permittee Transaction Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: Individuals or households. *Abstract:* The purpose of this collection is to ensure that records are available for tracing explosive materials when necessary and to ensure that limited permittees do not exceed their maximum allotment of receipts of explosive materials.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: There will be an estimated 5,000 respondents, who will spend approximately 5 minutes to receive, file, and forward the appropriate documentation.

(6) An estimate of the total burden (in hours) associated with the collection: There are an estimated 12,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: December 15, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–30313 Filed 1–6–10; 8:45 am]

BILLING CODE 4410–FY–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before February 8, 2010. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (*See* 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Agency-wide (N1–16–10–4, 1 item, 1 temporary item). Routine surveillance recordings, which were previously approved for disposal.

2. Department of Agriculture, Center for Nutrition Policy and Promotion (N1–462–09–10, 1 item, 1 temporary item). Master files of an electronic information system that is used to provide the public with information concerning such matters as scientific nutritional research, dietary guidelines, and physical activity assessments.

3. Department of Agriculture, Food and Nutrition Service (N1–462–09–12, 1 item, 1 temporary item). Master files of an electronic information system used to identify and monitor fraudulent activities by retailers involved in the Supplemental Nutrition and Assistance Program.

4. Department of Agriculture, Food and Nutrition Service (N1–462–09–14, 1 item, 1 temporary item). Master files of an electronic information system containing data concerning abusive vendors involved in the Women, Infants and Children Program. Data is used as a management tool at the state level and used by the agency to prepare reports to Congress and other groups.

5. Department of Health and Human Services, Office of the Secretary (N1–468–09–4, 1 item, 1 temporary item). Master files of an electronic information system used for Office of General Counsel work flow and time tracking.

6. Department of Health and Human Services, Administration on Aging (N1–439–09–3, 5 items, 5 temporary items). Records of the Office of Preparedness and Response, including input to departmental reports, working papers, and records relating to emergency planning.

7. Department of Health and Human Services, Administration on Children and Families (N1–292–09–1, 2 items, 2 temporary items). Master files of electronic information systems used for grant program announcements and for the tracking and evaluation of grant applications.

8. Department of the Interior, Office of the Secretary (N1–48–08–1, 17 items, 17 temporary items). Records of the Chief Information Officer, including such records as capital planning and investment control files, reports and presentations, legal files, agreements, and Web site management records.

9. Department of the Interior, Office of the Secretary (N1–48–09–5, 2 items, 2 temporary items). Master files of an electronic information system used to maintain information on incidents and

investigations as well as data concerning agency law enforcement and security personnel.

10. Department of Justice, Civil Division (N1–131–08–1, 7 items, 3 temporary items). Claims, allowances, and individual trusts relating to the World War I alien property program. Proposed for permanent retention are substantive records relating to the program, such as subject files, procedures, and executive orders and proclamations.

11. Department of Justice, Executive Office for U.S. Attorneys (N1–60–09–40, 5 items, 5 temporary items). Master files, inputs, and outputs associated with an electronic information system used for litigation support. This system provides workflow management for responding to litigation and discovery requests.

12. Department of the Navy, Agency-wide (N1–NU–10–1, 1 item, 1 temporary item). Case files relating to the confinement of court-martial prisoners.

13. Department of Transportation, Federal Aviation Administration (N1–237–09–6, 6 items, 6 temporary items). Master files and inputs associated with an electronic information system used to gather data and prepare reports concerning various aspects of contracts involving disadvantaged business enterprises.

14. Department of Transportation, Federal Aviation Administration (N1–237–09–12, 1 item, 1 temporary item). Master files of an electronic information system used for monitoring contracting activities.

15. Department of Transportation, Federal Aviation Administration (N1–237–09–13, 1 item, 1 temporary item). Master files of an electronic information system used for monitoring the handling of customer service requests.

16. Department of Transportation, Federal Aviation Administration (N1–237–09–14, 1 item, 1 temporary item). Records of an electronic information system that serves as a temporary repository for information relating to the certification of airmen.

17. Department of Transportation, Federal Aviation Administration (N1–237–09–15, 1 item, 1 temporary item). Records of an electronic information system used to provide front end presentation logic on the agency web site relating to aviation safety inspections.

18. Department of Transportation, Federal Aviation Administration (N1–237–09–16, 5 items, 5 temporary items). Master files and reports relating to the printing and distribution of navigation products.

19. Department of Transportation, Federal Aviation Administration (N1–237–09–17, 2 items, 2 temporary items). Master files and other records associated with an electronic information system used for data concerning material costs entailed in printing nautical and aeronautical charts.

20. Department of Transportation, Federal Aviation Administration (N1–237–09–18, 1 item, 1 temporary item). Electronic records relating to flight standards training that is used by employees to access their records and obtain information concerning courses.

21. Department of Transportation, Federal Aviation Administration (N1–237–09–19, 1 item, 1 temporary item). Electronic records associated with a web-based tool used to provide access to reference copies of flight safety and flight standards information.

22. Department of Transportation, Federal Aviation Administration (N1–237–09–20, 1 item, 1 temporary item). Electronic data related to managing and monitoring the certification of airlines.

23. Department of Transportation, Federal Aviation Administration (N1–237–09–21, 4 items, 4 temporary items). Electronic data relating to surveillance and other activities of aviation safety inspectors.

24. Department of Transportation, Federal Aviation Administration (N1–237–09–22, 1 item, 1 temporary item). Electronic data relating to incidents involving violations of flight safety rules.

25. Department of Transportation, Federal Aviation Administration (N1–237–09–24, 3 items, 3 temporary items). Inputs, outputs, and master files associated with an obsolete electronic information system used for data concerning flying air tours over National Parks in the West.

26. Department of Transportation, Federal Aviation Administration (N1–237–09–25, 1 item, 1 temporary item). Records of an obsolete database used to track personal property and equipment.

Dated: December 30, 2009.

James J. Hastings,

Director, Access Programs.

[FR Doc. 2010–33 Filed 1–6–10; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

U.S. Chief Financial Officer Council; Grants Policy Committee (GPC)

ACTION: Notice of outreach for feedback regarding GPC's proposed response to the recommendations of the U.S. Government Accountability Office (GAO) about the timeliness of Grants.gov application submissions.

SUMMARY: This notice announces an outreach effort for feedback on topical items that impact individuals/organizations' ability to submit grant applications in a timely fashion. This outreach effort is sponsored by the GPC.

DATES: The GPC welcomes feedback on this topic from the date of this publication until January 31, 2010. Feedback received after this date will be accepted, but may not have the opportunity to inform the development of the Work Group product.

ADDRESSES: Submit electronic comments or lists of topical issues through *http://www.GPC.gov* by clicking on "share your feedback" on the second item in the LATEST NEWS box on the home page.

