Federal Register

4–9–09 Thursday
Vol. 74 No. 67 Apr. 9, 2009

Pages 16097–16320

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

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

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

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

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

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

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

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

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

How To Cite This Publication: Use the volume number and the page number. Example: 74 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

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

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, April 14, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 74, No. 67

Thursday, April 9, 2009

Agricultural Marketing Service
PROPOSED RULES
Milk in the Northeast and Other Marketing Areas:
Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders, 16296–16319
Proposed Processed Raspberry Promotion, Research, and Information Order, 16266–16289
Proposed Processed Raspberry Promotion, Research, and Information Order; Referendum Procedures, 16289–16293

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Food Safety and Inspection Service
See Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16176

Animal and Plant Health Inspection Service
RULES
Citrus Canker; Interstate Movement of Regulated Nursery Stock From Quarantined Areas, 16097–16104
PROPOSED RULES
Importation of Wooden Handicrafts from China, 16146–16151

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Charter Renewal:
Advisory Council for the Elimination of Tuberculosis, 16212
Meetings:
CDC/Health Resources and Services Administration Advisory Committee on HIV and STD Prevention and Treatment, 16212–16213

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16213–16214

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 16178
Membership of the USCCR Performance Review Board, 16178

Coast Guard
PROPOSED RULES
Meetings:
Transportation Worker Identification Credential (TWIC) – Reader Requirements, 16161–16162

Commerce Department
See Economic Analysis Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16187–16188

Defense Department
See Engineers Corps

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Drug Enforcement Administration
NOTICES
Importer of Controlled Substances Application:
Lipomed, Inc., One Broadway, Cambridge, MA, 16234–16235
Manufacturer of Controlled Substances Registration:
GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, IL, 16235
ISP Freetown Fine Chemicals, 238 South Main Street, Assonet, MA, 16235–16236

Economic Analysis Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16178–16180

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16190–16191

Employment and Training Administration
NOTICES
States Triggering 'on' to the Second-Tier of Emergency Unemployment Compensation (2008), 16236

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Energy Employees Occupational Illness Compensation Program Act of 2000; Revision to List of Covered Facilities, 16191–16192
Meetings:
Environmental Management Site-Specific Advisory Board, Nevada, 16192–16193

Energy Efficiency and Renewable Energy Office
NOTICES
Decision and Order Granting Waivers:
Energy Conservation Program for Commercial Equipment, 16193–16197

Engineers Corps
NOTICES
Environmental Impact Statements; Availability, etc.:
Aliso Creek, Orange County, CA, 16188
Nags Head Beach Nourishment Project, Dare County, NC, 16188–16190

Environmental Protection Agency
RULES
National Priorities List, 16126–16135
PROPOSED RULES
National Priorities List, 16162–16169
NOTICES
Meetings:
Farm, Ranch, and Rural Communities Committee, 16207
National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation, 16207–16208

Federal Aviation Administration
RULES
Airworthiness Directives:
Bell Helicopter Textron Canada Limited Model 206A, 206B, 206L, 206L–1, 206L–3, 206L–4, 222, 222B, 222U, 230, 407, 427, and 430 Helicopters, 16112–16114
Boeing Model 737 300, 400, and 500 Series Airplanes, 16108–16111
Hawker Beechcraft Corporation Model BH.125 Series 600A Airplanes, etc., 16116–16117
Honeywell Flight Management Systems Equipped with Honeywell NZ–2000 Navigation Computers, etc., Installed on Various Transport Category Airplanes, 16121–16124
Liberty Aerospace Incorporated Model XL–2 Airplanes, 16117–16121
MD Helicopters, Inc. Model MD900 (including the MD902 Configuration) Helicopters, 16114–16116
PROPOSED RULES
Airworthiness Directives:
Airbus Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, B4–622R, F4–605R, F4–622R, and C4–605R Variant F Series Airplanes, etc., 16152–16154
Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB 135BJ, 135ER, 135KE, 135KL, 135LR, 145, et al., Airplanes, 16154–16160
NOTICES
Environmental Impact Statements; Availability, etc.:
George Bush Intercontinental Airport, Houston, TX; Public Scoping Meetings, 16255–16256

Federal Emergency Management Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16225–16226

Federal Energy Regulatory Commission
PROPOSED RULES
Standards for Business Practices and Communication Protocols for Public Utilities, 16160
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16197–16199
Applications:
Duke Energy Carolinas, LLC, 16199–16200
Riverbank Sparta, LLC, 16200
Combined Notice of Filings, 16200–16204
Filings:
Abel, James E., 16204
Black Oak Energy, LLC, et. al., 16204–16205
Duane, Elizabeth Stevens, 16205
Kroboth, Michael E., 16205
Initial Market–Based Filing:
Connectiv Vineland Solar, LLC, 16205–16206
DC Energy Dakota, LLC, 16206
Windhorse Energy, LLC, 16206–16207
Petition for Declaratory Order:
Portland General Company and The Confederated Tribes of Warm Springs, 16207

Federal Highway Administration
NOTICES
Final Federal Agency Actions on Proposed Highway in California, 16256

Federal Reserve System
NOTICES
Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 16208

Federal Trade Commission
NOTICES
Consent Orders:
BASF SE, 16208–16210
Native Essence Herb Company, et al.; Analysis of Proposed Consent Order to Aid Public Comment, 16210–16212

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
12-Month Finding on a Petition to List the San Francisco Bay–Delta Population of the Longfin Smelt as Endangered, 16169–16175
NOTICES
Endangered and Threatened Wildlife and Plants:
5-Year Status Reviews of 13 Southeastern Plant Species, 16230–16232
Recovery Plan for the Rio Grande Silvery Minnow, 16232–16233

Food and Drug Administration
PROPOSED RULES
Substances Prohibited From Use in Animal Food or Feed, 16160–16161
NOTICES
Medical Devices:
Order for Certain Class III Devices; Submission of Safety and Effectiveness Information, 16214–16217
Meetings:
12th Annual Food and Drug Administration–Orange County Regulatory Affairs Educational Conference, 16217

Food Safety and Inspection Service
RULES
Rulemaking Petitions, 16104–16108
NOTICES
Comparative Risk Assessment for Listeria Monocytogenes in Ready-to-eat Meat and Poultry Deli Meats, 16176–16178

Foreign Assets Control Office
NOTICES
Unblocking of Specially Designated Narcotics Trafficker Pursuant to Executive Order (12978), 16259

Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals; Correction, 16178

Health and Human Services Department
See Centers for Disease Control and Prevention

See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16217–16218
Meetings:
Advisory Committee on Heritable Disorders in Newborns and Children, 16218–16219

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Customs and Border Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16224–16225

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16230

Interior Department
See Fish and Wildlife Service
See Reclamation Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Wasatch County Water Efficiency Recycled Water Project, 16230

Internal Revenue Service
PROPOSED RULES
Guidance Regarding Foreign Base Company Sales Income; Hearing Cancellation, 16161
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16259–16262
Credit for Renewable Electricity Production, etc., and Publication of Inflation Adjustment Factors and Reference Prices, 16262–16263

International Trade Administration
NOTICES
Antidumping:
Purified Carboxymethylcellulose from Finland, 16180–16185
North American Free-Trade Agreement, Article 1904 Binational Panel Reviews:
Termination of Panel Review, 16185–16186

International Trade Commission
NOTICES
Investigations:
Malleable Iron Pipe Fittings from China, 16233

Justice Department
See Drug Enforcement Administration
NOTICES
Consent Decrees:
United States v. Laquidara Construction, Inc. and Peter V. Laquidara, 16233–16234
Settlement Agreements, etc.:
In re Asarco LLC, 16234

Labor Department
See Employment and Training Administration

National Institutes of Health
NOTICES
Meetings:
National Advisory Mental Health Council, 16219
Center for Scientific Review, 16219–16220
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 16220
National Institute of Allergy and Infectious Diseases, 16222
National Institute of Diabetes and Digestive and Kidney Diseases, 16222
National Institute of Mental Health, 16221–16222
National Institute on Alcohol Abuse and Alcoholism, 16221
National Institute on Drug Abuse, 16220–16221
National Library of Medicine, 16222–16223
NIH Blue Ribbon Panel, 16223

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Atka Mackerel in the Bering Sea and Aleutian Islands Management Area, 16144–16145
Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area, 16145
NOTICES
Meetings:
Pacific Fishery Management Council, 16186
Southeastern Data, Assessment, and Review (SEDAR) Steering Committee, 16186–16187

Nuclear Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16236
Environmental Impact Statements; Availability, etc.:
General Electric–Hitachi Global Laser Enrichment Uranium Enrichment Facility, 16237–16238

Pipeline and Hazardous Materials Safety Administration
RULES
Hazardous Materials:
Miscellaneous Cargo Tank Motor Vehicle and Cylinder Issues; Petitions for Rulemaking, 16135–16144

Postal Service
RULES
Insurance Claims Process Changes, 16124–16126

Reclamation Bureau
NOTICES
Meetings:
Colorado River Basin Salinity Control Advisory Council, 16233

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16238–16239
Applications:
Phoenix Life Insurance Co., et al., 16239–16243
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 16243–16247
International Securities Exchange, LLC, 16247–16249

NASDAQ OMX PHLX, Inc., 16249–16255

State Department
NOTICES
Meetings:
Fine Arts Committee, 16255

Substance Abuse and Mental Health Services Administration

NOTICES
Fiscal Year (FY) 2009 Funding Opportunity, 16223
Meetings:
Advisory Committee for Women's Services, 16224

Surface Transportation Board
NOTICES
Abandonment Exemption:
Union Pacific Railroad Co., Milwaukee County, WI, 16256–16257
Filings:
Gabriel D. Hall—Corporate Family Transaction Exemption—U S Rail Holdings, LLC and U S Rail Corporation, 16257–16258
Lease and Operation Exemption:
U S Rail Holdings, LLC, Winamac Southern Railway Co., and Kokomo Grain Co., Inc., 16258

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service
NOTICES
Meetings:
Debt Management Advisory Committee, 16258–16259

U.S. Customs and Border Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 16226–16229

Veterans Affairs Department
NOTICES
Privacy Act; Systems of Records, 16263

Separate Parts In This Issue

Part II
Agriculture Department, Agricultural Marketing Service, 16266–16293

Part III
Agriculture Department, Agricultural Marketing Service, 16296–16319

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
301 16097
Proposed Rules:
305 16146
319 16146
1000 16296
1001 16296
1005 16296
1006 16296
1007 16296
1030 16296
1032 16296
1033 16296
1124 16296
1126 16296
1131 16296
1208 (2 documents) 16266, 16289

9 CFR
392 16104

14 CFR
39 (6 documents) 16108, 16112, 16114, 16116, 16117, 16121
Proposed Rules:
39 (2 documents) 16152, 16154

18 CFR
Proposed Rules:
38 16160

21 CFR
Proposed Rules:
589 16160

26 CFR
Proposed Rules:
1 16161

33 CFR
Proposed Rules:
101 16161
104 16161
105 16161
106 16161

39 CFR
111 16124

40 CFR
300 16126
Proposed Rules:
30 16162

49 CFR
171 16135
173 16135
176 16135
178 16135
180 16135

50 CFR
679 (2 documents) 16144, 16145
Proposed Rules:
17 16169

Rules and Regulations

Federal Register
Vol. 74, No. 67
Thursday, April 9, 2009

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2007–0032]

RIN 0579–AC38

Citrus Canker; Interstate Movement of Regulated Nursery Stock From Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the citrus canker regulations to explicitly prohibit, with limited exceptions, the interstate movement of regulated nursery stock from a quarantined area. The interim rule provided two exceptions to this prohibition, one that allowed nursery stock to be moved interstate for immediate export under certain conditions and another that allowed calamondin and kumquat plants to be moved interstate in accordance with a protocol designed to ensure their freedom from citrus canker. Our decision to provide for the interstate movement of calamondin and kumquat plants was based on their apparent resistance to citrus canker infection. However, since the publication of the interim rule, we have confirmed that 47 calamondin plants growing in an area quarantined for citrus canker were infected with the disease. Therefore, this final rule amends the protocol to exclude calamondin plants. The interim rule was necessary to clarify our regulations and to address the risk associated with the interstate movement of regulated nursery stock from areas quarantined for citrus canker.

DATES: *Effective Date:* May 11, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Senior Operations Officer, Emergency and Domestic Programs, Plant Protection and Quarantine, APHIS, 4700 River Road, Unit 137, Riverdale, MD 20737–1231; (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

Under section 412(a) of the Plant Protection Act (7 U.S.C. 7701 *et seq.*, referred to below as the PPA), the Secretary of Agriculture may prohibit or restrict the movement in interstate commerce of any plant or plant product, if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of a plant disease within the United States. Under the Act, the Secretary may also issue regulations requiring plants and plant products moved in interstate commerce to be subject to remedial measures determined to be necessary to prevent the spread of a plant disease or requiring the objects to be accompanied by a permit issued by the Secretary prior to movement.

Citrus canker is a plant disease that is caused by the bacterium *Xanthomonas citri* subsp. *citri* (referred to below as *Xcc*) that affects plants and plant parts of citrus and citrus relatives (Family Rutaceae). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which render the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas. Citrus canker is only known to be present in the United States in the State of Florida.

The regulations to prevent the interstate spread of citrus canker are contained in ''Subpart—Citrus Canker'' (7 CFR 301.75–1 through 301.75–14, referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker. Regulated articles are plants and plant parts of all species, clones, cultivars, strains, varieties, or hybrids of the genera *Citrus* and *Fortunella*, and all clones, cultivars, strains, varieties and hybrids of the species *Clausena lansium* and *Poncirus trifoliata*. Plants and plant parts include fruit, seed, grass clippings, plant clippings, tree clippings, and nursery stock. The regulations also provide conditions under which regulated fruit and regulated seed may be moved from quarantined areas.

Preventing the spread of citrus canker is of great importance, and the regulations are therefore necessary, not only because of the severity of the disease, but also because commercial citrus production is of considerable significance to the U.S. agricultural economy. Since 2002, an average of 939,360 acres within the United States has been devoted annually to citrus grown for commercial production.[1] During the same time period, these acres have produced, on average, more than 13 million tons of fresh citrus a year.[2] The average estimated annual value of citrus produced in the United States during that time period was $2.55 billion (packinghouse door equivalent).

Florida accounts for the majority of commercial citrus produced in the United States, but there is substantial commercial citrus production in other States. Between 2002 and 2007, Arizona, California, and Texas, three States that the United States Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) has designated as commercial citrus-producing areas in § 301.75–5, maintained, on average, 305,500 acres devoted to commercial citrus production annually and produced an average of more than 3.64 million tons of fresh citrus articles each year.[3]

Moreover, commercial citrus production in Florida has declined in recent years, from approximately 11.5 million tons in 2002 to approximately 7.8 million tons in 2006. The primary reason for this decline was the exceptionally active hurricane seasons of 2004 and 2005, which were devastating to Florida's citrus

[1] Source: Florida Agricultural Statistic Service (FASS), National Agricultural Statistics Service (NASS), USDA, ''Citrus Summary 2006–2007,'' February 2008.

[2] Data for 2002–2006 are derived from: NASS/USDA, ''Citrus Fruits 2006 Summary,'' 2006. 2007 data are from: NASS/USDA, ''Citrus Summary 2006–2007,'' February 2008.

[3] Data for 2002–2006 are derived from: NASS/USDA, ''Citrus Fruits 2006 Summary,'' 2006. 2007 data are from: NASS/USDA, ''Citrus Summary 2006–2007,'' February 2008.

production. Not only was extensive damage to citrus plants wrought during each hurricane, but the storms also widely disseminated diseases affecting citrus, including citrus canker, within the State.

Before the 2004 and 2005 hurricane seasons, we had sought to quarantine those areas within the State where the disease was found and to promote eradication efforts, while allowing the normal movement of regulated citrus articles from those areas within Florida where the disease was not present. In areas quarantined for citrus canker, the regulations required a number of measures prior to the interstate movement of any regulated articles: Inspections at set intervals of all regulated citrus plants and trees within the area, except indoor house plants; treatment of all vehicles, equipment, personnel, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove containing regulated plants or trees, as well as in providing landscaping or lawn care services on any premises containing regulated plants or regulated trees; and destruction of all plants and trees within the area that were determined to be infected with citrus canker, except plants and trees at nurseries and indoor house plants.

We based this earlier approach on the localized nature of quarantined areas within Florida during that time period. Such areas were usually no greater than a county.[4] Because of the relatively small size of these quarantined areas, we were confident that this approach would allow us to identify and quarantine newly infected areas quickly enough to prevent the further spread of the disease within Florida and to eradicate citrus canker within the State.

However, after the hurricane seasons of 2004 and 2005, at one point approximately 75 percent of all commercial citrus trees in the State were located within 5 miles of a location where citrus canker had been detected. It thus became apparent that, because of the size and distribution of the newly affected areas, the existing approach would no longer be adequate to eradicate the disease or prevent its spread within Florida. Therefore, on January 10, 2006, APHIS announced that it had determined that the established eradication program was no longer a scientifically feasible option to address citrus canker within Florida.[5]

We later codified this decision in an interim rule[6] effective and published in the **Federal Register** on August 1, 2006 (71 FR 43345–43352, Docket No. APHIS–2006–0114), in which we declared the State of Florida a quarantined area for citrus canker and amended the requirements for the movement of regulated citrus articles from Florida.

Specifically, in that rule, we moved provisions of the regulations requiring inspections at set intervals of regulated plants and trees, except indoor house plants; the treatment of articles used in providing landscaping services; and the destruction of plants and trees, except for plants and trees at nurseries and indoor house plants, from § 301.75–6, which sets conditions that must be met in order for any regulated articles to be moved interstate from a quarantined area, to paragraph (d) of § 301.75–4, which sets out conditions that must be met in order for less than an entire State to be designated as a quarantined area. We stated that these provisions were only appropriate for a regulatory program focused on eradication, and thus were no longer applicable to Florida.

After the publication of the August 2006 interim rule, it was determined that the amendments that the 2006 interim rule made to § 301.75–6 could be construed as allowing the interstate movement of citrus nursery stock from an area quarantined for citrus canker. Citrus nursery stock, however, is considered to be one of the most likely pathways for the introduction of *Xcc* to previously unaffected areas.[7] Therefore, we determined that it was necessary to amend the regulations to clarify that such movement was not allowed. At the same time, we recognized that there were many citrus producers within Florida who had been adversely affected by the restrictions imposed by the interim rule. Accordingly, we also sought to provide them with a degree of regulatory relief appropriate under the circumstances.

As a result, in an interim rule[8] effective March 16, 2007, and published in the **Federal Register** on March 22, 2007 (72 FR 13423–13428, Docket No. APHIS–2007–0032), we amended the regulations to explicitly prohibit the movement of citrus nursery stock from an area quarantined for citrus canker. This action was necessary to clarify our regulations and address the risk associated with the interstate movement of nursery stock from a quarantined area. The interim rule also included two exceptions to the prohibition, one that allowed citrus nursery stock to be moved interstate for immediate export, subject to certain restrictions, and another that allowed calamondin and kumquat plants to be moved interstate under a protocol designed to ensure their freedom from citrus canker prior to movement.

We solicited comments concerning the interim rule for 60 days ending May 21, 2007. We subsequently reopened and extended the deadline for comments until June 11, 2007, in a document published in the **Federal Register** on May 23, 2007 (72 FR 28827, Docket No. APHIS–2007–0032). For reasons we discuss below in the section entitled ''Comments Regarding the Interstate Movement of Calamondins and Kumquats,'' we reopened and extended the deadline for comments once more, until February 28, 2008, in a document published in the **Federal Register** on January 29, 2008 (73 FR 5085, Docket No. APHIS–2007–0032).

We received 18 comments by that date, from State departments of agriculture, greenhouses, citrus nursery stock growers, brokers for stock growers, and a plant board. The comments are discussed below by topic.

General Comments on the Interim Rule

Two commenters stated that the interim rule contained no scientific analysis evaluating the risks associated with the interstate movement of citrus nursery stock from a quarantined area. In the absence of such an analysis, the commenters suggested that APHIS had not adequately examined the possible risks posed by such movement or the availability of control measures that may mitigate or eliminate these risks. Because of this, they stated that we ought to withdraw the interim rule. Similarly, two commenters stated that APHIS had overstated the risk of spread

[4] In the decade preceding the end of the 2005 hurricane season, APHIS issued three interim rules (61 FR 1519–1521, Docket No. 95–086–1; 65 FR 53528–53531, Docket No. 00–036–1; 69 FR 55315–55320, Docket No. 04–045–1) designating areas in Florida as quarantined areas. Two of these three rules added counties or portions of counties.

[5] APHIS, Letter to Charles H. Bronson, Commissioner of Agriculture, Florida Department of Agriculture and Consumer Services, January 10, 2006.

[6] To view the interim rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0114.*

[7] APHIS, ''Movement of Commercially Packed Citrus Fruit from Citrus Canker Disease Quarantine Area: Revised Risk Management Analysis,'' September 2007, ppg. 25–26. To view this document, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0022.*

[8] To view the interim rule or the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0032.*

of citrus canker associated with the interstate movement of nursery stock from the State of Florida.

Our prohibition on the interstate movement of nursery stock reflects the fact that the movement of citrus nursery stock has been considered one of the most likely pathways for the spread of citrus canker. In virtually every case worldwide where citrus canker has been introduced into a previously unaffected area, it is considered likely to have occurred through the movement of infected nursery stock. Moreover, USDA has historically prohibited the interstate movement of citrus nursery stock from areas quarantined because of citrus canker. The purpose of the interim rule was therefore to make explicit our long-standing historical practice and science-based policy of prohibiting the interstate movement of citrus nursery stock from areas quarantined for citrus canker. Because this prohibition was not new, we did not prepare a risk assessment for the interim rule.

We also note that the dispersion of *Xcc* was widespread within the State of Florida as a result of the 2004 and 2005 hurricane seasons and that there were, consequently, many newly infected citrus plants within the State, including citrus nursery stock. These two considerations had, in fact, formed the basis for designating the entire State of Florida as a quarantined area in August 2006.

In deciding within that same rule to codify a protocol that allowed the interstate movement of calamondin and kumquat plants under certain conditions, we relied on a peer-reviewed scientific article on citrus canker and the long-standing, but informal, consensus of scientists regarding the strong biological resistance of calamondins and kumquats to *Xcc*.[9] We have since obtained epidemiological results that indicate that calamondins are not as resistant to citrus canker as we had previously believed. We discuss this information in greater detail in the section entitled ''Comments Regarding the Interstate Movement of Calamondins and Kumquats.''

Several commenters questioned the need for the interim rule on other grounds. Some stated that in Florida, the only State currently quarantined for citrus canker, nursery inspections mandated by Federal and State authorities suffice to prevent the movement of nursery stock infected with citrus canker. Others asserted that the biosecurity measures many nursery stock growers voluntarily undertake in order to market their plants, beyond those required by Federal or State regulations, provide adequate protection against the spread of citrus canker through the movement of nursery stock.

There are currently no Federal regulations requiring the inspection of citrus nursery stock in Florida. When an entire State has been designated as an area quarantined for citrus canker, there are no Federal regulations requiring inspection of citrus nursery stock within that area. In the August 2006 interim rule that designated the entire State of Florida as a quarantined area for citrus canker, we had intended to remove any reference to inspections from § 301.75–6 because that provision was appropriate only for a program focused on eradication and conducted in a quarantined area smaller than a State. The provision was therefore no longer appropriate for Florida, given our January 2006 determination that the widespread dispersion of *Xcc* that had occurred throughout the State as a result of the 2004 and 2005 hurricane seasons had rendered an eradication-based approach unfeasible. Likewise, we recognized in 2006 that the provision more appropriately belonged in § 301.75–4, which contains provisions under which an area less than an entire State may be designated as a quarantined area for *Xcc*. Our intention in the August 2006 interim rule was therefore to remove the provision from § 301.75–6 and add it to § 301.75–4. While we did the latter, we did not do the former. Our mistake in leaving the inspection provision in § 301.75–6 is demonstrated by the fact that, after publication of the August 2006 interim rule, § 301.75–6 appeared not to require inspected plants to yield negative results for the presence of citrus canker. Our regulations could then be read to allow infected nursery stock, whether visibly affected or asymptomatic, to be transported interstate. As these provisions did not conform to our long-standing historical practice and science-based policy, we removed the provisions from § 301.75–6 in the March 2007 interim rule.

We acknowledge that the inspections for citrus canker mandated by Florida's Department of Agriculture and Consumer Services/Division of Plant Industry (FDACS/DPI) serve to lessen the risk of the spread of *Xcc* to unaffected producers within the quarantined area. However, we have determined that these inspections do not adequately address the risk associated with the interstate movement of citrus nursery stock from Florida.

The inspections are, however, part of a larger program for citrus nursery stock produced in the State of Florida, the Citrus Nursery Stock Certification Program. We address the program itself in greater detail below, in the section entitled ''Comments Proposing Florida's Citrus Nursery Stock Certification Program as an Alternative to Rulemaking.''

Finally, we recognize that the biosecurity measures stock growers employ often reduce the likelihood that their plants may become infected with citrus canker. However, because these measures are voluntary, we cannot assume that all producers within Florida adhere to these standards. This is important, because, as we mentioned above, the movement of citrus nursery stock is considered to be one of the most likely pathways for the spread of *Xcc.* Standards and protocols that may not be uniformly followed do not adequately address the risk associated with the interstate movement of citrus nursery stock from an area quarantined for citrus canker.

Several commenters suggested that the interim rule should be withdrawn because citrus canker poses no human health risk and is not transmissible to plants other than citrus. Similarly, three commenters stated that the rule should be withdrawn because, they stated, APHIS' basis for issuing the rule was solely to protect and promote the economic interests of other commercial citrus-producing areas, rather than to prevent the further dissemination of *Xcc* within the United States.

As noted above, our intent in issuing the interim rule was to clarify our long-standing historical practice and science-based policy of prohibiting the movement of nursery stock from areas quarantined for citrus canker. The existing prohibitions on the interstate movement of citrus nursery stock from areas quarantined because of citrus canker fall within the authority delegated to APHIS under the PPA. The PPA authorizes APHIS to take measures to prohibit or restrict movement in interstate commerce of any plant or plant product, if we determine that the prohibition or restriction is necessary to prevent the dissemination of a plant disease within the United States. Citrus canker is highly transmissible to citrus plants and can cause extensive damage to affected plants. Furthermore, as we mentioned above, citrus nursery stock is considered to be one of the most likely pathways for the introduction of citrus canker to previously unaffected areas.

[9] We adopted a similar protocol in a final rule published in the **Federal Register** on March 24, 1989 (54 FR 12175–12183, Docket No. 88–105); we removed the protocol from the regulations, without giving a reason for doing so, in a final rule published in the **Federal Register** on September 11, 1990 (55 FR 37441–37453, Docket No. 90–114).

Moreover, we note that it was likewise appropriate for APHIS, in particular, to take such measures, since it was in keeping with our mission as an Agency to protect American agriculture.

One commenter stated that the interim rule should be withdrawn because APHIS lacked adequate personnel to enforce it and should be replaced with a risk-based approach that assigns personnel to the pathways through which citrus canker is most likely to travel.

We are confident that we have adequate personnel to effectively enforce this rule, which does not impose new prohibitions on the interstate movement of citrus nursery stock but rather clarifies our long-standing historical practice and science-based policy of prohibiting the movement of nursery stock from areas quarantined for citrus canker.

Comments Proposing Florida's Citrus Nursery Stock Certification Program as an Alternative to Rulemaking

Several commenters stated that APHIS had not adequately considered less stringent measures to prevent the spread of citrus canker through the interstate movement of citrus nursery stock. Many of the commenters asserted that Florida's Citrus Nursery Stock Certification Program, which is designed to prevent the spread of citrus canker and citrus greening within and from that State and which was enacted by the State of Florida on December 26, 2006, would provide an effective, yet less restrictive, alternative to the regulations established by the interim rule.[10] They pointed out that:

- The certification program requires all citrus nursery stock propagations after January 1, 2007, to be made within structures approved by FDACS/DPI to prevent the introduction of citrus canker, citrus greening, and the Asian citrus psyllid, a vector of citrus greening;
- The program contains provisions to prohibit the sale and distribution of nursery stock not grown in a structure and a site approved by FDACS/DPI;
- The program requires all nurseries in which citrus nursery stock is grown after December 26, 2006, to be fenced and to limit access to those areas within the nursery which contain citrus nursery stock;
- The program requires the decontamination of all personnel and equipment before entering a nursery;
- The program requires all parent trees from which propagations are taken after December 26, 2006, to be tested and found free of citrus canker, citrus greening, and other citrus pathogens that are transmissible through grafting; and
- The program requires nurseries to be inspected every 30 days, and allocates funds and personnel to this end.

The commenters asserted that these safeguards, collectively, provide adequate phytosanitary security to allow the interstate movement of citrus nursery stock from the quarantined area.

To consider these comments, we examined the various provisions of the certification program. We determined that certain provisions of Florida's program did not adequately address the risk of the spread of citrus canker or citrus greening from Florida. For example, the program exempts retail outlets and retail sales areas having fewer than 500 citrus plants in stock at any given time from having to place nursery stock in screened enclosures or even segregate it from other plants on-site; does not regulate citrus plants propagated in nurseries prior to implementation of the program, regardless of the phytosanitary conditions under which the plants were propagated; and does not require that all such plants be inspected for freedom from citrus canker or citrus greening prior to sale. Moreover, the State regulations that implement the Citrus Nursery Stock Certification Program do not provide a scientific rationale for not addressing the risk associated with these provisions. For these reasons, we came to the conclusion that Florida's program was not an adequate alternative to the restrictions on the interstate movement of nursery stock in our regulations.

In response to this determination, Florida requested APHIS' assistance in crafting a systems approach that would provide adequate phytosanitary measures to allow the interstate movement of citrus nursery stock from areas quarantined for citrus canker, citrus greening, and Asian citrus psyllid, a vector of citrus greening, to areas of the United States that APHIS has not designated as commercial citrus-producing areas. To this end, APHIS convened a technical working group, which recommended sourcing from a pest-exclusionary production facility and testing for all germplasm and budwood destined for propagation in nurseries within the State, construction and maintenance of pest-exclusionary production facilities and buffer zones, safeguarding, routine inspections, cleaning and disinfection protocols, and other measures that would be sufficient to address the concerns raised in our earlier evaluation.

As a result of this collaboration with APHIS, FDACS/DPI presented a draft systems approach to us for evaluation in December 2008. The mitigation measures proposed in that systems approach appear consistent with the recommendations of the technical working group; therefore, we have reason to believe that they may provide a basis for allowing the limited interstate movement of citrus nursery stock from Florida. However, because citrus nursery stock is known to be a high-risk pathway for citrus canker and citrus greening, we have decided to initiate a formal assessment of the risk associated with interstate movement of citrus nursery stock under the provisions of the systems approach. If the assessment finds the systems approach to provide effective mitigation measures, we will initiate rulemaking to codify the approach. Until such time, we will retain the existing prohibition on the interstate movement of citrus nursery stock from areas quarantined for citrus canker. Therefore, we are making no change in response to these comments.

One commenter suggested that if we did not recognize Florida's program as an alternative to rulemaking, we needed to amend the regulations to establish a similar, federally regulated certification program. The commenter stated that, without such a program, our citrus canker regulations would be inconsistent with APHIS regulations governing other plant diseases, such as *Ralstonia solanacearum* and *Phytophthora ramorum,* which allow the importation or interstate movement of plants or plant parts from an area quarantined for a disease if the plants have been produced under conditions that prevent those plants from being infected with that disease.

We implemented those certification programs based on an examination of the severity and prevalence of each specific disease, its likelihood of transmission, and the efficacy of various mitigation measures at preventing its spread. As noted above, we are currently conducting such an examination for the interstate movement of citrus nursery stock for areas quarantined for citrus canker and citrus greening.

Two commenters suggested that, in greatly restricting the movement of citrus nursery stock from Florida, APHIS had effectively encouraged States that are not commercial citrus-producing States and that have few or

[10] To view Florida's regulations implementing the Citrus Nursery Stock Certification Program, go to *http://www.flrules.org/gateway/ChapterHome.asp?Chapter=5B-62.*

no regulations governing citrus products to promote commercial citrus production. As evidence, one of the commenters stated that Georgia has initiated plans to produce citrus nursery stock within that State as a result of the interim rule without also establishing production requirements equivalent to those required by the State governments of other commercial citrus-producing areas. Poorly regulated production of citrus nursery stock, both commenters asserted, constitutes a significant pathway for the spread of citrus canker and other citrus diseases.

The temperate climate of most States not listed in the regulations as commercial citrus-producing States renders outdoor commercial citrus production impracticable. Current indoor citrus production in those States, whether commercial or noncommercial, is minimal.

We do recognize that Georgia and several other States that are not listed in the regulations as commercial citrus-producing States contain areas whose climates may be conducive to outdoor commercial citrus production. However, if these States begin commercial citrus production, we will designate them as commercial citrus-producing areas in our regulations and if citrus canker or any other quarantine disease of citrus is discovered in any of these States, we will take appropriate measures to eradicate the disease or control its spread.

Comments Proposing Changes to the Interim Rule

Several commenters suggested that APHIS should allow movement of regulated citrus nursery stock to States with a temperate climate that are not designated as commercial citrus-producing States. Citrus nursery stock moved to these States, they asserted, is primarily destined for outdoor use during the summer months or for ornamental, indoor use. If destined for outdoor use, diseased nursery stock would not survive the winter in an area with a temperate climate, and both the plant and *Xcc* would perish. If destined for indoor use, the possibility for disease aggregation or dispersion would be minimal.

We are making no changes to the interim rule in response to these comments. Allowing the movement of citrus nursery stock to areas of the United States not designated as commercial citrus-producing areas does not preclude the subsequent movement of the plants to commercial citrus-producing areas. Since nursery stock is not intended for immediate consumption, and can survive for years after it leaves the commercial distribution system, the possibility of this subsequent movement must be taken into consideration. Nor does the commenters' suggestion address the possible airborne dispersion of *Xcc* while the plants are being moved. When blown by the wind, the bacteria associated with citrus canker have been shown to survive at distances of more than 100 feet from their host.[13]

Moreover, while we are confident that we have sufficient personnel to ensure that producers in the quarantined area are adhering to the provisions of this rule, we do not have sufficient personnel to monitor every possible commercial or non-commercial pathway in each State that could result in the movement of infected but asymptomatic citrus nursery stock to other areas of the country.

Several commenters suggested that the final rule be amended to explicitly forbid the smuggling of nursery stock from an area quarantined for citrus canker.

Any movement of citrus nursery stock other than those movements authorized by the regulations is prohibited. Individuals who engage in such movements may be subject to both civil and criminal penalties.

Another commenter expressed concern about the exception in the interim rule allowing the regulated movement of nursery stock for immediate export. Such movement, the commenter suggested, appears to present a risk of introducing citrus canker into unaffected areas of the United States or other countries where the disease is not known to occur. The commenter suggested that APHIS either prohibit such movement or allow the interstate movement of citrus nursery stock, subject to the same disease control measures that allow its exportation.

In the August 2006 interim rule that quarantined the entire State of Florida for citrus canker, we established provisions under which citrus fruit and nursery stock from an area quarantined for citrus canker could be moved interstate for immediate export. We adopted these provisions to provide a degree of regulatory relief to growers, packers, and others who were adversely affected by new restrictions on the movement of citrus articles imposed by the rule.

Any nursery stock moved interstate for immediate export must be accompanied by a limited permit and must be moved in a sealed conveyance directly to the port of export. We have determined that these requirements adequately address the risk of disease spread while the articles are in transit within the United States to their port of export.

Foreign countries set their own requirements for importing commodities, including citrus nursery stock, from the United States, and thus may choose whether or not to accept nursery stock from areas quarantined for citrus canker.

Two commenters expressed concern that nursery stock imported into the United States could be infected with citrus canker or harbor vectors of the disease. These commenters suggested that APHIS consider restricting or prohibiting the importation of citrus nursery stock and other citrus products into the United States.

The regulations in 7 CFR 319.19 prohibit the importation of citrus nursery stock from other countries, unless the nursery stock is imported for experimental or scientific purposes or imported into Guam. Similarly, the regulations in 7 CFR 319.28 prohibit the importation of citrus fruit and peels from most countries quarantined for citrus canker, with certain, limited exceptions.

Comments Regarding the Interstate Movement of Calamondins and Kumquats

In the interim rule, we allowed the interstate movement of calamondin and kumquat plants under a protocol designed to ensure that they were free of the disease prior to movement. The protocol allowed interstate movement if the following conditions were met:

- The plants are own-root-only, and have not been grafted or budded.
- The plants are started, are grown, and have been maintained solely at the nursery from which they will be moved interstate.
- If the plants are not grown from seed, then the cuttings used for propagation of the plants are taken from plants located on the same nursery premises or from another nursery that is eligible to produce calamondin and kumquat plants for interstate movement under the requirements of the regulations. Cuttings may not be obtained from properties where citrus canker is present.
- All citrus plants at the nursery premises have undergone State inspection and have been found to be free of citrus canker by State authorities

[13] See Gottwald, T.R., Graham, J.H., and Schubert, T.S., 2002. Citrus canker, The pathogen and its impact. Plant Health Progress doi: 10.1094/PHP–2002–0812–01–RV. Available at *http://www.plantmanagementnetwork.org/pub/php/review/citruscanker/*.

no less than three times, at 30- to 45-day intervals, prior to movement, with the most recent inspection being within 30 days of the date on which the plants are removed and packed for shipment.

- All vehicles, equipment, and other articles used in providing inspection, maintenance, or related services in the nursery, as well as all personnel employed in providing inspection, maintenance, or related services in the nursery, must be treated in accordance with the regulations before entering the nursery in order to prevent the introduction of citrus canker.
- If citrus canker is found in the nursery, all regulated plants and plant material must be removed from the nursery and all areas of the nursery's facilities where plants are grown and all associated equipment and tools used at the nursery must be treated in accordance with the regulations in order for the nursery to be eligible to produce calamondin and kumquat plants to be moved interstate under the protocol. Fifteen days after these actions are completed, the nursery may receive new calamondin and kumquat seed or cuttings from a nursery that is eligible to produce calamondin and kumquat plants for interstate movement.
- The plants, except for plants that are hermetically sealed in plastic bags before leaving the nursery, are completely enclosed in containers or vehicle compartments during movement through the quarantined area.
- The plants are accompanied by a limited permit displayed on a plastic or metal tag attached to the outside of the articles or the outside of their containers, stating that they are not to be distributed to commercial citrus-producing areas. The statement must also be displayed on the outside of the shipping containers used to transport the plants, and the limited permit must be attached to the bill of lading or any other shipping document.

In the interim rule, we stated that we had implemented a substantively similar protocol in 1989, which we removed from the regulations in 1990 without giving a reason for doing so. We also stated that, in issuing our August 2006 interim rule quarantining the entire State of Florida for citrus canker, we had reexamined the movement of calamondin and kumquat plants and decided to allow their movement. We allowed this movement through administrative action. Our intent, therefore, was to modify this 1989 protocol slightly and codify it in the regulations, in order to provide stock growers with a degree of relief appropriate under the circumstances from restrictions imposed by the interim rule and to mitigate the economic impact associated with the August 2006 quarantine.

In deciding to reinstitute the protocol, we cited a peer-reviewed article on citrus canker.[14] Although we did not cite it in the interim rule, we also relied upon the views of a 1987 panel of plant pathologists and other experts in the field of diseases affecting citrus regarding the high degree of biological resistance to *Xcc* that the calamondin and kumquat plants appeared to possess.

Several commenters expressed concerns regarding the protocol. Noting that the scientific literature cited in the interim rule did not indicate that calamondins and kumquats are entirely immune to citrus canker, one commenter suggested that APHIS had effectively adopted a risk-based approach for the interstate movement of these two plants. The commenter stated that APHIS had provided no evidence in the interim rule that the calamondin and kumquat protocol precludes the artificial spread of citrus canker through the interstate movement of these plants, nor had APHIS considered similar protocols by which other citrus articles more susceptible to citrus canker might be moved interstate. The same commenter stated that calamondins and kumquats are not as resistant to citrus canker as the interim rule suggested.

Two other commenters reiterated this last point, and added that most nurseries do not take more restrictive biosecurity measures to limit the exposure of calamondins and kumquats to citrus canker than they impose on other citrus nursery stock. All three commenters suggested that APHIS reevaluate the protocol or consider similar protocols to allow the interstate movement of other citrus nursery stock.

In response to these comments, APHIS reexamined the results of surveys and inspections conducted on citrus nursery stock within the quarantined area and on calamondin and kumquat plants growing in groves and residential settings within that area. While no infected kumquat plants were reported, in March 2006, State officials and PPQ inspectors had reported finding a nursery with several calamondin plants infected with citrus canker. Plant pathologists from FDACS/DPI subsequently conducted laboratory testing of 48 samples from these plants. These tests confirmed the presence of citrus canker in 47 of the samples.

In July 2007, in order to independently assess the accuracy of FDACS/DPI's testing, APHIS collected samples from 15 of the infected plants and sent them to PPQ's Center for Plant Health Science and Technology for corroborative testing. Officials there examined the samples using two different standard diagnostic methods. Under both methods, each sample tested positive for citrus canker. In addition, the infected plants were confirmed to be calamondin plants.

The protocol codified in the interim rule, as well as the 1989 protocol on which it was modeled, had been predicated on calamondin and kumquat plants being highly resistant to *Xcc*. As a result of these positive samples, we determined that calamondins were not highly resistant, and that the interstate movement of calamondin nursery stock, even under the conditions of the protocol, was a possible pathway for the spread of citrus canker. Accordingly, we decided that it would be prudent to amend the regulations to remove calamondin nursery stock from the protocol in a final rule.

However, in order to provide the public with an opportunity to comment on this possible change, we reopened the comment period for the interim rule, in a document published in the **Federal Register** on January 29, 2008 (73 FR 5085, Docket No. APHIS–2007–0032). In that document, we specifically asked for comments regarding calamondin plants and the interstate movement protocol.

Several commenters pointed out that the State inspections that discovered the infected calamondin plants were conducted before the implementation of Florida's Citrus Nursery Stock Certification Program. The commenters stated that calamondin plants grown under the provisions of the program cannot become infected with *Xcc* and that calamondin plants should therefore not be removed from the protocol.

As we mentioned above, we have found the Citrus Nursery Stock Certification Program does not sufficiently address the risk associated with the interstate movement of nursery stock from the State of Florida, but we are currently evaluating the adequacy of a draft systems approach proposed by the State. While we conduct our evaluation, we consider it necessary to maintain our long-standing policy prohibiting the interstate movement of citrus nursery stock from areas quarantined for citrus canker. In accordance with that policy and based on our findings, we must consider calamondin plants to be a host of citrus canker and thus must prohibit their interstate movement.

Other commenters suggested that we should allow calamondin nursery stock to be shipped to areas of the country

[14] *See* footnote 13.

that have not been designated as commercial citrus-producing areas.

We address the substantial risk associated with the shipment of citrus nursery stock to such areas above, in the section entitled ''Comments Proposing Changes to the Interim Rule.''

Accordingly, we are amending § 301.75–6 in this final rule to remove calamondin from the protocol. Wherever the text of that section has referred to ''calamondin and kumquats,'' it will now refer only to ''kumquats.'' We are also amending § 301.75–12 in a similar manner to reflect the removal of calamondin.

Comments Concerning the Economic Impact of the Interim Rule

Many commenters stated that the rule had had a substantive effect on their operations, or appeared to disproportionately impact small entities, and asked that APHIS include such impacts in the economic analysis in the final rule.

The interim rule codified existing policies, but did not establish new procedures for quarantine operations. We determined that the rule therefore had no new economic effect on any entities.

Rather, it was our August 2006 interim rule quarantining the entire State of Florida for citrus canker that resulted in new economic effects on entities involved in the production, packing, and movement of citrus fruit and nursery stock in that State. The August 2006 interim rule included a preliminary economic analysis of the effects of the State-wide quarantine; when we publish a final action following that interim rule, we will provide an updated and more comprehensive analysis of those economic effects.

However, this final rule does make a substantive change in the regulations by removing calamondins from eligibility for interstate movement. Accordingly, we examine the economic effects of that action in this final rule under the heading ''Executive Order 12866 and Regulatory Flexibility Act.''

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988.

Executive Order 12866 and Regulatory Flexibility Act

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

This final rule follows an interim rule that amended the citrus canker regulations by explicitly prohibiting, with limited exceptions, the interstate movement of regulated citrus nursery stock from an area quarantined for citrus canker. In the interim rule, we allowed calamondin and kumquat plants to be moved interstate from a quarantined area in accordance with a protocol designed to ensure their freedom from citrus canker. In this final rule, we have amended the protocol to exclude calamondin plants.

According to Small Business Administration (SBA) criteria, a nursery (North American Industry Classification System code 111422) is considered to be a small entity if its annual receipts are not more than $750,000. In 2003, there were 1,360 nursery operators in the State of Florida, 88 percent of which were classified as small entities.[15] Of these 1,360 nurseries, 57 produced fruit and nut nursery stock. Citrus nursery stock producers fall within this larger category of fruit and nut nursery stock producers.

Although APHIS has not yet been able to confirm the number of citrus nursery stock producers in the State of Florida currently engaged in calamondin nursery stock production, correspondence with State officials has suggested that there are nine such producers.[16] There are, moreover, at least five nurseries in the State that engage exclusively in calamondin propagation.[17]

The average size of the affected nurseries is unknown. However, it is reasonable to assume that most of the nurseries are small entities, since the vast majority of all nursery operators in the State of Florida are small entities, according to SBA standards.

On January 11, 2008, APHIS issued a Federal Order designating the State of Florida as an area quarantined for citrus greening.[18] In order to prevent the spread of citrus greening to unaffected areas of the United States, the order also prohibited the interstate movement of all citrus plants from the State of Florida, as well as other citrus articles that could serve as potential host material for the citrus greening bacterium, unless the articles were destined for immediate export. Because the interstate movement of calamondin nursery stock other than for immediate export is already prohibited under that order, and because this rule does not regulate the intrastate movement of calamondin nursery stock, we expect that the impact of this rule on those producers will be minimal, at most.

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

Paperwork Reduction Act

The March 2007 interim rule contained information collection requirements. On March 27, 2007, the Office of Management and Budget (OMB) approved the collection of information with respect to the interim rule under OMB control number 0579–0317 (expires November 30, 2010).

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, the interim rule amending 7 CFR part 301 that was published at 72 FR 13423–13428 on March 22, 2007, is adopted as a final rule with the following changes:

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

[15] Source: USDA, NASS, July 2004. ''Nursery Crops 2003 Summary.'' Washington, DC.

[16] Source: Florida's Department of Agricultural and Consumer Services/Bureau of Plant and Apiary Inspection. Correspondence with APHIS, November 2007.

[17] Ibid.

[18] To view the Federal Order, go to *http://www/usda.gov/plant_health/plant_pest_info/citrusgreening/downloads/pdf_files/federalorder-01-11-2008.pdf*.

§ 301.75–6 [Amended]

■ 2. Section 301.75–6 is amended as follows:

■ a. In paragraph (a), by removing the words ''calamondin and''.

■ b. In the introductory text of paragraph (b), by removing the words ''Calamondin (*Citrus mitus*) and kumquat'' and adding the word ''Kumquat'' in their place.

■ c. In paragraph (b)(3), by removing the words ''calamondin and''.

■ d. In paragraph (b)(6), by removing the words ''calamondin and''.

■ e. In paragraph (b)(8), by removing the words ''calamondin or''.

§ 301.75–12 [Amended]

■ 3. In § 301.75–12, the introductory text of paragraph (b)(1) is amended by removing the words ''calamondin and''.

Done in Washington, DC, this 6th day of April 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–8103 Filed 4–8–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 392

[Docket No. 00–019F; FDMS Docket No. FSIS–2005–0020]

RIN 0583–AC81

Petitions for Rulemaking

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its administrative regulations to add a new part that establishes regulations governing the submission to FSIS of petitions for rulemaking. The new regulations supersede existing guidance on the submission of petitions to FSIS to issue, amend, or repeal its regulations. FSIS is taking this action to help ensure the filing of well-supported petitions that contain information that the Agency needs to proceed with consideration of the requested rulemaking in a timely manner.

DATES: *Effective Date:* June 8, 2009.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Director, Policy Issuances Division, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Background

On January 12, 2006, FSIS published a proposal in the **Federal Register** to establish regulations governing the submission to FSIS of petitions to issue, amend, or repeal a regulation administered by the Agency (71 FR 1988). As discussed in that proposed rulemaking, FSIS had previously published guidelines in 1993 on how to submit petitions for rulemaking to the Agency (58 FR 63570, December 2, 1993). Despite the existence of this guidance, rulemaking petitions are submitted to FSIS in various forms, often without adequate data and supporting documentation for FSIS to properly evaluate the merits of the requested action. The measures proposed in the January 12, 2006, proposed rule are designed to encourage the filing of well-supported petitions that contain information that the Agency needs to evaluate a requested rulemaking in a timely manner. The comment period for the proposed rule closed on March 12, 2006.

Comments and FSIS Response

FSIS received only one comment in response to the January 12, 2006, proposal. The comment was generally supportive of the proposed regulations but also expressed the view that when preparing Notices and Directives, FSIS should provide an opportunity for public comment prior to the issuance of these documents. According to the comment, FSIS Notices and Directives may have the same effect on the industry as regulations. The comment recommended that FSIS adopt a rule that would specifically provide opportunity for stakeholders to participate in the development of these documents.

The January 12, 2006, proposed rule proposed to establish regulations for the submission to FSIS of petitions for rulemaking. Establishing a new process for making draft FSIS Notices and Directives available for comment is outside the scope of this rulemaking. Under this final rule, however, persons may certainly petition the Agency to issue, amend or repeal such documents.

The comment also stated that, when evaluating petitions for rulemaking, FSIS must take into account that small and very small establishments have limited resources and may not have access to all of the data that FSIS considers necessary to evaluate a petition for rulemaking.

In the preamble to the proposed rule, FSIS acknowledged that some small entities may not have access to certain data that is readily available to large companies or industry trade associations. As stated in the preamble, the Agency will take these limitations into consideration when it evaluates petitions submitted by small entities.

The Final Rule

In this final rule FSIS is establishing regulations governing the submission to FSIS of petitions for rulemaking. As noted above, the one comment submitted in response to the January 12, 2006, proposed rule raised no objections that were within the scope of the proposed rulemaking. Therefore, FSIS is finalizing the proposed rule without changes.

As was proposed, FSIS is adding a new part 392—Petitions for rulemaking to title 9, subchapter D of the CFR. As stated in § 392.1, part 392 contains provisions governing the submission to FSIS of petitions for rulemaking and applies to all requests to initiate rulemaking, except to the extent that other provisions in the FSIS regulations prescribe procedures for submitting requests to amend a regulation. As discussed in the preamble to the proposed rule, § 392.1 includes this exception because FSIS' regulations already contain procedures on how to submit requests to amend certain sections of the regulations. For example, as noted in the proposal, a request to amend the regulations to authorize a new Reference Amount or Product Category identified in 9 CFR 317.312(b) and 381.412(b) must be submitted as a labeling application in accordance with the provisions of 9 CFR 317.312(g) and 381.412(g).

Section 392.2 defines a ''petition'' as a written request to issue, amend, or repeal a regulation administered by the Agency. Section 392.2 also provides that a request to issue, amend, or repeal a document that interprets a regulation administered by the Agency, such as an FSIS Directive, Notice, or compliance guide, may be made by petition.

Section 392.3 describes the information that a petition is required to contain to be considered by FSIS. Section 392.3(a) requires that a petition include the name, address and telephone number, and e-mail address (if available) of the person submitting the petition. Section 392.3(b) requires that a petition contain a full statement of the action requested by the petitioner, including the citation and exact wording of any existing regulation affected by the requested action. Section 392.3(c) requires that a petition include a statement of the factual and legal basis for the requested action, including all relevant information known to the

petitioner, both favorable and unfavorable to the petitioner's position. Section 392.3(c) also states that the statement of the factual and legal basis should identify the problem that the requested action is intended to address and explain why the requested action is needed to address the problem.

Section 392.4 describes the information that should be submitted in support of a rulemaking petition. As was discussed in the preamble to the proposal, the documentation described in proposed § 392.4 is not required for a petition to be considered by FSIS. Rather, § 392.4 is intended to provide petitioners with a clear idea of the type of supporting documentation that FSIS considers necessary to evaluate a petition in an efficient and effective manner.

Section 392.4(a) provides that information referred to or relied on in support of a petition should be included in full, and that a copy of any source cited in a petition should be submitted with the petition. Section 392.4(b) lists sources of information that FSIS considers appropriate to use in support of a petition. These sources include, but are not limited to, professional journal articles, official government statistics, official government reports, scientific textbooks, research reports, and industry data.

Section 392.4(c) provides that if original research reports are used to support a petition, the information should be presented in a form that would be acceptable for publication in a peer reviewed scientific or technical journal. Section 392.4(d) states that if quantitative data are used to support a petition, the presentation of these data should include a complete statistical analysis using conventional statistical methods.

Section 392.5 sets out the procedures for filing a rulemaking petition with FSIS. Under § 392.5(a), any interested person may file a petition with FSIS. Section 392.5(a) provides that, for purposes of part 392, an ''interested person'' means any individual, partnership, corporation, association, or public or private organization. Section 392.5(b) explains that to file a petition with FSIS, a person should submit the petition to the FSIS Docket Clerk at the address provided in that paragraph. Section 392.5(c) states that when FSIS receives a petition, the Agency will stamp it with the date of filing and assign the petition a number. Section 392.5(c) provides that FSIS will inform the petitioner in writing when a petition has been filed with the Agency. Section 392.5(c) also states that FSIS will provide the petitioner with the number assigned to the petition along with an Agency contact for the petition.

Section 392.5(d) contains procedures for withdrawing a petition. Under § 392.5(d) a petition may be withdrawn at any time. Section 392.5(d) provides that if a petitioner elects to withdraw a petition, the petitioner should inform FSIS in writing. Once a petition is withdrawn, § 392.5(d) permits the petitioner to resubmit the petition at any time.

Section 392.6 provides for public display of rulemaking petitions and any supporting documentation. Section 392.6(a) provides that unless material is exempt from public disclosure under the Freedom of Information Act (FOIA) (5 U.S.C 552 *et seq.*), or under any other applicable laws or regulations, all rulemaking petitions, along with any supporting documentation filed with a petition, will be available for public inspection in the FSIS docket room and posted on the FSIS Web site. Section 392.6(b) provides that if FSIS can not readily determine whether information submitted by a petitioner is privileged or confidential business information, FSIS will request that the petitioner submit a written statement that certifies that the petition does not contain confidential information that should not be put on public display. As explained in the proposed rule, when it issues the request, FSIS will also specify a date by which the petitioner must respond. If the petitioner fails to provide the certification by the specified date, FSIS will assume that the information is confidential.

Section 392.6(c) provides that if FSIS determines that information submitted in support of a petition is exempt from public disclosure under the FOIA, or any other applicable laws or regulations, and that the information would provide the basis for granting the petition, FSIS will inform the petitioner in writing. Under § 392.6(c), the petitioner will then have an opportunity to withdraw the petition or the supporting documentation, or modify the supporting documentation to permit public disclosure.

Section 392.7 sets out the procedures for submitting comments on a petition that has been filed with FSIS. Section 392.7(a) provides that any interested person may submit written comments on a petition. Section 392.7(b) provides that comments on a petition should be submitted within 60 days of the posting date of the petition, and that the comments should identify the number assigned to the petition to which the comments refer.

Section 392.7(c) provides that FSIS will consider all comments that are timely submitted as part of its review of a rulemaking petition. Under § 392.7(d), these comments will become part of the petition file and, like the petition, will be on public display in the FSIS docket room and posted on the FSIS Web site. Section 392.7(e) provides that a comment on a petition that is actually a request for an alternative regulatory action should be submitted as a separate petition rather than as a comment. Under § 392.7(f), if FSIS determines that a comment received on a petition is in fact a request for an alternative action, the Agency will inform the commenter in writing. Section 392.7(f) also provides that FSIS will take no further action on the suggested alternative action unless the commenter submits a petition for rulemaking.

Under § 392.8(a), petitions that request actions that are intended to enhance the public health by removing or reducing foodborne pathogens or other potential food safety hazards that might be present in or on meat, poultry, or egg products qualify for expedited review. Section 392.8(b) provides that for a petition to be considered for expedited review, the petitioner must submit scientific information that demonstrates that the requested action will reduce or remove foodborne pathogens or other potential food safety hazards, and how it will do so. Section 392.8(c) explains that if FSIS determines that a petition should receive expedited review, the Agency will review the petition ahead of other pending petitions. As noted in the proposal, if a petition receives expedited review, the petition will still be subject to all other provisions that apply to rulemaking petitions.

Section 392.9 provides that information related to the submission and processing of petitions for rulemaking may be found on the FSIS Web site. In conjunction with the issuance of this final rule, FSIS has developed a page on its Web site that explains the petition filing process. Also posted on this Web page is a description of the type of information that is required for FSIS to consider a petition for rulemaking and the type of information that FSIS recommends be submitted with a petition for rulemaking. In addition, after this rule becomes effective, all petitions for rulemaking that are submitted to the Agency, and any comments received on the petitions, will be posted on the FSIS Web site.

Information Needed To Conduct Regulatory Analyses

In the January 12, 2006, proposed rule, FSIS explained that as part of the

regulatory development process, Federal agencies are required by law, Executive Order, and regulation to conduct certain analyses on the impact of proposed and final agency regulations. FSIS briefly described the statutes and Executive orders that most often affect rulemakings conducted by FSIS (*see* 71 FR 1988, 1991).

As discussed in the preamble to the proposed rule, once a petition is granted, the subsequent rulemaking often requires that FSIS expend substantial resources to conduct the prescribed regulatory impact analyses. Therefore, one of the factors that the Agency considers when evaluating a petition for rulemaking is whether it should commit resources to the development of a particular rule and the analyses that would be required if the Agency were to grant the petition.

In the January 12, 2006, proposal, FSIS did not propose to require that petitions include data on the potential impacts of a requested regulatory action. However, FSIS did explain that it may be able to more efficiently and effectively evaluate and act on a petition if the petitioner includes supporting data that FSIS can use in connection with the required impact analyses.

Consistent with the proposal, this final rule does not require that petitioners submit data on the impacts of a requested regulatory action. However, FSIS strongly encourages the submission of these data to help make the Agency's review of rulemaking petitions more effective and efficient and to facilitate regulatory development in the event a petition is granted.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. It has been determined to be non-significant for purposes of E.O. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

This final rule establishes regulations governing the submission of rulemaking petitions to FSIS. It specifies the type of information that must be included in a rulemaking petition if the petition is to be granted and describes the type and quality of data that should be submitted in support of a petition.

This final rule will benefit persons interested in filing a rulemaking petition with FSIS by providing clear guidance on how to prepare and submit a petition to best ensure prompt and appropriate consideration by the Agency. This final rule will also benefit petitioners by promoting a more timely resolution of their requested regulatory actions.

Persons interested in petitioning FSIS to issue, amend, or repeal a regulation will bear the costs associated with preparing a rulemaking petition. These costs will vary depending on the complexity of the requested action and the type of documentation needed to support the petition. However, because the decision to submit a petition for rulemaking is voluntary, persons interested in the issuance, amendment, or repeal of a regulation administered by FSIS will most likely submit a rulemaking petition if the benefits of the requested action outweigh the costs of preparing the petition. By encouraging consistency in the content of rulemaking petitions and the submission of adequate supporting documentation, this final rule will reduce the administrative costs associated with the FSIS' review and evaluation of rulemaking petitions, as well as expedite the time it takes for the Agency to review petitions.

In addition to this final rule, FSIS considered the option of no rulemaking. Under this option, prospective petitioners would continue to rely on the guidelines for the submission, consideration, and disposition of petitions that FSIS published in the 1993 **Federal Register** notice. FSIS rejected this option because the Agency determined that its procedures for submitting petitions need certain clarification, and that the importance of these procedures should be underscored by adopting this final rule and codified to make them readily available to prospective petitioners.

Effect on Small Entities

The Administrator, FSIS, has determined that this final rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The decision to submit a petition for rulemaking is voluntary, and therefore, small entities are not required to comply with these final regulations unless they choose to submit a rulemaking petition. Furthermore, although FSIS continues to encourage petitioners to submit relevant data needed to prepare the regulatory analyses that would be required should the petition be granted, the submission of this information is not required under this final rule. FSIS is aware that some small entities may not have access to certain data that are readily available to large companies or industry trade associations. FSIS will take this into consideration when evaluating petitions submitted by small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2009_Interim_&_Final_Rules_Index/index.asp*.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or record keeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). This information collection request is at OMB awaiting approval. FSIS will collect no information

associated with this rule until the information collection is approved by OMB.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Ave., SW., Room 3532 South Building, Washington, DC 20250–3700; (202) 720–0345.

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601 *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

Administrative practice and procedure, Freedom of information.

■ For the reasons discussed in the preamble, FSIS is amending 9 CFR Chapter III as follows:

SUBCHAPTER D—FOOD SAFETY AND INSPECTION SERVICE ADMINISTRATIVE PROVISIONS

■ Subchapter D is amended by adding a new part 392 to read as follows:

PART 392—PETITIONS FOR RULEMAKING

Sec.
392.1 Scope and purpose.
392.2 Definition of petition.
392.3 Required information.
392.4 Supporting documentation.
392.5 Filing procedures.
392.6 Public display.
392.7 Comments.
392.8 Expedited review.
392.9 Availability of additional guidance.

Authority: 5 U.S.C. 553(e), 7 CFR 1.28.

§ 392.1 Scope and purpose.

This part contains provisions governing the submission of petitions for rulemaking to the Food Safety and Inspection Service (FSIS). The provisions in this part apply to all rulemaking petitions submitted to FSIS, except to the extent that other parts or sections of this chapter prescribe procedures for submitting a request to amend a particular regulation.

§ 392.2 Definition of petition.

For purposes of this part, a ''petition'' is a written request to issue, amend, or repeal a regulation administered by FSIS. A request to issue, amend, or repeal a document that interprets a regulation administered by FSIS may also be submitted by petition.

§ 392.3 Required information.

To be considered by FSIS, a petition must contain the following information:

(a) The name, address, telephone number, and e-mail address (if available) of the person who is submitting the petition;

(b) A full statement of the action requested by the petitioner, including the exact wording and citation of the existing regulation, if any, and the proposed regulation or amendment requested;

(c) A full statement of the factual and legal basis on which the petitioner relies for the action requested in the petition, including all relevant information and views on which the petitioner relies, as well as information known to the petitioner that is unfavorable to the petitioner's position. The statement should identify the problem that the requested action is intended to address and explain why the requested action is necessary to address the problem.

§ 392.4 Supporting documentation.

(a) Information referred to or relied on in support of a petition should be included in full and should not be incorporated by reference. A copy of any article or other source cited in a petition should be submitted with the petition.

(b) Sources of information that are appropriate to use in support of a petition include, but are not limited to:

(1) professional journal articles,
(2) research reports,
(3) official government statistics,
(4) official government reports,
(5) industry data, and
(6) scientific textbooks.

(c) If an original research report is used to support a petition, the information should be presented in a form that would be acceptable for publication in a peer reviewed scientific or technical journal.

(d) If quantitative data are used to support a petition, the presentation of the data should include a complete statistical analysis using conventional statistical methods.

§ 392.5 Filing procedures.

(a) Any interested person may file a petition with FSIS. For purposes of this part, an ''interested person'' is any individual, partnership, corporation, association, or public or private organization.

(b) To file a petition with FSIS, a person should submit the petition to the FSIS Docket Clerk, Department of Agriculture, Food Safety and Inspection Service, Room 2534 South Building, 1400 Independence Ave., SW., Washington, DC 20250–3700.

(c) Once a petition is submitted in accordance with this part, it will be filed by the FSIS Docket Clerk, stamped with the date of filing, and assigned a petition number. Once a petition has been filed, FSIS will notify the petitioner in writing and provide the petitioner with the number assigned to the petition and the Agency contact for the petition. The petition number should be referenced by the petitioner in all contacts with the Agency regarding the petition.

(d) If a petitioner elects to withdraw a petition submitted in accordance with this part, the petitioner should inform FSIS in writing. Once a petition has been withdrawn, the petitioner may re-submit the petition at any time.

§ 392.6 Public display.

(a) All rulemaking petitions filed with FSIS, along with any documentation submitted in support of a petition, will be available for public inspection in the FSIS docket room and will be posted on the FSIS Web site at *http://www.fsis.usda.gov/*.

(b) If FSIS cannot readily determine whether information submitted in support of a petition is privileged or confidential business information, FSIS will request that the petitioner submit a written statement that certifies that the petition does not contain confidential information that should not be put on public display. If the petitioner fails to submit the certification within a time specified by FSIS, the Agency will consider the information to be confidential.

(c) If FSIS determines that a petition, or any documentation submitted in support of a petition, contains information that is exempt from public disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*) or any other applicable laws or regulations, and that the information would provide the basis for granting the petition, FSIS will inform the petitioner in writing. FSIS will provide the petitioner an opportunity to withdraw the petition or supporting documentation, or modify the supporting documentation to permit public disclosure.

§ 392.7 Comments.

(a) Any interested person may submit written comments on a petition filed with FSIS.

(b) Comments on a petition should be submitted within 60 days of the posting date of the petition and should identify the number assigned to the petition to which the comments refer.

(c) FSIS will consider all timely comments on a petition that are submitted in accordance with this

section as part of its review of the petition.

(d) All comments on a petition will become part of the petition file and will be available for public inspection in the FSIS docket room and posted on the FSIS Web site at *http://www.fsis.usda.gov/*.

(e) Any interested person who wishes to suggest an alternative action to the action requested by the petition should submit a separate petition that complies with these regulations and not submit the alternative as a comment on the petition.

(f) If FSIS determines that a comment received on a petition is in fact a request for an alternative action, the Agency will inform the commenter in writing. The Agency will take no further action on the requested alternative action unless the commenter submits an appropriate petition for rulemaking.

§ 392.8 Expedited review.

(a) A petition will receive expedited review by FSIS if the requested action is intended to enhance the public health by removing or reducing foodborne pathogens or other potential food safety hazards that might be present in or on meat, poultry, or egg products.

(b) For a petition to be considered for expedited review, the petitioner must submit scientific information that demonstrates that the requested action will reduce or remove foodborne pathogens or other potential food safety hazards that are likely to be present in or on meat, poultry, or egg products, and how it will do so.

(c) If FSIS determines that a petition warrants expedited review, FSIS will review the petition ahead of other pending petitions.

§ 392.9 Availability of additional guidance.

Information related to the submission and processing of petitions for rulemaking may be found on the FSIS Web site at *http://www/fsis.usda.gov/*.

Done at Washington, DC, on: April 6, 2009.

Alfred V. Almanza,

Administrator.

[FR Doc. E9–8106 Filed 4–8–09; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0412; Directorate Identifier 2007–NM–346–AD; Amendment 39–15870; AD 2009–07–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all Boeing Model 737–300, –400, and –500 series airplanes. That AD currently requires repetitive inspections for discrepancies of the fuselage skin under the dorsal fin assembly, and repairing if necessary. This new AD requires an inspection for any chafing or crack in the fuselage skin and abrasion resistant coating at the dorsal fin landing, an inspection for damage to the dorsal fin seals, attach clip, and seal retainer, and other specified and corrective actions as necessary. The new requirements will end the need for the existing repetitive inspections. This AD results from a report of an 18-inch crack found in the fuselage skin area under the blade seals of the nose cap of the dorsal fin due to previous wear damage, and additional reports of fuselage skin wear. We are issuing this AD to prevent discrepancies of the fuselage skin, which could result in fatigue cracking due to cabin pressurization and consequent rapid in-flight decompression of the airplane fuselage.

DATES: This AD becomes effective May 14, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 14, 2009.

On November 12, 2004 (69 FR 62567, October 27, 2004), the Director of the Federal Register approved the incorporation by reference of Boeing Message Number 1–QXO35, dated October 13, 2004.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; telephone 206–544–9990; fax 206–766–5682; e-mail *DDCS@boeing.com*; Internet *https://www.myboeingfleet.com*.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2004–22–05, amendment 39–13833 (69 FR 62567, October 27, 2004). The existing AD applies to all Boeing Model 737–300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on April 24, 2008 (73 FR 22088). That NPRM proposed to continue to require repetitive inspections for discrepancies of the fuselage skin under the dorsal fin assembly, and repairing if necessary. That NPRM also proposed to add an inspection for any chafing or crack in the fuselage skin and abrasion resistant coating at the dorsal fin landing, an inspection for damage to the dorsal fin seals, attach clip, and seal retainer, and other specified and corrective actions as necessary.

Comments

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

Request To Clarify Certain Language in Paragraph (i) of the NPRM

Boeing asks that we change certain language in paragraph (i) of the NPRM to add the word ''abrasion'' as follows: ''Do a detailed inspection for any signs of abrasion, chafing, or crack . * * *'' Boeing also asks that we change that same paragraph to make the word ''retainer'' plural as follows: ''do a detailed inspection for damage to the

dorsal fin seals, attach clip, and seal retainers, and do all applicable other specified and corrective actions * * *'' Boeing states that these changes will clarify that the inspection is also for signs of abrasion and that there is more than one seal retainer.

We agree to add the word ''abrasion'' (in parentheses) to the description of the discrepancies specified in paragraph (i) of the AD because abrasion is a synonym of chafing. We also agree that there are multiple seal retainers and we have also included that in paragraph (i) of the AD for clarification.

Boeing also asks that we change the last sentence in paragraph (i) of the NPRM for clarification to add that paragraph (g) of the NPRM is also terminated by the actions in paragraph (i).

We do not agree to change the last sentence in paragraph (i) of this AD. Paragraph (g) is corrective action that is accomplished if any discrepancy is found during any inspection required by paragraph (f) of the AD. The terminating action in paragraph (i) is for the repetitive inspections in paragraph (f); therefore, if operators are no longer performing those inspections then the corrective action will not be necessary. We have made no change to the AD in this regard.

Request To Expand Inspection to Add the Wear Strip

Japan Transocean Air (JTA) asks that we expand the inspection specified in paragraph (i) of the NPRM to include an inspection of either the fuselage skin or the wear strip. JTA notes that AD 2004–22–05 requires repetitive detailed inspections for discrepancies (wear or cracking) of the fuselage skin under the dorsal fin assembly, and the new requirements retain this inspection. JTA states that it plans to install wear strips in accordance with Boeing Alert Service Bulletin 737–53A1266, dated August 30, 2007. In order to avoid removal of the wear strip, JTA asks that repetitive inspections for either the fuselage skin or the wear strip be included in the NPRM.

We do not agree to include a requirement to inspect either the fuselage skin or the wear strip. Accomplishing all of the applicable actions in paragraph (i) of the AD terminates the repetitive inspections required by AD 2004–22–05; the new requirements do not retain the repetitive inspections as noted by the commenter. Paragraph (i) of the NPRM follows the inspection procedures specified in Boeing Alert Service Bulletin 737–53A1266, dated August 30, 2007. However, according to the provisions of paragraph (l) of this AD, the operator can apply for an alternative method of compliance (AMOC) if supporting data is provided. We have made no change to the AD in this regard.

Request To Add a Note to the Applicability Section

Boeing asks that we add a note to the applicability section of the NPRM to address operators who may have accomplished repairs or modifications in the subject area. Boeing states that some operators have accomplished Boeing Service Bulletin 737–55–1057, dated December 12, 1996, structural repair manual (SRM) repairs, or AD 2004–22–05 in the subject area and some of the repairs are no longer acceptable.

We do not agree to add a note to the applicability section in this AD. The new inspections required by paragraph (i) of the AD are required on all airplanes, as identified in paragraph (c) of this AD. For airplanes on which existing repairs, alterations, or modifications do not allow for the inspections, you must request an AMOC as required by 14 CFR 39.17. We will consider requests for AMOCs under the provisions of paragraph (l) of the AD, which will then be evaluated to ensure that the unsafe condition has been addressed. We have made no change to the AD in this regard.

Request To Clarify Compliance Section

Boeing asks that we clarify the action required in the compliance section as specified at the end of the sentence of paragraph (e) of the NPRM. Paragraph (e) specifies in part ''* * * unless the actions have already been done.'' Boeing suggests we change that language in paragraph (e) to read: ''* * * unless the actions required by this AD have already been done.'' Boeing states that this change would clarify the actions required by the AD.

We do not agree to clarify paragraph (e) of this AD. We find that the current language is clear as written. We have made no change to the AD in this regard.

Request To Clarify the Purpose of Restating the Requirements in AD 2004–22–05

Boeing asks that we clarify the reason for the requirements specified in paragraphs (f), (g), and (h) of the NPRM. Boeing states that the purpose of restating the requirements of AD 2004–22–05 in the NPRM is unclear and confusing. Boeing notes that we need to clearly indicate if the restatement section is meant to reprint AD 2004–22–05, and if so, those sections should contain the same language and indicate that the previous AD is obsolete. Boeing adds that if the intention of the new AD is to restate some of the requirements of AD 2004–22–05, then Boeing points out that Boeing Service Bulletin 737–55–1057, dated December 12, 1996 (referenced in AD 2004–22–05) has been cancelled; Boeing Message Number I–QXO35, dated October 13, 2004 (also referenced in AD 2004–22–05), has been superseded by Boeing Alert Service Bulletin 737–53A1266, dated August 30, 2007, which does not require repetitive inspections.

We do not agree that the reason for the requirements specified in paragraphs (f), (g), and (h) of the AD needs clarification because these statements are restating the requirements of AD 2004–22–05, which is being superseded by this AD. As specified in the new requirements in paragraph (i) of this AD, accomplishing the actions in paragraph (i) terminates the repetitive inspections required by paragraph (f) of the AD. Since paragraph (f) restates the requirements in AD 2004–22–05, accomplishing those requirements is no longer necessary after accomplishing the requirements in paragraph (i); however, the requirements of AD 2004–22–05, as restated in this AD, remain in effect until the requirements of paragraph (i) of this AD are accomplished. Paragraph (g) of the AD is the follow-on repair if discrepancies are found, and paragraph (h) just specifies that reporting is not required. Therefore, we have made no change to the AD in this regard.

Request To Change Paragraph (l)(4) of the NPRM

Boeing asks that we change paragraph (l)(4) of the NPRM to specify the following: ''AMOCs approved previously in accordance with AD 2004–22–05 and repairs accomplished in accordance with 737–300/–400/–500 SRM 737–53–60–01, repairs 9 and 10, are approved as AMOCs for the corresponding provisions of paragraphs (f) and (g) of this AD, if they fulfill the requirements provided in paragraph (i) of this AD.'' Boeing states that better clarification of the language is necessary to encompass SRM repairs. Boeing notes that the addition of reference to paragraph (i) is required because some airplanes on which AD 2004–22–05 has been accomplished will not meet the new requirements.

We do not agree to change paragraph (l)(4) of the AD. AMOCs approved previously for AD 2004–22–05 are approved as AMOCs to the provision of paragraphs (f) and (g) of this AD only. All airplanes are subject to the new

inspection requirements specified in paragraph (i) of the AD. For airplanes on which existing repairs, alterations, or modifications do not allow for the inspection, we will consider requests for AMOCs under the provisions of paragraph (l) of the AD, which will then be evaluated to ensure that the unsafe condition has been addressed. We have made no change to the AD in this regard.

Request To Exclude Certain Inspections of the Fuselage Skin

KLM Royal Dutch Airlines asks that the NPRM specify that inspections of the fuselage skin aft of body station (BS) 887 and BS 908 are not required if inspections done previously per AD 2004–22–05 have resulted in findings only between BS 857 and BS 887 (no findings aft of BS 887), or BS 857 and BS 908 (no findings aft of BS 908), as applicable; and when a repair has been installed per Boeing 737–300/–400/–500 SRM, Chapter 53–60–01, Repair 9 or Repair 10, as applicable, including installation of CRES 0.016 inch thick wear strips. KLM notes that the following language should be included in the NPRM: ''A one-time detailed inspection for damage to dorsal fin seals, attach clip, and seal retainer, and accomplishment of all the applicable corrective actions per the Accomplishment Instructions of Boeing Service Bulletin 737–53A1266–R0 is still required.''

We do not agree to exclude the inspections noted above by KLM. Repair 9 of Chapter 53–60–01 of the Boeing 737–300/–400/–500 SRM was revised in 2006 and operators that used the earlier version of Repair 9 are required to comply with the new requirements in this AD. Installation of the latest Repair 9 or Repair 10 of Chapter 53–60–01 of the Boeing 737–300/–400/–500 SRM, including the wear strips, does not eliminate the potential for wear damage aft of the repair location. Operators are still required to inspect this area to ensure there is no damage. However, according to the provisions of paragraph (l) of this AD, we may approve requests for an AMOC if the request includes data that prove that excluding the inspections would provide an acceptable level of safety. We have not changed the AD in this regard.

Conclusion

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

Costs of Compliance

There are about 1,963 airplanes of the affected design in the worldwide fleet. This AD affects about 627 airplanes of U.S. registry.

The actions that are required by AD 2004–22–05 and retained in this AD take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the currently required actions for U.S. operators is $100,320, or $160 per airplane, per inspection cycle.

The new actions take about 15 work hours per airplane, at an average labor rate of $80 per work hour. Required parts cost about $801 per airplane. Based on these figures, the estimated cost of the new actions specified in this AD for U.S. operators is $1,254,627, or $2,001 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13833 (69 FR 62567, October 27, 2004) and by adding the following new airworthiness directive (AD):

2009–07–11 Boeing: Amendment 39–15870. Docket No. FAA–2008–0412; Directorate Identifier 2007–NM–346–AD.

Effective Date

(a) This AD becomes effective May 14, 2009.

Affected ADs

(b) This AD supersedes AD 2004–22–05.

Applicability

(c) This AD applies to all Boeing Model 737–300, –400, and –500 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of an 18-inch crack found in the fuselage skin area under the blade seals of the nose cap of the dorsal fin due to previous wear damage, and additional reports of fuselage skin wear. We are issuing this AD to prevent discrepancies of the fuselage skin, which could result in fatigue cracking due to cabin pressurization and consequent rapid in-flight decompression of the airplane fuselage.

Compliance

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

Restatement of Requirements of AD 2004–22–05

Repetitive Detailed Inspections

(f) For airplanes specified in either paragraph (f)(1), (f)(2), (f)(3), or (f)(4) of this AD: Accomplish a detailed inspection for discrepancies (wear or cracking) of the fuselage skin under the dorsal fin assembly by doing all the actions specified in Boeing Message Number 1–QXO35, dated October 13, 2004. Repeat the inspection thereafter at intervals not to exceed 9,000 flight cycles. Accomplishing all of the applicable actions specified in paragraph (i) of this AD terminates the repetitive inspections required by this paragraph.

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

(1) For airplanes with line numbers 1001 through 2828 inclusive that have not been inspected as of November 12, 2004 (the effective date of AD 2004–22–05), in accordance with Boeing Service Bulletin 737–55–1057, dated December 12, 1996; or Revision 1, dated July 22, 1999: Inspect before the accumulation of 18,000 total flight cycles, or within 90 days after November 12, 2004, whichever is later.

(2) For airplanes with line numbers 2829 through 3132 inclusive that are not included in the effectivity of Boeing Service Bulletin 737–55–1057, dated December 12, 1996; or Revision 1, dated July 22, 1999: Inspect before the accumulation of 18,000 total flight cycles, or within 90 days after November 12, 2004, whichever is later.

(3) For airplanes with line numbers 1001 through 2828 inclusive that have been inspected, but not repaired or modified as of November 12, 2004, in accordance with Boeing Service Bulletin 737–55–1057, dated December 12, 1996; or Revision 1, dated July 22, 1999: Inspect within 9,000 flight cycles after accomplishing the inspection, or within 90 days after November 12, 2004, whichever is later.

(4) For airplanes with line numbers 1001 through 2828 inclusive that have been inspected and repaired or modified as of November 12, 2004, in accordance with Boeing Service Bulletin 737–55–1057, dated December 12, 1996; or Revision 1, dated July 22, 1999: Inspect within 18,000 flight cycles after accomplishing the repair or modification, or within 90 days after November 12, 2004, whichever is later; and if a repair doubler is installed, before further flight, inspect the repair doubler for discrepancies (wear or cracking).

Note 2: Boeing Message Number 1–QXO35, dated October 13, 2004, references Part I of Boeing Service Bulletin 737–55–1057, Revision 1, dated July 22, 1999, as an additional source of service information for accomplishing the actions required by paragraph (f) of this AD.