Overview: The GPC is in the early stages of developing a proposed response recommendation regarding the timeliness of Grants.gov applications and would like to gather early feedback from applicants on topical items or major issues that impact their ability to submit grant applications in a timely fashion. The purpose of this outreach effort is to provide a mechanism for the applicant community to submit issues that impact individuals/organizations' ability to submit grant applications in a timely fashion. This outreach effort is sponsored by the GPC.

Feedback Submission Information: Feedback will be accepted by clicking on "share your feedback" on the second item in the LATEST NEWS box on the home page. Information that pertains to this outreach effort is posted on *http://www.GPC.gov* where you may also submit topics or lists of topical issues and major challenges regarding the timely submission of grants applications on Grants.gov.

Questions: Questions should be directed to Charisse Carney-Nunes, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; e-mail, *ccarney@nsf.gov*, but feedback will not be accepted via this address.

SUPPLEMENTARY INFORMATION: This outreach effort has been made possible by the cooperation of the National Science Foundation and the GPC. A team of the Pre-Award Work Group of the GPC has been working to propose an OMB response to one of the recommendations in the U.S. Government Accountability Office (GAO) Report, "Grants.gov Has Systemic Weaknesses That Require Attention" (GAO–09–589, July, 2009). The proposed recommendation relates to electronic submission of grant applications through Grants.gov.

Specifically, the team is working on a proposed response to the GAO recommendation regarding timeliness of applications, including:

a. Bases for what constitutes a timely application;

b. Notification to applicants regarding the timeliness of applications; and

c. Handling of late applications.

At this early stage of the policy development process the GPC is gathering applicant feedback on topical items and major issues related to the timely submission of grants applications on Grants.gov. Feedback will be accepted by clicking on "share your feedback" on the second item in the LATEST NEWS box on the home page.

Please note that this opportunity to provide feedback is not a formal request for comment and that the government will not conduct a formal review and resolution of any comments received. Rather, the GPC seeks to publicly announce the undertaking and invites informal feedback regarding a response to the GAO report.

Background: The GPC is a committee of the U.S. Chief Financial Officers (CFO) Council. The Office of Management and Budget (OMB) sponsors the GPC; its membership consists of grants policy subject matter experts from across the Federal Government. The GPC is charged with improving the management of federal financial assistance government-wide. To carry out that role, the committee recommends financial assistance policies and practices to OMB and coordinates related interagency activities. The GPC serves the public interest in collaboration with other Federal Government-wide grants initiatives.

Dated: January 4, 2010.

Charisse A. Carney-Nunes,

Senior Staff Associate of the National Science Foundation and Executive Officer of the Grants Policy Committee of the U.S. CFO Council.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–24 Filed 1–6–10; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 15c3–4; SEC File No. 270–441; OMB Control No. 3235–0497.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 15c3–4 (17 CFR 240.15c3–4) (the "Rule") under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) (the "Exchange Act") requires certain broker-dealers that are registered with the Commission as OTC derivatives dealers to establish, document, and maintain a system of internal risk management controls. The Rule sets forth the basic elements for an OTC derivatives dealer to consider and include when establishing, documenting, and reviewing its internal risk management control system, which are designed to, among other things, ensure the integrity of an OTC derivatives dealer's risk measurement, monitoring, and management process, to clarify accountability at the appropriate organizational level, and to define the permitted scope of the dealer's activities and level of risk. The Rule also requires that management of an OTC derivatives dealer must periodically review, in accordance with written procedures, the OTC derivatives dealer's business activities for consistency with its risk management guidelines.

The staff estimates that that the average amount of time a new OTC derivatives dealer will spend establishing and documenting its risk management control system is 2,000 hours and that, on average, an registered OTC derivatives dealer will spend approximately 200 hours each year to maintain (*e.g.*, reviewing and updating) its risk management control system. Currently, four firms are registered with the Commission as OTC derivatives dealers. The staff estimates that approximately one additional OTC derivatives dealer may become registered within the next three years. Accordingly, the staff estimates the total annualized burden associated with Rule 15c3–4 for five OTC derivatives dealers will be approximately 1,567 hours annually.[1]

The staff believes that the cost of complying with Rule 15c3–4 will be approximately $258 per hour.[2] This per hour cost is based upon an annual average hourly salary for a compliance manager who would be responsible for ensuring compliance with the requirements of Rule 15c3–4. Accordingly, the total annualized cost for all affected OTC derivatives dealers is estimated to be $404,200.[3]

The records required to be made by OTC derivatives dealers pursuant to the Rule and the results of the periodic reviews conducted under paragraph (d) of Rule 15c3–4 must be preserved under Rule 17a–4 of the Exchange Act (17 CFR 240.17a–4) for a period of not less than three years, the first two years in an accessible place. The Commission will not generally publish or make available to any person notice or reports received pursuant to the Rule. The statutory basis for the Commission's refusal to disclose such information to the public is the exemption contained in Section (b)(4) of the Freedom of Information Act, 5 U.S.C. 552, which essentially provides that the requirement of public dissemination does not apply to commercial or financial information which is privileged or confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: (i) *Shagufta_Ahmed@comb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 30, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–2 Filed 1–6–10; 8:45 am]

BILLING CODE 8011–01–P

[1] ((One new OTC derivatives dealer × 2,000 hours to establish and document its internal risk management control system) + (One new OTC derivatives dealer × 200 hours to maintain an internal risk management control system × (3 years/2)) + (Four registered OTC derivatives dealers × 200 hours to maintain an internal risk management control system × 3 years))/3 years = 1,567 hours.

[2] The $258 per hour salary figure for a Compliance Manager is from SIFMA's Management & Professional Earnings in the Securities Industry 2008, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[3] 1,567 hours × $258 = $404,200.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17i–2, SEC File No. 270–528, OMB Control No. 3235–0592.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [1] the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below. The Code of Federal Regulation citation to this collection of information is the following: 17 CFR 240.17i–2.

Section 231 of the Gramm-Leach-Bliley Act of 1999 [2] (the "GLBA") amended Section 17 of the Securities Exchange Act of 1934 (17 USC 78a *et seq.*) ("the Exchange Act") to create a regulatory framework under which a holding company of a broker-dealer ("investment bank holding company" or "IBHC") may voluntarily be supervised by the Commission as a supervised investment bank holding company (or "SIBHC").[3] In 2004, the Commission promulgated rules, including Rule 17i–2, to create a framework for the Commission to supervise SIBHCs.[4] This framework includes qualification criteria for SIBHCs, as well as recordkeeping and reporting requirements. Among other things, this regulatory framework for SIBHCs is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated, home-country supervisor [5] for SIBHCs and their affiliated broker-dealers.

Rule 17i–2 provides the method by which an IBHC can elect to become an SIBHC. In addition, Rule 17i–2 indicates that the IBHC will automatically become an SIBHC 45 days after the Commission receives its completed Notice of Intention unless the Commission issues an order indicating either that it will begin its supervision sooner or that it does not believe it to be necessary or appropriate in furtherance of Section 17 of the Exchange Act for the IBHC to be so supervised. Finally, Rule 17i–2 sets forth the criteria the Commission would use to make this determination.