Repair

(g) If any discrepancy (wear or cracking) is found during any inspection required by paragraph (f) of this AD, before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or using a method approved in accordance with the procedures specified in paragraph (1) of this AD.

Reporting Not Required

(h) Although Boeing Message Number 1–QXO35, dated October 13, 2004, specifies to report any fuselage skin cracking found during the detailed inspections, this AD does not include that requirement.

New Requirements of This AD

New Inspections and Other Specified and Corrective Actions

(i) At the applicable compliance times specified in paragraph 1.E. of Boeing Alert Service Bulletin 737–53A1266, dated August 30, 2007, except as provided by paragraph (j) of this AD: Do a detailed inspection for any chafing (abrasion) or crack in the fuselage skin of the dorsal fin landing and abrasion resistant coating, do a detailed inspection for damage to dorsal fin seals, attach clip, and seal retainers, and do all the applicable other specified and corrective actions, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1266, dated August 30, 2007, except as provided by paragraph (k) of this AD. Accomplishing all of the applicable actions specified in this paragraph terminates the repetitive inspections required by paragraph (f) of this AD.

Exception to Compliance Times

(j) Where Boeing Alert Service Bulletin 737–53A1266, dated August 30, 2007, specifies counting the compliance time from ''* * * the date on the service bulletin,'' this AD requires counting the compliance time from the effective date of this AD.

Exception to Corrective Actions

(k) If any damage is found aft of body station 908 during any inspection required by this AD, and Boeing Alert Service Bulletin 737–53A1266, dated August 30, 2007, specifies to contact Boeing for appropriate action: Before further flight, repair the fuselage skin using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously in accordance with AD 2004–22–05 are approved as AMOCs for the corresponding provisions of paragraphs (f) and (g) of this AD.

Material Incorporated by Reference

(m) You must use Boeing Alert Service Bulletin 737–53A1266, dated August 30, 2007; and Boeing Message Number 1–QXO35, dated October 13, 2004; as applicable; 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 Boeing Alert Service Bulletin 737–53A1266, dated August 30, 2007, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Boeing Message Number 1–QXO35, dated October 13, 2004, on November 12, 2004 (69 FR 62567, October 27, 2004).

(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 March 25, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–7159 Filed 4–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0301; Directorate Identifier 2008–SW–69–AD; Amendment 39–15876; AD 2009–08–03]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Limited Model 206A, 206B, 206L, 206L–1, 206L–3, 206L–4, 222, 222B, 222U, 230, 407, 427, and 430 Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a superseding airworthiness directive (AD) for the specified Bell Helicopter Textron Canada Limited (BHTC) Model 206A, 206B, 206L, 206L–1, 206L–3, 206L–4, 222, 222B, 222U, 230, 407, 427, and 430 helicopters. That AD currently requires replacing each affected tail rotor blade (blade) with an airworthy blade that has a serial number not listed in the Rotor Blades, Inc. (RBI) document that is attached to each of the Bell Helicopter Textron Alert Service Bulletins (ASBs) listed in the applicability section of the AD. That AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of Canada. The MCAI states that there have been three reports of blade tip weights departing from the blade during flight. Since issuing that AD, BHTC has issued revised service information to correct part numbers and serial numbers listed in the RBI document that is attached to each BHTC ASB and to add additional part-numbered and serial-numbered blades to the list. The actions of this AD are intended to prevent loss of a blade tip weight, loss of a blade, and subsequent loss of control of the helicopter.

DATES: This AD becomes effective on April 24, 2009.

The incorporation by reference of certain publications is approved by the Director of the Federal Register as of April 24, 2009.

We must receive comments on this AD by June 8, 2009.

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

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

You may get the service information identified in this AD from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272, or at *http://www.bellcustomer.com/files/*.

Examining the 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, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is stated in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

On October 31, 2007, the FAA issued AD 2007–19–52, Amendment 39–15264 (72 FR 65221, November 20, 2007), to publish Emergency AD 2007–19–52, which made the AD effective to all persons except those to whom it was made immediately effective on September 14, 2007. That AD requires, before further flight, removing and replacing each affected blade with an airworthy blade. That action was prompted by three reports of blade tip weights being slung from the blades during flights, causing significant vibration.

Since issuing that AD, BHTC has revised the ASBs based on revisions to the RBI documents that are attached to the ASBs to add blade serial numbers to the applicability. Also, the ASBs have been revised to add clarification to the applicability by adding specific part number dash numbers.

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD No. CF–2007–21, dated September 13, 2007, to correct an unsafe condition for the BHTC Model 206A, 206B, 206L, 206L–1, 206L–3, 206L–4, 222, 222B, 222U, 230, 407, 427, and 430 helicopters. The MCAI states that there have been three reports of blade tip weights departing from the blade during flight. The actions are intended to prevent loss of a blade tip weight, loss of a blade, and subsequent loss of control of the helicopter. Although the BHTC ASBs have been revised since they were referenced in our AD 2007–19–52, the Transport Canada AD has not been revised.

You may obtain further information by examining the MCAI and any related service information in the AD docket.

Related Service Information

BHTC has issued the following:

- ASB No. 206–07–116, Revision A, dated September 19, 2007, for BHTC Model 206 A/B series helicopters;
- ASB No. 206L–07–148, Revision A, dated September 19, 2007, for BHTC Model 206L series helicopters;
- ASB No. 222–07–106, Revision C, dated September 20, 2007, for BHTC Model 222 and 222B helicopters;
- ASB No. 222U–07–77, Revision C, dated September 20, 2007, for BHTC Model 222U helicopters;
- ASB No. 230–07–38, Revision C, dated September 20, 2007, for BHTC Model 230 helicopters;
- ASB No. 407–07–81, Revision A, dated September 19, 2007, for BHTC Model 407 helicopters;
- ASB No. 427–07–18, Revision A, dated September 19, 2007, for BHTC Model 427 helicopters; and
- ASB No. 430–07–41, Revision C, dated September 20, 2007, for BHTC Model 430 helicopters.

All of the ASBs contain a letter from RBI indicating that certain blades processed by RBI may be missing the adhesive applied to the tip weight screw during the weight and balance process. Since the issuance of AD 2007–19–52, some ASBs have been revised to include additional blade part numbers and serial numbers that require inspection, as well as to clarify the part number applicability by adding specific part number ''dash numbers.'' Additionally, the ASBs' revisions specify marking the blade with an ''L'' once inspection determines that the blade is airworthy. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to our bilateral agreement with Canada, they have notified us of the unsafe condition described in the MCAI. We are issuing this AD because we evaluated all information provided by Transport Canada and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Differences Between This AD and the MCAI

The actions required by this AD only apply to those blades listed in the RBI document that is attached to the ASBs listed in paragraph (c). The MCAI allows use of those ASBs, or ''later revisions approved by Chief, Continuing Airworthiness, Transport Canada.''

Costs of Compliance

We estimate that this AD will affect about 3,741 helicopters of U.S. registry. We also estimate that it will take about 2 work-hours per helicopter to determine if an affected blade is installed. The average labor rate is $80 per work-hour. The ASB contains a warranty statement that owners or operators of BHTC helicopters who comply with the instructions in the ASB will be eligible to return defective blades identified by serial number in the compliance section to their nearest RBI facility for inspection and repair at no cost. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $598,560, assuming all shipping, inspection, and repair costs are paid by RBI or BHTC.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. We find that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because loss of a blade tip weight during flight can adversely affect the controllability and structural integrity of the helicopter. Also, determining if an affected blade is installed and replacing any affected blade before further flight is required. Therefore, we have determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. However, we invite you to send us any written data, views, or arguments concerning this AD. Send your comments to an address listed under the **ADDRESSES** section of this AD. Include ''Docket No. FAA–2009–0301; Directorate Identifier 2008–SW–69–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 helicopters identified in this rulemaking action.

Regulatory Findings

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

Therefore, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15264 (72 FR 65221, November 20, 2007), and adding the following new AD:

2009–08–03 Bell Helicopter Textron Canada Limited: Amendment 39–15876. Docket No. FAA–2009–0301; Directorate Identifier 2008–SW–69–AD.

Effective Date

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

Other Affected ADs

(b) Supersedes AD 2007–19–52, Amendment 39–15264, Docket No. FAA–2007–0179, Directorate Identifier 2007–SW–36–AD (72 FR 65221, November 20, 2007).

Applicability

(c) This AD applies to Model 206A, 206B, 206L, 206L–1, 206L–3, 206L–4, 222, 222B, 222U, 230, 407, 427, and 430 helicopters, with a tail rotor blade (blade) installed that has a part number and serial number which is listed in the Rotor Blades, Inc. (RBI) document attached to the following Bell Helicopter Textron Alert Service Bulletins (ASBs), certificated in any category:

ASB No.	Revision	Date	Helicopter model
206–07–116	A	September 19, 2007	206A and 206B.
206L–07–148	A	September 19, 2007	206L, L–1, L–3, and L–4.

ASB No.	Revision	Date	Helicopter model
222–07–106	C	September 20, 2007	222 and 222B.
222U–07–77	C	September 20, 2007	222U.
230–07–38	C	September 20, 2007	230.
407–07–81	A	September 19, 2007	407.
427–07–18	A	September 19, 2007	427.
430–07–41	C	September 20, 2007	430.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that there have been three reports of blade tip weights departing from the blade during flight. This AD corrects part numbers and serial numbers of blades, and adds additional blades to the previous AD listing, based on revised ASBs issued by Bell Helicopter Textron Canada Limited. The actions required by this AD are intended to prevent loss of a blade tip weight, loss of a blade, and subsequent loss of control of the helicopter.

Actions and Compliance

(e) Before further flight, unless already accomplished, replace any affected blade with an airworthy blade. An airworthy blade is one that has a part number and a serial number that is not listed in the RBI document that is attached to each ASB listed in the Applicability section of this AD.

Differences Between This AD and the MCAI AD

(f) The actions required by this AD only apply to those blades listed in the RBI document that is attached to the ASBs listed in paragraph (c). The MCAI allows use of those ASBs, or ''later revisions approved by Chief, Continuing Airworthiness, Transport Canada.''

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, FAA, ATTN: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Air Transport Association of America (ATA) Tracking Code

(h) ATA Code 6410: Tail Rotor Blades.

Material Incorporated by Reference

(i) You must use the following Bell Helicopter Textron Alert Service Bulletin for your model helicopter to determine which blades are subject to these AD actions:

ASB No.	Revision	Date	Helicopter model
206–07–116	A	September 19, 2007	206A and 206B.
206L–07–148	A	September 19, 2007	206L, L–1, L–3, and L–4.
222–07–106	C	September 20, 2007	222 and 222B.
222U–07–77	C	September 20, 2007	222U.
230–07–38	C	September 20, 2007	230.
407–07–81	A	September 19, 2007	407.
427–07–18	A	September 19, 2007	427.
430–07–41	C	September 20, 2007	430.

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

(2) For service information identified in this AD, contact Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272, or at *http://www.bellcustomer.com/files/*.

(3) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., 76193–0111, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or e-mail to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Fort Worth, Texas on March 26, 2009.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–7783 Filed 4–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0772; Directorate Identifier 2008–SW–30–AD; Amendment 39–15872; AD 2009–07–13]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model MD900 (including the MD902 Configuration) Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified MD Helicopters, Inc. (MDHI) model helicopters that requires, within 30 days, reducing the current gross weight limit to a maximum gross weight limit of 5,400 pounds and inserting a copy of this AD into the Limitations section of the Rotorcraft Flight Manual (RFM) or making certain optional modifications that constitute terminating actions. This amendment is prompted by flight tests that show that the information currently listed in the Limitations section of the RFM is inconsistent with the actual performance of the helicopter. The actions specified by this AD are intended to prevent loss of directional control of the helicopter.

DATES: Effective May 14, 2009.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 14, 2009.

ADDRESSES: You may get the service information identified in this AD from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or on the Web at *http://www.mdhelicopters.com*.

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://www.regulations.gov* or at the Docket Operations office, West Building Ground Floor, Room W12–140, 1200

New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Chip Adam, Flight Test Pilot, FAA, Los Angeles Aircraft Certification Office, Flight Test Branch, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5369, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on July 28, 2008 (73 FR 43646). That action proposed to require, for helicopters that have not complied with MDHI Mandatory SB900–099 R1, dated December 27, 2006 (SB), reducing the gross weight limit to a maximum gross weight limit of 5,400 pounds and inserting a copy of the AD into the Limitations section of the RFM. These actions would be required within 30 days. The proposed AD also included optional terminating actions for the weight reduction. Those terminating actions would be to:

- Determine if a NOTAR fan felt seal part number (P/N) 900F3441025–103 is installed. If a NOTAR fan felt seal, P/N 900F3441025–103, is not installed, replace the installed seal with an airworthy NOTAR fan felt seal, P/N 900F3441025–103, before further flight; and
- Install a thruster extension kit in accordance with specified portions of SB.

We have reviewed the SB, which describes procedures for adjusting the directional control system rigging, installing a thruster extension kit, and verifying that a NOTAR fan felt seal, part number (P/N) 900F3441025–103 is installed. The SB specifies that failure to comply with the procedures may result in reduced anti-torque control during certain combinations of high gross weight, density altitude, and wind critical conditions. The SB also indicates that the maximum gross weight of the helicopter will be lowered if the SB is not complied with.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

We estimate that this AD affects 31 helicopters of U.S. registry. The estimated lost revenue attributable to the gross weight reduction is $1,750,000 per helicopter over the life of the helicopter. It takes approximately ½ work hour per helicopter to insert the AD into the Limitations section of the RFM; 8 work hours to adjust the directional control system rigging; 8 work hours to install a NOTAR fan felt seal; and 24 work hours to install a thruster extension kit at an average labor rate of $80 per work hour. The NOTAR fan felt seal and thruster extension kit cost approximately $16,000. However, the manufacturer has stated that they will provide the fan felt seal and the thruster extension kit to all operators at no cost to them and that they will also provide each affected operator a credit for the labor costs for a total of 32 work hours for those work hours required to perform the directional control rigging adjustment (8 work hours) and installation of the thruster extension kit (24 work hours). Based on these figures, the total estimated cost impact of this AD on U.S. operators is $1,920, assuming (1) The entire fleet chooses to modify their affected helicopter in accordance with the optional terminating action provision of this AD and there is no reduction in gross weight necessary, (2) the manufacturer covers all the costs of the parts and the labor costs associated with the rigging adjustment and installation of the thruster extension kit and (3) only 3 helicopters need to have a new fan felt seal installed.

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 an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2009–07–13 MD Helicopters, Inc.: Amendment 39–15872. Docket No. FAA–2008–0772; Directorate Identifier 2008–SW–30–AD.

Applicability: Model MD900 (including MD902 Configuration) helicopters that have not complied with MD Helicopters, Inc. (MDHI) Mandatory Service Bulletin SB900–099 R1, dated December 27, 2006, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of directional control of the helicopter, accomplish the following:

(a) Within 30 days, reduce the gross weight limit to a maximum gross weight limit of 5,400 pounds by inserting a copy of this AD into the Limitations section of the Rotorcraft Flight Manual.

(b) As an optional terminating action for the weight reduction mandated by paragraph (a) of this AD, accomplish the following:

(1) Determine if a NOTAR fan felt seal part number (P/N) 900F3441025–103 is installed. If a NOTAR fan felt seal, P/N 900F3441025–103, is not installed, replace the installed seal with an airworthy NOTAR fan felt seal, P/N 900F3441025–103, before further flight.

(2) Install a thruster extension kit in accordance with the Accomplishment

Instructions, paragraph B.(3). through (17). of MDHI Mandatory SB900–099 R1, dated December 27, 2006, before further flight. Contacting the manufacturer is not required by this AD.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Los Angeles Aircraft Certification Office, ATTN: Chip Adam, Flight Test Pilot, FAA, Flight Test Branch, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5369, fax (562) 627–5210, for information about previously approved alternative methods of compliance.

(d) Special flight permits will not be issued.

(e) The modification shall be done in accordance with the specified portions of MDHI Mandatory SB900–099 R1, dated December 27, 2006. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or on the Web at *http://www.mdhelicopters.com*. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 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/code_of_federal_regulations/ibr_locations.html*.

(f) This amendment becomes effective on May 14, 2009.

Issued in Fort Worth, Texas, on March 26, 2009.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–7780 Filed 4–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1240; Directorate Identifier 2008–NM–098–AD; Amendment 39–15877; AD 2009–08–04]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation Model BH.125 Series 600A Airplanes and Model HS.125 Series 700A Airplanes Modified in Accordance With Supplemental Type Certificate (STC) SA2271SW

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation Model BH.125 series 600A airplanes and Model HS.125 series 700A airplanes. This AD requires inspecting the wiring diagrams containing the cockpit blowers and comparing with the current airplane configuration, and reworking the wiring if necessary. This AD results from a report indicating that a blower motor of the cockpit ventilation and avionics cooling system seized up and gave off smoke. We are issuing this AD to prevent smoke and fumes in the cockpit in the event that a blower motor seizes and overheats due to excessive current draw.

DATES: This AD is effective May 14, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 14, 2009.

ADDRESSES: For service information identified in this AD, contact Hawker Beechcraft Corporation, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085; telephone 316–676–8238; fax 316–676–6706; e-mail *tmdc@hawkerbeechcraft.com*; Internet *https://www.hawkerbeechcraft.com/service_support/pubs*.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Andy Shaw, Aerospace Engineer, Special Certification Office, ASW–190, FAA Southwest Regional Office, 2601 Meacham Boulevard, Fort Worth, Texas 76137; telephone (817) 222–5188; fax (817) 222–5785.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Hawker Beechcraft Corporation Model BH.125 series 600A airplanes and Model HS.125 series 700A airplanes. That NPRM was published in the **Federal Register** on November 26, 2008 (73 FR 71959). That NPRM proposed to require inspecting the wiring diagrams containing the cockpit blowers and comparing with the current airplane configuration, and reworking the wiring if necessary.

Comments

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

Explanation of Change to Final Rule

We have changed the product identification line to specify the airplane type certificate holder.

Conclusion

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

Costs of Compliance

We estimate that this AD affects 40 airplanes of U.S. registry. We also estimate that it takes about 1 work-hour 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 U.S. operators to be $3,200, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–08–04 Hawker Beechcraft Corporation (Formerly Raytheon Aircraft Company): Amendment 39–15877. Docket No. FAA–2008–1240; Directorate Identifier 2008–NM–098–AD.

Effective Date

(a) This airworthiness directive (AD) is effective May 14, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hawker Beechcraft Corporation Model BH.125 series 600A airplanes and Model HS.125 series 700A airplanes, certificated in any category; as identified in Hawker Beechcraft Mandatory Service Bulletin SB 24–3850, dated January 2008, which have been modified in accordance with Supplemental Type Certificate SA2271SW.

Unsafe Condition

(d) This AD results from a report indicating that a blower motor of the cockpit ventilation and avionics cooling system seized up and gave off smoke. We are issuing this AD to prevent smoke and fumes in the cockpit in the event that a blower motor seizes and overheats due to excessive current draw.

Compliance

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

Inspection and Rework

(f) Within 600 flight hours or 6 months after the effective date of this AD, whichever occurs first, inspect the wiring diagrams containing the cockpit blowers and compare with the current airplane configuration, in accordance with the Accomplishment Instructions of Hawker Beechcraft Mandatory Service Bulletin SB 24–3850, dated January 2008; except as provided by paragraph (g) of this AD.

(1) If the current airplane configuration does not match the applicable cockpit blower wiring diagrams, before further flight, rework the wiring using a method approved by the Manager, Special Certification Office, ASW–190, Rotorcraft Directorate, FAA. For the determination to be approved by the Manager, Special Certification Office, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(2) If the current airplane configuration matches the applicable cockpit blower wiring diagrams, before further flight, rework the wiring in accordance with the Accomplishment Instructions of Hawker Beechcraft Mandatory Service Bulletin SB 24–3850, dated January 2008.

No Submission of Certain Information

(g) Although Hawker Beechcraft Mandatory Service Bulletin SB 24–3850, dated January 2008, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Special Certification Office, ASW–190, Rotorcraft Directorate, FAA, *Attn:* Andy Shaw, Aerospace Engineer, Special Certification Office, ASW–190, FAA, Southwest Regional Office, 2601 Meacham Boulevard, Fort Worth, Texas 76137; telephone (817) 222–5188; fax (817) 222–5785; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

Material Incorporated by Reference

(i) You must use Hawker Beechcraft Mandatory Service Bulletin SB 24–3850, dated January 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) For service information identified in this AD, contact Hawker Beechcraft Corporation, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085; telephone 316–676–8238; fax 316–676–6706; e-mail *tmdc@hawkerbeechcraft.com*; Internet *https://www.hawkerbeechcraft.com/service_support/pubs*.

(2) 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.

(3) 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 April 2, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–8080 Filed 4–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0329; Directorate Identifier 2009–CE–020–AD; Amendment 39–15878; AD 2009–08–05]

RIN 2120–AA64

Airworthiness Directives; Liberty Aerospace Incorporated Model XL–2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Liberty Aerospace Incorporated Model XL–2 airplanes. This AD requires you to repetitively inspect the exhaust muffler for cracks and to replace the exhaust muffler when cracks are found. This AD is the result of reports that cracks have been found in the exhaust muffler during maintenance and service inspections. We are issuing this AD to detect and correct cracks in the exhaust muffler, which could result in carbon monoxide entering the cabin through the heating system. Carbon monoxide entering into the airplane cabin could lead to incapacitation of the pilot.

DATES: This AD becomes effective on April 20, 2009.

On April 20, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive any comments on this AD by June 8, 2009.

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

- *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.

To get the service information identified in this AD, contact Liberty Aerospace, 100 Aerospace Drive, Melbourne, Florida 32901; *telephone:* (321) 752–0332 or (800) 759–5953; *fax:* (321) 752–0377; *Internet: http://www.libertyaircraft.com*.

To view the comments to this AD, go to *http://www.regulations.gov*. The docket number is FAA–2009–0329; Directorate Identifier 2009–CE–020–AD.

FOR FURTHER INFORMATION CONTACT:

—Corey Spiegel, Aerospace Engineer, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; *telephone:* (770) 703–6045; *facsimile:* (770) 703–6097; *e-mail: corey.spiegel@faa.gov*; or

—Cindy Lorenzen, Aerospace Engineer, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; *telephone:* (770) 703–6078; *facsimile:* (770) 703–6097; *e-mail: cindy.lorenzen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We received reports of cracks found in the exhaust mufflers of Liberty Aerospace Incorporated (Liberty Aerospace) Model XL–2 airplanes. One crack was found during maintenance, which prompted Liberty Aerospace to publish service information requesting the exhaust mufflers be inspected for cracks on all Model XL–2 airplanes. Seven additional cracks have been found during these service inspections.

Investigation is ongoing to determine what is causing the exhaust mufflers to crack. Excessive vibration caused by improper propeller clocking position may be a contributing factor.

This condition, if not corrected, could result in carbon monoxide entering the cabin through the heating system and cause incapacitation of the pilot.

Relevant Service Information

We reviewed Liberty Aerospace, Inc. Service Document Critical Service Bulletin (CSB) CSB–09–001, Revision Level B, Revised on March 18, 2009. The service information describes procedures for inspecting the exhaust muffler for cracks and replacing the exhaust muffler when cracks are found.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This AD requires repetitively inspecting the exhaust muffler for cracks and replacing the exhaust muffler when cracks are found. This AD also requires inspecting the propeller for proper clocking position and correcting any discrepancies found.

Liberty Aerospace is reviewing the information related to the occurrences referenced in this AD and may develop a modification that, when incorporated, would eliminate the need for the repetitive inspections required by this AD. The FAA will review any modification that is developed, determine whether it would eliminate the need for the requirements of this action, and then determine whether additional AD action is necessary.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because cracks in the exhaust muffler could result in carbon monoxide entering the cabin through the heating system. Carbon monoxide entering into the airplane cabin could lead to incapacitation of the pilot. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number ''FAA–2009–0329; Directorate Identifier 2009–CE–020–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light 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 concerning this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

You may examine the AD docket that contains the AD, the regulatory evaluation, any comments received, and other information 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 Docket Office (telephone (800) 647–5527) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–08–05 Liberty Aerospace Incorporated: Amendment 39–15878; Docket No. FAA–2009–0329; Directorate Identifier 2009–CE–020–AD.

Effective Date

(a) This AD becomes effective on April 20, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model XL–2 airplanes, serial numbers 0007, 0009, and subsequent, that are certificated in any category.

Unsafe Condition

(d) This AD is the result of reports that eight cracks have been found in the exhaust muffler during maintenance and service inspections. We are issuing this AD to detect and correct cracks in the exhaust muffler, which could result in carbon monoxide entering the cabin heating system. This condition could lead to incapacitation of the pilot.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect the following: (i) The exhaust muffler for cracks. There are two different exhaust systems available for the affected airplanes. They are: (A) Standard exhaust system, part number (P/N) DEL200201–002 that incorporates muffler P/N DEL200201–101; and (B) Reduced sound exhaust system, P/N DEL200201–003 that incorporates muffler P/N 200201–104. (ii) The tail pipe and the tail pipe opening in the lower cowl for a 0.5-inch minimum clearance. (iii) Inspect the propeller for proper propeller clocking position.	Initially inspect within the next 10 hours time-in-service (TIS) after April 20, 2009 (the effective date of this AD) or at the next annual inspection, whichever occurs first. Repetitively inspect the exhaust muffler thereafter as specified in paragraph (e)(5) of this AD.	Follow Liberty Aerospace, Inc. Service Document Critical Service Bulletin (CSB) CSB–09–001, Revision Level B, Revised on March 18, 2009.
(2) As a result of the inspections required in paragraphs (e)(1)(ii) and (e)(1)(iii) of this AD: (i) If the clearance between the tail pipe and the tail pipe opening is less than the required 0.5-inch minimum, trim the lower cowl as needed to achieve the minimum clearance. (ii) If there is a discrepancy in the propeller clocking position, remove and reinstall the propeller at the correct position.	Before further flight after the inspection required in paragraph (e)(1) of this AD.	As specified in Liberty Aerospace, Inc. Service Document Critical Service Bulletin (CSB) CSB–09–001, Revision Level B, Revised on March 18, 2009.
(3) As a result of the initial inspection required in paragraph (e)(1)(i) of this AD or any repetitive inspection required in paragraph (e)(5) of this AD, if a crack is found, replace the exhaust muffler. (i) The manufacturer will provide the replacement exhaust system. (ii) A reduced sound exhaust system may be replaced with a standard exhaust system. (iii) Installing a reduced sound exhaust system as a replacement part also requires installing a bypass SCAT tube and a "Do Not Use" placard on or near the heater knob.	Before further flight after the initial inspection required in paragraph (e)(1) of this AD and before further flight after any repetitive inspection required in paragraph (e)(5) of this AD.	Follow Liberty Aerospace, Inc. Service Document Critical Service Bulletin (CSB) CSB–09–001, Revision Level B, Revised on March 18, 2009.

Actions	Compliance	Procedures
(4) If the airplane is equipped with a reduced sound exhaust system and no cracks are found during the initial inspection required in paragraph (e)(1) of this AD, install a bypass SCAT tube and a ''Do Not Use'' placard on or near the heater knob.	Within the next 10 hours TIS after April 20, 2009 (the effective date of this AD.	Follow Liberty Aerospace, Inc. Service Document Critical Service Bulletin (CSB) CSB–09–001, Revision Level B, Revised on March 18, 2009.
(5) If no cracks are found in the exhaust muffler during the initial inspection required in paragraph (e)(1) of this AD or if the exhaust muffler was replaced as required in paragraph (e)(3) of this AD, repetitively inspect thereafter at the intervals specified in paragraphs (e)(5)(i), (e)(5)(ii), and (e)(5)(iii) of this AD.	(i) For airplanes equipped with a standard exhaust system and the optional bypass SCAT tube has not been installed, repetitively inspect thereafter every 25 hours TIS or every 12 months, whichever occurs first. (ii) For airplanes equipped with a standard exhaust system and the optional bypass SCAT tube has been installed, repetitively inspect thereafter every 50 hours TIS or every 12 months, whichever occurs first. (iii) For airplanes equipped with a reduced sound exhaust system and the required bypass SCAT tube has been installed, repetitively inspect thereafter every 50 hours TIS or every 12 months, whichever occurs first.	Follow Liberty Aerospace, Inc. Service Document Critical Service Bulletin (CSB) CSB–09–001, Revision Level B, Revised on March 18, 2009.
(6) Report the results of the following inspections required in this AD to the FAA. (i) Initial inspection required in paragraph (e)(1) of this AD. (ii) Repetitive inspections required in paragraph (e)(5) of this AD only if cracks are found. (iii) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.	Within 10 days after each inspection required by this AD.	Use the form (Figure 1 of this AD) and submit it to FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349.

AD 2009–08–05 Inspection Report		
Airplane Serial Number		
Airplane Tach Hours at time of inspection		
Propeller type (circle one)	MT	Sensenich
Propeller Tach Hours at time of inspection		
Exhaust Type (circle one)	Standard	Reduced Sound
Is Exhaust Cracked? (circle one)	Yes	No
Did lower cowl require trimming at the tail pipe opening? (circle one) *Not applicable after initial inspection.*	Yes	No
Did the propeller clocking position need to be corrected? (circle one) *Not applicable after initial inspection.*	Yes	No
Were any other discrepencies noticed during the inspection?		
Name:		
Telephone and/or e-mail address:		
Date:		

Send report to: Corey Spiegel, Aerospace Engineer, Atlanta ACO,
One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta Georgia 30349;
facsimile: (770) 703–6097; email: corey.spiegel@faa.gov.

Figure 1

Special Flight Permit

(f) Under 14 CFR part 39.23, we are limiting the special flight permits for this AD by the following conditions:

(1) The cabin heat turned off; and

(2) The fresh air vents are open.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Atlanta 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: Corey Spiegel, Aerospace Engineer, Atlanta ACO, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(h) You must use Liberty Aerospace, Inc. Service Document Critical Service Bulletin (CSB) CSB–09–001, Revision Level B, Revised on March 18, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Liberty Aerospace, 100 Aerospace Drive, Melbourne, Florida 32901; *telephone:* (321) 752–0332 or (800) 759–5953; *fax:* (321) 752–0377; *Internet: http://www.libertyaircraft.com.*

(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.*

Issued in Kansas City, MO, on April 3, 2009.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–8075 Filed 4–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0899; Directorate Identifier 2008–NM–022–AD; Amendment 39–15874; AD 2009–08–01]

RIN 2120–AA64

Airworthiness Directives; Honeywell Flight Management Systems (FMSs) Equipped With Honeywell NZ–2000 Navigation Computers and Honeywell IC–800 or IC–800E Integrated Avionics Computers; as Installed on Various Transport Category Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all Honeywell FMSs served by Honeywell NZ–2000 navigation computers and IC–800 integrated avionics computers. That AD currently requires identifying affected computers by part number and software modification level and revising the Limitations section of applicable airplane flight manuals to provide procedures for retaining optimum position determination and intended navigation. This new AD requires upgrading new software, which terminates the existing requirements. This AD results from reports of in-flight unannunciated shifts of computed position in airplanes with the subject FMS computers. We are issuing this AD to prevent a shift in the FMS computed position, which could result in uncommanded deviations from the intended flight path of the airplane, and, if those deviations are undetected by the flight crew, compromised terrain/traffic avoidance.

DATES: This AD becomes effective May 14, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 14, 2009.

On April 18, 2007 (72 FR 15818, April 3, 2007), the Director of the Federal Register approved the incorporation by reference of Honeywell Technical Newsletter A23–6111–008, Revision 001, dated February 22, 2007.

ADDRESSES: For service information identified in this AD, contact Honeywell Technical Operations Center, 1944 East Sky Harbor Circle, Phoenix, Arizona 85034–3442; telephone (U.S. and Canada) 800–601–3099, (international) 602–365–3099; e-mail *AeroTechSupport@Honeywell.com*; Internet *http://www.honeywell.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 address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Daniel Bui, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5339; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2007–07–12, amendment 39–15009 (72 FR 15818, April 3, 2007). The existing AD applies to all Honeywell FMSs served by Honeywell NZ–2000 navigation computers and IC–800 integrated avionics computers. That NPRM was published in the **Federal Register** on August 21, 2008 (73 FR 49368). That NPRM proposed to retain the existing requirements of identifying affected airplanes by part numbers/modification levels and revising the Limitations section of the airplane flight manual. That NPRM also proposed to require uploading new software, which would terminate the existing requirements.

Actions Since NPRM Was Issued

Since we issued the NPRM, Honeywell has published Alert Service Bulletin 7017300–22–A6112, Revision 001, dated February 7, 2008. In the NPRM, we referred to Honeywell Alert Service Bulletin 7017300–22–A6112, dated June 22, 2007, as the appropriate source of service information for accomplishing the proposed actions. The procedures in Revision 001 of this service bulletin are essentially the same as those in the original issue of this service bulletin. Revision 001 of this service bulletin includes instructions to load software onboard as an alternative

to sending the unit to a service center to have the software loaded.

Therefore, we have revised this AD to refer to Honeywell Alert Service Bulletin 7017300–22–A6112, Revision 001, dated February 7, 2008, as the appropriate source of service information. We have also added a new paragraph (i) to this AD that specifies that actions done before the effective date of this AD in accordance with Honeywell Alert Service Bulletin 7017300–22–A6112, dated June 22, 2007, are acceptable for compliance with the requirements of this AD and re-identified subsequent paragraphs.

Comments

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

Request To Remove References to Service Bulletin

Honeywell requests that we remove the references to Honeywell Service Bulletin 7018879–34–6061, Revision 001, dated January 21, 2008, from the NPRM because the service modifications identified in this service bulletin are not affected by the identified unsafe condition and the modification works correctly.

We agree that Honeywell Service Bulletin 7018879–34–6061, Revision 001, dated January 21, 2008, is unnecessary. This service bulletin, which includes Modifications A and B, did not exhibit the FMS position jump problem that this AD addresses. This problem started when Modification C was incorporated into the affected units. Since Modifications A and B did not exhibit the FMS position jump problem, operators of these units are not required to incorporate the AFM revision procedures. Therefore, we have removed references to Honeywell Service Bulletin 7018879–34–6061, Revision 001, dated January 21, 2008, from this AD.

Request To Clarify Terminology

Honeywell notes that the NPRM states that the new software should be ''uploaded.'' This term may cause some confusion as very few of the affected airplanes have the capability to field-load the software. Honeywell recommends replacing the term ''upload'' with ''upgrade.''

We agree that this terminology may cause some confusion, and we have changed the ''upload'' terminology to ''upgrade'' throughout this AD.

Request To Change Contact Information of Manufacturer

The manufacturer, Honeywell, has requested that we change the contact information for service information to Honeywell Technical Operations Center, 1944 East Sky Harbor Circle, Phoenix, Arizona 85034–3442; telephone (U.S. and Canada) 800–601–3099; (international) 602–365–3099; e-mail *AeroTechSupport@Honeywell.com*.

We agree, and we have provided the specific contact information for the manufacturer as requested.

Conclusion

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

Costs of Compliance

There are about 104 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hour	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM revision (required by AD 2007–07–12)	1	$80	$80	77	$6,160
Terminating action (new required action)	1	80	80	77	6,160

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13

by removing amendment 39–15009 (72 FR 15818, April 3, 2007) and by adding the following new airworthiness directive (AD):

2009–08–01 Honeywell, Inc.: Amendment 39–15874. Docket No. FAA–2008–0899; Directorate Identifier 2008–NM–022–AD.

Effective Date

(a) This AD becomes effective May 14, 2009.

Affected ADs

(b) This AD supersedes AD 2007–07–12.

Applicability

(c) This AD applies to all Honeywell NZ–2000 navigation computers and Honeywell IC–800 or IC–800E integrated avionics computers; as installed on transport category airplanes, certificated in any category, including but not limited to the airplanes identified in Table 1 of this AD.

TABLE 1—KNOWN AFFECTED AIRPLANES

Manufacturer	Model
Bombardier, Inc	CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) airplanes.
Dassault Aviation	Mystere–Falcon 900 airplanes.
Gulfstream Aerospace Corporation	G–1159A and GV airplanes, and G–IV series airplanes.
Lockheed	382G series airplanes.
Hawker Beechcraft (formerly Raytheon Aircraft Company)	BAe.125 Series 800A (including C–29A and U–125) airplanes. Hawker 800XP and 1000 airplanes.

Unsafe Condition

(d) This AD results from reports of in-flight unannunciated shifts of computed position in airplanes with the subject flight management system (FMS) computers identified in paragraph (c) of this AD. We are issuing this AD to prevent a shift in the FMS computed position, which could result in uncommanded deviations from the intended flight path of the airplane and, if those deviations are undetected by the flight crew, compromised terrain/traffic avoidance.

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.

Requirements of AD 2007–07–12

Identification of Part Number/Modification Level

(f) Within 14 days after April 18, 2007 (the effective date of AD 2007–07–12): Determine if the installed NZ–2000 navigation computers and IC–800 or IC–800E integrated avionics computers serving FMSs have computer part numbers and software modification levels identified in Honeywell Technical Newsletter A23–6111–008, Revision 001, dated February 22, 2007. For purposes of this AD, airplanes with FMS computers having a part number and software modification level identified in the newsletter are ''affected airplanes.''

Revision of Airplane Flight Manual (AFM)

(g) For any affected airplane: Within 14 days after April 18, 2007, revise the Limitations section of the applicable AFM to incorporate the information included in Appendix A of Honeywell Technical Newsletter A23–6111–008, Revision 001, dated February 22, 2007. This may be done by inserting a copy of Appendix A of the newsletter into the AFM.

New Requirements of This AD

Terminating Action

(h) Within 12 months after the effective date of this AD, upgrade the applicable software as specified in Table 2 of this AD. After upgrading the applicable software, the requirements of paragraphs (f) and (g) of this AD are no longer necessary, and the AFM revision required by paragraph (g) of this AD may be removed.

TABLE 2—TERMINATING ACTION

Upgrade new software in—	In accordance with the accomplishment instructions of—	For—
(1) The IC–800 or IC-800E integrated avionic computer (IAC), as applicable.	Honeywell Alert Service Bulletin 7017300–22–A6112, Revision 001, dated February 7, 2008.	The IAC identified in Honeywell Alert Service Bulletin 7017300–22–A6112, Revision 001, dated February 7, 2008.
(2) The NZ–2000 navigation computer (NAV computer).	Honeywell Alert Service Bulletin 7018879–34–A6060, Revision 001, dated January 21, 2008.	The NAV computer identified in Honeywell Alert Service Bulletin 7018879–34–A6060, Revision 001, dated January 21, 2008.
	Honeywell Alert Service Bulletin 7018879–34–A6062, dated June 12, 2007.	The NAV computer identified in Honeywell Alert Service Bulletin 7018879–34–A6062, dated June 12, 2007.
	Honeywell Alert Service Bulletin 7018879–34–A6063, dated July 6, 2007.	The NAV computer identified in Honeywell Alert Service Bulletin 7018879–34–A6063, dated July 6, 2007.

Credit for Actions Done According to Previous Issue of Service Bulletin

(i) Actions done before the effective date of this AD in accordance with Honeywell Service Bulletin 7017300–22–A6112, dated June 22, 2007, are acceptable for compliance with the requirements of paragraph (h)(1) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Los Angeles 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:* Daniel Bui, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5339; fax (562) 627–5210.

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

Material Incorporated by Reference

(k) You must use the service information contained in Table 3 of this AD to do the actions required by this AD, as applicable, unless the AD specifies otherwise. (The revision level of Honeywell Alert Service Bulletin 7017300–22A6112, Revision 001;

and Honeywell Alert Service Bulletin 7018879–34–A6060, Revision 001; is identified only on the first page of these documents.)

TABLE 3—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Honeywell Alert Service Bulletin 7017300–22A6112	001	February 7, 2008.
Honeywell Alert Service Bulletin 7018879–34–A6060	001	January 21, 2008.
Honeywell Alert Service Bulletin 7018879–34–A6062	Original	June 12, 2007.
Honeywell Alert Service Bulletin 7018879–34–A6063	Original	July 6, 2007.
Honeywell Technical Newsletter A23–6111–008	001	February 22, 2007.

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained in Table 4 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 4—NEW MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Honeywell Alert Service Bulletin 7017300–22A6112	001	February 7, 2008.
Honeywell Alert Service Bulletin 7018879–34–A6060	001	January 21, 2008.
Honeywell Alert Service Bulletin 7018879–34–A6062	Original	June 12, 2007.
Honeywell Alert Service Bulletin 7018879–34–A6063	Original	July 6, 2007.

(2) The Director of the Federal Register previously approved the incorporation by reference of the service information contained in Table 5 of this AD on April 18, 2007 (72 FR 15818, April 3, 2007).

TABLE 5—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Document	Revision	Date
Honeywell Technical Newsletter A2–6111–008	001	February 22, 2007.

(3) For service information identified in this AD, contact Honeywell Technical Operations Center, 1944 East Sky Harbor Circle, Phoenix, Arizona 85034–3442; telephone (U.S. and Canada) 800–601–3099, (international) 602–365–3099; e-mail *AeroTechSupport@Honeywell.com;* Internet *http://www.honeywell.com.*

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

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

Issued in Renton, Washington, on March 30, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–7790 Filed 4–8–09; 8:45 am]

BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 111

Insurance Claims Process Changes

AGENCY: Postal Service.™

ACTION: Final rule.

SUMMARY: The Postal Service is revising its regulations governing the processing and adjudication of domestic mail insurance claims in order to streamline the claims process and to provide customers with more consistent service.

DATES: *Effective Date:* May 11, 2009.

FOR FURTHER INFORMATION CONTACT: Monica Grein, 202–268–8411.

SUPPLEMENTARY INFORMATION: On January 27, 2009, the Postal Service published a proposed rule in the **Federal Register** (Volume 74, Number 16, pages 4727–4729), inviting comments on a set of proposed revisions to the procedures governing the processing and adjudication of domestic mail insurance claims. One set of comments was received. After reviewing those comments, and upon further consideration of the proposed revisions, the Postal Service has decided to adopt the proposed regulations with minor revisions described below.

As noted in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Postal Service is revising its regulations to make the online claims processing service available to customers who purchase domestic insurance through any retail channel—i.e., USPS.com,® Automated Postal Center® kiosks, local Post Office™ facilities, or authorized PC Postage® providers. In addition, Express Mail® customers may file online claims, even if no additional insurance was purchased. Collect on Delivery (COD) and Registered Mail™ claims may be filed by mail or at a Post Office; however, they cannot be filed online.

Under this final rule, a customer may also file a claim by downloading a form from USPS.com and mailing it directly to Postal Service Accounting Services in St. Louis, MO, or continue to file the claim form at a local Post Office and have it sent to St. Louis for them.

To ensure consistency and service quality, all claims will now be adjudicated by Accounting Services. Local Post Office personnel will no longer adjudicate claims.

The damaged goods inspection policy for domestic claims is also changed. Customers must retain the damaged article and container, including packaging, wrapping, and any other contents received, until the claim is fully resolved. Customers are no longer required to take these materials to the Post Office at the time a claim is filed. Rather, upon receiving a request from the Postal Service, they are required to turn the materials over to their local Post Office for inspection, retention, and disposition in accordance with the claims decision.

The Registered Mail section is changed by updating the term ''uninsured Registered Mail'' to ''Registered Mail with no declared value'' to reflect current policy.

Evaluation of Comments Received

The Postal Service received one set of comments. In its submission, the commenter suggested that the Service adopt one consistent procedure for filing claims instead of different procedures for different mail types. All domestic claims, except COD and Registered Mail, can be filed online. The Postal Service appreciates the interest in a uniform filing procedure, and will consider this interest as the claims procedures evolve.

The commenter also expressed concerns about the customer requirement to retain the contents and all packaging materials until the claim is fully processed. The commenter suggested that the Postal Service instead accept digital photographs as proof of damage or proof of missing contents, and allow packaging to be discarded, with the contents retained, pending final disposition. The Postal Service believes that the requirement to retain the contents and packaging is necessary and is consistent with standard industry practices. While photographs may be helpful, they are not a substitute for the actual materials at the basis of a claim and which the Postal Service may need to examine. Furthermore, a customer who files online may upload digital evidence of his or her damaged item, but will need to retain the item for possible examination by the Postal Service. The Postal Service is confident that the revised process improves the inspection requirements for customers, and will consider further improvements in the future.

The commenter also suggested that the Postal Service modify the timeframe within which a mailer may file an inquiry. The Postal Service has determined that this suggestion is outside the scope of this final rule.

Finally, the commenter suggested that a photocopy of a mailing receipt be acceptable as evidence of insurance as long as the copy matches the information on the package. After considering this comment, the Postal Service has revised section 3.1.a. to permit the submission of photocopies as acceptable evidence of insurance, except for claims involving Registered Mail or COD.

In addition, the Postal Service has made editorial changes to enhance the clarity of revised section 2.6.1 and section 1.6.3.

The Postal Service adopts the following changes to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM®), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

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

PART 111—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

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

* * * * *

500 Additional Mailing Services

503 Extra Services

* * * * *

2.0 Registered Mail

* * * * *

[Revise heading of 2.6 as follows:]

2.6 Inquiry on Article With No Declared Value

2.6.1 Who May File

[Revise 2.6.1 to read as follows:]

If postal insurance was purchased, the claim procedures in 609 apply. The procedures in this section apply only to Registered Mail with no declared value. Only the mailer may file an inquiry on Registered Mail with no declared value. Only the permit holder may file an inquiry on Registered Mail with no declared value sent using merchandise return service.

[Revise the heading of 2.6.2 to read as follows:]

2.6.2 When and How To File

[Revise introductory paragraph to read as follows, and delete items 2.6.2a, 2.6.2b, and 2.6.2c in their entirety:]

The mailer may not file any inquiry until 15 days after the mailing date of the article. An inquiry may be filed at any Post Office, classified station, or classified branch, except for an inquiry about matter registered with merchandise return service, which must be filed by the permit holder at the Post Office where the permit is held. An inquiry for Registered Mail with no declared value must be filed by completing a PS Form 1000, Domestic or International Claim, which may be obtained from any Post Office or online at *www.usps.com/forms/_pdf/ps1000.pdf*.

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

609 Filing Indemnity Claims for Loss or Damage

1.0 General Filing Instructions

* * * * *

1.5 Where To File

[Revise 1.5 to read as follows:]

A claim may be filed:

a. Via mail to Domestic Claims, Accounting Services (see 608.8) for insured mail, Registered Mail, COD, and Express Mail.

b. Online at *http://www.usps.com/insuranceclaims/online.htm* for domestic insured mail and Express Mail. Claims for COD and Registered Mail cannot be filed online.

c. By submitting the required information at any Post Office facility for mailing to Accounting Services in St. Louis.

* * * * *

1.6 How To File

[Revise 1.6 by deleting existing text and adding 1.6.1, 1.6.2, and 1.6.3 to read as follows:]

1.6.1 Claims Filed by Mail

Customers may file a claim by completing a PS Form 1000, Domestic or International Claim, and mailing it to Domestic Claims, Accounting Services (see 608.8). Customers may print PS Form 1000 from *http://www.usps.com/insuranceclaims*. Evidence of value is required and must accompany the PS Form 1000. Evidence of insurance must be retained by the customer until the claim is resolved. For Express Mail COD and Registered Mail COD claims, the customer must provide both the original

COD receipt and the Express Mail receipt or the Registered Mail receipt. Upon written request by the USPS, the customer must submit proof of damage (see 2.0) for damaged items or missing contents, in person to a local Post Office for inspection, retention, and disposition in accordance with the claims decision.

1.6.2 Claims Filed Online

Customers may file a claim online for insured mail and Express Mail at *http://www.usps.com/insuranceclaims/online.htm*. Evidence of value is required and may be submitted as an uploaded file or sent via First-Class Mail to Domestic Claims, Accounting Services (see 608.8). Evidence of insurance must be retained by the customer until the claim is resolved. Upon written request by the USPS, the customer must submit proof of damage (see 2.0) for damaged items or missing contents, in person to a local Post Office for inspection, retention, and disposition in accordance with the claims decision. COD and Registered Mail claims cannot be filed online.

1.6.3 Claims Filed at the Post Office

A customer may file PS Form 1000 at a local Post Office, which will then forward the form to Accounting Services in St. Louis. Customers may print PS Form 1000 from *http://www.usps.com/insuranceclaims*. Evidence of value is required and must accompany the PS Form 1000. Evidence of insurance must be retained by the customer until the claim is resolved. For Express Mail COD and Registered Mail COD claims, the customer must provide both the original COD receipt and the Express Mail receipt or the Registered Mail receipt. Upon written request by the USPS, the customer must submit proof of damage (see 2.0) for damaged items or missing contents, in person to a local Post Office for inspection, retention, and disposition in accordance with the claims decision.

* * * * *

2.0 Providing Proof of Loss or Damage

2.1 Missing Contents

[Revise the first sentence of 2.1 to read as follows:]

If a claim is filed because some or all of the contents are missing, the addressee must retain the mailing container, including wrapping, packaging, and any contents that were received, and must, upon written request by the USPS, make them available to the local Post Office for inspection, retention, and disposition in accordance with the claims decision. * * *

2.2 Proof of Damage

[Revise the first and second sentences of 2.2 to read as follows:]

If the addressee files the claim, the addressee must retain the damaged article and mailing container, including wrapping, packaging, and contents, and must, upon written request by the USPS, make them available for inspection. If the mailer files the claim, Accounting Services in St. Louis may notify the addressee by letter to present the damaged article and mailing container, including any wrapping, packaging, and any other contents received, to a local Post Office for inspection, retention, and disposition in accordance with the claims decision. * * *

* * * * *

3.0 Providing Evidence of Insurance and Value

3.1 Evidence of Insurance

[Revise introductory paragraph and item 3.1a to read as follows:]

For a claim involving insured mail, Registered Mail, COD, or Express Mail, the customer must retain evidence showing that the particular service was purchased until the claim is resolved. Examples of acceptable evidence of insurance are:

a. The original mailing receipt issued at the time of mailing (retail insured mail, Registered Mail, and COD receipts must contain a USPS postmark). Except for Registered Mail and COD claims, a photocopy of the original mailing receipt is acceptable. If the original mailing receipt, or a photocopy of such receipt, is not available, the original USPS sales receipt listing the mailing receipt number and insurance amount is acceptable. Customers filing online claims may scan the receipt and submit as an uploaded file.

* * * * *

[Delete item 3.1d, and redesignate current items 3.1e and 3.1f as 3.1d and 3.1e.]

* * * * *

3.2 Evidence of Value

[Revise introductory paragraph of 3.2 to add online option as follows:]

The customer (either the mailer or the addressee) must submit acceptable evidence to establish the cost or value of the article at the time it was mailed. For claims submitted online, the evidence may be scanned and uploaded or sent via First-Class Mail to Domestic Claims, Accounting Services (see 608.8.0). Other evidence may be requested to help determine an accurate value. Examples of acceptable evidence are:

* * * * *

6.0 Adjudication of Claims

6.1 Initial Adjudication of Claims

[Revise 6.1 to read as follows:]

Accounting Services in St. Louis adjudicates and determines whether to uphold a claim in full, uphold a claim in part, or deny a claim in full. Domestic insurance claims may be filed online through *http://www.usps.com/insuranceclaims/online.htm*, via mail to Domestic Claims Accounting Services (see 608.8), or by filing it at a local Post Office. Claims for COD and Registered Mail cannot be filed online.

6.2 Appealing a Claim Decision

[Revise 6.2 to read as follows:]

A customer may appeal a claim decision by filing a written appeal to Domestic Claims Appeals, Accounting Services (see 608.8) within 60 days of the date of the original decision. A customer may also appeal a claim decision online through *http://www.usps.com/insuranceclaims/online.htm* if the original claim was filed online.

6.3 Final USPS Decision of Claims

[Revise text of 6.3 by adding a new last sentence as follows:]

* * * The customer may file the additional appeal online if the original appeal was filed online.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E9–8038 Filed 4–8–09; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2008–0575, EPA–HQ–SFUND–2008–0576, EPA–HQ–SFUND–2008–0577, EPA–HQ–SFUND–2008–0585, EPA–HQ–SFUND–2008–0580, EPA–HQ–SFUND–2008–0581, EPA–HQ–SFUND–2008–0582, EPA–HQ–SFUND–2008–0583, EPA–HQ–SFUND–2008–0083; FRL–8790–1]

RIN 2050–AD75

National Priorities List, Final Rule No. 46

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds nine sites to the NPL, eight to the General Superfund Section and one to the Federal Facilities Section.

DATES: *Effective Date:* The effective date for this amendment to the NCP is May 11, 2009.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, ''Availability of Information to the Public'' in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone (703) 603–8852, *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (mail code 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. What Are CERCLA and SARA?
B. What Is the NCP?
C. What Is the National Priorities List (NPL)?
D. How Are Sites Listed on the NPL?
E. What Happens to Sites on the NPL?
F. Does the NPL Define the Boundaries of Sites?
G. How Are Sites Removed From the NPL?
H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?
I. What Is the Construction Completion List (CCL)?
J. What Is the Sitewide Ready for Anticipated Use Measure?
II. Availability of Information to the Public
A. May I Review the Documents Relevant to This Final Rule?
B. What Documents Are Available for Review at the Headquarters Docket?
C. What Documents Are Available for Review at the Regional Dockets?
D. How Do I Access the Documents?
E. How May I Obtain a Current List of NPL Sites?
III. Contents of This Final Rule
A. Additions to the NPL
B. Site Name Change
C. What Did EPA Do With the Public Comments It Received?
IV. Statutory and Executive Order Reviews
A. *Executive Order 12866:* Regulatory Planning and Review
1. What Is Executive Order 12866?
2. Is This Final Rule Subject to Executive Order 12866 Review?
B. Paperwork Reduction Act
1. What Is the Paperwork Reduction Act?
2. Does the Paperwork Reduction Act Apply to This Final Rule?
C. Regulatory Flexibility Act
1. What Is the Regulatory Flexibility Act?
2. How Has EPA Complied With the Regulatory Flexibility Act?
D. Unfunded Mandates Reform Act
1. What Is the Unfunded Mandates Reform Act (UMRA)?
2. Does UMRA Apply to This Final Rule?
E. *Executive Order 13132:* Federalism
What Is Executive Order 13132 and Is It Applicable to This Final Rule?
F. *Executive Order 13175:* Consultation and Coordination With Indian Tribal Governments
1. What Is Executive Order 13175?
2. Does Executive Order 13175 Apply to This Final Rule?
G. *Executive Order 13045:* Protection of Children From Environmental Health and Safety Risks
1. What Is Executive Order 13045?
2. Does Executive Order 13045 Apply to This Final Rule?
H. *Executive Order 13211:* Actions that Significantly Affect Energy Supply, Distribution, or Usage
Is this Rule Subject to Executive Order 13211?
I. National Technology Transfer and Advancement Act
1. What Is the National Technology Transfer and Advancement Act?
2. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?
J. *Executive Order 12898:* Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
1. What Is Executive Order 12898?
2. Does Executive Order 12898 Apply to This Final Rule?
K. Congressional Review Act
1. Has EPA Submitted This Rule to Congress and the Government Accountability Office?
2. Could the Effective Date of This Final Rule Change?
3. What Could Cause a Change in the Effective Date of This Rule?

I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and

requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL. EPA's role is less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (*see* 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL Define the Boundaries of Sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.*, the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.*, it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.*, where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation (''RI'') ''is a process undertaken * * * to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known

boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.*, institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund.*

J. What Is the Sitewide Ready for Anticipated Use Measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority EPA places on considering anticipated future land use as part of our remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment, including current and future land users, in a manner that allows contaminated properties to be restored to environmental and economic vitality while ensuring protectiveness for current and future land users. For further information, please go to *http://www.epa.gov/superfund/programs/recycle/tools/index.html.*

II. Availability of Information to the Public

A. May I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through *http://www.regulations.gov* (see table below for Docket Identification numbers). Although not all Docket materials may be available electronically, you may still access any of the publicly available Docket materials through the Docket facilities identified below in section II D.

Site name	City/state	FDMS docket ID No.
Raleigh Street Dump	Tampa, FL	EPA–HQ–SFUND–2008–0575.
Arkla Terra Property	Thonotosassa, FL	EPA–HQ–SFUND–2008–0576.
U.S. Smelter and Lead Refinery, Inc	East Chicago, IN	EPA–HQ–SFUND–2008–0577.
Fort Detrick Area B Ground Water	Frederick, MD	EPA–HQ–SFUND–2008–0585.
Behr Dayton Thermal System VOC Plume	Dayton, OH	EPA–HQ–SFUND–2008–0580.
New Carlisle Landfill	New Carlisle, OH	EPA–HQ–SFUND–2008–0581.
BoRit Asbestos	Ambler, PA	EPA–HQ–SFUND–2008–0582.
Barite Hill/Nevada Goldfields	McCormick, SC	EPA–HQ–SFUND–2008–0583.
Attebury Grain Storage Facility	Happy, TX	EPA–HQ–SFUND–2008–0083.

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters Docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. For sites that received comments during the comment period, the Headquarters Docket also contains a Support Document that includes EPA's responses to comments.

C. What Documents Are Available for Review at the Regional Dockets?

The Regional Dockets contain all the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional Dockets. For sites that received comments during the comment period, the Regional Docket also contains a Support Document that includes EPA's responses to comments.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication

of this rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional Dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room 3334, Washington, DC 20004, 202/566–0276.

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1417.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8862.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SMR–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SFTS, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Mailcode SUPRERNB, Kansas City, KS 66101; 913/551–7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6463.

Karen Jurist, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD–9–1, San Francisco, CA 94105; 415/972–3219.

Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mailcode ECL–112, Seattle, WA 98101; 206/553–2782.

E. How May I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/* (look under the Superfund sites category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following nine sites to the NPL, eight to the General Superfund Section and one to the Federal Facilities Section:

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county
FL	Raleigh Street Dump	Tampa.
FL	Arkla Terra Property	Thonotosassa.
IN	U.S. Smelter and Lead Refinery, Inc	East Chicago.
OH	Behr Dayton Thermal System VOC Plume	Dayton.
OH	New Carlisle Landfill	New Carlisle.
PA	BoRit Asbestos	Ambler.
SC	Barite Hill/Nevada Goldfields	McCormick.
TX	Attebury Grain Storage Facility	Happy.

TABLE 2—FEDERAL FACILITIES SECTION

State	Site name	City/county
MD	Fort Detrick Area B Ground Water	Frederick.

B. Site Name Change

The BoRit Asbestos site in Ambler, Pennsylvania, was proposed to the NPL under a different name. The former name was Borit Asbestos Tailings Pile (see Proposed Rule at 73 FR 51393, September 3, 2008). EPA believes the new name, BoRit Asbestos, more accurately identifies the site.

C. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the sites in this rule and responded to all relevant comments.

Nine sites are being finalized in this rule. EPA received adverse comments related to the HRS scoring of four sites: Attebury Grain Storage Facility (Happy, TX); Fort Detrick Area B Ground Water (Frederick, MD); Behr Dayton Thermal System VOC Plume (Dayton, OH); and U. S. Smelter and Lead Refinery, Inc. (East Chicago, IN). The comments, EPA's responses to the comments, and the impacts, if any, on the HRS scores, are presented in support documents responding to the comments for each of the four sites. These support documents are being placed in the Headquarters and regional dockets concurrent with the publication of this rule.

EPA received one non-HRS comment, after the close of the comment period, for all sites proposed in March 2008, which included the Attebury Grain Storage Facility. (All other sites added to the NPL in this rule were proposed for inclusion in September 2008.) The commenter stated that EPA's process for adding sites to the NPL does not meet notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA), and urged that EPA provide additional information beyond that which it already does, in order to facilitate a dialogue with interested parties on why the site was chosen for addition to the NPL. In response, EPA's process for adding sites to the NPL complies with the APA. EPA agrees generally with the commenter that a dialogue with interested parties is useful to inform listing decisions, but believes there are many opportunities for such a dialogue throughout the Superfund cleanup process before listing a site on the NPL.

Typically for a prospective site (and in accordance with the long-standing procedures in the NCP), EPA conducts a preliminary assessment (PA), and documents its findings in a public

report. Based on the PA, EPA may then conduct a more comprehensive site inspection (SI), the results of which are also documented in a public report. An SI typically involves gathering sampling data (by conducting sampling at or near the site) and gathering additional assessment data by contacting the state and other parties, such as landowners at or near the site. These early efforts put interested parties on notice of EPA's interest in the site. When EPA proposes to list a site, EPA provides its detailed rationale in documents publicly available in Dockets located at EPA Headquarters in Washington DC, in the Regional offices, and by electronic access at *http://www.regulations.gov*. If the site is affected by any particular CERCLA statutory requirements or EPA listing policies, site-specific discussions of those statutory requirements or listing policies are included as part of the docket materials for public review and comment. Commenters have the opportunity to raise any comments they may have on the proposed action, including raising any policy concerns regarding the propriety of using the Superfund process to address the site. Indeed, EPA often gets comments of this nature on its proposed sites, and responds to those comments before it makes any final decision to list a site on the NPL.

For the five remaining sites being finalized in this rule, EPA received no comments on four of those sites: Raleigh Street Dump (Tampa, FL); Arkla Terra Property (Thonotosassa, FL); New Carlisle Landfill (New Carlisle, OH); and Barite Hill/Nevada Goldfields (McCormick, SC). Over 40 comments were received for the BoRit Asbestos site. All of them were supportive of listing and none presented any concerns with the HRS scoring. They all urged EPA to list the site based on human health, environmental and redevelopment needs. In response, EPA is adding the site to the NPL. Listing makes a site eligible for remedial action funding under CERCLA, and EPA will examine the site to determine what response, if any, is appropriate. Actual funding may not be necessarily undertaken in the precise order of HRS scores, however, and upon more detailed investigation may not be necessary in some cases. EPA will determine the need for using Superfund monies for remedial activities on a site-by-site basis, taking into account the NPL ranking, State priorities, further site investigation, other response alternatives, and other factors as appropriate.

All comments that were received by EPA are contained in the Headquarters Docket and are also listed in EPA's electronic public Docket and comment system at *http://www.regulations.gov*.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The 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.

2. Is This Final Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act Apply to This Final Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

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 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) 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 (*i.e.*, small businesses, small organizations, and small governmental 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 a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How Has EPA Complied With the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule where 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 final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA Apply to This Final Rule?

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site listing does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

What Is Executive Order 13132 and Is It Applicable to This Final Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation. 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 the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

1. What is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

2. Does Executive Order 13175 Apply to This Final Rule?

This final rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this final rule.

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

1. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of

the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

2. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Usage

Is This Rule Subject to Executive Order 13211?

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy impacts because proposing a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution, or usage. Thus, Executive Order 13175 does not apply to this action.

I. National Technology Transfer and Advancement Act

1. What Is the 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 note), 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 standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

1. What is Executive Order 12898?

Executive Order (EO) 12898 (59 FR 7629 (Feb. 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.

2. Does Executive Order 12898 Apply to This Rule?

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 because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon State, tribal or local governments, this rule will neither increase nor decrease environmental protection.

K. Congressional Review Act

1. Has EPA Submitted This Rule to Congress and the Government Accountability Office?

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

2. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

3. What Could Cause a Change in the Effective Date of This Rule?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA*, 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: April 1, 2009.

Barry N. Breen,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

■ 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Tables 1 and 2 of Appendix B to part 300 are amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
FL	Arkla Terra Property	Thonotosassa.	
*	*	*	*
FL	Raleigh Street Dump	Tampa.	
*	*	*	*
IN	U.S. Smelter and Lead Refinery, Inc	East Chicago.	
*	*	*	*
OH	Behr Dayton Thermal System VOC Plume	Daytona.	
*	*	*	*
OH	New Carlisle Landfill	New Carlisle.	
*	*	*	*
PA	BoRit Asbetos	Ambler.	
*	*	*	*
SC	Barite Hill/Nevada Goldfields	McCormick.	
*	*	*	*
TX	Attebury Grain Storage Facility	Happy.	
*	*	*	*

TABLE 2—FEDERAL FACILITIES SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
MD	Fort Detrick Area B Ground Water	Frederick.	
*	*	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (HRS score need not be > 28.50).
C = Sites on Construction Completion list.
S = State top priority (HRS score need not be > 28.50)
P = Sites with partial deletion(s).

* * * * *

[FR Doc. E9–7825 Filed 4–8–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 173, 176, 178, and 180

[Docket No. PHMSA–2006–25910 (HM–218E)]

RIN 2137–AE23

Hazardous Materials: Miscellaneous Cargo Tank Motor Vehicle and Cylinder Issues; Petitions for Rulemaking

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: PHMSA is amending the Hazardous Materials Regulations to revise certain requirements applicable to the manufacture, maintenance, and use of DOT and MC specification cargo tank motor vehicles, DOT specification cylinders and UN pressure receptacles. The revisions are based on petitions for rulemaking submitted by the regulated community and are intended to enhance the safe transportation of hazardous materials in commerce, clarify regulatory requirements, and reduce operating burdens on cargo tank and cylinder manufacturers, requalifiers, carriers, shippers, and users. The most significant amendment adopted in this final rule addresses a safety issue identified by the National Transportation Safety Board concerning the transportation of compressed gases in cylinders mounted on motor vehicles or in frames, commonly referred to as tube trailers.

DATES: *Effective Date:* This final rule is effective May 11, 2009.

Voluntary Compliance Date: Voluntary compliance with all these amendments, including those with delayed mandatory compliance, is authorized as of April 9, 2009.

Incorporation by Reference Date: The incorporation by reference of publications listed in this final rule has been approved by the Director of the Federal Register as of May 11, 2009.

FOR FURTHER INFORMATION CONTACT: Hattie L. Mitchell, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION:

I. Background

The Administrative Procedure Act (APA) requires Federal agencies to give interested persons the right to petition for the issuance, amendment, or repeal of a rule (5 U.S.C. 553(e)). PHMSA's rulemaking procedure regulations, at 49 CFR 106.95, provide for persons to ask PHMSA to add, amend or delete a regulation by filing a petition for rulemaking containing adequate support for the requested action. In this final rule, PHMSA (also ''we'' or ''us'') is amending the HMR based on petitions for rulemaking submitted by cargo tank and cylinder manufacturers, requalifiers, shippers, and carriers. We are also incorporating revisions to address requests for clarification of the regulations. These revisions are intended to enhance the safe transportation of hazardous materials in cargo tank motor vehicles and cylinders, clarify regulatory requirements, and reduce operating burdens on carriers, shippers, and users.

II. Notice of Proposed Rulemaking

We published a notice of proposed rulemaking (NPRM) under this docket on April 12, 2007 (72 FR 18446). The comment period for the NPRM closed on June 11, 2007. PHMSA received 21 comments from the following individuals, companies, and organizations:

(1) Matheson Tri Gas (Matheson; PHMSA–2006–25910–2 and 4);
(2) Clifford L. Bartley (Bartley; PHMSA–2006–25910–3);
(3) A&S Enterprises (A&S; PHMSA–2006–25910–4);
(4) Taylor-Wharton Huntsville (Taylor-Wharton; PHMSA–2006–25910–5);
(5) Catalina Cylinders (Catalina; PHMSA–2006–25910–7);
(6) Norco Welding-Safety Medical Gases & Supplies (Norco; PHMSA–2006–25910–8);
(7) Richard O. Harder (Harder; PHMSA–2006–25910–9);
(8) Scott Specialty Gases (Scott Specialty; PHMSA–2006–25910–10);
(9) Chemetall Foote Corp. (Chemetall; PHMSA–2006–25910–11);
(10) National Transportation Safety Board (NTSB; PHMSA–2006–25910–13);
(11) Certified Training Co. (CTC; PHMSA–2006–25910–14);
(12) Luxfer Gas Cylinders (Luxfer; PHMSA–2006–25910–15);
(13) Sherwood Harsco Corp. (Sherwood; PHMSA–2006–25910–16);
(14) Air Products and Chemicals Inc. (Air Products; PHMSA–2006–25910–17);
(15) National Propane Gas Assoc. (NPGA; PHMSA–2006–25910–18);
(16) FMC Lithium (FMC Lithium; PHMSA–2006–25910–19);
(17) Barlen & Assoc. Inc. (Barlen; PHMSA–2006–25910–20);
(18) The Linde Group (Linde; PHMSA–2006–25910–21);
(19) Roberts Oxygen Company, Inc. (Roberts; PHMSA–2006–25910–22);
(20) Steigerwalt (Steigerwalt; PHMSA–2006–25910–23); and
(21) Compressed Gas Association (CGA; PHMSA–2006–25910–24).

Commenters are generally supportive of the proposals in the NPRM. All of the proposals, with corresponding comments, are discussed in more detail below.

III. Proposals Not Adopted

We are not adopting two of the amendments proposed in the NPRM relating to the incorporation by reference of two CGA publications. In the NPRM, we proposed the incorporation of CGA V–9 titled ''Standard for Compressed Gas Cylinder Valves, 2005 Fifth Edition'' which was requested by CGA (P–1422). This amendment contained in proposed §§ 173.40(c) and 173.301(a)(11) would have required each valve on a cylinder to conform to CGA V–9 unless otherwise excepted. We received 15 comments from Air Products, Matheson, Taylor-Wharton, Catalina, Norco, Harder, Scott Specialty, Chemetall, Luxfer, Sherwood, NPGA, FMC Lithium, Barlen, Linde, and Roberts. With the exception of Luxfer, these commenters request that we delay the incorporation by reference of CGA V–9 to allow sufficient time for CGA to resolve certain concerns that would cause confusion to both industry and enforcement officials. Luxfer suggests that we adopt CGA V–9 and revise the HMR to establish in-process approvals, controls, and inspections for the manufacture of V–9 valves. Because CGA is in the process of revising the CGA V–9 publication, we agree with the commenters who suggest that the publication should not be incorporated into the HMR at this time.

We also proposed the incorporation of CGA C–1 titled ''Methods for Hydrostatic Testing of Compressed Gas Cylinders,'' that was requested by CGA (P–1485). This amendment contained in proposed § 180.205(g) would have required the requalification of cylinders using a pressure test conducted in accordance with CGA C–1. Air Products supports referencing CGA C–1. Two

other commenters, A&S and CTC, disagree with referencing the publication. A&S states that referencing CGA C–1 for use would not best serve the interest of safety and would increase costs for cylinder requalifiers who use the hydrostatic test method. However, A&S provided no information to support its position. CTC expresses concerns about the adequacy of certain provisions in CGA C–1, including test equipment accuracy, calibrated cylinder design requirements, and certain omissions. Because CGA is in the process of revising the CGA C–1 publication, we are not incorporating the publication into the HMR at this time.

IV. Summary of Adopted Amendments

The following is a review-by-section summary of changes and, where applicable, a discussion of comments received.

A. Part 171

Incorporations by Reference (§ 171.7)

Section 171.7(a) lists the publications incorporated by reference (IBR) into the HMR. In addition, paragraph (b) in this section contains a list of informational materials not requiring incorporation by reference. In the NPRM, we proposed to amend this section by adding or revising certain IBR and informational materials. Commenters support adoption of these materials. Therefore, in response to CGA petition P–1489, under the entry ''Compressed Gas Association, Inc.,'' we are updating CGA G–2.2, ''Guideline Method for Determining Minimum of 0.2% Water in Anhydrous Ammonia,'' from the 1985 Edition to reflect the 1985 Second Edition, Reaffirmed 1997. Section 173.315(l), prohibits the use of MC 330 and MC 331 cargo tanks constructed of quenched and tempered ''QT'' steel to transport anhydrous ammonia unless the ammonia has the specified minimum water content. The analysis of the water content in the ammonia is conducted as prescribed in CGA G–2.2. Currently, CGA G–2.2, 1985, Second Edition is incorporated by reference in § 171.7(a)(3). CGA reaffirmed this publication in 1997. There were no changes to the document other than the title reflecting that it was reaffirmed in 1997. The other adopted IBR materials are discussed later in this preamble with their applicable regulatory amendments.

B. Part 173

Mobile Refrigeration Systems (§ 173.5b)

In the NPRM, in response to Western Growers Association (WGA) petition P–1352, we proposed to revise the HMR to provide for the transportation of large, mobile refrigeration systems used by the agricultural produce industry at field sites to help preserve freshly harvested fruit and vegetables. These refrigeration systems consist of ASME non-DOT specification pressure components with a maximum total volumetric capacity per vehicle of 2,500 gallons. Refrigerant systems placed in service prior to June 1, 1991, have a maximum allowable working pressure (MAWP) between 150 to 250 psig; those placed in service on or after June 1, 1991, have an MAWP of 250 psig. These refrigeration systems, commonly known as vacuum tubes, accumulators, refrigeration units, icemakers, pressure coolers or evaporators, primarily use Division 2.2 refrigerant gases or anhydrous ammonia in the cooling process. The refrigeration systems may or may not be mounted on a motor vehicle and currently are operated under a special permit (SP–10285) that requires each refrigeration system to be visually inspected annually and proof pressure tested at least once every two years. In the NPRM, we proposed design and safety control measures for these refrigeration systems consistent with those specified in the special permit and established conditions for their use. We did not receive any comments regarding this amendment; therefore, with minor editorial revisions, we are adopting it as proposed. In addition, in the IBR materials in § 171.7(b), we are adding an entry for the American Society for Testing and Materials' publication ASTM E 290–97a (2004) and revising the entries for the ASME Code, ASTM A 53/A 53M–06a and ASTM A 106/A 106M–06a to add a corresponding reference to § 173.5b.

Classification Criteria for Toxic Gas Mixtures (§ 173.115)

In § 173.115(c)(2), the definition for Division 2.3 material (gas poisonous by inhalation) provides that LC_{50} values for mixtures may be determined using the formula in § 173.133(b)(1)(i) or CGA P–20, ''Standard for Classification of Toxic Gas Mixtures.'' In the NPRM, we proposed to update CGA P–20 from the 1995 2nd edition to the 2003 3rd edition as requested by CGA (P–1488). We did not receive any comments opposing this update; therefore, we are adopting the amendment as proposed.

Tube Trailers (§ 173.301)

This section prescribes general requirements for the shipment of compressed gases in cylinders and spherical pressure vessels. Paragraph (i) of § 173.301 specifies guidelines for cylinders mounted on motor vehicles or in frames, commonly referred to as tube trailers. Seamless DOT specification cylinders longer than 2 meters (6.5 feet) may be transported only when horizontally mounted on a vehicle or in an ISO framework or other framework of equivalent structural integrity. In the NPRM, we proposed to revise § 173.301(i) to reference the technical bulletin, CGA TB–25, ''Design Considerations for Tube Trailers,'' 2005 edition in response to a CGA petition (P–1484). CGA TB–25 addresses protective structures for valves and pressure relief devices, and design considerations for the static, dynamic, and thermal loads affecting tube trailers. These design considerations are intended to reduce the likelihood of the tube separating from the trailer and to minimize the unintentional release of hazardous materials in the event of a highway collision, including but not limited to, a rollover accident, thereby promoting the reliable operation of the trailers under normal conditions and minimizing the risk of a catastrophic accident. CGA developed TB–25 to address safety concerns identified following a May 1, 2001 hydrogen gas tube trailer incident in Ramona, Oklahoma, investigated by the National Transportation Safety Board (NTSB). In the incident, certain horizontally mounted cylinders on a semi-trailer, along with valves, piping and fittings, were damaged, causing the release of hydrogen gas.

In the NPRM, we stated the adoption of CGA TB–25 would respond to two NTSB safety recommendations (H–02–23 and H–02–24). Based on its investigation of the May 1, 2001 accident, NTSB recommended that PHMSA revise § 173.301 to clearly require valves, piping, and fittings on cylinders that are horizontally mounted and used to transport hazardous materials to be protected from multidirectional forces that are likely to occur during accidents, including rollovers (Recommendation H–02–23) and to require cylinders that are used to transport hazardous materials and are horizontally mounted on a semitrailer to be protected from impact with the roadway or terrain to reduce the likelihood of their being fractured and ejected during a rollover accident (Recommendation H–02–24).

In response to the NPRM, NTSB submitted comments stating that CGA TB–25 adequately addresses Safety Recommendation H–02–23, but expressing concern that CGA TB–25 does not adequately address Safety Recommendation H–02–24. NTSB notes that in the May 1, 2001 accident, 6 of the 10 cylinders on the semi-trailer extended beyond the envelope of the

mounting bulkheads on the semi-trailer. Consequently, during the rollover and sliding of the semi-trailer along the ground, the exposed cylinders, rather than the mounting bulkheads, sustained the initial impact with the roadway and ground. NTSB states CGA TB–25 does not specifically require the individual cylinders to be within the envelope of the mounting bulkheads or otherwise be protected from direct impact with the roadway or ground and the NPRM does not explain how the implementation of the multidirectional loading standards for the cylinders and mounting attachments reduces the exposure of cylinders to direct impacts in rollover accidents. NTSB also notes the cylinders on the tube trailer in the Ramona accident were *permanently* mounted on the trailer chassis, while CGA TB–25 defines a ''tube module'' as an assembly of one or more tubes horizontally mounted on a structural frame that is designed to be *temporarily* mounted on a motor vehicle, and does not specifically require that tube modules meet the comparable loadings and accident protection standards implemented for tube bundles that are permanently mounted on a trailer chassis.

Based on the concerns raised in the NTSB comments, CGA formed a committee to address the issues identified by NTSB and responded with detailed comments and a revised CGA TB–25 that are available in the public docket. CGA disagrees with NTSB on the causal factors of the Ramona accident and contends that modifying existing trailers or designing new trailers so that the envelope extends beyond the cylinders is unjustified based upon the circumstances of the Ramona accident. CGA notes that prior to the Ramona tube trailer rollover, there are no records of previous incidents that resulted in an actual failure of a cylinder. CGA further states that, in the early stages of the development of CGA TB–25, a CGA task force spent a significant amount of time reviewing the details of the NTSB report, as well as information gathered from individuals with first-hand knowledge of the investigation and the tube trailer involved, to gain a more thorough understanding of the cause of the cylinder failure. The CGA task force observed that the threads on the mounting flange and the corresponding threads on the neck of the failed tube showed evidence of excessive wear. The task force concluded, therefore, that the excessive wear of the threads in the mounting flanges allowed the neck on the rear end of one of the cylinders to pull loose from the mounting flange during the initial rollover. The cantilevered movement of the now unrestrained rear end of the cylinder imparted substantial stress on the restrained front neck of the cylinder, causing the cylinder neck to fracture. CGA notes that its conclusion that contact of the cylinder with the roadway was not the cause of the cylinder failure is substantiated by evidence from previous rollover incidents where cylinders contacting the road surface exhibited only abrasion damage similar to that depicted on the remaining cylinders on the tube trailer shown in Figure 5 of the NTSB investigation report. As a result, the task force concludes that one of the key design considerations for CGA TB–25 should be the securement of the tubes within the tube bundles.

To address this securement issue, CGA established another task force to develop inspection criteria for the mounting threads on cylinders mounted on tube trailers that could be performed during requalification. CGA's publication on mounting thread inspection is targeted for publication in early 2009. In the interim, we have posted periodic thread inspection guidelines for cylinders mounted on tube trailers on the PHMSA Web site (*http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/ Files/Inspection_Procedure.pdf*). To address NTSB's concern regarding the distinction between the requirements for a tube module and a tube bundle, CGA revised TB–25 to address its applicability to tube modules. In this final rule, we are incorporating the revised CGA TB–25, 2008 edition by reference into the HMR.

Requalification of DOT 3BN Cylinders (§ 173.338)

Section 173.338 authorizes the use of DOT 3BN cylinders for the shipment of tungsten hexafluoride. In response to a petition (P–1458) from Air Products, we proposed in the NPRM to permit DOT 3BN cylinders used exclusively for tungsten hexafluoride to be requalified by an external visual inspection in place of the volumetric expansion test. The proposal was based on the safety record of a similar chemical, hydrogen fluoride, which has a similar exception. This alternative requalification method is currently authorized under the terms of a special permit (DOT SP–14016). In response to the proposed amendment, Air Products requests that we revise the proposed language to allow a cylinder utilizing this exception to be given a complete internal inspection and a volumetric expansion test if used to transport other types of hazardous materials rather than require the cylinder to be removed from service and condemned, as required under the special permit. Air Products notes that cylinders used in tungsten hexafluoride service are authorized for the transportation of other types of compressed gases provided all applicable HMR requirements are met. Air Products further notes that the condemnation requirement in DOT SP–14016 was based on the fact that it was applied for and granted on an emergency basis. The commenter is not correct. We included the condemnation requirement in the special permit because of the similarity of the two chemicals. Air Product has not provided any technical and safety data to support waiving the requirement. Therefore, the amendment is adopted as proposed.