The collections of information required by Rule 17i–2 are necessary to allow the Commission to effectively determine whether supervision of an IBHC as an SIBHC is necessary or appropriate in furtherance of the purposes of Section 17 of the Exchange Act. In addition, these collections are needed so that the Commission can adequately supervise the activities of these SIBHCs. Finally, these rules enhance the Commission's supervision of the SIBHCs' subsidiary broker-dealers through collection of additional information and inspections of affiliates of those broker-dealers.

We estimate that three IBHCs will file Notices of Intention with the Commission to be supervised by the Commission as SIBHCs. Each IBHC that files a Notice of Intention to become supervised by the Commission as an SIBHC will require approximately 900 hours to draft the Notice of Intention, compile the various documents to be included with the Notice of Intention, and work with the Commission staff. Further, each IBHC likely will have an attorney review its Notice of Intention, and it will take the attorney approximately 100 hours to complete such a review. Consequently, we estimate the total one-time burden for all three firms to file their Notices of Intention would be approximately 3,000 hours.[6] Rule 17i–2 also requires that an IBHC/SIBHC update its Notice of Intention on an ongoing basis.[7] Each IBHC/SIBHC will require approximately two hours each month to update its Notice of Intention, as necessary. Thus, we estimate that it will take the three IBHC/SIBHCs, in the aggregate, about 72 hours each year to update their Notices of Intention.[8] Thus, the total burden relating to Rule 17i–2 for all SIBHCs would be approximately 3,072 hours in the first year,[9] and approximately 72 hours each year thereafter.

The records required to be created pursuant to Rule 17i–2 must be preserved for a period of not less than three years.[10] The collection of information is mandatory and the information required to be provided to the Commission pursuant to this Rule is deemed confidential pursuant to Section 17(j) of the Exchange Act and Section 552(b)(3)(B) of the Freedom of Information Act,[11] notwithstanding any other provision of law. In addition, Exchange Act Rule 17i–2(d)(1) [12] states that all Notices of Intention, amendments, and other documentation and information filed pursuant to Rule 17i–2 will be accorded confidential treatment to the extent permitted by law.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@comb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 30, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3 Filed 1–6–10; 8:45 am]

BILLING CODE 8011–01–P

[1] 44 U.S.C. 3501 *et seq.*

[2] Pub. L. No. 106–102. 113 Stat. 1338 (1999).

[3] See 15 U.S.C. 78q(i).

[4] See Exchange Act Release No. 49831 (Jun. 8, 2004), 69 FR 34472 (Jun. 21, 2004).

[5] See H.R. Conf. Rep. No. 106–434, 165 (1999). See also Exchange Act Release No. 49831, at 6 (Jun. 8, 2004), 69 FR 34472, at 34473 (Jun. 21, 2004).

[6] (900 hours + 100 hours) × 3 IBHCs/SIBHCs = 3,000 hours.

[7] An IBHC would be required to review and update its Notice of Intention to the extent it becomes inaccurate prior to a Commission determination, and an SIBHC would be required to update its Notice of Intention if it changes a mathematical model used to calculate its risk allowances pursuant to Rule 17i–7 after a Commission determination was made.

[8] (2 hours × 12 months each year) × 3 SIBHCs = 72.

[9] (3,000 hours to file the Notices of Intention + 72 hours to update them) = first year cost of 3,072.

[10] 17 CFR 240.17i–5(b)(2).

[11] 5 U.S.C. 552(b)(3)(B).

[12] 17 CFR 240.17i–2(d)(1).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request;

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17i–4, SEC File No. 270–530, OMB Control No. 3235–0594.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [1] the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget request for extension of the

[1] 44 U.S.C. 3501 *et seq.*

previously approved collection of information discussed below. The Code of Federal Regulation citation to this collection of information is the following rule: 17 CFR 240.17i–4.

Section 231 of the Gramm-Leach-Bliley Act of 1999[2] (the "GLBA") amended Section 17 of the Securities Exchange Act of 1934 (17 USC 78a *et seq.*) ("Exchange Act") to create a regulatory framework under which a holding company of a broker-dealer ("investment bank holding company" or "IBHC") may voluntarily be supervised by the Commission as a supervised investment bank holding company (or "SIBHC").[3] In 2004, the Commission promulgated rules, including Rule 17i–4, to create a framework for the Commission to supervise SIBHCs.[4] This framework includes qualification criteria for SIBHCs, as well as recordkeeping and reporting requirements. Among other things, this regulatory framework for SIBHCs is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated home-country supervisor for SIBHCs and their affiliated broker-dealers.[5]

Rule 17i–4 requires an SIBHC to comply with present Exchange Act Rule 15c3–4[6] as though it were a broker-dealer, which requires that the firm establish, document and maintain a system of internal risk management controls to assist it in managing the risks associated with its business activities (including market, credit, operational, funding, and legal risks). In addition, Rule 17i–4 requires that an SIBHC establish, document, and maintain procedures for the detection and prevention of money laundering and terrorist financing as part of its internal risk management control system. Finally, Rule 17i–4 requires that an SIBHC periodically review its internal risk management control system for integrity of the risk measurement, monitoring, and management process, and accountability, at the appropriate organizational level, for defining the permitted scope of activity and level of risk.

The collection of information required pursuant to Rule 17i–4 is needed so that the Commission can adequately supervise the activities of these SIBHCs, and to allow the Commission to effectively determine whether supervision of an IBHC as an SIBHC is necessary or appropriate in furtherance of the purposes of Section 17 of the Exchange Act. Without this information, the Commission would be unable to adequately supervise the SIBHC as provided for under the Exchange Act.

We estimate that three IBHCs will file Notices of Intention with the Commission to be supervised by the Commission as SIBHCs. An SIBHC will require, on average, about 3,600 hours to assess its present structure, businesses, and controls, and establish and document its risk management control system. In addition, an SIBHC will require, on average, approximately 250 hours each year to maintain its risk management control system. Consequently, the total initial burden for all SIBHCs is approximately 10,800 hours[7] and the continuing annual burden is about 750 hours.[8] Thus, the total burden relating to Rule 17i–4 for all SIBHCs is approximately 11,550 hours[9] in the first year, and approximately 750 hours each year thereafter.[10]

We believe that an IBHC likely will upgrade its information technology ("IT") systems in order to more efficiently comply with certain of the SIBHC framework rules (including Rules 17i–4, 17i–5, 17i–6 and 17i–7), and that this would be a one-time cost. Depending on the state of development of the IBHC's IT systems, it would cost an IBHC between $1 million and $10 million to upgrade its IT systems to comply with the SIBHC framework of rules. Thus, on average, it would cost each of the three IBHCs about $5.5 million to upgrade their IT systems, or approximately $16.5 million in total. It is impossible to determine what percentage of the IT systems costs would be attributable to each Rule, so we allocated the total estimated upgrade costs equally (at 25% for each of the above-mentioned Rules), with $4,125,000 attributable to Rule 17i–4.