C. Part 176

Stowage Requirements for Class 2 Material on Vessels (§ 176.200)

Section 176.200 prescribes general stowage requirements for Class 2 (compressed gases) materials transported aboard vessels. In response to a petition (P–1471) from Horizon Lines, we proposed in the NPRM to prohibit the stowage on vessels of Division 2.1 (flammable) gases in powered refrigerated temperature controlled containers (reefer units) unless the equipment is capable of preventing ignition of flammable vapors by having non-sparking or explosion-proof electric fittings within the cooling compartment. This amendment is consistent with requirements contained in the International Maritime Dangerous Goods Code. We received one supportive comment (Bartley). We did not receive any comments opposing this amendment; therefore, we are adopting it as proposed.

D. Part 178

DOT 4E Cylinders (§ 178.68)

Section 178.68 contains the manufacturing specification for DOT 4E welded aluminum cylinders. Paragraph (l)(2) specifies the guided bend test procedures and rejection criteria to be applied to welds. In response to a petition (P–1486) from Worthington Cylinders Corp (Worthington), we proposed in the NPRM to revise paragraph (l)(2) to authorize the use of an alternate bend test illustrated in paragraph 12 of The Aluminum Association's publication, ''Welding Aluminum: Theory and Practice'' for determining the soundness of circumferential seam welds on aluminum cylinders. We did not receive

any comments opposing this amendment; therefore, we are adopting it as proposed.

DOT 406, 407, and 412 Cargo Tank Motor Vehicles (§ 178.345–3)

Section 178.345–3 prescribes structural integrity requirements for the design and construction of DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles. In response to a petition (P–1408) from TTMA, we proposed in the NPRM to revise paragraph (a) to reference TTMA RP 96–01, ''Structural Integrity of DOT 406, DOT 407, and DOT 412 Cylindrical Cargo Tanks,'' as suitable guidance for performing the structural integrity calculations. We did not receive any comments regarding this amendment; therefore, we are adopting it as proposed. In addition, we are revising paragraph (b) of § 171.7, List of informational materials not requiring incorporation by reference, to add a reference to TTMA RP No. 96–01 and a corresponding section reference for § 178.345–3.

Manhole Assemblies on DOT 406, 407, and 412 Cargo Tank Motor Vehicles (§ 178.345–5)

Section 178.345–5 prescribes requirements for manhole assemblies used on DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles. In response to a petition (P–1372) from TTMA, we proposed in the NPRM to revise paragraph (f) to remove a duplicative manhole marking requirement. We did not receive any comments regarding this amendment; therefore, we are adopting it as proposed except for certain minor editorial revisions.

E. Part 180

Cargo Tank Testing and Inspection (§ 180.407)

Section 180.407 prescribes requirements for the periodic testing and inspection of specification cargo tanks. Paragraph (d)(3) of § 180.407 requires each reclosing pressure relief valve that is required to be removed and tested to be able to open at the required set pressure and reseat to a leak-tight condition at 90 percent of the set-to-discharge pressure or the pressure for the applicable cargo tank specification. In response to a petition for rulemaking from Keehn Service Corporation (Keehn Service) (P–1436), we proposed to revise paragraphs (d)(3) and (g)(1)(ii)(A) of § 180.407 to specify that reclosing and self-closing pressure relief valves must be set to discharge at a pressure no more than 110% of the required set pressure. Providing for a tolerance is consistent with the set-to-discharge tolerance allowed for certain other DOT specification pressure vessels. We received comments from Air Products and NPGA regarding this proposed amendment. Air Products is supportive of the amendment as proposed. NPGA recommends the usage of the term ''start-to-discharge'' in place of the term ''set-to-discharge.'' NPGA also suggests we clarify that reseating to a leak tight position should occur at ''no less than'' 90 percent of the set-to-discharge pressure. We agree with both suggestions and believe that they would benefit the regulated community. Also, the tank car and portable tank requirements in the HMR use similar terminology.

V. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under authority of 49 U.S.C. 5103(b), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. The purpose of this final rule is to enhance the safe transportation of hazardous materials in cargo tank motor vehicles and cylinders, clarify regulatory requirements, and reduce operating burdens on carriers, shippers, and users.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

In this final rule, we are amending the HMR to enhance safety and to offer greater flexibility in complying with the regulatory requirements for cargo tanks and cylinders without sacrificing the current HMR level of safety. Most of these amendments are based on petitions for rulemaking submitted by the regulated community and, for the most part, should reduce overall compliance costs. For example, several of the amendments adopted in this final rule provide regulatory relief through alternative means of compliance with certain industry consensus standards. Adoption of industry standards reduces the regulatory burden on persons who offer hazardous material for transportation and persons who transport hazardous materials in commerce. Industry standards developed and adopted by consensus generally are accepted and followed by the industry; thus, their incorporation by reference in the HMR assures that the industry is not forced to comply with a different set of standards to accomplish the same safety goal. In addition, several amendments adopted in this final rule provide regulatory relief through compliance with certain nationally and internationally recognized standards such as the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code and standards published by the American Society for Testing and Materials (ASTM) and the International Organization for Standardization (ISO). Requiring regulatory compliance with standards such as the ASME Code, ASTM and ISO takes advantage of established and well-defined and proven practices.

Additionally, we are addressing a safety problem involving the transportation of hazardous materials in tube trailers through adoption of CGA consensus standard TB–25, ''Design Considerations for Tube Trailers.'' The updated CGA standard addresses safety concerns identified by NTSB in its investigation of an accident involving tube trailers that resulted in the release of hydrogen gas. We anticipate transportation of hydrogen gas in tube trailers will increase significantly in the coming years to support its use as an alternative fuel for automobiles and other vehicles. Ensuring that hydrogen gas will be transported safely to suppliers and distribution centers will be essential to support its use as an alternative fuel. The CGA standard addresses protective structures for valves and pressure relief devices and design considerations for static, dynamic, and thermal loads affecting tube trailers. The standard is intended to reduce the likelihood of the tubes separating from the trailer and to prevent the unintentional release of hazardous materials in the event of a highway collision or rollover accident. Because we are adopting an industry consensus standard that revises a standard already in widespread use, we expect compliance costs associated with this proposal will be minimal.

Overall this final rule will enhance transportation safety and reduce the overall compliance burden on the regulated industry.

C. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule

preempts State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazardous material;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) The design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This final rule addresses covered subject items (v) above and preempts State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA has determined the effective date of Federal preemption for these requirements will be 1 year from the date of publication of a final rule in the **Federal Register**.

D. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Regulatory Policies and Procedures

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines a rule is not expected to have a significant impact on a substantial number of small entities. This final rule incorporates several petitions for rulemaking submitted by the regulated community. As specified above, there may be minimal increased costs associated with the adoption of CGA TB–25. However, the revisions as a whole in this rule should decrease overall compliance costs for the regulated community while enhancing the safe transportation of hazardous materials in commerce. Therefore, I certify this rule should not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA currently has approved information collections under Office of Management and Budget (OMB) Control Number 2137 0014, ''Cargo Tank Specification Requirements,'' with an expiration date of February 28, 2011. This final rule contains no new information collection and recordkeeping requirements. The annual visual inspection certification and record retention requirement prescribed for portable and mobile refrigeration systems in § 173.5b(d) of the final rule are required currently under the terms of the special permit (DOT–SP 10285) and are included in the burden hours reported under OMB Control Number 2137–0014.

Title 5, Code of Federal Regulations requires us to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests.

Requests for a copy of these information collections should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–10), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., (Second Floor, East Building), Washington, DC 20590–0001, Telephone (202) 366–8553.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This final rule imposes no unfunded mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

I. Environmental Assessment

The National Environmental Policy Act (42 U.S.C. 4321–4375) requires that Federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Counsel on Environmental Quality (CEQ) regulations order Federal agencies to conduct an environmental review considering (1) The need for the proposed action; (2) alternatives to the proposed action; (3) probable environmental impacts of the proposed action and alternatives; and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

1. Purpose and Need

PHMSA is making miscellaneous amendments to the HMR based on petitions for rulemaking and PHMSA's own initiatives. The amendments are intended to update, clarify, or provide relief from certain existing regulatory requirements to promote safer transportation practices; eliminate unnecessary regulatory requirements; resolve outstanding petitions for rulemaking; and make these requirements easier to understand.

2. Alternatives

In developing the proposed rule, we considered two alternatives:

(1) Do nothing.

(2) Propose revisions to the HMR based on petitions for rulemaking and PHMSA initiatives.

Alternative 1:

Because our goal is to facilitate uniformity, compliance, commerce and safety in the transportation of hazardous materials, we rejected this alternative.

Alternative 2:

Many of the industry standards currently incorporated by reference have been revised and updated to incorporate new technology and methodology. Most of the amendments would relax requirements in certain instances or allow for alternative means of compliance while still ensuring safety, clarify regulatory requirements, and make the regulatory provisions more consistent—all in furtherance of the safe transportation of hazardous materials in commerce.

3. Analysis of Environmental Impacts

Hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, or loading, unloading, or handling problems. The ecosystems that could be affected by a release include air, water, soil, and ecological resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean up of the accident scene. Most hazardous materials are not transported in quantities sufficient to cause significant, long-term environmental damage if they are released.

The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a hazard and reducing the probability and quantity of a hazardous material release. Making the regulatory provisions in the HMR clearer and more consistent with industry standards will promote compliance and thereby enhance the safe transportation of hazardous materials and the protection of the environment. Updating the references to industry standards enhances safety and environmental protection by recognizing the use of new technologies. This final rule to relax certain regulatory requirements is based on PHMSA's experience, review, and determination that the changes are consistent with safety. Neither the ''do nothing'' alternative nor the action alternative would result in any significant impacts on the environment.

4. Consultations and Public Comment

Various modal agencies, including FMCSA, FRA, and the USCG were consulted and participated in the notice and comment process. A listing of the commenters is specified in the **SUPPLEMENTARY INFORMATION** section under ''Background.'' No commenters addressed the potential environmental impacts of the proposals in the NPRM.

5. Decision About the Degree of Environmental Impact

PHMSA finds that the selected alternative will not have a significant impact on the human environment.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov*.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Public Law 101–410 section 4 (28 U.S.C. 2461 note); Public Law 104–134 section 31001.

■ 2. In § 171.7, the following amendments are made:

■ a. Paragraph (a)(2)(i) is revised;

■ b. In the table in paragraph (a)(3), under The Aluminum Association, the organization address is revised and a new entry titled ''Welding Aluminum: Theory and Practice,'' 2002 Fourth Edition is added in alphabetical order;

■ c. In the table in paragraph (a)(3), under American Society of Mechanical Engineers, the organization address and the entry titled ''ASME Code, Sections II (Parts A and B), V, VIII (Division 1), and IX of 1998 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code,'' are revised;

■ d. In the table in paragraph (a)(3), under American Society for Testing and Materials, the organization address is revised and entries for ASTM A53/A53M–06a and ASTM A106/A106M–06a) are added in alphanumeric order;

■ e. In the table in paragraph (a)(3), under Compressed Gas Association, Inc., the organization address and the entries for CGA Pamphlet G–2.2 1985 edition and CGA Pamphlet P–20 1995 edition are revised;

■ f. In the table in paragraph (a)(3), under Compressed Gas Association Inc., a new entry for CGA TB–25 2008 edition is added in alphanumeric order;

■ g. In the table in paragraph (a)(3), under International Organization for Standardization, the organization address and the entry ISO 9809–1:1999 (E) are revised; and

■ h. In paragraph (b), a new entry ''Truck Trailer Manufacturers Association,'' 1020 Princess Street, Alexandria, Virginia 22314, ''TTMA RP No. 96–01,'' January 1, 2001 Edition is added in alphabetical order.

The revisions and additions read as follows:

§ 171.7 Reference material.

(a) * * *

(2) * * *

(i) The Office of Hazardous Materials Safety, Office of Hazardous Materials Standards, East Building, PHH–10, 1200

New Jersey Avenue, SE., Washington, DC 20590–0001. For information on the availability of this material at PHH–10, call 1–800–467–4922, or go to: *http://www.phmsa.dot.gov*; and

* * * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * *	* * *
The Aluminum Association, 420 Lexington Avenue, New York, NY 10017, telephone 301–645–0756, *http://www.aluminum.org*:	
* * * *	* * *
Welding Aluminum: Theory and Practice, 2002 Fourth Edition	178.68
* * * *	* * *
American Society of Mechanical Engineers, ASME International, 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007–2900, telephone 1–800–843–2763 or 1–973–882–1170, *http://www.asme.org*:	
'ASME Code'; ASME Code, Sections II (Parts A and B), V, VIII (Division 1), and IX of 1998 Edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code.	172.102; 173.5b; 173.24b; 173.32; 173.306; 173.315; 173.318; 173.420; 178.245–1; 178.245–3; 178.245–4; 178.245–6; 178.245–7; 178.255–1; 178.255–2; 178.255–14; 178.255–15; 178.270–2; 178.270–3; 178.270–7; 178.270–9; 178.270–11; 178.270–12; 178.271–1; 178.272–1; 178.273; 178.274; 178.276; 178.277; 178.320; 178.337–1; 178.337–2; 178.337–3; 178.337–4; 178.337–6; 178.337–16; 178.337–18; 178.338–1; 178.338–2; 178.338–3; 178.338–4; 178.338–5; 178.338–6; 178.338–13; 178.338–16; 178.338–18; 178.338–19; 178.345–1; 178.345–2; 178.345–3; 178.345–4; 178.345–7; 178.345–14; 178.345–15; 178.346–1; 178.347–1; 178.348–1; 179.400–3; 180.407.
* * * *	* * *
American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 1942, telephone (610) 832–9585, *http://www.astm.org*:	
* * * *	* * *
ASTM A 53, ASTM A 53/A 53M–06a Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless.	173.5b.
ASTM A 106, ASTM A 106/A 106M–06a Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service.	173.5b.
* * * *	* * *
Compressed Gas Association, Inc., 4221 Walney Road, 5th Floor, Chantilly, Virginia 20151, telephone (703) 788–2700, *http://www.cganet.com*:	
* * * *	* * *
CGA G-2.2, Guideline Method for Determining Minimum of 0.2% Water in Anhydrous Ammonia, 1985, Second Edition, Reaffirmed 1997.	173.315.
* * * *	* * *
CGA P-20, Standard for the Classification of Toxic Gas Mixtures, 2003, Third Edition	173.115.
* * * *	* * *
CGA TB–25, Design Considerations for Tube Trailers, 2008 Edition	173.301.
* * * *	* * *
International Organization for Standardization, Case Postale 56, CH–1211, Geneve 20, Switzerland, *http://www.iso.org*:	
* * * *	* * *
ISO 9809–1: Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1 100 MPa., First edition, June 1999, (E).	178.37; 178.71; 178.75.
* * * *	* * *

(b) *List of informational materials not requiring incorporation by reference.*

* * *

Source and name of material	49 CFR reference
* * * * * * *	
Truck Trailer Manufacturers Association, 1020 Princess Street, Alexandria, Virginia 22314, telephone (703) 549–3010, *http://www.ttmanet.org*:	
TTMA RP No. 96–01, TTMA RP No. 96–01, Structural Integrity of DOT 406, DOT 407, and DOT 412 Cylindrical Cargo Tanks, January 2001 Edition	178.345–3

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 3. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

■ 4. A new § 173.5b is added to read as follows:

§ 173.5b Portable and mobile refrigeration systems.

This section authorizes the highway transportation of residual amounts of Division 2.2 refrigerant gases or anhydrous ammonia contained in non-specification pressure vessels that are components of refrigeration systems, which may or may not be permanently mounted to a transport vehicle, used for agricultural operations. These refrigeration systems are used at field sites to cool (pre-cool) produce before the produce is loaded into trucks or railcars for market or used to supplement stationary refrigeration systems during peak harvest times. The components of these refrigeration systems are commonly known as vacuum tubes, accumulators, refrigeration units, ice makers, pressure coolers, or evaporators.

(a) *General packaging requirements.* Each non-specification pressure vessel must conform to the following:

(1) Each pressure vessel must be designed, manufactured, and maintained in accordance with applicable requirements of the ASME Code (IBR, see § 171.7 of this subchapter).

(2) Except as authorized in this section, each pressure vessel and associated piping must be rated at a maximum allowable work pressure (MAWP) of 250 psig. The pressure in these components may not exceed MAWP.

(3) Any part of the piping or pressure vessel separated from another component of the refrigeration system by means of a valve, blank flange, or other device must be equipped with a pressure relief valve set at MAWP. All lines that must be disconnected for transportation purposes must be closed by means of a cap, plug or blank flange, and valves at the end of disconnected lines must be tightly closed.

(4) The aggregate total volumetric capacity of components within the refrigeration system authorized for highway transportation in accordance with this section may not exceed 2,500 gallons per vehicle.

(5) Each pressure vessel and associated piping containing anhydrous ammonia must conform to the following:

(i) Piping with a diameter of 2 inches or more must conform to ASTM A 53 Schedule 40 or ASTM A106 Schedule 40 (IBR, see § 171.7 of this subchapter).

(ii) Piping with a diameter of less than 2 inches must conform to ASTM A 53 Schedule 80 or ASTM A 106 Schedule 80 (IBR, see § 171.7 of this subchapter).

(iii) The words ''Inhalation Hazard'' must be marked as required in special provision 13 in § 172.102 of this subchapter and, when practicable, within 24 inches of the placard.

(b) *Refrigeration systems placed into service prior to June 1, 1991.* (1) For refrigeration systems placed into service prior to June 1, 1991, each pressure vessel and associated piping for the condensing line (''high side'') must be rated at an MAWP of not less than 250 psig. Each pressure vessel and associated piping for the evaporating line (''low side'') must be rated at an MAWP of not less than 150 psig, except that each pressure vessel or associated piping that will contain refrigerant gas during transportation must be rated at an MAWP of not less than 250 psig. During transportation, pressure in the components that are part of the evaporating line may not exceed 150 psig.

(2) Each pressure vessel and associated piping that is part of the evaporating line must be marked ''LOW SIDE'' in a permanent and clearly visible manner. The evaporating line must have a pressure gauge with corresponding temperature markings mounted so as to be easily readable when standing on the ground. The gauge must be permanently marked or tagged ''SATURATION GAUGE''.

(3) Each pressure vessel and associated piping with an MAWP of 250 psig or greater containing liquid anhydrous ammonia must be isolated using appropriate means from piping and components marked ''LOW SIDE''.

(4) Liquid lading is only authorized in system components with a rated MAWP of not less than 250 psig.

(5) Prior to transportation, each pressure vessel and associated piping with a rated MAWP of less than 250 psig must be relieved of enough gaseous lading to ensure that the MAWP is not exceeded at transport temperatures up to 54 °C (130 °F).

(6) Refrigeration systems placed into service prior to June 1, 1991, may continue in service until October 1, 2017.

(c) Prior to transportation over public highways, each pressure vessel and associated piping must be drained of refrigerant gas or liquid anhydrous ammonia to the extent practicable. Drained contents must be recovered in conformance with all applicable environmental regulations. Residual liquid anhydrous ammonia in each component may not exceed one percent of the component's total volumetric capacity or 10 gallons, whichever is less.

(d) *System inspection and testing.* (1) Each refrigeration system authorized under this section must be visually inspected every year. The visual inspection must include items listed in § 180.407(d)(2) of this subchapter applicable to refrigeration systems. A certificate of the annual visual inspection must be dated and signed by the person performing the inspection and must contain that person's company affiliation. The certificate must remain at the equipment owner's office.

(2) Each refrigeration system authorized under this section must be proof pressure tested every two years beginning with the initial pressure test performed after manufacture. Additional pressure tests must be performed after any modification, repair or damage to a part of the system pressurized with refrigerant gas. System test pressures may not be less than one-and-one-half (1.50) times the rated MAWP of the system component or piping.

(3) Pressure relief valves must be successfully tested every two years at the MAWP for the components or piping to which they are attached.

Pressure relief valves may be replaced and marked every 5 years with valves certified at the appropriate MAWP, in which case the valves need not be tested every two years. Valves that do not pass the test must be repaired or replaced.

(e) *Test markings and reports.* (1) Evidence of testing specified in paragraph (d) of this section must be marked on the right forward side of the refrigeration system with 2 inch high letters indicating type of last test (V = visual; P = pressure: hydrostatic or pneumatic) and the month/year in which it was performed. Reports and all of the requirements for records of inspections including markings must be completed as specified in part 180.

(2) Pressure relief valves must be durably marked with either the date of last test, set-pressure and testing company or the date of last replacement, set-pressure, and certifying company, as applicable.

■ 5. In § 173.115, paragraph (c)(2) is revised to read as follows:

§ 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.

* * * * *

(c) * * *

(2) In the absence of adequate data on human toxicity, is presumed to be toxic to humans because when tested on laboratory animals it has an LC_{50} value of not more than 5000 mL/m^3 (see § 173.116(a) of this subpart for assignment of Hazard Zones A, B, C or D). LC_{50} values for mixtures may be determined using the formula in § 173.133(b)(1)(i) or CGA P–20 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 6. In § 173.301, paragraph (i) is revised to read as follows:

§ 173.301 General requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles and spherical pressure vessels.

* * * * *

(i) *Cylinders mounted in motor vehicles or in frames.* (1) MEGCs must conform to the requirements in § 173.312. DOT specification cylinders mounted on motor vehicles or in frames must conform to the requirements specified in this paragraph (i).

(2) Seamless DOT specification cylinders longer than 2 m (6.5 feet) are authorized for transportation only when horizontally mounted on a motor vehicle or in an ISO framework or other framework of equivalent structural integrity in accordance with CGA TB–25 (IBR, see § 171.7 of this subchapter). The pressure relief device must be arranged to discharge unobstructed to the open air. In addition, for Division 2.1 (flammable gas) material, the pressure relief devices must be arranged to discharge upward to prevent any escaping gas from contacting personnel or any adjacent cylinders.

(3) Cylinders may not be transported by rail in container on freight car (COFC) or trailer on flat car (TOFC) service except under conditions approved by the Associate Administrator for Safety, Federal Railroad Administration.

* * * * *

■ 7. Section 173.338 is revised to read as follows:

§ 173.338 Tungsten hexafluoride.

(a) Tungsten hexafluoride must be packaged in specification 3A, 3AA, 3BN, or 3E (§§ 178.36, 178.37, 178.39, 178.42 of this subchapter) cylinders. Cylinders must be equipped with a valve protection cap or be packed in a strong outside container meeting the provisions of § 173.40. Outlets of any valves must be capped or plugged. As an alternative, the cylinder opening may be closed by the use of a metal plug. Specification 3E cylinders must be shipped in an overpack that meets the provisions of § 173.40.

(b) In place of the volumetric expansion test, DOT 3BN cylinders used in exclusive service may be given a complete external visual inspection in conformance with part 180, subpart C, of this subchapter, at the time such periodic requalification becomes due. Cylinders that undergo a complete external visual inspection, in place of the volumetric expansion test, must be condemned if removed from tungsten hexafluoride service.

PART 176—CARRIAGE BY VESSEL

■ 8. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 9. In § 176.200, paragraph (f) is revised to read as follows:

§ 176.200 General stowage requirements.

* * * * *

(f) Class 2 (compressed gas) material must be kept as cool as practicable and be stowed away from all sources of heat and ignition. Any package containing a Division 2.1 (flammable gas) material is restricted from transport in powered refrigerated temperature controlled containers, unless the equipment is capable of preventing ignition of flammable vapors by having non-sparking or explosion-proof electric fittings within the cooling compartment.

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 10. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 11. In § 178.68, paragraph (l)(2) is revised to read as follows:

§ 178.68 Specification 4E welded aluminum cylinders.

* * * * *

(l) * * *

(2) *Guided bend test.* A bend test specimen must be cut from the cylinder used for the physical test specified in paragraph (j) of this section. Specimen must be taken across the seam, must be a minimum of 1½ inches wide, edges must be parallel and rounded with a file, and back-up strip, if used, must be removed by machining. The specimen shall be tested as follows:

(i) The specimen must be bent to refusal in the guided bend test jig as illustrated in paragraph 6.10 of CGA C–3 (IBR, see § 171.7 of this subchapter). The root of the weld (inside surface of the cylinder) must be located away from the ram of the jig. The specimen must not show a crack or other open defect exceeding ⅛ inch in any direction upon completion of the test. Should this specimen fail to meet the requirements, specimens may be taken from each of 2 additional cylinders from the same lot and tested. If either of the latter specimens fails to meet requirements, the entire lot represented must be rejected.

(ii) Alternatively, the specimen may be tested in a guided bend test jig as illustrated in Figure 12.1 of The Aluminum Association's 2002 publication, ''Welding Aluminum: Theory and Practice.'' The root of the weld (inside surface of the cylinder) must be located away from the mandrel of the jig. No specimen must show a crack or other open defect exceeding ⅛ inch in any direction upon completion of the test. Should this specimen fail to meet the requirements, specimens may be taken from each of 2 additional cylinders from the same lot and tested. If either of the latter specimens fails to meet requirements, the entire lot represented must be rejected.

* * * * *

■ 12. In § 178.345–3, at the end of paragraph (a)(3), a sentence is added to read as follows:

§ 178.345–3 Structural integrity.

(a) * * *

(3) * * * TTMA RP 96–01, Structural Integrity of DOT 406, DOT 407, and

DOT 412 Cylindrical Cargo Tanks, may be used as guidance in performing the calculations.

* * * * *

■ 13. In § 178.345–5, paragraph (f) is revised to read as follows:

§ 178.345–5 Manhole assemblies.

* * * * *

(f) All components mounted on a manhole cover that form part of the lading retention structure of the cargo tank wall must withstand the same static internal fluid pressure as that required for the manhole cover. The component manufacturer shall verify compliance using the same test procedure and frequency of testing as specified in § 178.345–5(b).

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 15. In § 180.407, paragraphs (d)(3) and (g)(1)(ii)(A) are revised to read as follows:

§ 180.407 Requirements for test and inspection of specification cargo tanks.

* * * * *

(d) * * *

(3) All reclosing pressure relief valves must be externally inspected for any corrosion or damage which might prevent safe operation. All reclosing pressure relief valves on cargo tanks carrying lading corrosive to the valve must be removed from the cargo tank for inspection and testing. Each reclosing pressure relief valve required to be removed and tested must open at no less than the required set pressure and no more than 110 percent of the required set pressure, and must reseat to a leak-tight condition at no less than 90 percent of the start-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification.

* * * * *

(g) * * *

(1) * * *

(ii) * * *

(A) Each self-closing pressure relief valve that is an emergency relief vent must open at no less than the required set pressure and no more than 110 percent of the required set pressure, and must reseat to a leak-tight condition at no less than 90 percent of the start-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification.

* * * * *

Issued in Washington, DC, on April 3, 2009 under authority delegated in 49 CFR part 1.

Cynthia Douglass,

Acting Deputy Administrator.

[FR Doc. E9–8021 Filed 4–8–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XO12

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI) for vessels participating in the BSAI trawl limited access fishery. This action is necessary to fully use the 2009 A season total allowable catch (TAC) of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 6, 2009, through 1200 hrs, A.l.t., April 15, 2009. Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 20, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XO12, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*.
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

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

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for Atka mackerel by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea on January 20, 2009 (74 FR 5625, January 30, 2009).

NMFS has determined that approximately 476 mt of the 2009 A season Atka mackerel TAC for vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2009 A season TAC of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery, NMFS is terminating the previous closure and is reopening directed fishing for Atka mackerel by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached. Consequently, NMFS is prohibiting directed fishing for the 2009 A season TAC of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery effective 1200 hrs, A.l.t., April 15, 2009.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 2, 2009. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea for vessels participating in the BSAI trawl limited access fishery to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until April 20, 2009.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: April 3, 2009.

James P. Burgess,

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

[FR Doc. E9–8007 Filed 4–3–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XO14

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by trawl catcher vessels in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the B season allowance of the 2009 Pacific cod allowable catch (TAC) specified for trawl catcher vessels in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 5, 2009, though 1200 hrs, A.l.t., June 10, 2009.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The B season allowance of the 2009 Pacific cod TAC allocated to trawl catcher vessels in the BSAI is 3,832 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the B season allowance of the 2009 Pacific cod TAC allocated to trawl catcher vessels in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,782 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by trawl catcher vessels in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by trawl catcher vessels in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 2, 2009.

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

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: April 3, 2009.

James P. Burgess,

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

[FR Doc. E9–8011 Filed 4–3–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 67
Thursday, April 9, 2009

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. APHIS–2007–0117]

RIN 0579–AC90

Importation of Wooden Handicrafts From China

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations to provide for the importation of wooden handicrafts from China under certain conditions. From 2002 to 2005, the Animal and Plant Health Inspection Services (APHIS) issued more than 300 emergency action notices and conducted national recalls to remove infested Chinese-origin wooden handicrafts from the U.S. marketplace. In 2005, APHIS suspended the importation of certain Chinese wooden handicrafts until we could more fully analyze the pest risks associated with those articles. Based on the evidence in a recent pest risk analysis, APHIS has determined that these articles can be safely imported from China, provided certain conditions are met. This action would allow for trade in Chinese wooden handicrafts to resume while continuing to protect the United States against the introduction of plant pests.

DATES: We will consider all comments that we receive on or before June 8, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0117* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0117, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0117.

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

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. John Tyrone Jones, Trade Director (Forestry Products), Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–8860.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles'' (7 CFR 319.40–1 through 319.40–11, referred to below as the regulations) govern the importation of various logs, lumber, and other unmanufactured wood products into the United States. Under § 319.40–9 of the regulations, all regulated articles must be inspected at the port of first arrival. If a regulated article shows any signs of pest infestation, the inspector may require treatment, if an approved treatment exists, or refuse entry of the consignment.

In recent years, wood decorative items and craft products (wooden handicrafts) from China have been entering the United States in increasing quantities. Since 2002, the Animal and Plant Health Inspection Service (APHIS) has issued more than 300 emergency action notices for wooden handicrafts from China, including artificial trees manufactured from a composite of natural and synthetic materials, garden trellis towers, home and garden wood décor, and craft items. In 2004, the United States Department of Agriculture (USDA) intercepted live wood boring beetles, *Callidiellum villosulum* (Coleoptera: Cerambycidae), on artificial trees manufactured from wood components and on other craft products imported from China. Subsequent to these interceptions, shipments of those articles were recalled from retail stores. Based on these pest interceptions, we suspended the importation of most wooden handicrafts (i.e., all handicrafts made from wooden logs, limbs, branches, or twigs greater than 1 centimeter in diameter) from China in 2005 until a more thorough evaluation of the pest risks associated with those articles could be conducted.

APHIS prepared a pest risk assessment, titled ''Pests and mitigations for manufactured wood décor and craft products from China for importation into the United States,'' to evaluate the risks associated with the importation of such wooden handicrafts into the United States from China. APHIS also prepared a risk management document, titled ''Pests and mitigations for manufactured wood décor and craft products from China for importation into the United States,'' to determine mitigations necessary to prevent pest entry, introduction, or establishment associated with imported wooden handicrafts from China. Copies of the pest risk assessment and risk management document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the conclusions in the pest risk assessment and the accompanying risk management document, we have determined that wooden handicrafts can be imported from China provided certain conditions are met. The details of those conditions would be set out in a new paragraph (o) in § 319.40–5, ''Importation and entry requirements for specified articles.'' The new paragraph would require treatments, phytosanitary certificates and inspection, and box identifications. These requirements are discussed in more detail in the following paragraphs.

Change to the Title of ''Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles''

For reasons that we discuss below, we are proposing to remove the word

''unmanufactured'' from the title of the subpart.

Definitions

Section 319.40–1 contains definitions for certain terms used in the regulations pertaining to logs, lumber, and other wood articles. In § 319.40–1, we are proposing to add a new definition, *wooden handicraft*, and to revise the definition of *regulated article*. We would define *wooden handicraft* as a commodity class of articles derived or made of natural components of wood, twigs, and vines, and including bamboo poles and garden stakes. Handicrafts would include the following products where wood is present: Carvings, baskets, boxes, bird houses, manufactured Christmas trees, garden and lawn/patio furniture (rustic), potpourri, silk trees (typically artificial ficus trees), trellis towers, garden fencing and edging, and other items composed of wood. This new definition would establish the meaning of this term in the context of the regulations.

Currently, we define a *regulated article* as ''the following articles, if they are unprocessed or have received only primary processing: Logs; lumber; any whole tree; any cut tree or any portion of a tree, not solely consisting of leaves, flowers, fruits, buds, or seeds; bark; cork; laths; hog fuel; sawdust; painted raw wood products; excelsior (wood wool); wood chips; wood mulch; wood shavings; pickets; stakes; shingles; solid wood packing materials; humus; compost; and litter.'' Based on this definition, insofar as wooden handicrafts are often composed primarily of products that have undergone more than primary processing, we recognize that it is not immediately apparent that they would fall within the scope of articles regulated by the subpart.

However, we have long construed one of the clauses of the definition of *regulated article*, designating any unmanufactured or partially processed portion of a tree as a regulated article, to mean that any article that contains an unmanufactured or partially processed part that cannot feasibly be separated from the other parts of the article for the purposes of inspection and treatment is, in fact, a regulated article. For example, we would consider a crate constructed of processed (e.g., plywood) sides but unprocessed lumber bracing to be a regulated article, and thus subject to inspection and treatment. Moreover, wooden handicrafts, as we are proposing to define them, would always contain unmanufactured or partially processed parts that cannot easily be extricated from the other parts of the handicraft. Therefore, we consider wooden handicrafts to fall within the scope of regulated articles.

However, we do consider it useful to amend and clarify the definition of *regulated articles* at this time based on our long-standing interpretation of that definition. As amended, *regulated articles* would be ''the following articles, if they are unprocessed, have received only primary processing, or contain parts that are either unprocessed or have received only primary processing and are not feasibly separable from the other parts of the article: Logs; lumber; any whole tree; any cut tree or any portion of a tree, not solely consisting of leaves, flowers, fruits, buds, or seeds; bark; cork; laths; hog fuel; sawdust; painted raw wood products; excelsior (wood wool); wood chips; wood mulch; wood shavings; pickets; stakes; shingles; solid wood packing materials; humus; compost; litter; and wooden handicrafts.''

Accordingly, since we have long applied the requirements of this subpart to articles that are partially processed or manufactured, we also consider it useful to amend the title of the subpart by removing the word ''unmanufactured'' from it.

Treatments

Wood boring beetles in the families Buprestidae, Cerambycidae, and Scolytidae were the pests of greatest concern identified in the pest risk assessment as likely to follow the pathway on imported wooden handicrafts from China. Because the immature stages of wood boring beetles develop completely inside wood, wood boring beetles are considered to present a high risk of entering the United States undetected within untreated wood. Until adult insects leave the wood, there is often no sign of the internally feeding pest. Therefore, to address the risks presented by those pests, we are proposing to amend the regulations to require that all wooden handicrafts from China be treated with heat treatment or heat treatment with moisture reduction. In certain instances, which we specify below, we are also proposing to allow methyl bromide as an alternative treatment method.

The requirements for heat treatment and heat treatment with moisture reduction are currently set forth in § 319.40–7(c) and (d), respectively. As provided in § 319.40–7(c), heat treatment may take place only at a facility where APHIS or an inspector authorized by the Administrator and the national government of the country in which the facility is located has inspected the facility and determined that its operation complies with the treatment specifications as follows: Heat treatment procedures may employ steam, hot water, kilns, exposure to microwave energy, or any other method (e.g., the hot water and steam techniques used in veneer production) that raises the temperature of the center of each treated regulated article to at least 71.1 °C (160 °F) and maintains the regulated article at that center temperature for at least 75 minutes.

Section 319.40–7(d) provides that heat treatment with moisture reduction may include kiln drying conducted in accordance with the schedules prescribed for the regulated article in the Dry Kiln Operator's Manual, Agriculture Handbook 188, which we have incorporated by reference into our regulations (*see* 7 CFR 300.2), or dry heat, exposure to microwave energy, or any other method that raises the temperature of the center of each treated regulated article to at least 71.1 °C (160 °F), maintains the regulated articles at that center temperature for at least 75 minutes, and reduces the moisture content of the regulated article to 20 percent or less as measured by an electrical conductivity meter.

For regulated articles that are heat treated or heat treated with moisture reduction prior to arrival in the United States, the regulated article must be stored, handled, or safeguarded in a manner which excludes any infestation of the regulated article by plant pests, particularly the pests of greatest concern identified in the risk management document, during the entire interval between treatment and export.

Proposed § 319.40–5(o)(1) provides for the use of methyl bromide fumigation as an additional treatment option for wooden handicrafts that are less than 6 inches in diameter. The methyl bromide treatment we would prescribe, which is listed in 7 CFR part 305 as treatment schedule T404–d, is not an effective treatment for wood pieces that are larger than 6 inches in diameter.

Phytosanitary Certificate

Proposed § 319.40–5(o)(2) would require that all consignments of wooden handicrafts be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of China. The phytosanitary certificate would have to contain an additional declaration stating that the handicrafts were treated as required under § 319.40–5(o) and inspected and found free from quarantine pests. The phytosanitary certificate would serve to verify that treatment took place in China

and that the consignment was free of quarantine pests upon exportation.

Identification of Shipping Packages

Proposed § 319.40–5(o)(3) would require that all individual packages of wooden handicrafts be labeled with a merchandising tag containing the identity of the product manufacturer. We would require that the tag be applied to each package in China prior to exportation and that the identifying tag remain in place until the package reaches the store at which it will be sold in the United States. The identification tag would serve as a means for APHIS to track shipments should a recall be required.

Changes to Treatment Schedules

We are also proposing to amend § 305.28, ''Kiln sterilization treatment schedule.'' Currently, this section contains a treatment schedule, T–404–b–4, that, while correct, is ambiguous. Therefore, we would have T–404–b–4 refer to the kiln sterilization techniques prescribed in the Dry Kiln Operator's Manual, Agriculture Handbook 188, which is incorporated by reference into our regulations. The Dry Kiln Operator's Manual, Agriculture Handbook 188, would provide exporters of wood products with equivalent kiln sterilization treatment schedules that are clearer.

Executive Order 12866 and Regulatory Flexibility Act

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

We have prepared an initial regulatory flexibility analysis that considers the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act.

We are proposing to amend the regulations to provide for the importation of wooden handicrafts from China under certain conditions. From 2002 to 2005, APHIS issued more than 300 emergency action notices and conducted national recalls to remove infested Chinese-origin wooden handicrafts from the U.S. marketplace. In 2005, APHIS suspended the importation of certain Chinese wooden handicrafts until further analysis of pest risk could be conducted. Based on the evidence in a recent pest risk assessment, APHIS has determined that these articles can be safely imported from China, provided certain conditions are met. This action would allow for trade in Chinese wooden handicrafts to resume while continuing to protect the United States against the introduction of plant pests.

U.S.-Chinese Trade in Wood Products

The U.S. forest products industry is among the nation's leading manufacturers. It contributes about $167 billion to the gross domestic product, with annual shipments valued at $359 billion.[1] The industry tends to locate near its resource base and therefore is important to many local rural economies. It employs directly more than 1.5 million people. Many other jobs depend on such forest-related activities as hunting, hiking, fishing, and the production and sale of alternative forest products.

The United States is one of the major players in international wood products trade. It is a top five exporter and the leading importer of wood and wood products. In 2006, the United States exported wood and wood products valued at $6.6 billion to a variety of destinations. The major destinations included Canada, Japan, Mexico, China, Spain, the United Kingdom, Italy, Germany, South Korea, and Hong Kong. That same year, the U.S. imported wood and wood products valued at $22.9 billion. Canada, Brazil, China, Chile, and Germany supplied 83 percent of U.S. total imports of wood and wood products.

According to a recent report by USDA's Foreign Agricultural Services (FAS), the United States imported wood products (including furniture and paper products) from China valued at $4.55 billion, while it exported to China wood products valued at $1.11 billion in 2006.[2] Most of the Chinese exports to the United States are value-added products such as furniture and paper, while the U.S. exports to China are mainly raw or semi-processed materials such as timber, lumber, and veneer. Trade between the two countries in all products is expanding at a rapid rate. China jumped from being the United States' fourth largest trade partner in 2002 to being our second largest partner in 2006. If this rate of expansion continues, China will likely pass Canada and become the United States' largest trading partner in the near future. China's overall mercantile exports to the United States increased from $102 billion in 2001 to $288 billion in 2006, a 181 percent increase. Over the same period of time, U.S. imports increased overall by about 62 percent. The increase in imports of Chinese wood products was even larger, about 256 percent over the same period, compared to an overall increase in U.S. imports of wood products of 53 percent.[3]

Benefits and Costs

The brown fir longhorned beetle, *Callidiellum villosulum*, and the Japanese cedar longhorned beetle, *Callidiellum rufipenne*, are both related to *Anoplophora glabripennis*, the Asian longhorned beetle (ALB). The ALB is a pest that is destructive of many tree species found in U.S. forests and is currently being eradicated in the United States. Its host ranges include cedar, cypress, pine, redwood, and other conifers. The host range of the tiger longhorned beetle, *Chlorophorus annularis*, includes grapes, citrus, pears, and cotton. (U.S.-produced grapes, citrus, pears, and cotton had combined domestic sales of over $12 billion in 2006.) The introduction of one of these pests to an area could result in reduced yields, reduced commodity value, and loss of both domestic and international markets. The damage caused by these pests becomes additive when there are mixed populations of closely related species. The United States is susceptible to establishment of these pests because our climatic zones are similar to those of China.

The potential destructiveness and economic impacts of these insects are exemplified by APHIS' most recent experience with ALB and *Agrilus planipennis*, the emerald ash borer (EAB). The ALB continues to attack hosts with significant commercial value, killing the host or predisposing it to destruction by other organisms. Affected areas lose aesthetic and property values as large infested trees are replaced by young and less desirable ALB-resistant trees. Eradication efforts in New York and Illinois have resulted in the destruction and removal of thousands of trees. APHIS has spent more than $300 million on eradication efforts and tree replacement. A study by Nowak *et al.* (2002), using the New York and Illinois experience as a basis, estimated that the potential national urban impact of ALB could reach a loss of 34.9 percent of total canopy cover, with 30.3 percent

[1] U.S. Census Bureau, Annual Survey of Manufactures: 2005 Statistics for industry groups and industries, November 2006. The value added and shipment values are for wood products manufacturing, paper manufacturing, and furniture and related product manufacturing.

[2] USDA/FAS, Solid Wood Products: China's Wood processing Sector and Re-exports of Imported U.S. Wood products, 2007, GAIN Report Number CH7061.

[3] World Trade Atlas, 1993–2007. Global Trade Information Services, Inc., July 2007.

tree mortality and a value loss of $669 billion.[4]

Similarly, EAB is a destructive wood-boring insect that attacks ash trees (*Fraxinus* spp., including green ash, white ash, black ash, and several horticultural varieties of ash). This destructive pest has already killed more than 20 million ash trees since it was discovered in Michigan in the summer of 2002.[5] The mortality rate for infested trees is 100 percent. If EAB spreads from infested areas to the surrounding forests of the northeastern United States, where nursery, landscaping, and timber industries and forest-based recreation and tourism industries play vital economic roles, its impact would be severe. The pest has the potential to destroy entire stands of ash, and any incursion of the pest can result in substantial losses to forest ecosystems, urban trees, and the timber industry. Sydnor *et al.* (2007) estimate total potential losses from this one pest in one State (Ohio), including ash landscape losses, tree removal, and replacements, to be between $1.8 billion and $7.6 billion.[6]

Eradication and control costs for ALB and EAB, and potential losses that could be caused by these pests if nothing were done to prevent their spread, are similar to the costs and losses that could be incurred if the pests addressed by this proposed rule were to become established in the United States.

The cost of meeting the regulatory requirements of this proposed rule would be borne by Chinese manufacturers and exporters before the products are exported to the United States. The treatment options include heat treatment and heat treatment with moisture reduction, and for articles with a diameter of less than 6 inches, fumigation with methyl bromide. Heat treatment can increase the value of wood, while green wood products treated by methyl bromide do not gain additional value.

Reportedly, fumigation tends to be a bit more expensive than heat treatment per treated load, but it does not have the considerable upfront expenditure associated with installing a heat treatment system. The cost for a fumigation service depends on a number of factors, including distance from the nearest service center, volume, frequency, and services requested. Fumigation services can range anywhere from $175–$500 per load.[7] U.S. entities that import wooden handicraft articles from China may therefore experience some increase in prices because of the treatment requirements imposed by this rule, but the effect is not expected to be significant. For one thing, due to the treatment of wooden packing material currently required of incoming shipments from China, China already has in place the heat treatment and fumigation facilities and operations that would be needed. Therefore, while we lack information regarding the total number of treatments that would need to be conducted because of this rule, we are confident that China has in place means to minimize the cost of treatment.

Finally, the cost of heat treatment or fumigation is expected to be small in comparison to the value of the wooden handicrafts that would be shipped. Wooden handicrafts are a value-added product for which there is an established market in the United States, as indicated by imports of wooden handicrafts from China prior to 2005. Accordingly, we expect that any portion of treatment costs that may be passed on to U.S. consumers would be minor compared to the benefits that would be accrued by U.S. consumers based on consumer access to a product for which there has been a clear market in recent years. Moreover, we expect these costs to be less than benefits that may be accrued based on the aggregate value of the handicrafts themselves and the potentiality, based on this value, for the facilitation of greater trade between the United States and China.

Effects on Small Entities

As a part of the rulemaking process, APHIS evaluates whether regulations are likely to have a significant economic impact on a substantial number of small entities. The Small Business Administration has established guidelines for determining the number of firms considered small under the Regulatory Flexibility Act. The entities that may be affected by this proposed rule are those engaged in wood product manufacturing, importing of the regulated articles, or furniture and related products manufacturing.[8] These establishments are considered small if they employ 500 or fewer workers.[9] There were 2,129 establishments engaged in other miscellaneous wood product manufacturing (North American Industry Classification System (NAICS) Code 321999), of which only 4 establishments (less than 0.2 percent) could be considered to be large. The average annual value of their shipments in 2002 was $154 million. The 2,125 small establishments had an average annual shipment value in 2002 of $1.9 million.

Alternatives

The Agency does not foresee any significant impact of the proposed rule and therefore has not set forth any significant alternatives to minimize the impact on small entities. Any costs due to the treatments required by the proposed rule would be directly borne by the manufacturer or exporter in China. A portion of this cost may be passed on to the U.S. importer, but it would not be significant.

Summary

The application of the required treatments would take place in China before the products are exported to the United States. The entities that would be directly affected by the rule are Chinese manufacturers and exporters of wooden handicrafts. Domestically, the entities that may be marginally affected by the rule would be those engaged in wood product manufacturing, and importers and users of wooden handicrafts from China. These establishments are considered small if they employ 500 or fewer workers. In 2002, there were 2,129 establishments engaged in other miscellaneous wood product manufacturing (NAICS Code 321999), of which 4 establishments (less than 0.2 percent) could be considered to be large. The average annual value of their shipments in 2002 was $154 million. That same year, small establishments had an average annual shipment value of $1.9 million. We expect any indirect impact of the rule for U.S. entities large or small, in terms of increased prices for wooden handicrafts from China because of the treatment requirements, to be minor. The U.S. forest industry has an important role in the U.S. economy, and the proposed amendments would help protect the industry from the establishment of pests introduced in wooden handicrafts imported from China.

[4] Nowak, D.J., D.E. Crane, and J.F. Dwyer. July 2002. ''Compensatory Value of Urban Trees in the United States.'' Journal of Arboriculture, Vol. 28: 194–199.

[5] *http://www.ca.uky.edu/AGC/NEWS/2006/Dec/ashborer.htm.*

[6] Sydnor, T.D., M. Bumgardner, and A. Todd, (January 2007). ''The potential economic impacts of emerald ash borer (*Agrilus planipennis*) on Ohio, U.S., communities.'' Arboriculture and Urban Forestry, Vol. 33: 48–54.

[7] Pallet Enterprise Web site: *http://www.palletenterprise.com/pests/fumigation101.asp.*

[8] U.S. Census Bureau, 2002 economic census, Manufacturing-Subject Series.

[9] U.S. Small Business Administration Table of Small Business Size Standards. (*http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the importation of wooden handicrafts from China, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (A link to Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Use of Methyl Bromide

The United States is fully committed to the objectives of the Montreal Protocol, including the reduction and ultimately the elimination of reliance on methyl bromide for quarantine and pre-shipment uses in a manner that is consistent with the safeguarding of U.S. agriculture and ecosystems. APHIS reviews its methyl bromide policies and their effect on the environment in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and Decision XI/13 (paragraph 5) of the 11th Meeting of the Parties to the Montreal Protocol, which calls on the Parties to review their ''national plant, animal, environmental, health, and stored product regulations with a view to removing the requirement for the use of methyl bromide for quarantine and pre-shipment where technically and economically feasible alternatives exist.''

The United States Government encourages methods that do not use methyl bromide to meet phytosanitary standards where alternatives are deemed to be technically and economically feasible. In some circumstances, however, methyl bromide continues to be the only technically and economically feasible treatment against specific quarantine pests. In addition, in accordance with Montreal Protocol Decision XI/13 (paragraph 7), APHIS is committed to promoting and employing gas recapture technology and other methods whenever possible to minimize harm to the environment cause by methyl bromide emissions. As noted above, we welcome data or other information regarding other treatments that may be efficacious and technically and economically feasible that we may consider as alternatives to methyl bromide.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2007–0117. Please send a copy of your comments to: (1) Docket No. APHIS–2007–0117, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to amend the regulations to provide for the importation of wooden handicrafts from China under certain conditions. This action would allow for trade in Chinese wooden handicrafts to resume while continuing to protect the United States against the introduction of plant pests. Allowing the importation of wooden handicrafts from China would necessitate the use of certain information collection activities, including the completion of phytosanitary certificates and identification tags of packages of wooden handicrafts.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.003984 hours per response.

Respondents: Chinese exporters.

Estimated Annual Number of Respondents: 140.

Estimated Annual Number of Responses per Respondent: 2,259.

Estimated Annual Number of Responses: 316,260.

Estimated Total Annual Burden on Respondents: 1,260 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

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

Lists of Subjects

7 CFR Part 305

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

7 CFR Part 319

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

Accordingly, we propose to amend 7 CFR parts 305 and 319 as follows:

PART 305—PHYTOSANITARY TREATMENTS

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

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

2. Section 305.2 is amended as follows:

a. In the introductory text of paragraph (v), in the first sentence, by adding the word ''handicrafts,'' after the word ''containers,''.

b. In the table in paragraph (v), by adding, in alphabetical order, a new entry for ''wooden handicrafts'' to read as set forth below.

§ 305.2 Approved treatments.

* * * * *

(v) * * *

Material	Pest	Treatment schedule
* *	* *	* * *
Wooden handicrafts	Wood-boring beetles (including the families Buprestidae, Cerambycidae, and Scolytidae) and other pests associated with wooden handicrafts.	MB–T404-d (less than 6 inches in diameter), heat treatment (§ 319.40–7(c) of this chapter), or heat treatment with moisture reduction (§ 319.40–7(d) of this chapter).

3. Section 305.28 is revised to read as follows:

§ 305.28 Kiln sterilization treatment schedule.

T404–b–4: See kiln sterilization treatments contained in the ''Dry Kiln Operator's Manual,'' which is incorporated by reference at § 300.2 of this chapter.

PART 319—FOREIGN QUARANTINE NOTICES

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

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

5. Following § 319.37–14, the subpart heading ''Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles'' is amended by removing the word ''Unmanufactured''.

6. Section 319.40–1 is amended by revising the definition of *regulated article* and adding, in alphabetical order, a definition for *wooden handicraft* to read as follows:

§ 319.40–1 Definitions.

* * * * *

Regulated article. The following articles, if they are unprocessed, have received only primary processing, or contain parts that are either unprocessed or have received only primary processing and are not feasibly separable from the other parts of the article: Logs; lumber; any whole tree; any cut tree or any portion of a tree, not solely consisting of leaves, flowers, fruits, buds, or seeds; bark; cork; laths; hog fuel; sawdust; painted raw wood products; excelsior (wood wool); wood chips; wood mulch; wood shavings; pickets; stakes; shingles; solid wood packing materials; humus; compost; litter; and wooden handicrafts.

* * * * *

Wooden handicraft. A commodity class of articles derived or made from natural components of wood, twigs, and vines, and including bamboo poles and garden stakes. Handicrafts include the following products where wood is present: Carvings, baskets, boxes, bird houses, manufactured Christmas trees, garden and lawn/patio furniture (rustic), potpourri, silk trees (typically artificial ficus trees), trellis towers, garden fencing and edging, and other items composed of wood.

* * * * *

7. Section 319.40–5 is amended by adding a new paragraph (o) to read as follows:

§ 319.40–5 Importation and entry requirements for specified articles.

* * * * *

(o) *Wooden handicrafts from China.* Wooden handicrafts may be imported into the United States from China only in accordance with this paragraph and all other applicable provisions of this title.

(1) *Treatment.* (i) Wooden handicrafts must be treated with heat treatment in accordance with § 319.40–7(c) or heat treatment with moisture reduction in accordance with § 319.40–7(d).

(ii) Wooden handicrafts that are less than 6 inches in diameter may also be treated with methyl bromide fumigation in accordance with part 305 of this chapter.

(2) *Phytosanitary certificate.* All consignments of wooden handicrafts must be accompanied by a phytosanitary certificate issued by the national plant protection organization of China. The phytosanitary certificate must contain an additional declaration stating that the handicrafts were treated in accordance with this section and inspected and found free from quarantine pests.

(3) *Identification tag.* All individual packages of wooden handicrafts must be labeled with a merchandise tag containing the identity of the product manufacturer. The identification tag must be applied to each package in China prior to exportation and remain attached to the package until it reaches the location at which the wooden handicraft will be sold in the United States.

Done in Washington, DC, this 3rd day of April 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–8102 Filed 4–8–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0324; Directorate Identifier 2008–NM–186–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, B4–622R, F4–605R, F4–622R, and C4–605R Variant F Series Airplanes Equipped With Simmonds Precision Products, Inc., Fuel Quantity Indicating System Sensors and In-Tank Harnesses Installed in Accordance With Supplemental Type Certificate (STC) ST00092BO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus model series airplanes. This proposed AD would require revising the Airworthiness Limitations Section of the Instructions for Continuing Airworthiness to incorporate new fuel system limitations for airplanes modified in accordance with STC ST00092BO. This AD also requires performing a general visual inspection for tank unit separation and compensator separation of the: center, inner, outer fuel tanks, and trim fuel tanks of the tank units, and corrective actions if necessary. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent a potential of ignition sources inside fuel tanks, which in combination with flammable fuel vapors, could result in a fuel tank fire or explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by May 26, 2009.

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

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

For service information identified in this AD, contact Goodrich Corporation, Fuel and Utility Systems, 100 Panton Road, Vergennes, Vermont 05491–1008; telephone 802–877–4476; e-mail *lgd.TechPubs.Oakville@goodrich.com*; Internet *http://www.goodrich.com/TechPubs*. 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: Marc Ronell, Aerospace Engineer, ANE–150, FAA, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7776; fax (781) 238–7170.

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–2009–0324; Directorate Identifier 2008–NM–186–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

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

We have reviewed Goodrich A300–600 Instructions for Continued Airworthiness, Document T3012–0005–0101, Revision B, dated June 12, 2008. The document describes new airworthiness limitations (AWLs) for

fuel tank systems. The new AWLs include:

• AWL inspections, which are periodic inspections of certain features for latent failures that could contribute to an ignition source; and

• Critical design configuration control limitations (CDCCL), which 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 changes that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

The instructions describe procedures to perform a general visual inspection (GVI) for tank unit separation and compensator separation of the: Center, inner, outer fuel tanks, and trim fuel tanks of the tank units.

We have also reviewed Goodrich Service Bulletin 300723–0101–28–01,

Revision 1, dated July 1, 2004. The service bulletin describes procedures to perform an inspection of each probe and compensator location for sufficient clearance to structure.

Other Related AD

We issued AD 2004–05–05, amendment 39–13499 (69 FR 10319, March 5, 2004) on February 20, 2004, for certain Airbus Model A300–600, A300, and A310 airplanes. We issued that AD to require a one-time inspection of the space between the fuel quantity indication probes and any adjacent structures for minimum clearance and corrective action if necessary.

Doing inspections in accordance with section 2.2.3 of the Goodrich A300–600 Instructions for Continued Airworthiness, Document T3012–0005–0101, Revision B, dated June 12, 2008, and Goodrich Service Bulletin 300723–0101–28–01, Revision 1, dated July 1, 2004, are acceptable methods of compliance for paragraphs (b) and (c) of AD 2004–05–05.

FAA's Determination and Requirements of this Proposed AD

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

Differences Between the Proposed AD and the Service Information

The service information does not specify initial compliance times for doing GVI for tank unit separation and compensator separation of the: center, inner, outer fuel tanks, and trim fuel tanks of the tank units. This AD requires an initial inspection for the GVI inspections within six months after the effective date of this AD.

The service information does not include corrective actions if incorrect separation is found. This AD also requires, if incorrect separation is found, correction of the separation in accordance with the airplane maintenance manual for the corresponding inspection specified in section 2.2.3 of the Goodrich A300–600 Instructions for Continued Airworthiness, Document T3012–0005–0101, Revision B, dated June 12, 2008.

Costs of Compliance

We estimate that this proposed AD would affect 68 airplanes of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $43,520, or $640 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866,

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

Simmonds Precision Products, Inc., D/B/A Goodrich Corporation Fuel & Utility Systems: Docket No. FAA–2009–0324; Directorate Identifier 2008–NM–186–AD.

Comments Due Date

(a) We must receive comments by May 26, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, B4–622R, F4–605R, F4–622R, and C4–605R Variant F series airplanes, certificated in any category, equipped with Simmonds Precision Products, Inc., Fuel Quantity Indicating System sensors and in-tank harnesses installed in accordance with supplemental type certificate (STC) ST00092BO.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections and critical design configuration control limitations (CDCCLs). 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 and CDCCLs, the operator may not be able to accomplish the inspections and CDCCLs, described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (o) of this AD. The request should include a description of changes to the required inspections and CDCCLs that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to reduce the potential of ignition sources inside fuel tanks, which in combination with flammable fuel vapors, could result in fuel tank fire or explosions and consequent loss of the airplane.

Compliance

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

Revision to the Airworthiness Limitations Section

(g) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate the inspections specified in section 2.2.3 of the Goodrich A300–600 Instructions for Continued Airworthiness, Document T3012–0005–0101, Revision B, dated June 12, 2008.

(h) Within six months after the effective date of this AD, do a general visual inspection for tank unit separation and compensator separation of the: center, inner, outer fuel tanks, and trim fuel tanks of the tank units, in accordance with section 2.2.3 of the Goodrich A300–600 Instructions for Continued Airworthiness, Document T3012–0005–0101, Revision B, dated June 12, 2008. If incorrect separation is found, in accordance with section 2.2.3 of the Goodrich A300–600 Instructions for Continued Airworthiness, Document T3012–0005–0101, Revision B, dated June 12, 2008, before further flight, correct the separation in accordance with the airplane maintenance manual for the corresponding inspection specified in section 2.2.3 of the Goodrich A300–600 Instructions for Continued Airworthiness Document T3012–0005–0101, Revision B, dated June 12, 2008. A review of airplane maintenance records is acceptable in lieu of this inspection if the requirement of Table 6 in section 10.1 of the Goodrich A300–600 Instructions for Continued Airworthiness, Document T3012–0005–0101, Revision B, dated June 12, 2008, can be conclusively determined to have been done from that review.

(i) Within 30 days after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate the CDCCLs as defined in section 10.1 of the Goodrich A300–600 Instructions for Continued Airworthiness, Document T3012–0005–0101, Revision B, dated June 12, 2008.

(j) Except as provided by paragraph (o) of this AD: After accomplishing the actions specified in paragraphs (g) and (i) of this AD, no alternative inspection, inspection intervals, or CDCCLs may be used.

Actions Done According to Previous Service Information

(k) Inspections are acceptable for compliance with the requirements of paragraph (h) of this AD, if done before the effective date of this AD, in accordance with Goodrich Service Bulletin 300723–0101–28–01, dated April 15, 2004.

(l) Inspections are also acceptable for compliance with the requirements of paragraph (h) of this AD, if done in accordance with Goodrich Service Bulletin 300723–0101–28–01, Revision 1, dated July 1, 2004.

Acceptable Methods of Compliance for AD 2004–05–05

(m) Doing the inspections in section 2.2.3 of the Goodrich A300–600 Instructions for Continued Airworthiness Document T3012–0005–0101, Revision B, dated June 12, 2008, is considered an acceptable method of compliance to paragraphs (b) and (c) of AD 2004–05–05, amendment 39–13499.

(n) Doing the inspections in accordance with Goodrich Service Bulletin 300723–0101–28–01, Revision 1, dated July 1, 2004, is an acceptable method of compliance to paragraphs (b) and (c) of AD 2004–05–05.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Boston 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: Marc Ronell, Aerospace Engineer, ANE–150, FAA, Boston ACO, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7776; fax (781) 238–7170.

(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.

Issued in Renton, Washington, on April 2, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–8081 Filed 4–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0083; Directorate Identifier 2006–NM–266–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier NPRM for the products listed above. This action revises the earlier NPRM by expanding the scope. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been found the occurrence of engine anti-ice system valve failure, where the valve spring seat has broken and obstructed the anti-ice system venturi tube. Therefore, should the aircraft encounter icing conditions, ice may accrete in the engine inlet lip and be ingested through the air inlet, resulting in possible engine damage and flame-out.

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

DATES: We must receive comments on this proposed AD by May 4, 2009.

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

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

For service information identified in this proposed AD, contact Empresa

Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 Saão Jose dos Campos—SP—BRASIL; telephone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; e-mail: *distrib@embraer.com.br*; Internet: *http://www.flyembraer.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0083; Directorate Identifier 2006–NM–266–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on October 25, 2007 (72 FR 60595). That earlier NPRM proposed to require actions intended to address the unsafe condition for the products listed above.

Since the earlier NPRM was issued, we have determined that the procedures specified in paragraphs (f)(5)(ii), (f)(6)(i), (f)(6)(ii), (f)(7), and (f)(8) of the earlier NPRM need to be revised for the reasons cited in our response to the comment submitted by American Eagle Airlines below. The earlier NPRM corresponds to Brazilian Airworthiness Directive 2006–09–03R1, effective January 4, 2007 (referred to after this as ''the MCAI''). The MCAI describes procedures for inspecting the engine anti-icing system valves and tubes to detect damage and, if necessary, replacing the anti-icing system valves. You may obtain further information by examining the MCAI in the AD docket.

Comments

We have considered the following comments received on the earlier NPRM.

Request To Clarify if Earlier NPRM Will be Delayed Due to a Malfunction Related to Part Number (P/N) C146009–4

American Eagle Airlines, Inc. states that it has experienced malfunctions of the engine anti-ice valve (EAIV) P/N C146009–4 installed during accomplishment of Embraer Service Bulletin 145–30–0044, Revision 03, dated December 12, 2006; and Embraer Service Bulletin 145–30–0049, Revision 01, dated October 19, 2006. These service bulletins are cited in the earlier NPRM as appropriate sources of service information for replacing the EAIV. The commenter asks if implementing the earlier NPRM will be delayed until the current problems with the P/N C146009–4 valve are identified and corrected.

We have determined that the reported malfunctions and failure of the EAIV P/N C146009–4 are due to piston rib breakage found in the EAIV (P/N C146009–2/–3 reworked to C146009–4) reworked in accordance with one of the service bulletins in the following table.

Embraer Service Bulletin	Revision	Date
145–30–0044	Original	October 31, 2005.
145–30–0044	01	June 26, 2006.
145–30–0044	02	September 25, 2006.
145–30–0044	03	December 12, 2006.
145LEG–30–0018	Original	June 26, 2006.
145LEG–30–0018	01	September 25, 2006.
145LEG–30–0018	02	December 12, 2006.

Embraer Service Bulletin 145LEG–30–0018, Revision 02, dated December 12, 2006, is also cited in the earlier NPRM as an appropriate source of service information for replacing the anti-ice valve.

We have determined that the piston rib failure mode of P/N C146009–4 is not related to the unsafe condition addressed by this supplemental NPRM. EMBRAER has stated that the new failure mode has no effect on safety because there is an engine indicating and crew alerting system (EICAS) message related to the event. There is no indication that this failure could lead to engine anti-ice system clogging and the final effect of this failure mode is to maintain the EAIV in ''open'' position, therefore maintaining unobstructed bleed air for engine anti-icing. We have not changed this supplemental NPRM in this regard.

However, EMBRAER has issued Service Bulletins 145–30–0044, Revision 04, dated May 14, 2008; and 145LEG–30–0018, Revision 03, dated May 14, 2008. The latest revisions of these service bulletins contain essentially the same procedures as the previous issues, except these service bulletins include revisions to the referenced Hamilton Sundstrand/Microtecnica procedures for upgrading the EAIV P/N C146009–2/–3 to P/N C146009–4 by including dye-penetrant inspections of the piston. We have revised paragraphs (f)(5)(i), (f)(6)(ii), (f)(7), (f)(8), and (f)(9) of the supplemental NPRM to refer to Embraer Service Bulletins 145–30–0044, Revision 04, dated May 14, 2008; and

145LEG–30–0018, Revision 03, dated May 14, 2008.

Also, EMBRAER has released Service Newsletter (SNL) 145–30–0021, dated May 26, 2008, informing the operators about the new failure mode and its effect on P/N C146009–4. EMBRAER and ANAC have stated that they will continue monitoring the occurrence reports related to the failure of P/N C146009–4. If additional data are presented that would justify additional actions, we might consider further rulemaking on this issue. We have not changed this supplemental NPRM in this regard.

Request to Correct Service Information Citation

EMBRAER and ExpressJet request that we correct an error in paragraph (f)(5)(ii) of the earlier NPRM. EMBRAER states that, rather than: ''If the valve was installed according to the detailed instructions and procedures described in Embraer Service Bulletin 145–30–0044, Revision 03, dated December 12, 2006,'' this sentence should cite the original issue of the service information: Embraer Service Bulletin 145–30–0044, dated October 31, 2005. ExpressJet also states that we should revise the service information citation as described, but adds that we should also refer to Embraer Service Bulletin 145–30–0044, Revision 01, dated June 26, 2006, in paragraph (f)(5)(ii) of the earlier NPRM.

We agree with the requests to correct the service information citation. However, since Embraer Service Bulletin 145–30–0044, Revision 01, includes the special detailed inspections for removing any damage or obstruction of the anti-ice tubes, only Embraer Service Bulletin 145–30–0044, dated October 31, 2005, should be cited in paragraph (f)(5)(ii) of the supplemental NPRM. We have revised paragraph (f)(5)(ii) of the supplemental NPRM accordingly. For the same reasons, we also revised paragraph (f)(6)(i) of the supplemental NPRM to cite Embraer Service Bulletin 145–30–0044, dated October 31, 2005.

Request to Allow Records Check

ExpressJet requests that we revise paragraph (f)(1) of the earlier NPRM to allow an aircraft records review to determine the valve part number. ExpressJet states that, except for 10 airplanes, its fleet has been retrofitted to replace EAIV P/Ns C146009–2 and C146009–3 with P/N C146009–4 valves. ExpressJet asserts that the locations of those valves that have not been replaced can be easily determined from an aircraft records review and that requiring a general visual inspection (GVI) of valves to determine their part numbers would be redundant and a waste of resources.

We disagree with this request. In order to ensure the correct configuration of EAIV part numbers are installed on the airplanes so that appropriate actions required by this AD are followed, we require a visual inspection of the part number, as specified in the MCAI, to determine if the valve is installed. However, as provided by paragraph (g)(1) of the AD, operators may request an alternative method of compliance (AMOC) if data are submitted to demonstrate that using a records review would provide an acceptable level of safety.

Request to Clarify Valve Replacement

ExpressJet requests that we clarify the valve replacement requirements described in paragraphs (f)(3) and (f)(4) of the earlier NPRM. ExpressJet asserts that replacing a P/N C146009–2 or C146009–3 valve with a valve having either of those P/Ns rather than a P/N C146009–4 valve will lead to excessive tracking and inspection requirements. ExpressJet states that this will constitute an enormous burden on operators and make it impossible or very difficult to meet certain documentation and tracking requirements of section 121.380 (a)(2)(i) of the Federal Aviation Regulations (14 CFR 121.380 (a)(2)(i)).

We acknowledge ExpressJet's statement that replacement with a P/N C146009–2 or C146009–3 valve leads to additional tracking and inspection requirements. However, we disagree that this will constitute an enormous burden on operators because replacing EAIV P/N C146009–2 or C146009–3 with a valve having either of those P/Ns rather than a P/N C146009–4 valve is an option. Although this option is more labor intensive, it will address the unsafe condition as required by the supplemental NPRM. Eventually operators would be required to replace P/N C146009–2 and C146009–3 valves with new P/N C146009–4 valves as specified in paragraphs (f)(7) and (f)(8) of the supplemental NPRM. We have not changed this supplemental NPRM in this regard.

Request to Allow Alternative Parts

Dukes, Inc., requests that we revise the earlier NPRM to permit the use of parts manufacturer approval (PMA) parts. The commenter states that in 2003 it designed, tested, and manufactured an approved PMA alternative valve (Dukes P/N 5460–00–1) to replace the P/N C146009–2 valve. The commenter states that this PMA valve is currently in operation in the field and that the PMA valve design is not subject to the failure mode described in the earlier NPRM. Further, the commenter asserts that subsequent upgrades developed for P/N C146009–2 and –3 valves do not affect the form, fit, or function of the PMA valve. The commenter asserts that the reduced cost and shorter lead-time for the PMA valve would be of great benefit to operators. The commenter requests that we permit the use of the described PMA valves as replacements for P/N C146009–4 as well as P/N C146009–3 valves.

We do not agree with the request to allow the use of Dukes P/N 5460–00–1 as a replacement for P/Ns C146009–3 and C146009–4. The PMA request to allow Dukes P/N 5460–00–1 as a replacement for P/N C146009–4 as well as P/N C146009–3 valves has not been approved yet. However, as provided by paragraph (g)(1) of the AD, any person may request an AMOC if data are submitted to demonstrate that using a different replacement part would provide an acceptable level of safety. We have not changed this supplemental NPRM in this regard.

Request to Clarify Terminating Action

ExpressJet requests that we clarify that the actions specified in paragraph (f)(5)(ii) of the earlier NPRM are considered terminating action. ExpressJet states that it is clear that the actions described in paragraph (f)(5)(i) of the earlier NPRM are terminating actions. ExpressJet asserts, therefore, that after the inspection specified in paragraph (f)(5)(ii) is done, no further action is required because the installation and inspection specified in paragraph (f)(5)(ii) of the earlier NPRM is equivalent to the installation specified in paragraph (f)(5)(i). ExpressJet states that the action in paragraph (f)(5)(ii) of the earlier NPRM would also qualify as an exception to the minimum equipment list (MEL) requirement specified in paragraph (f)(6) of the earlier NPRM.

We acknowledge ExpressJet's comments regarding clarifying paragraph (f)(5)(ii) of the earlier NPRM. We have revised paragraph (f)(5)(ii) of the supplemental NPRM to include the following statement: After doing the actions specified in paragraph (f)(5)(ii) of this AD, no further action is required by this AD.

We have revised paragraph (f)(6)(i) of the supplemental NPRM to add Embraer Service Bulletin 145–30–0044, dated October 31, 2005. In addition, we have revised paragraph (f)(6)(ii) of the supplemental NPRM to add Embraer Service Bulletins 145–30–0044, Revision 01, dated June 26, 2006;

Revision 02, dated September 25, 2006; Revision 03, dated December 12, 2006; and Revision 04, dated May 14, 2008. Therefore, the MEL exception will be in accordance with paragraph (f)(6)(i) and (f)(6)(ii) of the supplemental NPRM.

Request to Address Parts Installed as Replacements

ExpressJet requests that we revise paragraph (f)(5)(ii) of the earlier NPRM to address parts installed as replacements in accordance with service information other than the service bulletins specified in paragraph (f)(5)(ii).

We agree with the request to address service information other than the service bulletins specified in paragraph (f)(5)(ii) of the supplemental NPRM. We have received reports of clogging of venturi tubes when parts were replaced in accordance with the airplane maintenance manual or illustrated parts catalog. We have determined that parts that were installed in accordance with a method other than those specified in paragraph (f)(5)(i) of this AD must be inspected. We have revised paragraph (f)(5)(ii) of this AD accordingly.

Request to Revise Costs of Compliance

Dukes, Inc., requests that we revise the Costs of Compliance paragraph in the earlier NPRM. The commenter states that the cost to modify P/N C146009–2 or –3 valves to the –4 configuration will be in excess of $20,000 per valve.

We agree with the commenter. There are approximately 306 P/N C146009–2 and –3 valves (305 C146009–2 valves and 1 C146009–3 valve) that need to be replaced with P/N C146009–4 valves. The part would cost about $27,507 (the cost to modify the part is up to $23,444) and it would take about 5 work-hours to install. We have revised the Costs of Compliance paragraph in this supplemental NPRM accordingly. However, since certain parts of the P/N C146009–2 and –3 valve assemblies are re-workable, Hamilton Sundstrand and Microtechnica state that they have established commercial programs that reduce the cost substantially for the parts returned for modification.

Request to Review Additional Information on Earlier NPRM

Dukes, Inc., requests that we provide them with any additional information that was submitted after the comment period closed (November 26, 2007) for the earlier NPRM. Dukes states that it is aware that additional information may have been presented by a third party.

As stated earlier, we have received and reviewed new service information from EMBRAER. No additional information other than what is contained in the docket has been submitted. We are not aware of any ex parte contacts that occurred during the rulemaking process. 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 street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section of the supplemental NPRM. You may also 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.

Revisions to the Supplemental NPRM to Allow Compliance With Certain Service Bulletins

In the earlier NPRM, we inadvertently did not include references to the original issue of Embraer Service Bulletins 145–30–0049 and 145LEG–30–0016, both dated June 28, 2006, in paragraphs (f)(1)(ii), (f)(2), (f)(3), (f)(4), (f)(5)(ii), and (f)(6) of the earlier NPRM. These service bulletins are acceptable sources of service information for doing the actions specified in paragraphs (f)(1)(ii), (f)(2), (f)(3), (f)(4), (f)(5)(ii), and (f)(6) of the earlier NPRM. In order to correspond with the MCAI, we have revised paragraphs (f)(1)(ii), (f)(2), (f)(3), (f)(4), (f)(5)(ii), and (f)(6) of this supplemental NPRM to refer to Embraer Service Bulletin 145–30–0049, dated June 28, 2006; and Embraer Service Bulletin 145LEG–30–0016, dated June 28, 2006.

FAA's Determination and Requirements of This Proposed AD

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

Certain changes described above expand the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 697 products of U.S. registry. We also estimate that it would take about 7 work-hours per product to comply with the requirements of this proposed AD. Required parts would cost up to $55,014 per product (for airplanes having two affected parts; there are 306 affected parts). Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be up to $8,807,433 or up to $55,574 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira De Aeronautica S.A. (Embraer): Docket No. FAA–2007–0083; Directorate Identifier 2006–NM–266–AD.

Comments Due Date

(a) We must receive comments by May 4, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, certificated in any category, except airplanes having serial numbers 14500921, 14500928, 14500932, 14500949, 14500958, 14500971, 14500973 and up, which will have in-factory modification incorporated.

Subject

(d) Air Transport Association of America Code 30: Ice and Rain Protection.

Reason

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

It has been found the occurrence of engine anti-ice system valve failure, where the valve spring seat has broken and obstructed the anti-ice system venturi tube. Aircraft dispatch with that failure may be allowed by the operator Minimum Equipment List (MEL), since the engine anti-ice system valve be locked in the OPEN position. However, there is no readily available means to make sure the anti-ice system tubing is free of debris, allowing unrestricted hot airflow to the piccolo tube on the engine inlet lip. Therefore, should the aircraft encounter icing conditions, ice may accrete in the engine inlet lip and be ingested through the air inlet, resulting in possible engine damage and flame-out.

The required actions include an inspection to determine the part number of the engine anti-icing system valves; repetitive inspections of certain engine anti-icing system valves and tubes to detect damage, and replacement of the valves if damage is found; and eventual replacement of certain anti-icing system valves.

Actions and Compliance

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

(1) PART I—Within the next 500 flight hours or 3 months after the effective date of this AD, whichever occurs first, carry out a general visual inspection of both LH (left-hand) and RH (right-hand) engine anti-ice system valves to determine their P/N (part number).

(i) If any engine anti-ice system valve with P/N C146009–2 is found, no further action is required by paragraph (f)(1) of this AD.

(ii) If any anti-ice system valve with P/N C146009–3 is found, before further flight: Remove it and carry out a detailed inspection regarding its integrity; and carry out a special detailed inspection for an obstruction in the corresponding engine anti-ice system tubes; according to the detailed instructions and procedures described in Embraer Service Bulletin 145–30–0049, dated June 28, 2006, or Revision 01, dated October 19, 2006; or Embraer Service Bulletin 145LEG–30–0016, dated June 28, 2006, or Revision 01, dated February 5, 2007; as applicable.

(A) If the valve is damaged or the tube is obstructed, before further flight: Replace the valve with a serviceable or new valve bearing P/N C146009–2, C146009–3, or C146009–4; or remove the obstruction; as applicable; in accordance with the Accomplishment Instructions of Embraer Service Bulletin 145–30–0049, dated June 28, 2006, or Revision 01, dated October 19, 2006; or Embraer Service Bulletin 145LEG–30–0016, dated June 28, 2006, or Revision 01, dated February 5, 2007; as applicable.

(B) If the valve is not damaged or the tube is not obstructed, re-install the valve or install a serviceable or new valve bearing P/N C146009–2, C146009–3, or C146009–4; or re-install the tube; in accordance with the Accomplishment Instructions of Embraer Service Bulletin 145–30–0049, dated June 28, 2006, or Revision 01, dated October 19, 2006; or Embraer Service Bulletin 145LEG–30–0016, dated June 28, 2006, or Revision 01, dated February 5, 2007; as applicable.

(iii) If any engine anti-ice system valve with P/N C146009–4 is found, no further action is required by paragraph (f)(1) of this AD. In this case, paragraphs (f)(2), (f)(3), (f)(4), (f)(7), and (f)(8) of this AD are not applicable. However, paragraphs (f)(5) and (f)(6) of this AD must be accomplished.

(2) PART II—Within the next 1,500 flight hours or 9 months after the effective date of this AD, whichever occurs first, and thereafter at intervals that do not exceed 1,000 flight hours or 6 months, whichever occurs first, carry out a detailed inspection for damage of both LH and RH engine anti-ice system valves bearing P/N C146009–2 or C146009–3; and a special detailed inspection for obstruction of the corresponding engine anti-ice system tubes; according to the detailed instructions and procedures described in Embraer Service Bulletin 145–30–0049, dated June 28, 2006, or Revision 01, dated October 19, 2006; or Embraer Service Bulletin 145LEG–30–0016, dated June 28, 2006, or Revision 01, dated February 5, 2007; as applicable; and accomplish paragraphs (f)(2)(i) and (f)(2)(ii) of this AD, as applicable.

(i) If the valve is damaged or the tube is obstructed, before further flight: Replace the valve with a serviceable or new valve bearing P/N C146009–2, C146009–3, or C146009–4; or remove the obstruction; as applicable; in accordance with the Accomplishment Instructions of Embraer Service Bulletin 145–30–0049, dated June 28, 2006, or Revision 01, dated October 19, 2006; or Embraer Service Bulletin 145LEG–30–0016, dated June 28, 2006, or Revision 01, dated February 5, 2007; as applicable.

(ii) If the valve is not damaged, or the tube is not obstructed, before further flight: Re-install the valve or install a serviceable or new valve bearing P/N C146009–2, C146009–3, or C146009–4; or remove the obstruction; as applicable; in accordance with the Accomplishment Instructions of Embraer Service Bulletin 145–30–0049, dated June 28, 2006, or Revision 01, dated October 19, 2006; or Embraer Service Bulletin 145LEG–30–0016, dated June 28, 2006, or Revision 01, dated February 5, 2007; as applicable.

(3) PART III—Any engine anti-ice system valve with P/N C146009–2 or C146009–3 that will be installed as a replacement as provided for in paragraph (f)(1) and (f)(2) of this AD, must undergo a detailed inspection for its integrity before installation, and any damage or obstruction repaired, according to the detailed instructions and procedures described in Embraer Service Bulletin 145–30–0049, dated June 28, 2006, or Revision 01, dated October 19, 2006; or Embraer Service Bulletin 145LEG–30–0016, dated June 28, 2006, or Revision 01, dated February 5, 2007; as applicable; and additionally adhere to paragraphs (f)(3)(i) and (f)(3)(ii) of this AD, as applicable.