The records required to be created pursuant to Rule 17i–4 must be preserved for a period of not less than three years.[11] The collection of information is mandatory and the information required to be provided to the Commission pursuant to this Rule is deemed confidential pursuant to Section 17(j) of the Exchange Act and Section 552(b)(3)(B) of the Freedom of Information Act,[12] notwithstanding any other provision of law.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@comb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 30, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–4 Filed 1–6–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: US Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17i–6, SEC File No. 270–532, OMB Control No. 3235–0588.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995[1] the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget request for extension of the previously approved collection of information discussed below. The Code of Federal Regulation citation to this collection of information is the following rule: 17 CFR 240.17i–6.

Section 231 of the Gramm-Leach-Bliley Act of 1999[2] (the "GLBA") amended Section 17 of the Securities Exchange Act of 1934 (17 USC 78a *et seq.*) (the "Exchange Act") to create a regulatory framework under which a holding company of a broker-dealer ("investment bank holding company" or

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[2] Public Law 106–102, 113 Stat. 1338 (1999).

[3] See 15 U.S.C. 78q(i).

[4] See Exchange Act Release No. 49831 (Jun. 8, 2004), 69 FR 34472 (Jun. 21, 2004).

[5] See H.R. Conf. Rep. No. 106–434, 165 (1999). See also Exchange Act Release No. 49831, at 6 (Jun. 8, 2004), 69 FR 34472, at 34473 (Jun. 21, 2004).

[6] 17 CFR 240.15c3–4.

[7] (3,600 hours × 3 SIBHCs) = 10,800 hours.

[8] (250 hours per year × 3 SIBHCs) = 750 hours per year.

[9] (3,600 hours × 3 SIBHCs) + (250 hours per year × 3 SIBHCs).

[10] (250 hours per year × 3 SIBHCs).

[11] 17 CFR 240.17i–5(b)(5).

[12] 5 U.S.C. 552(b)(3)(B).

[1] 44 U.S.C. 3501 *et seq.*

[2] Public Law 106–102, 113 Stat. 1338 (1999).

"IBHC") may voluntarily be supervised by the Commission as a supervised investment bank holding company (or "SIBHC").[3] In 2004, the Commission promulgated rules, including Rule 17i–6, to create a framework for the Commission to supervise SIBHCs.[4] This framework includes qualification criteria for SIBHCs, as well as recordkeeping and reporting requirements. Among other things, this regulatory framework for SIBHCs is intended to provide a basis for non-U.S. financial regulators to treat the Commission as the principal U.S. consolidated home-country supervisor for SIBHCs and their affiliated broker-dealers.[5]

Pursuant to Section 17(i)(3)(A) of the Exchange Act, an SIBHC must make and keep records, furnish copies thereof, and make such reports as the Commission may require by rule.[6] Rule 17i–6 requires that an SIBHC file with the Commission certain monthly and quarterly reports and an annual audit report.

The collections of information required by Rule 17i–6 are necessary to allow the Commission to adequately to supervise the activities of these SIBHCs and to effectively determine whether supervision of an IBHC as an SIBHC is necessary or appropriate in furtherance of the purposes of Section 17 of the Act. Rule 17i–6s also enhances the Commission's supervision of a SIBHCs' subsidiary broker-dealers through collection of additional information and inspections of affiliates of those broker-dealers. Without these reports, the Commission would be unable to adequately supervise an SIBHC, nor would it be able to determine whether continued supervision of an IBHC as an SIBHC were necessary and appropriate in furtherance of the purposes of Section 17 of the Act.

We estimate that three IBHCs will file Notices of Intention with the Commission to be supervised by the Commission as SIBHCs. An SIBHC will require about 8 hours to prepare and file each monthly report required by this rule (or approximately 64 hours per year).[7] On average, it will take an SIBHC about 16 hours each quarter (or 64 hours each year)[8] to prepare and file the quarterly reports required by this rule. An SIBHC will require about 200 hours to prepare and file the annual audit reports required by this rule. Consequently, the total annual burden of Rule 17i–6 on all SIBHCs is approximately 984 hours.[9]

Rule 17i–6 requires that an SIBHC file certain monthly and quarterly reports with the Commission, as well as an annual audit report. The average cost for an SIBHC to prepare and file the monthly reports is about $1,424 per month, and thus approximately $11,392 per year.[10] On average, an SIBHC will incur a quarterly cost of $2,848 to prepare and file the required quarterly reports, and thus will incur an annual cost of $11,392 to file these reports.[11] Finally, an SIBHC, on average, will incur an annual cost of $40,400 to prepare and file an annual audit.[12] Thus, the total dollar cost of the ongoing paperwork burden associated with Rule 17i–6 is approximately $189,552.[13]

We believe that an IBHC likely will upgrade its information technology ("IT") systems in order to more efficiently comply with certain of the SIBHC framework rules (including Rules 17i–4, 17i–5, 17i–6 and 17i–7), and that this would be a one-time cost. Depending on the state of development of the IBHC's IT systems, it would cost an IBHC between $1 million and $10 million to upgrade its IT systems to comply with the SIBHC framework of rules. Thus, on average, it would cost each of the three IBHCs about $5.5 million to upgrade their IT systems, or approximately $16.5 million in total. It is impossible to determine what percentage of the IT systems costs would be attributable to each Rule, so we allocated the total estimated upgrade costs equally (at 25% for each of the above-mentioned Rules), with $4,125,000 attributable to Rule 17i–6.

The reports and notices required to be filed pursuant to Rule 17i–6 must be preserved for a period of not less than three years.[14] The collection of information is mandatory and the information required to be provided to the Commission pursuant to this Rule is deemed confidential pursuant to Section 17(j) of the Securities Exchange Act of 1934[15] and Section 552(b)(3)(B) of the Freedom of Information Act,[16] notwithstanding any other provision of law. In addition, paragraph 17i–6(h) specifies that all reports and statements filed by an SIBHC in accordance with Rule 17i–6 shall be accorded confidential treatment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC, 20503 or by sending an e-mail to: *Shagufta_Ahmed@comb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 30, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–5 Filed 1–6–10; 8:45 am]

BILLING CODE 8011–01–P

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[3] *See* 15 U.S.C. 78q(i).

[4] See Exchange Act Release No. 49831 (Jun. 8, 2004), 69 FR 34472 (Jun. 21, 2004).

[5] See H.R. Conf. Rep. No. 106–434, 165 (1999). *See also* Exchange Act Release No. 49831, at 6 (Jun. 8, 2004), 69 FR 34472, at 34473 (Jun. 21, 2004).

[6] 15 U.S.C. 78q(i)(3)(A).

[7] The SIBHC must file with the Commission a monthly report within 30 calendar days after the end of each month that does not coincide with a fiscal quarter end. Consequently, the SIBHC must file a monthly report 8 times each year. (8 hours × 8 months) = 64 hours/year.

[8] (16 hours × 4 quarters in a year) = 64 hours/year.

[9] (64 hours per year to prepare and file monthly reports + 64 hours each year to prepare and file quarterly reports + 200 hours each year to prepare and file annual audit reports) × 3 SIBHCs = 984 hours.

[10] We believe that an SIBHC would have a Senior Accountant prepare and file these reports. According to the Securities Industry Financial Management Association (or "SIFMA"), the hourly cost of a Senior Accountant is $178, as reflected in the SIFMA's *Report on Management and Professional Earnings for 2008*, and modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. ($178 × 8 hours) = $1,424. ($1,424 × 8 months) = $11,392.

[11] We believe that an SIBHC would have a Senior Accountant prepare and file these reports. The hourly cost of a Senior Accountant is $178. ($178 × 16 hours) = $2,842. ($2,848 × 4 quarters) = $11,392.

[12] We believe that an SIBHC would have a Senior Internal Auditor work with accountants to prepare and file these reports. According to the SIFMA, the hourly cost of a Senior Internal Auditor is $202, as reflected in its *Report on Monagement and Professional Earnings for 2008*, and modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. ($202 × 200 hours) = $40,400.

[13] (($11,392 +$11,392 + $40,400) × 3 SIBHCs) = $189,552.

[14] 17 CFR 240.17i–5(b)(3).

[15] 15 U.S.C. 78q(j)

[16] 5 U.S.C. 552(b)(3)(B).

SECURITIES AND EXCHANGE COMMISSION

Submission of OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor

Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 31a–2, SEC File No. 270–174, OMB Control No. 3235–0179.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 31(a)(1) of the Investment Company Act of 1940 [1] (the "Act") requires registered investment companies ("funds") and certain principal underwriters, broker-dealers, investment advisers and depositors of funds to maintain and preserve records as prescribed by Commission rules. Rule 31a–1 [2] specifies the books and records that each of these entities must maintain. Rule 31a–2,[3] which was adopted on April 17, 1944, specifies the time periods that entities must retain books and records required to be maintained under rule 31a–1.

Rule 31a–2 requires the following:

1. Every fund must preserve permanently, and in an easily accessible place for the first two years, all books and records required under rule 31a–1(b)(1)–(4).[4]

2. Every fund must preserve for at least six years, and in an easily accessible place for the first two years:

a. All books and records required under rule 31a–1(b)(5)–(12);[5]

b. all vouchers, memoranda, correspondence, checkbooks, bank statements, canceled checks, cash reconciliations, canceled stock certificates and all schedules that support each computation of net asset value of fund shares;

c. any advertisement, pamphlet, circular, form letter or other sales literature addressed or intended for distribution to prospective investors;

d. any record of the initial determination that a director is not an interested person of the fund, and each subsequent determination that the director is not an interested person of the fund, including any questionnaire and any other document used to determine that a director is not an interested person of the company;

e. any materials used by the disinterested directors of a fund to determine that a person who is acting as legal counsel to those directors is an independent legal counsel; and

f. any documents or other written information considered by the directors of the fund pursuant to section 15(c) of the Act in approving the terms or renewal of a contract or agreement between the company and an investment advisor.

3. Every underwriter, broker or dealer that is a majority-owned subsidiary of a fund must preserve records required to be preserved by brokers and dealers under rules adopted under section 17 of the Securities Exchange Act of 1934 [6] ("section 17") for the periods established in those rules.

4. Every depositor of any fund, and every principal underwriter of any fund other than a closed-end fund, must preserve for at least six years records required to be preserved by brokers and dealers under rules adopted under section 17 to the extent the records are necessary or appropriate to record the entity's transactions with the fund.

5. Every investment adviser that is a majority-owned subsidiary of a fund must preserve the records required to be maintained by investment advisers under rules adopted under section 204 of the Investment Advisers Act of 1940 [7] ("section 204") for the periods specified in those rules.

6. Every investment adviser that is not a majority-owned subsidiary of a fund must preserve for at least six years records required to be maintained by registered investment advisers under rules adopted under section 204 to the extent the records are necessary or appropriate to reflect the adviser's transactions with the fund.

The records required to be maintained and preserved under this part may be maintained and preserved for the required time by, or on behalf of, a fund on (i) Micrographic media, including microfilm, microfiche, or any similar medium, or (ii) electronic storage media, including any digital storage medium or system that meets the terms of this section. The fund, or person that maintains and preserves records on its behalf, must arrange and index the records in a way that permits easy location, access, and retrieval of any particular record.[8]

The Commission periodically inspects the operations of all funds to ensure their compliance with the provisions of the Act and the rules under the Act. The Commission staff spends a significant portion of their time in these inspections reviewing the information contained in the books and records required to be kept by rule 31a–1 and to be preserved by rule 31a–2.

There are approximately 4,522 registered investment companies ("funds") as of September 30, 2009, all of which are required to comply with rule 31a–2. Based on conversations with representatives of the fund industry and past estimates, our staff estimates that each fund currently spends 220 hours per year complying with rule 31a–2. Based on these estimates, our staff estimates that the total annual burden for a fund to comply with rule 31a–2, is 220 hours, with a total annual burden for all funds of 994,840 hours.[9]

The hour burden estimates for retaining records under rule 31a–2 are based on our experience with registrants and our experience with similar requirements under the Act and the rules under the Act. The number of burden hours may vary depending on, among other things, the complexity of the fund, the issues faced by the fund, and the number of series and classes of the fund. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are

[1] 15 U.S.C. 80a–30(a)(1).

[2] 17 CFR 270.31a–1.

[3] 17 CFR 270.31a–2.

[4] 17 CFR 270.31a–1(b)(1)–(4). These include, among other records, journals detailing daily purchases and sales of securities or contracts to purchase and sell securities, general and auxiliary ledgers reflecting all asset, liability, reserve, capital, income and expense accounts, separate ledgers reflecting, separately for each portfolio security as of the trade date all "long" and "short" positions carried by the fund for its own account, and corporate charters, certificates of incorporation and by-laws.

[5] 17 CFR 270.31a–1(b)(5)–(12). These include, among other records, records of each brokerage order given in connection with purchases and sales of securities by the fund, all other portfolio purchases, records of all puts, calls, spreads, straddles or other options in which the fund has an interest, has granted, or has guaranteed, records of proof of money balances in all ledger accounts, files of all advisory material received from the investment adviser, and memoranda identifying persons, committees or groups authorizing the purchase or sale of securities for the fund.

[6] 15 U.S.C. 78q.

[7] 15 U.S.C. 80b–4.