(i) If the valve is damaged, replace it with a serviceable or new valve bearing P/N C146009–2, C146009–3, or C146009–4; in accordance with the Accomplishment

Instructions of Embraer Service Bulletin 145–30–0049, dated June 28, 2006, or Revision 01, dated October 19, 2006; or Embraer Service Bulletin 145LEG–30–0016, dated June 28, 2006, or Revision 01, dated February 5, 2007; as applicable.

(ii) If the valve is not damaged, installation is permitted.

(4) PART IV—Any engine anti-ice system tubes that will be installed on the airplane as a replacement as provided for in paragraph (f)(1) and (f)(2) of this AD, must undergo a special detailed inspection before installation, and any damage or obstruction repaired, according to the detailed instructions and procedures described in Embraer Service Bulletin 145–30–0049, dated June 28, 2006, or Revision 01, dated October 19, 2006; or Embraer Service Bulletin 145LEG–30–0016, dated June 28, 2006, or Revision 01, dated February 5, 2007; as applicable.

(5) PART V—If any engine anti-ice system valve with P/N C146009–4 has been found during the inspection required by paragraph (f)(1) of this AD, do paragraphs (f)(5)(i) or (f)(5)(ii) of this AD, as applicable, within the next 1,500 flight hours or 9 months after the effective date of this AD, whichever occurs first.

(i) If the valve was installed according to the detailed instructions and procedures described in Embraer Service Bulletin 145–30–0044, Revision 01, dated June 26, 2006, Revision 02, dated September 25, 2006, Revision 03, dated December 12, 2006, or Revision 04, dated May 14, 2008; or Embraer Service Bulletin 145LEG–30–0018, Revision 02, dated December 12, 2006, or Revision 03, dated May 14, 2008; as applicable; no further action is required by this AD.

(ii) If the valve was installed according to detailed instructions and procedures other than those specified in paragraph (f)(5)(i) of this AD; carry out a special detailed inspection in the corresponding engine anti-ice system tubes, and repair all damage and remove all obstructions; according to the detailed instructions and procedures described in Embraer Service Bulletin 145–30–0049, dated June 28, 2006, or Revision 01, dated October 19, 2006; or Embraer Service Bulletin 145LEG–30–0016, dated June 28, 2006, or Revision 01, dated February 5, 2007; as applicable. After doing the actions specified in paragraph (f)(5)(ii) of this AD, no further action is required by this AD.

(6) PART VI—Before aircraft dispatch with one or two engine anti-ice system valves inoperative (Master Minimum Equipment List (MMEL) 30–21–01), carry out a detailed inspection for damage of the affected engine anti-ice system valves; and a special detailed inspection for obstruction of the corresponding engine anti-ice system tubes; and repair any damage or obstruction before further flight. Do all actions according to the detailed instructions and procedures described in Embraer Service Bulletin 145–30–0049, dated June 28, 2006, or Revision 01, dated October 19, 2006; or Embraer Service Bulletin 145LEG–30–0016, dated June 28, 2006, or Revision 01, dated February 5, 2007; as applicable; by accomplishing paragraph (f)(2) of this AD, unless:

(i) Valves with P/N C146009–4 have been previously installed according to the detailed instructions and procedures described in Embraer Service Bulletin 145–30–0044, dated October 31, 2005; Embraer Service Bulletin 145LEG–30–0018, dated June 26, 2006; or Embraer Service Bulletin 145LEG–30–0018, Revision 01, dated September 25, 2006; as applicable; and additionally, paragraph (f)(5)(ii) of this AD has been accomplished; or

(ii) Valves with P/N C146009–4 have been previously installed according to the detailed instructions and procedures described in Embraer Service Bulletin 145–30–0044, Revision 01, dated June 26, 2006, Revision 02, dated September 25, 2006, Revision 03, dated December 12, 2006, or Revision 04, dated May 14, 2008; or Embraer Service Bulletin 145LEG–30–0018, Revision 02, dated December 12, 2006, or Revision 03, dated May 14, 2008; as applicable.

(7) PART VII—Within the next 2,500 flight hours or 12 months after the effective date of this AD, whichever occurs first, install engine anti-ice system valves bearing P/N C146009–4 in the LH and RH engine positions, replacing P/N C146009–3, according to the detailed instructions and procedures described in Embraer Service Bulletin 145–30–0044, Revision 01, dated June 26, 2006, Revision 02, dated September 25, 2006, Revision 03, dated December 12, 2006, or Revision 04, dated May 14, 2008; or Embraer Service Bulletin 145LEG–30–0018, Revision 02, dated December 12, 2006, or Revision 03, dated May 14, 2008; as applicable.

(8) PART VIII—Within the next 6,000 flight hours or 30 months after the effective date of this AD, whichever occurs first, install engine anti-ice system valves bearing P/N C146009–4 in the LH and RH engine positions, replacing P/N C146009–2, according to the detailed instructions and procedures described in Embraer Service Bulletin 145–30–0044, Revision 01, dated June 26, 2006; Revision 02, dated September 25, 2006, Revision 03, dated December 12, 2006, or Revision 04, dated May 14, 2008; or Embraer Service Bulletin 145LEG–30–0018, Revision 02, dated December 12, 2006, or Revision 03, dated May 14, 2008; as applicable.

(9) PART IX—The installation of engine anti-ice system valves bearing P/N C146009–4 according to the detailed instructions and procedures described in Embraer Service Bulletin 145–30–0044, Revision 01, dated June 26, 2006, Revision 02, dated September 25, 2006, Revision 03, dated December 12, 2006; or Revision 04, dated May 14, 2008; or Embraer Service Bulletin 145LEG–30–0018, Revision 02, dated December 12, 2006, or Revision 03, dated May 14, 2008; as applicable; constitutes a terminating action for this AD, in lieu of the repetitive inspections required by paragraph (f)(2) of this AD.

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

Note 2: 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 3: 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.''

FAA AD Differences

Note 4: 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, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

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

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

Related Information

(h) Refer to Brazilian Airworthiness Directive 2006–09–03R1, effective January 4, 2007; and to the service bulletins listed in Table 1 of this AD; for related information.

TABLE 1—RELATED SERVICE BULLETINS

Embraer Service Bulletin—	Revision—	Dated—
145–30–0044	01	June 26, 2006.
145–30–0044	02	September 25, 2006.
145–30–0044	03	December 12, 2006.
145–30–0044	04	May 14, 2008.
145–30–0049	Original	June 28, 2006.
145–30–0049	01	October 19, 2006.
145LEG–30–0016	Original	June 28, 2006.
145LEG–30–0016	01	February 5, 2007.
145LEG–30–0018	02	December 12, 2006.
145LEG–30–0018	03	May 14, 2008.

Issued in Renton, Washington, on March 30, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–8082 Filed 4–8–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 38

[Docket No. RM05–5–013]

Standards for Business Practices and Communication Protocols for Public Utilities

April 3, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking: extension of time for comments.

SUMMARY: On March 19, 2009, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking (NOPR) proposing to incorporate by reference in its regulations at 18 CFR 38.2 the latest version (Version 002.1) of certain business practice standards adopted by the Wholesale Electric Quadrant of the North American Energy Standards Board (NAESB). The date for filing comments on the Commission's NOPR is being extended at the request of the Electric Power Supply Association and the Edison Electric Institute.

DATES: Comments on the proposed rule are due May 26, 2009.

ADDRESSES: You may submit comments identified by Docket No. RM05–5–013, by one of the following methods:

- *Agency Web Site: http://ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble of the Commission's March 19, 2009 NOPR.
- *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

FOR FURTHER INFORMATION CONTACT: Ryan M. Irwin (technical issues), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6454.

Valerie Roth (technical issues), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8538.

Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8321.

SUPPLEMENTARY INFORMATION:

Notice of Extension of Time

On April 1, 2009, the Electric Power Supply Association (EPSA) and the Edison Electric Institute (EEI) filed a joint motion in the above-proceeding, for an extension of time to file comments on the Commission's March 19, 2009 Notice of Proposed Rulemaking, 74 FR 12739, Mar. 25, 2009 which proposed to incorporate by reference standards developed by the North American Energy Standards Board.[1] In their motion, EPSA and EEI request that the date for filing comments on the NAESB NOPR be extended to the date when comments are due to be filed on the Commission's March 19, 2009 NOPR addressing reliability standards submitted to the Commission for approval by the North American Electric Reliability Company (NERC).[2] EPSA and EEI state that because of the importance of the market issues addressed in the NAESB NOPR and the NERC NOPR and because these issues impact each other, additional time is needed to adequately address both NOPRs and to submit responsive comments.

Upon consideration, notice is hereby given that an extension of time for interested parties for filing comments on the NAESB NOPR is granted to and including May 26, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8054 Filed 4–8–09; 8:45 am]

BILLING CODE 6717–01–P

[1] Standards for Business Practices and Communication Protocols for Public Utilities, 126 FERC ¶ 61,248 (2009) (NAESB NOPR).

[2] Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk Power System, 126 FERC ¶ 61,249 (2009) (NERC NOPR).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 589

[Docket No. FDA–2002–N–0031] (formerly Docket No. 2002N–0273)

RIN 0910–AF46

Substances Prohibited From Use in Animal Food or Feed; Final Rule: Proposed Delay of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed delay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is seeking public comment on a contemplated delay of 60 days in the effective date of the rule entitled ''Substances Prohibited From Use in Animal Food or Feed,'' published in the **Federal Register** on

April 25, 2008 (73 FR 22720). That rule established measures to further strengthen existing safeguards against bovine spongiform encephalopathy (BSE). FDA has become aware that some affected persons, particularly those in the rendering industry, are experiencing difficulties modifying their operations to comply with the new requirements contained in the April 25, 2008 final rule and, therefore, may not be in full compliance by the April 27, 2009, effective date. Accordingly, the FDA is proposing this action to delay the effective date of the April 25, 2008, final rule for 60 days until June 26, 2009. FDA is providing 7 days for public comment solely on the question of whether to delay the effective date.

DATES: Comments must be received on or before April 16, 2009.

ADDRESSES: You may submit comments, identified by [Docket No. FDA–2002–N–0031], by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and docket number and Regulatory Information Number (RIN 0910–AF46) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Burt Pritchett, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6860, e-mail: *burt.pritchett@fda.hhs.gov*.

Dated: April 6, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–8127 Filed 4–6–09; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–150066–08]

RIN 1545–BI45

Guidance Regarding Foreign Base Company Sales Income; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed rulemaking relating to the foreign base company sales income, in cases in which personal property sold by a controlled foreign corporation (CFC) is manufactured, produced, or constructed pursuant to a contract manufacturing arrangement or by one or more branches of the CFC. The temporary regulations modify the foreign base company sales income regulations to address current business structures and practices, particularly the growing importance of contract manufacturing and other manufacturing arrangements. The temporary regulations, in general, will affect CFCs and their United States shareholders.

DATES: The public hearing, originally scheduled for April 20, 2009, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION: A notice of public hearing that appeared in the **Federal Register** on Monday, December 29, 2008 (73 FR 79421), announced that a public hearing was scheduled for April 20, 2009, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 954 of the Internal Revenue Code.

The public comment period for these regulations expired on March 30, 2009. Outlines of topics to be discussed at the hearing were due on April 2, 2009. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Monday, April 6, 2009, no one has requested to speak. Therefore, the public hearing scheduled for April 20, 2009, is cancelled.

LaNita Van Dyke,

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

[FR Doc. E9–8134 Filed 4–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 101, 104, 105 and 106

[Docket No. USCG–2007–28915]

RIN 1625–AB21

Transportation Worker Identification Credential (TWIC)—Reader Requirements

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Coast Guard announces a public meeting to receive comments on an advanced notice of proposed rulemaking (ANPRM) entitled Transportation Worker Identification Credential (TWIC)—Reader Requirements that was published in the **Federal Register** on March 27, 2009. As stated in that document, the ANPRM discusses the Coast Guard's preliminary thoughts on potential requirements for owners and operators of certain vessels and facilities regulated by the Coast Guard under 33 CFR chapter I, subchapter H, for use of electronic readers designed to work with TWICs as an access control measure.

DATES: A public meeting will be held on Wednesday, May 6, 2009. We expect the meeting will run from 9 a.m. to 5 p.m., to provide an opportunity for oral comments. Written comments and related material may also be submitted to Coast Guard personnel specified at that meeting. The comment period for the proposed rule closes May 26, 2009. All comments and related material submitted after the meeting must either be submitted to our online docket via

http://www.regulations.gov on or before May 26, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: The public meeting will be held in the Washington, DC area. The exact location will be announced in the **Federal Register** as soon as it is finalized.

You may submit written comments identified by docket number USCG–2007–28915 before or after the meeting using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. Our online docket for this rulemaking is available on the Internet at *http://www.regulations.gov* under docket number USCG–2007–28915.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting or the ANPRM, please call or e-mail LCDR Jonathan Maiorine, Coast Guard; telephone 1–877–687–2243, e-mail *Jonathan.H.Maiorine@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

We published an ANPRM in the **Federal Register** on March 27, 2009 (74 FR 13360), entitled ''Transportation Worker Identification Credential (TWIC)—Reader Requirements.'' In it we stated our intention to hold a public meeting, and to publish a notice announcing the location and date. 74 FR 13360, 13361. This document is the notice of the date for that meeting, as well as the location of the metropolitan area where it will be held. Further notice of the exact location will be published in the **Federal Register**. We are publishing this notice in order to aid those wishing to attend the public meeting in making any necessary travel arrangements.

In the ANPRM, we discuss the United States Coast Guard's preliminary thoughts on potential requirements for owners and operators of certain vessels and facilities regulated by the Coast Guard under 33 CFR chapter I, subchapter H, for use of electronic readers designed to work with TWICs as an access control measure. It discusses additional potential requirements associated with TWIC readers, such as recordkeeping requirements for those owners or operators required to use an electronic reader, and amendments to security plans previously approved by the Coast Guard to incorporate TWIC requirements.

This rulemaking action, once final, would enhance the security of ports and vessels by ensuring that only persons who hold valid TWICs are granted unescorted access to secure areas on vessels and port facilities. It would also complete the implementation of the Maritime Transportation Security Act of 2002 transportation security card requirement, as well as the requirements of the Security and Accountability for Every Port Act of 2006, for regulations on electronic readers for use with Transportation Worker Identification Credentials.

You may view the ANPRM in our online docket, and comments submitted thus far by going to *http://www.regulations.gov*. Once there, select the Advanced Docket Search option on the right side of the screen, insert USCG–2007–28915 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. 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.

We encourage you to participate in this rulemaking by submitting comments either orally at the meeting or in writing. If you bring written comments to the meeting, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be submitted to our online public docket. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LCDR Maiorine at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Meeting

The Coast Guard will hold a public meeting regarding its Transportation Worker Identification Credential (TWIC)—Reader Requirements ANPRM on Wednesday, May 6, 2009 from 9 a.m. until 5 p.m., in the Washington, DC area. We plan to have a transcript of the meeting available on our online docket soon after the public meeting.

Dated: April 6, 2009.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Chief, Ports and Facilities Activities.

[FR Doc. E9–8142 Filed 4–7–09; 11:15 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2009–0062, EPA–HQ–SFUND–2009–0063, EPA–HQ–SFUND–2009–0064, EPA–HQ–SFUND–2009–0065, EPA–HQ–SFUND–2009–0066, EPA–HQ–SFUND–2009–0067, EPA–HQ–SFUND–2009–0068, EPA–HQ–SFUND–2009–0069, EPA–HQ–SFUND–2009–0071, EPA–HQ–SFUND–2009–0072, EPA–HQ–SFUND–2009–0073, EPA–HQ–SFUND–2009–0074, EPA–HQ–SFUND–2009–0075; FRL–8790–2]

RIN 2050–AD75

National Priorities List, Proposed Rule No. 50

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List

(''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add 13 sites to the NPL, all to the General Superfund Section.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before June 8, 2009.

ADDRESSES: Identify the appropriate FDMS Docket Number from the table below.

Site name	City/state	FDMS docket ID No.
General Dynamics Longwood	Longwood, FL	EPA–HQ–SFUND–2009–0067.
Lane Street Ground Water Contamination	Elkhart, IN	EPA–HQ–SFUND–2009–0071.
Southwest Jefferson County Mining	Jefferson County, MO	EPA–HQ–SFUND–2009–0074.
Flat Creek IMM	Superior, MT	EPA–HQ–SFUND–2009–0075.
Ore Knob Mine	Ashe County, NC	EPA–HQ–SFUND–2009–0068.
GMH Electronics	Roxboro, NC	EPA–HQ–SFUND–2009–0069.
Raritan Bay Slag	Old Bridge Township/Sayreville, NJ	EPA–HQ–SFUND–2009–0062.
Gowanus Canal	Brooklyn, NY	EPA–HQ–SFUND–2009–0063.
Little Scioto River	Marion County, OH	EPA–HQ–SFUND–2009–0072.
Foster Wheeler Energy Corporation/Church Road TCE.	Mountain Top, PA	EPA–HQ–SFUND–2009–0065.
Papelera Puertorriquena, Inc	Utuado, PR	EPA–HQ–SFUND–2009–0064.
Peck Iron and Metal	Portsmouth, VA	EPA–HQ–SFUND–2009–0066.
Amcast Industrial Corporation	Cedarburg, WI	EPA–HQ–SFUND–2009–0073.

Submit your comments, identified by the appropriate FDMS Docket number, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: superfund.Docket@epa.gov.*
- *Mail:* Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5305T); 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery or Express Mail:* Send comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue, NW., EPA West, Room 3334, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays).

Instructions: Direct your comments to the appropriate FDMS Docket number (see table above). 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; that means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public Docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone (703) 603–8852, *jeng.terry@epa.gov*, Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mail Code 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
A. What Are CERCLA and SARA?
B. What Is the NCP?
C. What Is the National Priorities List (NPL)?
D. How Are Sites Listed on the NPL?
E. What Happens to Sites on the NPL?
F. Does the NPL Define the Boundaries of Sites?
G. How Are Sites Removed From the NPL?
H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?
I. What Is the Construction Completion List (CCL)?
J. What Is the Sitewide Ready for Anticipated Use Measure?
II. Public Review/Public Comment
A. May I Review the Documents Relevant to this Proposed Rule?
B. How Do I Access the Documents?
C. What Documents Are Available for Public Review at the Headquarters Docket?
D. What Documents Are Available for Public Review at the Regional Dockets?
E. How Do I Submit My Comments?
F. What Happens to My Comments?
G. What Should I Consider When Preparing My Comments?
H. May I Submit Comments After the Public Comment Period Is Over?
I. May I View Public Comments Submitted by Others?
J. May I Submit Comments Regarding Sites Not Currently Proposed to the NPL?
III. Contents of This Proposed Rule
A. Proposed Additions to the NPL
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
1. What Is Executive Order 12866?
2. Is This Proposed Rule Subject to Executive Order 12866 Review?
B. Paperwork Reduction Act
1. What Is the Paperwork Reduction Act?
2. Does the Paperwork Reduction Act Apply to This Proposed Rule?
C. Regulatory Flexibility Act
1. What Is the Regulatory Flexibility Act?

2. How Has EPA Complied With the Regulatory Flexibility Act?
D. Unfunded Mandates Reform Act
1. What Is the Unfunded Mandates Reform Act (UMRA)?
2. Does UMRA Apply to This Proposed Rule?
E. Executive Order 13132: Federalism
What Is Executive Order 13132 and Is It Applicable to This Proposed Rule?
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
1. What Is Executive Order 13175?
2. Does Executive Order 13175 Apply to This Proposed Rule?
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
1. What Is Executive Order 13045?
2. Does Executive Order 13045 Apply to This Proposed Rule?
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage
Is This Rule Subject to Executive Order 13211?
I. National Technology Transfer and Advancement Act
1. What Is the National Technology Transfer and Advancement Act?
2. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
1. What Is Executive Order 12898?
2. Does Executive Order 12898 Apply to This Proposed Rule?

I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq*.

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System (''HRS'') score and determining whether the facility is placed on the NPL. At Federal Facilities Section sites, EPA's role is less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to

as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL Define the Boundaries of Sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation (''RI'') ''is a process undertaken * * * to determine the nature and extent of the problem presented by the release'' as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study (''FS'') (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund.*

J. What Is the Sitewide Ready for Anticipated Use Measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority EPA places on considering anticipated future land use as part of our remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment, including current and future land users,

in a manner that allows contaminated properties to be restored to environmental and economic vitality while ensuring protectiveness for current and future land users. For further information, please go to *http://www.epa.gov/superfund/programs/recycle/tools/index.html*.

II. Public Review/Public Comment

A. May I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in public Dockets located both at EPA Headquarters in Washington, DC, in the Regional offices and by electronic access at *www.regulations.gov* (see instructions in the **ADDRESSES** section above).

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional Dockets after the publication of this proposed rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional Dockets for hours.

The following is the contact information for the EPA Headquarters Docket: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room 3334, Washington, DC 20004; 202/566–0276. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1417.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., 9th floor, Atlanta, GA 30303; 404/562–8862.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SMR–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SFTS, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Mailcode SUPRERNB, Kansas City, KS 66101; 913/551–7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6463.

Karen Jurist, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD–9–1, San Francisco, CA 94105; 415/972–3219.

Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mailcode ECL–112, Seattle, WA 98101; 206/463–1349.

You may also request copies from EPA Headquarters or the Regional Dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. Please note that due to the difficulty of reproducing oversized maps, oversized maps may only be viewed in-person, however EPA dockets are not equipped to either copy and mail out such maps or scan them and send them out electronically.

You may use the Docket at *www.regulations.gov* to access documents in the Headquarters Docket (see instructions included in the **ADDRESSES** section above). Please note that there are differences between the Headquarters Docket and the Regional Dockets and those differences are outlined below.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters Docket for this rule contains the following for the sites proposed in this rule: HRS score sheets; Documentation Records describing the information used to compute the score; information for any sites affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional Dockets for this rule contain all of the information in the Headquarters Docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional Dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the mailing addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments are typically addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. May I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

I. May I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters Docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional Dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper, will be made available for public viewing in the electronic public Docket

at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Once in the public Dockets system, select ''search,'' then key in the appropriate Docket ID number.

J. May I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the Docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

In today's proposed rule, EPA is proposing to add 13 sites to the NPL, all to the General Superfund section. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above. The sites are presented in the table below.

State	Site name	City/county
FL	General Dynamics Longwood	Longwood.
IN	Lane Street Ground Water Contamination	Elkhart.
MO	Southwest Jefferson County Mining	Jefferson County.
MT	Flat Creek IMM	Superior.
NC	Ore Knob Mine	Ashe County.
NC	GMH Electronics	Roxboro.
NJ	Raritan Bay Slag	Old Bridge Township/Sayreville.
NY	Gowanus Canal	Brooklyn.
OH	Little Scioto River	Marion County.
PA	Foster Wheeler Energy Corporation/Church Road TCE	Mountain Top.
PR	Papelera Puertorriquena, Inc.	Utuado.
VA	Peck Iron and Metal	Portsmouth.
WI	Amcast Industrial Corporation	Cedarburg.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What Is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The 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.

2. Is This Proposed Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act Apply to This Proposed Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

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 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory

Enforcement Fairness Act (SBREFA) of 1996) 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 (i.e., small businesses, small organizations, and small governmental 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 a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How Has EPA Complied With the Regulatory Flexibility Act?

This proposed rule listing sites on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule where 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 final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small-government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA Apply to This Proposed Rule?

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Proposing a site on the NPL does not itself impose any costs. Proposal does not mean that EPA necessarily will undertake remedial action. Nor does proposal require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of proposing a site to be placed on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site proposal does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

What Is Executive Order 13132 and Is It Applicable to This Proposed Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed 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 the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

1. What Is Executive Order 13175?

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

2. Does Executive Order 13175 Apply to This Proposed Rule?

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Proposing a site to the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this proposed rule.

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

1. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

2. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

Is This Rule Subject to Executive Order 13211?

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy impacts because proposing a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution, or usage. Thus, Executive Order 13175 does not apply to this action.

I. National Technology Transfer and Advancement Act

1. What Is the 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 note), 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 standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

1. What Is Executive Order 12898?

Executive Order (EO) 12898 (59 FR 7629 (Feb. 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.

2. Does Executive Order 12898 Apply to This Rule?

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon State, tribal or local governments, this rule will neither increase nor decrease environmental protection.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: April 1, 2009.

Barry N. Breen,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. E9–7824 Filed 4–7–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R8-ES-2008-0045; MO 922105 0083-B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the San Francisco Bay-Delta Population of the Longfin Smelt (*Spirinchus thaleichthys*) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12–month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12–month finding on a petition to list the San Francisco Bay-Delta population of the longfin smelt (*Spirinchus thaleichthys*) as endangered with critical habitat under the Endangered Species Act of 1973, as amended (Act). After a thorough review of all available scientific and commercial information, we find that the San Francisco Bay-Delta population of the longfin smelt does not meet our definition of a distinct population segment (DPS), as identified in our DPS policy (61 FR 4721, February 7, 1996). As a result, listing the species as a DPS is not warranted. However, we are initiating a status assessment of the longfin smelt, and we solicit information on the status of the species range wide.

DATES: The finding announced in the document was made on April 9, 2009.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* and *http://*

www.fws.gov/sacramento. Supporting documentation we used in preparing this finding are available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, CA 95825; telephone 916-414-6600; or facsimile 916-414-6712. Please submit any new information, materials, comments, or questions concerning this finding to the above street address or fax.

FOR FURTHER INFORMATION CONTACT: For information on this finding, contact Susan Moore, Field Supervisor, or Arnold Roessler, Listing Program Coordinator, of the Sacramento Fish and Wildlife Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition containing substantial scientific and commercial information indicating that listing may be warranted, we make a finding within 12 months of the date of our receipt of the petition on whether the petitioned action is: (a) not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants. Such 12–month findings are to be published promptly in the **Federal Register**. This finding is based on our determination, based on the limited evidence available, that the San Francisco Bay-Delta population of longfin smelt is not a valid distinct population segment (DPS) under our Distinct Population Segment Policy (61 FR 4721, February 7, 1996), and, therefore, cannot be considered a listable entity under section 3(16) of the Act.

Previous Federal Actions

On August 8, 2007, we received a petition from the Bay Institute, the Center for Biological Diversity, and the Natural Resources Defense Council to list the San Francisco Bay-Delta population of the longfin smelt as a distinct population segment (DPS) and designate critical habitat for the species concurrent with the listing. The petition was clearly identified as a petition for a listing rule and contained the names, signatures, and addresses of the requesting parties. On May 6, 2008, we published a 90–day finding (73 FR 24911) in which we concluded that the petition provided substantial information indicating that listing San Francisco Bay-Delta Population of the longfin smelt as a DPS may be warranted, and we initiated a status review. However, in that notice, we did not make a final determination that the San Francisco Bay-Delta Population of the longfin smelt was a DPS; we only stated that the petition presented substantial information indicating that listing as a DPS may be warranted and that we would finalize our determination in our status review. This notice constitutes the 12–month finding on the August 8, 2007, petition to list the San Francisco Bay-Delta population of the longfin smelt as a DPS and designate critical habitat for the species concurrent with the listing.

Species Description

The following species description is taken from U.S. Fish and Wildlife Service 1995, p. 47, except where cited otherwise. Longfin smelt is a pelagic (lives in open water), estuarine fish that typically measures 3.5 to 4.3 inches (in) (90-110 millimeters (mm)) standard length, although third-year females may grow up to 5.9 in (150 mm) (Moyle 2002, p. 236). The sides and lining of the gut cavity appear translucent silver, the back has an olive to iridescent pinkish hue, and mature males are usually darker in color than females. Longfin smelt can be distinguished from other smelts in California by their long pectoral fins, incomplete lateral line, weak or absent striations on their opercular (covering the gills) bones, low numbers of scales in the lateral series (54 to 65), and long maxillary bones (in adults, these bones extend just short of the posterior margin of the eye).

Taxonomy

The longfin smelt belongs to the true smelt family Osmeridae, and is one of three species in its genus; the night smelt (*Spirinchus starksi*) co-occurs in California and the shishamo (*S. lanceolatus*) occurs in northern Japan (McAllister 1963, pp. 10 and 15). Because of its distinctive characteristics, the San Francisco Bay-Delta population of longfin smelt was once described as a species separate from more northern populations (Moyle 2002, p. 235). McAllister (1963, p. 12) merged the two species, *S. thaleichthys* and *S. dilatus,* because the difference in morphological characters represented a north-south cline rather than a discrete set; a subsequent study using electrophoresis of allozymes (proteins used as genetic markers because DNA contains information that is used by cells to build proteins) showed that populations from Lake Washington near Seattle, Washington, and the Sacramento-San Joaquin Delta in California are similar genetically (Stanley *et al.* 1995, p. 390). The study did, however, find that the Sacramento-San Joaquin Delta population of longfin smelt differs in allele (alternative form of a gene) frequencies from the population in Lake Washington (Stanley *et al.* 1995, p. 390). Delta smelt and longfin smelt hybrids have been observed in the San Francisco Bay-Delta estuary, although these offspring are not thought to be fertile because delta smelt and longfin smelt are not closely related taxonomically or genetically (California Department of Fish and Game (CDFG) 2001, p. 473).

Biology

The longfin smelt is a euryhaline (tolerant of variable salinities) pelagic fish that inhabits various depths of the water column depending on the individual's life stage. Longfin smelt have been found throughout the year in fresh and brackish waters with salinities ranging from 14 to 28 parts per thousand (ppt) (CDFG 2001, p. 477). Adults can typically be found in the middle or lower part of the water column (Moyle 2002, p. 236), while larvae maintain position in the upper part of the water column, where they are usually found. Longfin smelt reportedly cannot tolerate water temperatures greater than 68 degrees Fahrenheit (°F) (20 degrees Celsius (°C)) (Moyle 2002, p. 236), and will move farther downstream (west) during the summer months when water temperatures in the Delta are higher. Adult longfin smelt occupy water at temperatures from 61 to 68 °F (16 to 20 °C), with spawning probably occurring in water with temperatures between 44.5 to 58 °F (7.0 to 14.5 °C) (Wang 1986, pp. 6-9).

Longfin smelt prey primarily on opossum shrimp (*Neomysis mercedis*) and other small crustaceans (*Acanthomysis* sp.), although copepods such as the calanoid copepod (*Pseudodiatomus forbesi*) and cyclopoid copepod (*Acanthocyclops vernalis*) (Hobbs *et al.* 2006, p. 907) and other crustaceans are also preyed upon, especially by smaller fish (Moyle 2002, p. 236). Longfin smelt are preyed upon by fishes, birds, and mammals (Barnhart *et al.* 1992, p. 44) and are a major prey item of harbor seals (*Phoca vitulina*) in the Columbia River (Service 1995, p. 51). Predation of longfin smelt in the San Francisco Bay Estuary is known to occur by both striped bass (*Morone*

saxatilis) and inland silversides (*Menidia beryllina*), but the effects of predation on the population are not well understood (Moyle 2002, p. 238). In the ocean, longfin smelt feed primarily on small crustaceans, but may also feed on jellyfish and larval fish (Barnhart *et al.* 1992, p. 44).

Reproduction

Longfin smelt may spawn as early as November and as late as June, although typically spawning occurs from February to April (Moyle 2002, p. 236). However, longfin smelt at various life stages are detected in the San Francisco Bay estuary trawl surveys in numerous months of the year (Rosenfield and Baxter 2007, p. 1578), suggesting that the spawning period may not be restricted to November to June or that growth and development between individuals varies. Spawning occurs in areas of relatively low salinity, which are considered essential nursery habitat for estuarine organisms (Jassby *et al.* 1995, p. 284). Spawning usually occurs over rocky or gravelly substrates and aquatic plants (Moyle 2002, p. 236). Female longfin smelt produce between 5,000 to 24,000 eggs which stick to the substrate, and hatch within 40 days depending on the water temperature (CDFG 2001, p. 477). Newly hatched embryos are transported in the upper portion of the water column downstream (west) into more brackish parts of the San Francisco Bay-Delta system (Moyle 2002, p. 236). Longfin smelt usually live for 2 years, although some individuals may spawn as 1- or 3–year-old fish (Moyle 2002, p. 236), and die soon after spawning.

Range and Extant Distribution

The historical and current range of the longfin smelt is from Alaska southward to the San Francisco Bay-Delta in California, which includes the Delta, Suisun Marsh, San Pablo Bay, and the San Francisco Bay to the Golden Gate. One fish was found in the Monterey Bay (south of the San Francisco Bay-Delta) in California (Eschmeyer 1983, p. 82; Wang 1986, pp. 6-10). In Alaska, longfin smelt are known from Hinchinbrook Island, Prince William Sound, Dixon Entrance, Yakutat Bay, and Cook Inlet (Alaska Natural Heritage Program (ANHP) 2006, p. 3). In Washington, the range includes Willapa Bay, Skagit Bay, Columbia River, Grays Harbor, and Puget Sound; in Oregon, the range includes Coos Bay and Yaquina Bay (ANHP 2006, p. 3). Relative to longfin smelt in the San Francisco Bay-Delta, the nearest confirmed breeding population of longfin smelt occurs in the Columbia River, approximately 640 miles (mi) (1,029 kilometers (km)) north of the San Francisco Bay-Delta (Randall Baxter, CDFG, pers. comm. 2008). In California, longfin smelt are known from (north to south) the Klamath River, Humboldt Bay and its tributaries, the Eel River, the Van Duzen River, the Russian River, and the San Francisco Bay-Delta (Moyle 2002, p. 235). The species was previously described as ''weakly anadromous'' (Fry 1973, p. 88); however, new research has found that at least part of the San Francisco Bay-Delta population is anadromous (living mostly in the ocean and spawning in fresh water) (Rosenfield and Baxter 2007, p. 1590). Non-anadromous land-locked populations occur in Lakes Harrison and Pit in British Columbia, and Lakes Washington and Union in Washington (Page and Burr 1991, p. 57).

Longfin smelt are dispersed broadly in the San Francisco Bay-Delta estuary by high outflows and currents, which could transport larvae or small juveniles long distances before they mature and become demersal (living near the bottom of the water column) (Baxter 2008, p. 1). Unverified reports exist of longfin smelt being captured 3 to 4 mi (5 to 6 km) offshore in northern California (Service 1994, p. 3), but the ecology and behavior of longfin smelt in the open ocean remains largely unstudied. We are unaware of any studies assessing the swimming abilities of longfin smelt, but they may be comparable to juvenile salmon with the capability of swimming back into estuaries from the ocean (Moyle 2008, p. 1). We believe it is likely that individuals from the San Francisco Bay-Delta estuary population could be transported via ocean currents, north to the Russian River, Eel River/Humboldt Bay, and Klamath River estuaries, particularly during high outflow years, which are associated with northward ocean currents in the winter. It is also likely that individuals from northern estuaries may be transported to the San Francisco Bay-Delta estuary via southward (summer) currents, although the main southern current (the California current) is farther offshore than the northern current (the Davidson current). Humboldt Bay and the Klamath River are more than 260 mi (418 km) and 320 mi (515 km) away by sea, respectively, from the San Francisco Bay. It is impossible to reliably approximate how many individuals as a proportion of the population may be transported by currents or swim between the San Francisco Bay-Delta and the other estuaries.

Distinct Population Segment

We consider a species for listing under the Act if available information indicates such an action might be warranted. ''Species'' is defined in section 3 of the Act to include any subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). We, along with the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration–Fisheries (NOAA – Fisheries)), developed the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS Policy) (February 7, 1996; 61 FR 4721) to help us in determining what constitutes a DPS. Under our DPS policy, we consider three elements in a decision regarding the status of a possible DPS as endangered or threatened under the Act. These elements include: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing. If we determine that a population segment meets the discreteness and significance standards, then the level of threat to that population segment is evaluated based on the five listing factors established by the Act to determine whether listing the DPS as either threatened or endangered is warranted.

Discreteness

The DPS policy states that a population may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Significance

Under our DPS Policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. This consideration may include, but is not limited to: (1) Persistence of the discrete

population segment in an ecological setting that is unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

If a population is considered both discrete and significant (i.e., it is a distinct population segment) its evaluation for endangered or threatened status will be based on the Act's definitions of those terms and a five-factor analysis will be completed.

Distinct Population Segment Analysis

Discreteness

The petitioners claim the San Francisco Bay-Delta population of longfin smelt is discrete because there is no evidence that large numbers of longfin smelt migrate between populations within their range in the eastern Pacific or along the California coast. Additionally, they cite survey data indicating longfin smelt populations within several hundred miles of the San Francisco Bay-Delta are small and possibly declining, which leads the petitioners to conclude that it is unlikely that longfin smelt in the San Francisco Bay-Delta are supplemented by immigration from other areas. Additionally, the petitioners cite Moyle (2002, p. 235) who concluded the longfin smelt in the San Francisco Bay-Delta are reproductively isolated from other population units.

The range of the longfin smelt extends from Prince William Sound in Alaska, south to the San Francisco Bay-Delta. In California, longfin smelt have been found in the lower reaches and estuaries of the Klamath, Eel, Van Duzen (a tributary to the Eel River), and Russian Rivers, but populations in these areas are currently considered relatively small. We are unaware of historical numbers in these areas. Longfin smelt were historically abundant in Humboldt Bay, but this population is in decline (The Bay Institute *et al.* 2007, p. 1). The San Francisco Bay-Delta population is the southernmost self-sustaining population of longfin smelt (The Bay Institute *et al.* 2007, p. ii). One individual was found in Monterey Bay (Moyle 2002, p. 236), but a self-sustaining population is not considered present there. See Range and Extant Distribution for more information.

Geographical Isolation

The petitioners assert that the San Francisco Bay-Delta population is geographically isolated from all other populations, that there is no evidence of large numbers of longfin smelt migrating between populations, and that it is highly unlikely that the San Francisco Bay-Delta population is supplemented by populations from other areas. The petitioners requested the Service list the San Francisco Bay-Delta population of the longfin smelt as a DPS. We note that standard set forth in the DPS policy is that a DPS be ''markedly separated'' from other populations—thus, while absolute separation is not required, neither are ''large numbers'' of individuals migrating between populations.

Although the range of longfin smelt extends into Canada, the San Francisco Bay-Delta population is not separated from all other populations by an international border. Therefore, the San Francisco Bay-Delta population cannot be discrete due to be delimiting by an international border.

We are unaware of any targeted sampling efforts for longfin smelt, so the information we have about their distribution and numbers and our conclusions outlined below have been gleaned from past and ongoing sampling efforts that target other aquatic organisms. The following outlines the survey efforts and detections of longfin smelt in California north of San Francisco Bay as a result of these non-target sampling efforts.

In the Klamath River, longfin smelt were found in low numbers in the early 1990s using electrofishing techniques from river mile 2 to river mile 4 (river km 3.2 to 6.4). The Klamath River is located approximately 320 mi (515 km) by sea north of the San Francisco Bay-Delta. Additional sampling by the Yurok Tribe in the Klamath River in recent years did not identify any longfin smelt; however, this sampling targeted salmonids and, as a result, any osmerids that may have been inadvertently captured were not documented (Gale 2008, p. 1). Also, because standard sampling methods for salmonids are likely highly inefficient for collecting longfin smelt, their presence or absence in the Klamath River cannot be determined based on the Yurok Tribe sampling data.

In Humboldt Bay in Humboldt County, California, longfin smelt population numbers have likely always been small (Moyle 2002, p. 237). Humboldt Bay is located approximately 260 mi (418 km) by sea north of the San Francisco Bay-Delta. A total of 12 longfin smelt were caught in north Humboldt Bay during surveys using a variety of gear types from 2003 to 2005 (Pinnix *et al.* 2005, p. 11), and one adult was netted in Freshwater Creek (a tributary to Humboldt Bay) in February 2008 (Justin Garwood 2008, p. 1). Eleven longfin smelt were found at a total of four sites in Humboldt Bay between 2000 to 2001 (Cole 2004, p. 20). Survey efforts conducted by California State University at Humboldt caught only about half a dozen longfin smelt in Humboldt Bay in the past 10 years of non-target sampling using both trawls and beach seines (Mulligan 2008, p. 1). In addition, non-target sampling around a dredge disposal site about 2 mi (3.2 km) offshore from Humboldt Bay yields an average of a few dozen longfin smelt every year (Mulligan 2008, p. 1).