[8] In addition, the fund, or whoever maintains the documents for the fund must provide promptly any of the following that the Commission (by its examiners or other representatives) or the directors of the fund may request: (A) A legible, true, and complete copy of the record in the medium and format in which it is stored; (B) a legible, true, and complete printout of the record; and (C) means to access, view, and print the records; and separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section. In the case of records retained on electronic storage media, the fund, or person that maintains and preserves records on its behalf, must establish and maintain procedures: (i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction; (ii) to limit access to the records to properly authorized personnel, the directors of the fund, and the Commission (including its examiners and other representatives); and (iii) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

[9] This estimate is based on the following calculation: 4,522 registered investment companies × 220 hours = 994,840 total hours.

not derived from quantitative, comprehensive, or even representative survey or study of the burdens associated with our rules and forms.

The Commission staff estimates the average cost of preserving books and records required by rule 31a–2, to be approximately $70,000 annually per fund. As discussed previously, there are approximately 4,522 funds currently operating, for a total cost of preserving records as required by rule 31a–2 of $316,540,000 per year.[10] Our staff understands, however, based on conversations with representatives of the fund industry, that funds would already spend approximately half of this amount ($158,270,000) to preserve these same books and records, as they are also necessary to prepare financial statements, meet various state reporting requirements, and prepare their annual federal and state income tax returns. Therefore, we estimate that the total annual cost burden for funds as a result of compliance with rule 31a–2 is $158,270,000 per year.

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: December 30, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–6 Filed 1–6–10; 8:45 am]

BILLING CODE 8011–01–P

[10] This estimate is based on the following calculation: 4,522 funds × $70,000 = $316,540,000.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29101; 812–13549]

MetLife, Inc. and MetLife Capital Trust V; Notice of Application

December 30, 2009.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: MetLife Capital Trust V (the "Trust") and MetLife, Inc. ("MetLife") request an order that would permit the Trust to sell debt securities or non-voting preferred stock and use the proceeds to finance the business operations of its parent company or a controlled company of the parent company.

FILING DATES: The application was filed on July 21, 2008, and amended on January 16, 2009, August 13, 2009, November 16, 2009 and November 27, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 25, 2010, and should be accompanied by proof of service on applicant, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants. 200 Park Avenue, New York, NY 10166–0188.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915, or Julia Kim Gilmer, Branch Chief, at (202) 551–6871 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is a statutory trust formed under Delaware law and pursuant to a Declaration of Trust that MetLife signed as sponsor. As sponsor, MetLife is currently the sole beneficial owner of the Trust.[1] MetLife, a Delaware corporation, is an insurance holding company that, through its subsidiaries and affiliates, offers life insurance, annuities, automobile and homeowners insurance, retail banking and other financial services to individuals, as well as group insurance and retirement and savings products and services to corporations and other institutions.[2]

2. The Trust was formed for the purpose of funding the operations of MetLife or its Controlled Companies through the issuance of debt securities or non-voting preferred stock (the "Finance Subsidiary Securities"). The Trust has not yet begun operations.

3. MetLife currently contemplates that a MetLife Finance Subsidiary will offer Finance Subsidiary Securities in private placement transactions in reliance on an exemption from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), or through public offerings that are registered under the Securities Act.

[1] If the Trust issues common securities, MetLife or a Controlled Company (defined below) will own all of the common securities issued by the Trust. MetLife, as sponsor, will at all times control the Trust in all material respects, including having the sole right to select, remove or replace the Trust administrators. A Controlled Company may be a wholly-owned or majority-owned subsidiary of MetLife through which MetLife conducts its insurance, banking and broker-dealer business, or an entity that is or would be, after giving effect to the requested order, "controlled by" MetLife within the meaning of paragraph (b)(3) of rule 3a–5 under the Act.

[2] Applicants request that the order also apply to any existing or future company controlled by MetLife that is an insurance company or a bank (as defined in section 2(a) of the Act) or a holding company primarily engaged in the business of an insurance company or a bank, that relies on section 3(c)(3) and/or section 3(c)(6) of the Act, and that, except for its reliance on section 3(c)(3) and/or section 3(c)(6), acts as a "parent company" within the meaning of rule 3a–5 under the Act (such companies, together with MetLife, "Parent Companies" and each, individually, a "Parent Company") and to certain finance subsidiaries wholly owned by a Parent Company or a controlled company of such Parent Company ("Controlled Company of the Parent Company") that currently exist or that may be established or acquired in the future (such finance subsidiaries, together with the Trust, "MetLife Finance Subsidiaries"). The Trust is the only MetLife Finance Subsidiary that presently intends to rely on the requested order. Any MetLife entity that relies on the requested order in the future will comply with the terms and conditions of the application.

Applicants propose to use the proceeds from any such offerings to finance the business operations of the MetLife Finance Subsidiary's Parent Company or a Controlled Company of the Parent Company.

4. A Parent Company will unconditionally guarantee in conformity with rule 3a–5, any debt securities constituting Finance Subsidiary Securities as to payment of principal, interest and premium, if any, and any non-voting preferred securities constituting Finance Subsidiary Securities as to the payment of dividends, liquidation preference and sinking fund payments, if any. The guarantee will provide that, in the event of a default by the MetLife Finance Subsidiary in payment of any such amount, the holders of Finance Subsidiary Securities may institute legal proceedings directly against the Parent Company that guaranteed the Finance Subsidiary Securities to enforce the guarantee without first proceeding against the MetLife Finance Subsidiary.

5. Any Finance Subsidiary Securities that are convertible or exchangeable will be convertible or exchangeable only for securities issued by the Parent Company that guaranteed the Finance Subsidiary Securities or for other securities issued by the MetLife Finance Subsidiary that meet the applicable requirements of rule 3a–5(a)(1) through (a)(3) of the Act. Each MetLife Finance Subsidiary, through loans or an investment, will transfer at least 85% of the proceeds from the sale of the Finance Subsidiary Securities to its Parent Company or a Controlled Company of the Parent Company as soon as practicable, but in no event later than six months after receipt of such proceeds.

Applicant's Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from all provisions of the Act. Rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a–5(b)(2)(i) in relevant part defines a "parent company" to be any corporation, partnership, or joint venture that is not considered an investment company under section 3(a) of the Act or that is excepted or exempted by order from the definition of investment company by section 3(b) of the Act or by the rules or regulations under section 3(a) of the Act. Applicants state that while MetLife is not an investment company within the definition of section 3(a) of the Act, MetLife may in the future, choose to rely on section 3(c)(6) of the Act for an exclusion from the definition of an investment company. To the extent MetLife or another Parent Company derives its non-investment company status from section 3(c)(6) of the Act, MetLife would not qualify as an eligible parent company under rule 3a–5(b)(2)(i). Accordingly, applicants request exemptive relief to permit MetLife or another Parent Company that does not satisfy a portion of the definition of a "parent company" in rule 3a–5(b)(2)(i) solely because it is an "insurance company" or "bank" as defined in section 2(a) of the Act and is excepted from the definition of an investment company under sections 3(c)(3) or 3(c)(6) of the Act or a holding company primarily engaged in the business of an insurance company or a bank that is excepted from the definition of an investment company under section 3(c)(6) of the Act to guarantee Finance Subsidiary Securities issued by a MetLife Finance Subsidiary that is wholly-owned by the Parent Company or a Controlled Company of the Parent Company.

3. Rule 3a–5(b)(3)(i) in relevant part defines a "company controlled by the parent company" to be any corporation, partnership, or joint venture that is not considered an investment company under section 3(a) of the Act or that is excepted or exempted by order from the definition of investment company by section 3(b) of the Act or by the rules and regulations under section 3(a) of the Act. MetLife requests exemptive relief to permit a Controlled Company of the Parent Company that is excepted from the definition of an investment company under section 3(c)(2), 3(c)(3), 3(c)(4), 3(c)(5)(A), 3(c)(5)(B) or 3(c)(6) of the Act to receive funds from a MetLife Finance Subsidiary that is wholly owned by its Parent Company or a Controlled Company of the Parent Company.

4. Applicants state that the purpose of each MetLife Financing Subsidiary is to provide funds for the operations of its Parent Company or Controlled Company of the Parent Company. Applicants state that neither any Parent Company nor any Controlled Company of the Parent Company presents the potential for investment company activities.

5. Applicants seek exemptive relief that would include Parent Companies that have not been named as applicants to the application. Without the requested relief, a newly acquired MetLife insurance company or bank subsidiary that may seek (or such existing subsidiary that may determine in the future) to act as a "parent company" within the meaning of rule 3a–5 would have to submit another application seeking essentially the same relief as sought here. Such an application would not raise any significant issue that applicants have not already analyzed in the application.

6. Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the exemptive request meets the standards set forth in section 6(c) of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

Applicants will comply with all of the provisions of rule 3a–5 under the Act, except that:

(1) A Parent Company may not meet the portion of the definition of a "parent company" in rule 3a–5(b)(2)(i) solely because it is excluded from the definition of an investment company under sections 3(c)(3) or 3(c)(6) of the Act; and

(2) a Controlled Company of the Parent Company may not meet the portion of the definition of a "company controlled by the parent company" in rule 3a–5(b)(3)(i) solely because it is excluded from the definition of an investment company under sections 3(c)(2), 3(c)(3), 3(c)(4), 3(c)(5)(A), 3(c)(5)(B) or 3(c)(6) of the Act;

provided that:

(a) any Controlled Company of the Parent Company excluded from the definition of investment company under section 3(c)(5) of the Act will fall within section 3(c)(5)(A) or section 3(c)(5)(B) solely by reason of its holdings of accounts receivable of either its own customers or the customers of another Controlled Company of the Parent Company, or by reason of loans made to its customers or the customers of another Controlled Company of the Parent Company; and

(b) any Parent Company or Controlled Company of a Parent Company excluded from the definition of investment company under section 3(c)(6) of the Act will not engage primarily, directly, or through majority-owned subsidiaries in one or more of the businesses described in section 3(c)(5) of the Act (except as permitted by (a) above).

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1 Filed 1–6–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

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 an Open Meeting on January 11, 2010 at 9:30 a.m., in the Auditorium, Room L–002, to hear oral argument in an appeal by Diane M. Keefe ("Keefe"), a former employee of Pax World Management Corp. ("Pax Management"), a registered investment adviser, from the decision of an administrative law judge. The law judge found that Keefe, a portfolio manager of the Pax World High Yield Fund ("Fund"), an investment company registered with the Commission and advised by Pax Management, willfully violated Section 34(b) of the Investment Company Act of 1940. The law judge suspended Keefe for twelve months from association with an investment adviser, broker, or dealer.

Among the issues likely to be argued are whether Keefe willfully violated Investment Company Act Section 34(b) and, if so, whether and to what extent sanctions should be imposed on her.

Commissioner Paredes, as duty officer, determined that no earlier notice thereof was possible.

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: January 5, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–117 Filed 1–5–10; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 6861]

Culturally Significant Objects Imported for Exhibition Determinations: "Habsburg Treasures"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Habsburg Treasures," 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 Norton Museum of Art, West Palm Beach, Florida, from on or about January 16, 2010, until on or about April 11, 2010; the Columbia Museum of Art, Columbia, South Carolina, from on or about May 21, 2010, until on or about September 19, 2010; the John and Mable Ringling Museum of Art, Sarasota, Florida, from on or about October 7, 2010, until on or about December 30, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 4, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–113 Filed 1–6–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6860]

Termination of Ineligible Status and Statutory Debarment Pursuant to Section 38(g)(4) of the Arms Export Control Act and Section 127.7 of the International Traffic in Arms Regulations for Earlene Christenson (a.k.a. Earlene Larson Christenson; Earlene Larson)

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has terminated the ineligible status and statutory debarment of Earlene Christenson (a.k.a. Earlene Larson Christenson; Earlene Larson), pursuant to section 38(g)(4) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(g)(4)) and section 127.7 of the International Traffic in Arms Regulations (ITAR).

DATES: *Effective Date:* January 7, 2010.

FOR FURTHER INFORMATION CONTACT: Daniel J. Buzby, Acting Director, Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663–2812.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA and section 127.7 of the ITAR prohibit the issuance of export licenses or other approvals to a person if that person, or any party to the export, has been convicted of violating the AECA and certain other U.S. criminal statutes enumerated at section 38(g)(1) of the AECA and section 120.27 of the ITAR. Such individuals are considered ineligible in accordance with section 120.1 of the ITAR. Also, a person convicted of violating the AECA is subject to statutory debarment under section 127.7 of the ITAR.

In September 2003, Earlene Christenson was statutorily debarred pursuant to section 127.7 of the ITAR. Ms. Christenson was thus prohibited from participating directly or indirectly in exports of defense articles and defense services. Notice of debarment was published in the **Federal Register** (68 FR 52436, September 3, 2003).

In accordance with section 38(g)(4) of the AECA and section 127.7 of the ITAR, the statutory debarment may be terminated after consultation with other appropriate U.S. agencies, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns. Ms. Christenson, even after reinstatement, will not be eligible to participate directly or indirectly in any activities regulated under the ITAR

without prior approval from the Department of State. The Department of State has reviewed the circumstances and consulted with other appropriate U.S. agencies, and has determined that efforts necessary to prevent future ITAR violations have been taken. Therefore, in accordance with section 38(g)(4) of the AECA and section 127.7 of the ITAR, the statutory debarment is rescinded, effective January 7, 2010.

Dated: July 27, 2009.

Andrew J. Shapiro,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 2010–23 Filed 1–6–10; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 698X)]

CSX Transportation, Inc.—Discontinuance of Service Exemption—in Clark, Floyd, Lawrence, Orange, and Washington Counties, IN

On December 18, 2009, CSX Transportation, Inc. (CSXT) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue service over a 62.3-mile line of railroad on its Northern Region, Louisville Division, Hoosier Subdivision, between milepost 00Q 251.7, near Bedford, and milepost 00Q 314.0, near New Albany, in Clark, Floyd, Lawrence, Orange, and Washington Counties, IN.[1] The line traverses United States Postal Service Zip Codes 47150, 47172, 47106, 47143, 47165, 47167, 47108, 47452, 47446, and 47421, and includes the stations of Orleans, Leipsic, Campbellsburg, Salem, Pekin, and Borden.

CSXT states that the line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by April 7, 2010.

Any offer of financial assistance (OFA) for subsidy under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).[2]

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 698X) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204. Replies to the petition are due on or before January 27, 2010.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: December 31, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–81 Filed 1–6–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Sherburne and Stearns Counties, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to terminate Tier I EIS.

SUMMARY: The FHWA is issuing this notice to advise the public that the Tier I Environmental Impact Statement (EIS) process for a proposed east/west minor arterial connection between Trunk Highway (TH) 15 and TH 10, including a crossing of the Mississippi River, in an area south of 10th Street South and north of Interstate 94 in the St. Cloud Metropolitan Area, Sherburne and Stearns Counties, Minnesota is terminated. The original Notice of Intent for this Tier I EIS process was published in the **Federal Register** on December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Environmental and Civil Rights Specialist, Federal Highway Administration, Galtier Plaza, Suite 500, 380 Jackson Street, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Scott Mareck, Executive Director and Transportation Planning Manager, St. Cloud Area Planning Organization, 1040 County Road Four, St. Cloud, Minnesota 56303, Telephone (320) 252–7568.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the St. Cloud Area Planning Organization and Stearns and Sherburne Counties, has terminated the Tier I EIS process begun in 2002 to address the need for improved east/west minor arterial continuity, land use and trip generation growth, and forecasted 2025 congestion on existing bridges. The purpose of the Tier I EIS was to preserve right of way for the proposed highway improvement, including a crossing of the Mississippi River. The Scoping Decision Document for the project was approved by Stearns and Sherburne Counties on June 14, 2005 and April 21, 2005, respectively. An Amended Scoping Decision Document for the project was approved by Stearns and Sherburne Counties on September 8, 2006 and September 15, 2006, respectively. The conclusion of the Amended Scoping Decision Document was to separate the project into two independent projects by dividing the project at the intersection of Stearns County State Aid Highway (CSAH) 75. The first of these two projects (the 33rd Street Project), will extend from TH 15 easterly along existing 33rd Street South to its junction with CSAH 75. The second project (the Mississippi River Crossing Project) will extend from CSAH 75 easterly to TH 10 in Sherburne County. On October 3, 2006, the St. Cloud Area Planning Organization notified Federal, State and local agencies; interested parties; and the public that work on the 33rd Street Project would proceed as an Environmental Assessment and that the Tier I EIS for the Mississippi River Crossing Project would proceed at an undetermined future date. Therefore, the EIS for this project has been terminated.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations

[1] CSXT owns the line and acknowledges that it cannot abandon the line until its subsidiary, The Indiana Rail Road Company (INRD) discontinues service under the trackage rights it obtained in the *The Indiana Rail Road Company—Acquisition—Soo Line Railroad Company*, STB Finance Docket No. 34783 (STB served Apr. 11, 2006).

[2] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8.

implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: December 30, 2009.

Cheryl B, Martin,

Environmental and Civil Rights Specialist, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. E9–31403 Filed 1–6–10; 8:45 am]

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Thursday, January 7, 2010

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H.R. 3819/P.L. 111–125
To extend the commercial space transportation liability regime. (Dec. 28, 2009; 123 Stat. 3486)

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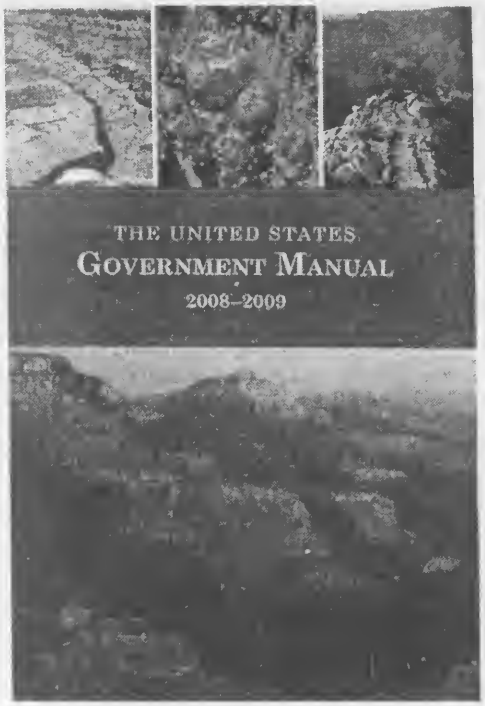

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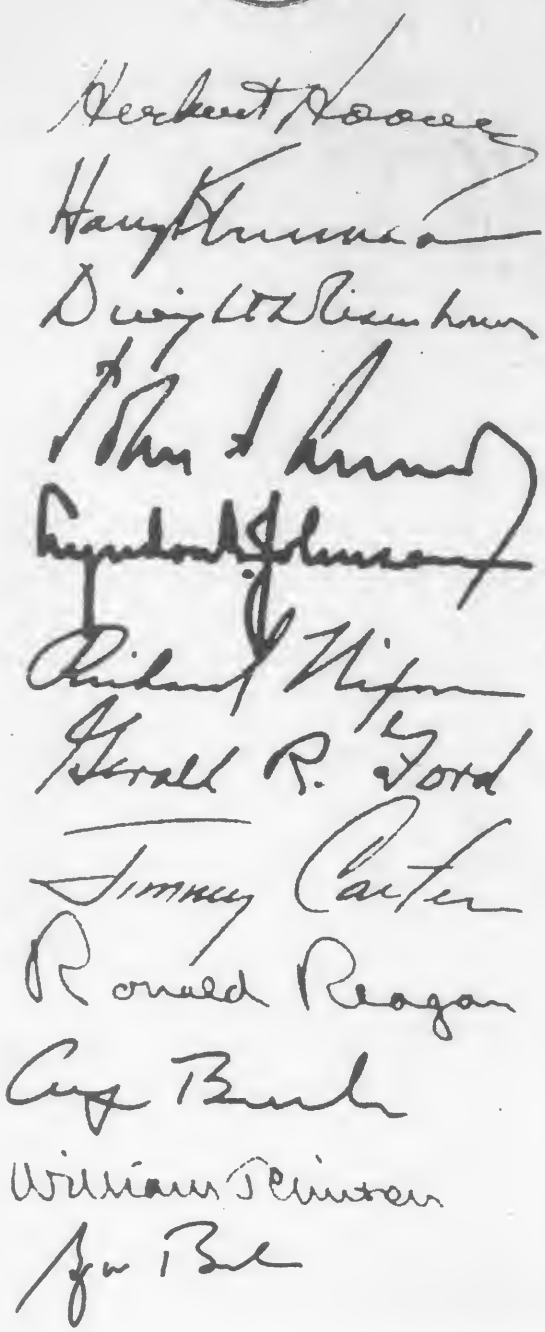

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