The Humboldt Bay tributaries of Hookton Slough, Salmon Creek, and Elk River Slough were sampled from 2005 to 2006, and Freshwater/Eureka Slough and its tributaries were sampled from 2003 to 2006. Longfin smelt were found in very low numbers during these years in all of these tributaries (Mike Wallace, 2008, p. 1). Spawning longfin smelt have been recorded in the Van Duzen River and in the Eel River drainage in Humboldt County (Moyle 2002, p. 235), but the current status of longfin smelt and sampling efforts in these rivers is unknown. Humboldt Bay and the Klamath River estuaries may also support small but self-sustaining populations of longfin smelt. Pre-spawn and spent (post-spawn) adults have been detected in the Klamath River estuary as recently as 2001, and adult and juvenile longfin smelt have been detected in recent years in Humboldt Bay, suggesting spawning and recruitment may be occurring in these estuaries (Baxter 2008, p. 1).

In the Russian River in Sonoma County, California (from the river mouth to approximately 10 mi (16 km) upriver), low numbers of longfin smelt were caught using otter trawls from 1997 to 2000 (Sonoma County Water Agency (SCWA) 1999, Appendices B-4 and B-8; SCWA 2000, Appendices B-8, B-10, B-11, and B-12; SCWA 2001, pp. 18-19). The Russian River estuary is approximately 75 mi (120 km) by sea north of the San Francisco Bay-Delta. No longfin smelt were caught in the Russian River using beach seines between 2003 and 2007 (SCWA 2004, p. 7; SCWA 2005, pp. 7-8; SCWA 2006, pp. 10-11; Cook 2008, p. 1). However, it is likely that beach seining is an ineffective method for determining presence or absence of longfin smelt,

because it does not sample the depths (typically 15 to 22 feet (ft) (4 to 7 meters (m)) or the middle of the river channel where longfin smelt were previously found in the Russian River using otter trawls.

One individual longfin smelt was found in Abbotts Lagoon at Point Reyes National Seashore in 1999 (Saiki and Martin 2001, p. 128), and near-shore midwater trawl surveys conducted by the NOAA – Fisheries in the spring for juvenile rockfish also detected longfin smelt and other smelt not identified to species at several locations from Cyprus Point near Monterey Bay to Point Reyes near Bodega Bay in 1984, 1994, and 2001 (Baltz, 2008, pp. 1-32). Although sampling continues, smelts caught have not been identified to species since 2001, and many of the stations where longfin smelt were identified in the 1980s and 1990s near the Gulf of the Farallones have not been sampled since 1996 (Sakuma, 2008, p. 1).

The City of San Francisco detected longfin smelt a few miles offshore in the Pacific Ocean in 1983 and 1984, suggesting that individuals from the San Francisco estuary disperse beyond the Golden Gate Bridge (City of San Francisco 1985, pp. 5-8; Rosenfield and Baxter 2007, p. 1590). Additional surveys conducted between 1987 and 2007 were not examined for pelagic fish species, so it is possible that longfin smelt were captured but not identified during these surveys (Kellogg 2008, p. 1).

Summary of Geographic Isolation

Although no physical barriers exist between the San Francisco Bay-Delta and estuarine habitat to the north, the distance that longfin smelt are able to travel out into the open ocean or northward along the coast to reach these areas is unknown. The 1995 Sacramento/San Joaquin Delta Native Fishes Recovery Plan (Service 1995, pp. 47-65) states that the San Francisco estuary population ''is isolated from other populations.'' However, as described above in the Range and Extant Distribution section, it is likely that longfin smelt are moving or being transported via currents between the San Francisco Bay-Delta estuary and other estuaries to the north. A recent review of the abundance and distribution of longfin smelt within the San Francisco Bay-Delta concluded that at least a portion of the longfin smelt population within the San Francisco Bay-Delta is anadromous and routinely disperses outside the San Francisco Bay-Delta estuary and into the Pacific Ocean (Rosenfield and Baxter 2007, p. 1590). Although we know of no studies assessing swimming ability of longfin smelt, it may be comparable to juvenile salmon, which have the capability to swim back into estuaries from the ocean (Moyle 2008, p. 1). Based on the recent information that a portion of the San Francisco Bay-Delta population of longfin smelt are anadromous and able to swim into and out of the San Francisco Bay-Delta, it is likely that individuals have the ability to swim into and out of ocean currents and into and between estuaries, including estuaries outside of the San Francisco Bay-Delta estuary. In addition, other individuals may be transported by other mechanisms, such as high outflows and ocean currents (see Range and Extant Distribution section). The distance that longfin smelt could swim or be transported from the San Francisco Bay-Delta is unknown. It is possible that the San Francisco Bay-Delta population is supplementing smaller nearby estuaries (such as the Russian River); therefore, Moyle's (2002, p. 235) conclusion that longfin smelt in the San Francisco Bay-Delta being reproductively isolated is questionable. Additionally, it is possible that other self-sustaining estuaries (such as Humboldt Bay, Coos Bay, Columbia River) may be supplementing smaller estuaries in their vicinities. Therefore, we have determined the San Francisco Bay-Delta population of longfin smelt is not geographically isolated from other longfin smelt populations.

Genetic Separation

The petitioner states that the San Francisco Bay-Delta population of longfin smelt differs genetically from a population in Lake Washington in Washington State (Stanley *et al.* 1995, pp. 390-396). The petitioners conclude from the single study that the San Francisco Bay-Delta population differs markedly from other populations genetically and that additional genetic analysis will confirm that the San Francisco Bay-Delta population represents an evolutionarily independent lineage of this species and qualifies as a DPS.

Only one genetic study has addressed longfin smelt. Stanley *et al.* (1995, pp. 390-396) used electrophoresis of allozymes to examine genetic variation within and between two populations of longfin smelt. Allozymes are proteins used as genetic markers and have been used to assess genetic variation for many years. Allozyme studies have the advantage of being relatively inexpensive and straightforward, once the basic technique is developed for a group. However, drawbacks of using electrophoretic allozyme studies include the limited number of proteins that can be screened (Parker *et al.* 1998, pp. 362-363) and the fact that they often detect little variability (Haig 1998, p. 419). It is not uncommon for population biologists to encounter species for which allozymes cannot be used as genetic markers because they lack variation (Parker *et al.* 1998, pp. 362-363).

Stanley *et al.* (1995, p. 395) found the San Francisco Bay-Delta population and Lake Washington populations of longfin smelt were significantly different in allele frequencies at several loci (gene locations). However, the authors also stated the overall genetic dissimilarity was within the range of other conspecific fish species (Stanley *et al.* 1995, p. 395) and concluded their research indicates longfin smelt from Lake Washington and the San Francisco Bay-Delta are conspecific (of the same species) despite the large geographic separation. We believe that this study is not well suited to address whether the San Francisco Bay-Delta longfin smelt population is markedly separated from other populations of longfin smelt (the criterion of the DPS policy) because only two locations were sampled. These two locations are ecologically different from one another and widely separated geographically. The life history and ecology of the landlocked Lake Washington longfin smelt population is different than other estuary populations, and may have been geographically separated for many years from other populations with access to the open ocean. A more appropriate comparison would have been to analyze longfin smelt from a series of locations with access to the open ocean (e.g., Columbia River to Humboldt Bay) to assess the potential of genetic relatedness of longfin smelt from the San Francisco Bay-Delta and other populations. While the study indicates that Lake Washington and San Francisco Bay-Delta longfin smelt differ significantly at some allozyme loci, it does not evaluate the genetic relationship between these populations and intervening populations along the Pacific coast.

Furthermore, at the time of their study, the authors believed the longfin smelt in Humboldt Bay to be rare or extinct but did acknowledge the existence of longfin smelt from the Klamath River, approximately 124 mi (200 km) north of Humboldt Bay. Stanley *et al.* (1995, p. 395) surmised that if the Humboldt Bay population was extinct, then genetic exchange between the Delta and Klamath River would be extremely unlikely. This line of reasoning appears to imply geographic isolation. However, based on more recent occurrence information, as

we have outlined above, longfin smelt are found in estuaries north of the San Francisco Bay-Delta, including the Russian River, Humboldt Bay, and the Klamath River. Also taking into account recent confirmation that a portion of the San Francisco Bay-Delta population of longfin smelt is fully anadromous and able to swim into and out of the San Francisco Bay-Delta, and that it is likely that individuals have the ability to swim into and out of ocean currents and into and between estuaries, including estuaries outside of the San Francisco Bay-Delta estuary, we believe the potential for genetic interchange exists.

As mentioned above, research to evaluate any genetic differences between the San Francisco Bay-Delta longfin smelt and other coastal longfin smelt populations has not yet been completed. There is also no indication that longfin smelt differ morphologically between the San Francisco Bay-Delta population and other populations. Researchers from University of California at Davis have undertaken a study using more modern molecular techniques, which examines DNA directly rather than looking at the product derived from DNA (i.e., proteins) to determine genetic variability within and among populations in Northern California, Oregon, and Washington (May 2008, p. 1). Additional study should provide more information on the distribution of genetic variation within the species and determine if longfin smelt from different locations are intermixing. We believe that while this additional study is needed, at this time we can not conclude that San Francisco Bay-Delta longfin smelt differ markedly from other populations in its genetic characteristics. Therefore, we have determined that, based on the best scientific and commercial information available, the San Francisco Bay-Delta population is not genetically distinct from other populations of longfin smelt.

Determination of Discreteness

Our DPS policy requires that when determining whether a population meets the definition of being a DPS, we must first consider discreteness of the population segment in relation to the remainder of the species to which it belongs. The population must be markedly separated from other population of the taxon as a consequence of physical, physiological, ecological, behavioral, genetic or morphological factors or as a result of international boundaries where significant differences in exploitation, management, conservation status, or regulatory mechanisms exist. If a population is considered discrete then we would consider the biological and ecological significance of the population. To be considered a DPS under our policy, the population must meet both the discreteness and significance aspects of the policy.

We have determined that, based on the best scientific and commercial information available, the San Francisco Bay-Delta population of the longfin smelt is not markedly separated from the other populations of longfin smelt. The only available data to address the markedly separate standard for longfin smelt relate to geographic isolation and genetic uniqueness, and we do not find that these data indicate longfin smelt from the San Francisco Bay-Delta are markedly separated from other longfin smelt found elsewhere. Recent studies indicate that at least part of the San Francisco Bay-Delta population is anadromous and able to swim into and out of estuaries. Individuals may also be carried by currents from the San Francisco Bay-Delta to other estuaries outside the San Francisco Bay-Delta which leads us to the conclusion that longfin smelt may be able to disperse between populations. Although it is impossible without further study to reliably approximate how many individuals are being transported or swimming between the San Francisco Bay-Delta and the other estuaries, ''large numbers'' of migrating individuals are not required to rule out populations being markedly separated. Nor is absolute isolation required for populations to be markedly separated. On balance, the limited data available do not suggest that the San Francisco Bay-Delta population of the longfin smelt is markedly separate from populations outside the San Francisco Bay-Delta. In addition, the only genetic study conducted to date examined only Lake Washington and San Francisco Bay-Delta longfin smelt, a sampling scheme too limited to reasonably address whether longfin smelt in the San Francisco Bay-Delta differ genetically from other locations along the Pacific coast. Therefore, we have determined that the San Francisco Bay-Delta population of longfin smelt is not discrete as defined under our DPS policy.

Significance

Since the San Francisco Bay-Delta population of longfin smelt is not discrete as defined under our DPS policy, we do not need to evaluate the significance of the population to the species as a whole.

Finding

We have carefully assessed the best scientific and commercial information available regarding whether the San Francisco Bay-Delta population of the longfin smelt is a distinct population segment. We have reviewed the petition, information available in our files, and all information submitted to us following our 90–day petition finding (73 FR 24911, May 6, 2008). We also consulted with recognized smelt experts, including State and Federal agency biologists, academics, and individuals involved in sampling and surveying efforts for the longfin smelt.

We find the San Francisco Bay-Delta population of the longfin smelt does not meet the discreteness criterion of our DPS policy (and therefore we did not undertake a significance review) and therefore is not a valid DPS. As a result, the San Francisco Bay-Delta population of the longfin smelt is not a listable entity under the Act and we will not complete a 5-factor analysis of the San Francisco Bay-Delta population of the longfin smelt in response to the August 8, 2007, petition. This finding is based on information obtained on the potential for dispersal via ocean currents, and on information that a portion of the longfin smelt within the San Francisco Bay-Delta regularly disperse out to the Pacific Ocean and are fully anadromous. Once individuals emigrate from the San Francisco Bay Estuary they are likely transported by ocean currents and able to occupy estuaries outside of the San Francisco Bay-Delta for an undetermined amount of time.

However, given the demonstrated anadromy of the San Francisco Bay Estuary population of longfin smelt and its potential for dispersal, we are initiating a range wide status assessment of the longfin smelt and are seeking information regarding: taxonomy, genetics, distribution, habitat selection, population density and trends, habitat trends, effects of management, dispersal and migratory capabilities or patterns of dispersal, and potential threats to the longfin smelt throughout its range in Alaska, Canada, Washington, Oregon, and California. Upon completion of this review, we will also evaluate whether the best available scientific information suggests that the San Francisco Bay-Delta population of the longfin smelt may be considered to occupy a significant portion of the range (SPR), and institute appropriate action. We encourage interested parties to continue to gather data that will assist in determining the status of the longfin smelt. New information should be

submitted to the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES**).

References Cited

A complete list of all references cited in this proposal is available upon request. You may request a list of all references cited in this document from the Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary authors of this notice are staff members of the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Sacramento, CA 95825.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 31, 2009.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–8087 Filed 4–8–09; 8:45 am]

BILLING CODE 4310-55-S

Notices

Federal Register

Vol. 74, No. 67

Thursday, April 9, 2009

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 6, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

National Agricultural Statistics Service

Title: Stocks Reports.

OMB Control Number: 0535–0007.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production. As part of this function, estimates are made for stocks of grain and including rice, oilseeds, potatoes, peanuts, hops, and dry beans. Grain and oilseed stocks in all positions are estimated quarterly. Grain stock estimates are one of the most important NASS estimates, which are watched closely by growers and industry groups. General authority for data collection is granted under U.S. Code Title 7, Section 2204. The Hop Growers of America provides the data collection for much of the production information because of sensitivity issues an impartial third party, NASS, collects stocks and price information.

Need and Use of the Information: NASS collects information to administer farm program legislation and make decisions relative to the export-import programs. Estimates of stocks provide essential statistics on supplies and contribute to orderly marketing. Farmers and agribusiness firms use these estimates in their production and marketing decisions. Collecting this information less frequently would eliminate data needed by government, industry and farmers to keep abreast of changes at the State and national level.

Description of Respondents: Business or other for profit; farms.

Number of Respondents: 12,400.

Frequency of Responses: Reporting: Monthly; quarterly; semi-annually; annually.

Total Burden Hours: 10,267.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–8104 Filed 4–8–09; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2009–0003]

Draft FSIS Comparative Risk Assessment for Listeria Monocytogenes in Ready-To-Eat Meat and Poultry Deli Meats

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of request for comment.

SUMMARY: The Food Safety and Inspection Service (FSIS) is requesting public comment on a draft quantitative food safety risk assessment for *Listeria monocytogenes* (*L. monocytogenes*) that compares the risk of listeriosis from consumption of prepackaged ready-to-eat (RTE) deli meat versus RTE deli meat that is sliced and packaged at retail. The risk assessment analyzes the comparative risk of listeriosis from prepackaged RTE deli meat versus RTE deli meat that is sliced and packaged at retail using data from a study by the National Alliance for Food Safety and Security (NAFSS) and new consumer survey data from Research Triangle Institute (RTI) International, Tennessee State University, and Kansas State University.

DATES: Submit written comments by June 8, 2009.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov*. Follow the online instructions at that site for submitting comments.
- *Mail, Including Floppy Disks or CD–ROMs, and Hand- or Courier-Delivered Items:* Send to Docket Clerk, U.S. Department of Agriculture, FSIS, 1400 Independence Avenue, SW., Room 2534, South Agriculture Building, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2009–0003. Comments received in response to this docket will be made available for public inspection and posted without change, including any

personal information, to *http://www.regulations.gov*.

For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dare Akingbade, Office of Public Health Science, FSIS, 1400 Independence Avenue, SW., Aerospace Center, Washington, DC. 20250–3700; *Telephone:* (202) 690–6462; *Fax:* (202) 690–6337; *Electronic mail: dare.akingbade@fsis.usda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

L. monocytogenes is estimated to cause approximately 2,500 illnesses, 2,300 hospitalizations, and 500 deaths each year in the United States (Mead *et al.*, 1999). *L. monocytogenes* is ubiquitous in nature. It is commonly found in the intestines of animals and humans without causing illness. It can survive for long periods of time in soil, leaf litter, sewage, silage dust, vegetation, and water. The organism has been found in many domestic and wild animals, fish, birds, insects, and snails. *L. monocytogenes* has been isolated from a variety of products, including raw milk, cheese made from unpasteurized milk, soft cheese, meat and poultry and their products, cole slaw, and cabbage. *L. monocytogenes* is found in the food-processing environment and can form biofilms on solid surfaces in food processing plants. *L. monocytogenes* can also survive adverse conditions on apparently smooth surfaces (*http://www.fsis.usda.gov/Frame/FrameRedirect.asp?main=http://www.fsis.usda.gov/oa/topics/lmguide.htm*).

Consumption of food contaminated with *L. monocytogenes* can cause listeriosis, a disease that results in high fever, severe headache, neck stiffness, and nausea. Listeriosis can also cause miscarriages and stillbirths, as well as fatal infections in those with weakened immune systems, such as infants, the elderly, and persons with HIV infection or undergoing chemotherapy (*http://www.fsis.usda.gov/News_&_Events/Recall_051_2008_Release/index.asp*).

To better understand the sources of foodborne *L. monocytogenes* infection, the Food and Drug Administration (FDA) and FSIS developed a quantitative risk assessment that compared the risk of listeriosis among 23 categories of RTE foods. The results of the risk assessment, completed in 2003, indicated deli meats pose the greatest risk for listeriosis, accounting for approximately 1,600 illnesses per year (*http://www.foodsafety.gov/~dms/lmr2-toc.html*).

Because of these findings, FDA and FSIS conducted a preliminary analysis using the deli meat model component of the 2003 FDA and FSIS *Listeria monocytogenes* risk assessment. This analysis estimated the relative risk of illness from *Listeria monocytogenes* on deli meat sliced and packaged at Federally inspected processing establishments compared to deli meat sliced at retail facilities. The results of the preliminary analysis indicated that approximately 80% of listeriosis cases related to deli meats were associated with those sliced at retail. However, because these results were based on a retail survey not specifically designed to collect contamination data on deli meats (Gombas *et al.* 2003), FSIS sought to gather targeted contamination data for prepackaged and retail-sliced deli meats to further examine the relative risk of listeriosis.

In the risk assessment released today—the Comparative Risk Assessment for *Listeria monocytogenes* in Ready-To-Eat Meat and Poultry Deli Meats—FSIS reanalyzes the relative risk of illness from *Listeria monocytogenes* on deli meat sliced and packaged at Federally inspected processing establishments compared to deli meat sliced at retail facilities based on new data.

II. The Draft Risk Assessment

The Comparative *Listeria Monocytogenes* in Ready-to-Eat Meat and Poultry Deli Meats risk assessment has undergone an independent external peer review consistent with the requirements in the Office of Management and Budget's ''Final Information Quality Bulletin for Peer Review'' and review by various government agencies. This quantitative risk assessment provides a science-based, analytical approach to collate and incorporate available data into a mathematical model. It provides risk managers with a decision-support tool to understand and evaluate the relative risk of slicing and packaging deli meat in retail facilities versus slicing and packaging deli meat in federally inspected processing establishments.

The deli meat pathway model of the draft risk assessment consists of four distinct stages: (1) A retail stage that determines the level of *L. monocytogenes* in prepackaged deli meats and those deli meats sliced at retail; (2) a growth stage that uses an exponential growth rate function to model the growth of *L. monocytogenes* in deli meat between purchase at retail and consumption; (3) a consumption stage that uses information about deli meat serving sizes and the number of servings consumed to estimate consumer exposure to the pathogen of concern; and (4) a dose-response stage that predicts the probability of death from consuming *L. monocytogenes*.

To update the deli meat pathway model of the 2003 risk assessment discussed above, FSIS obtained retail contamination data from the NAFSS study (Draughon, 2006) and used it in conjunction with new consumer survey data obtained by RTI International, Tennessee State University, and Kansas State University (Cates *et al.*, 2006).

The results from this comparative Lm risk assessment model indicate that approximately 83% of listeriosis cases and deaths attributed to deli meat consumption are from deli meat sliced and packaged at retail.

As part of an evaluation of the draft comparative *L. monocytogenes* risk assessment, FSIS seeks comments about:

(1) The assumptions made,
(2) The modeling techniques,
(3) The data used, and
(4) The clarity of the draft risk assessment document.

FSIS will review and evaluate all public comments on this draft comparative risk assessment and make modifications to the assessment based on comments, as appropriate. The draft risk assessment is available electronically on the FSIS Web site (*http://www.fsis.usda.gov/Science/Risk_Assessments/index.asp#RTE*).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2009_Notices_Index/*. FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The

Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls, export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on April 3, 2009.

Carol Maczka,

Assistant Administrator, ODIFP.

[FR Doc. E9–8056 Filed 4–8–09; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Urgent Removal of Timber

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Forest Service published an Information Collection Request for Comment in the **Federal Register** of March 24, 2009. The document contained an incorrect e-mail address.

FOR FURTHER INFORMATION CONTACT: Lathrop Smith, Forest Management staff, at 202–205–0858. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

Correction

In the **Federal Register** of March 24, 2009, (73 FR 12303), on page 12303, in the **ADDRESSES** section, correct the e-mail address to read:

ADDRESSES: Comments concerning this notice should be addressed to Director, Forest Management, 1400 Independence Avenue, SW., Mailstop 1103, Washington, DC 20250–1103.

Comments also may be submitted via facsimile to 202–205–1045 or by e-mail to: *urgent_removal@fs.fed.us*.

Dated: April 2, 2009.

Richard W. Sowa,

Acting Assistant Deputy Chief, National Forest System.

[FR Doc. E9–8026 Filed 4–8–09; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, April 17, 2009; 9:30 a.m. EDT.

PLACE: 624 9th St., NW., Room 540, Washington, DC 20425.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda.

II. Approval of Minutes of February 20, 2009 and March 30, 2009 Meetings.

III. Announcements.

IV. Staff Director's Report.

V. Program Planning.

- Update on Status of 2009 Statutory Report
- Approval of Findings and Recommendations for the Briefing Report on Department of Justice Voting Rights Enforcement for the 2008 Presidential Election
- Approval of Briefing Report on Provision of Supplemental Educational Services under the No Child Left Behind Act
- Approval of Concept Paper for a Commission Briefing on Health Disparities (Taylor)

V. Management & Operations.

- Update on the Status of Briefing Reports
- Motion Regarding Evaluation of Staff Director Performance (Melendez)
- Motion Regarding Staff Director's Provision of Quarterly Financial Reports to Commission (Melendez)
- Motion Regarding Commission Preparation of a Public Service Announcement (Melendez)
- Motion Regarding Review and Standardization of Agency Regulations, Administrative Instructions and Other Practices (Melendez)

VI. State Advisory Committee Issues.

- Tennessee SAC

VII. Adjourn.

FOR FURTHER INFORMATION CONTACT: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8582. 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: April 7, 2009.

David P. Blackwood,

General Counsel.

[FR Doc. E9–8261 Filed 4–7–09; 4:15 pm]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Membership of the USCCR Performance Review Board

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of Membership of the USCCR Performance Review Board.

SUMMARY: This notice announces the appointment of the Performance Review Board (PRB) of the United States Commission on Civil Rights. Publication of PRB membership is required pursuant to 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of the U.S. Commission on Civil Rights' Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Staff Director, U. S. Commission on Civil Rights for the FY 2008 rating year.

FOR FURTHER INFORMATION CONTACT: TinaLouise Martin, Director of Management, U.S. Commission on Civil Rights, 624 Ninth Street, NW., Washington, DC 20425, Telephone: (202) 376–8364.

USCCR Performance Review Board Members: William D. Spencer, Clerk of the Board, MSPB, David Capozzi, Acting Executive Director, U.S. Access Board, Mary Johnson, General Counsel, NMB.

Dated: April 6, 2009.

David P. Blackwood,

General Counsel.

[FR Doc. E9–8091 Filed 4–8–09; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposed Information Collection; Comment Request; Survey: Foreign Ocean Carriers' Expenses in the United States

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as

required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before 5 p.m. June 8, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230, or via e-mail at *dhynek@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Edward Dozier, Current Account Services Branch, Balance of Payments Division, (BE–58), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; *phone:* (202) 606–9559; *fax:* (202) 606–5314; or via e-mail at *edward.dozier@bea.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Economic Analysis (BEA) is responsible for the compilation of the U.S. international transactions accounts (ITAs), which it publishes quarterly in news releases, on its Web site, and in its monthly journal, the *Survey of Current Business*. These accounts provide a statistical summary of all U.S. international transactions and, as such, are one of the major statistical products of BEA. They are used extensively by both government and private organizations for national and international economic policy formulation and for analytical purposes. The information collected in this survey is used to develop the ''transportation'' portion of the ITAs. Potential respondents are U.S. agents of foreign ocean carriers operating in the United States. The information is collected on an annual basis from U.S. agents who handle 40 or more port calls by foreign ocean vessels and the covered expenses for all foreign ocean vessels handled by the U.S. agent were $250,000 or more. U.S. agents who handle fewer than 40 port calls or where the total annual covered expenses for all foreign ocean vessels handled by the U.S. agent are below $250,000 are exempt from reporting.

Without this information, an integral component of the ITAs would be omitted. No other government agency collects comprehensive annual data on foreign ocean carriers' expenses in the United States. There are no changes proposed to the form or instructions.

II. Method of Collection

The survey forms will be sent to respondents each quarter via US mail; the surveys are also available from our Web site. Respondents return the surveys one of four ways: U.S. mail, electronically using BEA's electronic collection system (eFile), fax or e-mail. Responses will be due within 50 days after the close of each calendar quarter.

III. Data

OMB Number: 0608–0012.

Form Number: BE–29.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 149.

Estimated Time per Response: 4 hours.

Estimated Total Annual Burden Hours: 596.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Glenna Mickelson,

Management Analyst, Office of Chief Information Officer.

[FR Doc. E9–8023 Filed 4–8–09; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposed Information Collection; Comment Request; Survey: Foreign Airline Operators' Revenues and Expenses in the United States

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before 5 p.m. June 8, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230, or via e-mail at *dhynek@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Edward Dozier, Current Account Services Branch, Balance of Payments Division, (BE–58), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone: (202) 606–9559; fax: (202) 606–5314; or via e-mail at *edward.dozier@bea.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Economic Analysis (BEA) is responsible for the compilation of the U.S. international transactions accounts (ITAs), which it publishes quarterly in news releases, on its Web site, and in its monthly journal, the *Survey of Current Business*. These accounts provide a statistical summary of all U.S. international transactions and, as such, are one of the major statistical products of BEA. They are used extensively by both government and private organizations for national and international economic policy formulation and for analytical purposes. The information collected in this survey is used to develop the ''transportation'' portion of the ITAs. Potential respondents are U.S. agents of foreign air carriers operating in the United States. The information is collected on a quarterly basis from foreign air carriers whose total annual covered revenues or total annual covered expenses incurred in the United States are, or are expected to be, $5,000,000 or more. Foreign air carriers whose total annual covered revenues and total annual covered expenses are, or are expected to be, each below $5,000,000 are exempt from reporting.

Without this information, an integral component of the ITAs would be omitted. No other government agency

collects comprehensive quarterly data on foreign airline operators' revenues and expenses in the United States. There are no changes proposed to the form or instructions.

II. Method of Collection

The survey forms will be sent to respondents each quarter via U.S. mail; the surveys are also available from our Web site. Respondents return the surveys one of four ways: U.S. mail, electronically using BEA's electronic collection system (eFile), fax or e-mail. Responses will be due within 50 days after the close of each calendar quarter.

III. Data

OMB Number: 0608–0068.

Form Number: BE–9.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 240.

Estimated Time per Response: 8 hours.

Estimated Total Annual Burden Hours: 1,920.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 3, 2009.

Glenna Mickelson,

Management Analyst, Office of Chief Information Officer.

[FR Doc. E9–8032 Filed 4–8–09; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–803]

Purified Carboxymethylcellulose from Finland; Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from Aqualon Company, a division of Hercules Inc., (the petitioner) and respondents CP Kelco OY and CP Kelco U.S., Inc. (collectively, CP Kelco), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from Finland. The review covers exports of the subject merchandise to the United States produced by CP Kelco. The period of review (POR) is July 1, 2007, through June 30, 2008.

We preliminarily find that CP Kelco made sales at less than normal value (NV) during the POR. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on differences between the export price (EP) or constructed export price (CEP) and NV.

EFFECTIVE DATE: April 9, 2009

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on CMC from Finland on

July 11, 2005. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands, and Sweden*, 70 FR 39734 (July 11, 2005). On July 11, 2008, the Department published the notice of opportunity to request an administrative review of CMC from Finland for the period July 1, 2007, through June 30, 2008. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 39948 (July 11, 2008).

On July 11, 2008, CP Kelco requested an administrative review for July 1, 2007, through June 30, 2008. On July 14, 2008, the petitioner requested a review of CP Kelco for the same period. On August 26, 2008, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 73 FR 50308 (August 26, 2008).

On October 3, 2008, the Department issued its standard antidumping questionnaire (the antidumping questionnaire) to CP Kelco. CP Kelco submitted its response to section A of the Department's antidumping questionnaire on September 30, 2008 (CP Kelco's Section A Response). CP Kelco submitted its response to sections B and C of the antidumping questionnaire on October 20, 2008 (CP Kelco's Sections B and C Response). Because the Department disregarded sales at prices below the cost of production in the most recently completed administrative review as of the initiation of the instant review, we are conducting a sales-at-below-cost investigation in this review. *See Purified Carboxymethylcellulose from Finland; Notice of Preliminary Determination of Antidumping Duty Administrative Review*, 72 FR 44106 (August 7, 2007) (unchanged in *Purified Carboxymethylcellulose from Finland, Notice of Final Results of Antidumping Duty Administrative Review*, 72 FR 70568 (December 12, 2007). Accordingly, CP Kelco submitted its response to section D of the antidumping questionnaire on October 31, 2008 (CP Kelco's Section D Response).

On November 10, 2008, the Department issued a supplemental questionnaire to CP Kelco regarding its responses to sections A, B, and C of the antidumping questionnaire. CP Kelco submitted its response to the Department's supplemental questionnaire on December 2, 2008 (CP Kelco's Supplemental Sections A, B, and C Response).

On January 5, 2009, the Department issued a supplemental questionnaire to CP Kelco regarding its responses to section D of the antidumping questionnaire. CP Kelco submitted its response to the Department's supplemental questionnaire on January 22, 2009 (CP Kelco's Supplemental Section D Response). On January 27, 2009, CP Kelco submitted data and electronic versions of exhibits from CP

Kelco's Supplemental Section D Response.

Scope of the Order

The merchandise covered by this order is all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Fair Value Comparisons

To determine whether sales of CMC in the United States were made at less than NV, we compared U.S. price to NV, as described in the ''Export Price,'' ''Constructed Export Price,'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (the Tariff Act), we calculated monthly weighted-average NVs and compared these to individual U.S. transactions. Because we determined CP Kelco made both EP and CEP sales during the POR, we used both EP and CEP as the basis for U.S. price in our comparisons. We used the invoice date, as recorded in CP Kelco's normal books and records, as the date of sale for CP Kelco's EP, CEP, and home market sales. *See* 19 CFR 351.401(i). For a more detailed discussion of these calculations, *see* Memorandum from Tyler Weinhold, to the File, ''Analysis of Data Submitted by CP Kelco Oy and CP Kelco U.S. Inc. (collectively, CP Kelco) in the Preliminary Results of the 2007–2008 Administrative Review of Purified Carboxymethylcellulose (CMC) from Finland,'' dated March 27, 2009 (Preliminary Analysis Memorandum).

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products produced by CP Kelco covered by the description in the ''Scope of the Order'' section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We relied on five characteristics to match U.S. sales of subject merchandise to home market sales of the foreign like product (listed in order of priority): 1) grade; 2) viscosity; 3) degree of substitution; 4) particle size; and 5) solution gel characteristics. *See* the antidumping questionnaire at Appendix 5. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of these product characteristics and the reporting instructions listed in the antidumping questionnaire. Because there were sales of identical or similar merchandise in the home market suitable for comparison to each U.S. sale, we did not compare any U.S. sales to constructed value (CV).

Export Price

Section 772(a) of the Tariff Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,'' as adjusted under section 772(c). In accordance with section 772(a) of the Tariff Act, we used EP for a number of CP Kelco's U.S. sales. We preliminarily find that these sales are properly classified as EP sales because these sales were made before the date of importation and were sales made directly to unaffiliated U.S. customers, and because our CEP methodology was not otherwise warranted.

We based EP on the prices to unaffiliated customers in the United States. We made adjustments for price or billing adjustments and discounts, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act, which included, where appropriate, foreign inland freight, international freight, marine insurance, and U.S. brokerage and handling. Additionally, we made adjustments for direct selling expenses (credit expenses) in accordance with section 772(c)(2)(A) of the Tariff Act.

CP Kelco incurred certain expenses as a result of factoring certain sales (*i.e.*, selling the accounts receivable associated with those sales to an affiliated financial institution in exchange for an immediate payment). For factored sales, we made an adjustment to gross unit price based upon the difference between the face value of the accounts receivables factored and the immediate payment received upon the factoring of those receivables (factoring discount).

We reduced movement expenses, where appropriate, by the amount of freight revenue paid by the customer to CP Kelco. In accordance with our practice in the recently completed administrative review of polyethylene retail carrier bags from the People's Republic of China, we capped the amount of freight revenue deducted at no greater than the amount of movement expenses in the home market. *See Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857 (February 11, 2009) (*Bags from the PRC*). As the Department explained in *Bags from the PRC*, section 772 (c)(1) of the Tariff Act provides that the Department shall increase the price used to establish either export price or constructed export price in only the following three instances: (A) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States; (B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States; and (C) the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy. In addition, section 351.401(c) of the Department's regulations directs the Department to use a price in the calculation of U.S. price which is net of any price adjustments that are reasonably attributable to the subject merchandise. The term ''price adjustments'' is defined under 19 CFR 351.102(b) as a ''change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates, and post-sale adjustments, that are reflected in the purchaser's net outlay.''

In past cases, we have declined to treat freight-related revenues as addition to U.S. price under section 772(c) of the Tariff Act or price adjustments under 19 CFR 351.102(b). Rather, we have incorporated these revenues as offsets to movement expenses because they relate to the transportation of subject merchandise. *See, e.g., Stainless Steel Wire Rod from Sweden: Preliminary*

Results of Antidumping Duty Administrative Review, 72 FR 51414 (September 7, 2007) (unchanged in *Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review*, 72 FR 12950 (March 1, 2008)).

Further, our offset practice limits the granting of an offset to situations where a respondent incurs expenses and realized revenue for the same type of activity. *See Stainless Steel Wire Rod from Sweden: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 51414, 51415. According to CP Kelco's responses, freight revenues are revenues received from customers for invoice items covering transportation expenses, and arise when freight is not included in the selling price under the applicable terms of delivery, but when CP Kelco arranges and prepays freight for the customer. *See* CP Kelco's Section B Response at B–25 and CP Kelco's Section C response at C–27. Therefore, we have limited the amount of the freight revenue used to offset CP Kelco's movement expenses to the amount of movement expenses incurred on the sale of subject merchandise. *See* Preliminary Analysis Memorandum at page 2.

Constructed Export Price

In accordance with section 772(b) of the Tariff Act, CEP is ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter,'' as adjusted under sections 772(c) and (d) of the Tariff Act. In accordance with section 772(b) of the Tariff Act, we used CEP for a number of CP Kelco's U.S. sales because CP Kelco sold merchandise to affiliate CP Kelco U.S., Inc. in the United States which, in turn, sold subject merchandise to unaffiliated U.S. customers. We preliminarily find that these U.S. sales are properly classified as CEP sales because they occurred in the United States and were made through CP Kelco U.S. Inc. to unaffiliated U.S. customers.

We based CEP on the prices to unaffiliated purchasers in the United States. We made adjustments for price or billing adjustments, early payment discounts, and factoring charges,[1] where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, customs duties, U.S. brokerage, U.S. inland freight, and U.S. warehousing expenses. We also reduced movement expenses, where appropriate, by the amount of freight revenue paid by the customer to CP Kelco. In accordance with our treatment of freight revenue on U.S. sales of subject merchandise (see ''Export Price'' section, above), we capped the amount of freight revenue deducted at no greater than the amount of movement expenses in the home market. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (imputed credit expenses), inventory carrying costs, and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act.

Further-Manufactured U.S. Sales

During the POR, CP Kelco made certain sales of subject merchandise to affiliated companies in the United States. *See* CP Kelco's Section A Response at pages B–46 to B–48, and exhibit A–27. This merchandise was subsequently further manufactured by the U.S. affiliates into non-subject merchandise, which was then sold to unaffiliated U.S. customers. *See* CP Kelco's Section A Response at pages A–46 to A–48. The total quantity of this material represented less than 10 percent of CP Kelco's total U.S. sales. *Id.*

Section 772(e) of the Tariff Act provides that when the value added in the United States by an affiliated party is likely to exceed substantially the value of the subject merchandise, the Department shall use one of the following prices to determine CEP if there is a sufficient quantity of sales to provide a reasonable basis of comparison and the use of such sales is appropriate: (1) the price of identical subject merchandise sold by the exporter or producer to an unaffiliated person; or (2) the price of other subject merchandise sold by the exporter or producer to an unaffiliated person.

In accordance with 19 CFR 351.402 (c)(2), we conducted an analysis to determine whether the value added to the subject merchandise by the affiliated customers after importation in the United States was at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States. *See* 19 CFR 351.402(c)(2). Our analysis showed that the value added by the affiliated customers was significantly greater than 65 percent. Therefore, we have preliminarily determined that the value added in the United States by the affiliated customers exceeds substantially the value of the subject merchandise. *Id. See also* CP Kelco's Section A Response at pages A–46 to A–48, and exhibit A–27.

We then considered whether there were sales of identical subject merchandise or other subject merchandise sold in sufficient quantities by the exporter or producer to an unaffiliated person that could provide a reasonable basis of comparison. In this case, there were sales of identical subject merchandise or other subject merchandise sold in sufficient quantities by CP Kelco U.S. to unaffiliated persons that could provide a reasonable basis for calculating CEP for CP Kelco's sales of further manufactured merchandise. *See* Preliminary Analysis Memorandum at page 1.

Decisions as to the appropriate methodology for determining CEP for sales involving further manufacturing generally must be made on a case-by-case basis. *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 51584, 51586 (September 10, 2007) (unchanged in final results, 73 FR 14220 (March 17, 2008)). In the instant review, we find the quantity of sales of merchandise to unaffiliated customers is sufficiently large to serve as a reasonable basis for the calculation of CEP. The value added to the CMC after importation is very substantial and the further manufacturing very complex. Therefore, pursuant to 19 CFR 351.402(c)(3), and as in the 2006–2007 review of this order, we have used the preliminary weighted-average dumping margins calculated on sales of other subject merchandise sold to unaffiliated persons to determine the dumping margins for further-manufactures sales. *See Purified Carboxymethylcellulose from Finland; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 45948, 45950 (August 7, 2008) (unchanged in *Purified Carboxymethylcellulose from Finland, Final Results of Antidumping Duty Administrative Review*, 73 FR 75397 (December 11, 2008)).

Normal Value

A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the

[1] *See* EP section, above.

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 was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Tariff Act. As CP Kelco's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Tariff Act, we are conducting a sales-below-cost investigation in this review because the Department disregarded some of CP Kelco's sales as having been made at prices below the cost of production in the previous administrative review. *See Purified Carboxymethylcellulose from Finland, Notice of Final Results of Antidumping Duty Administrative Review*, 72 FR 70568 (December 12, 2007).

C. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Tariff Act, we calculated the weighted-average cost of production (COP) for each model based on the sum of CP Kelco's materials and fabrication costs for the foreign like product, plus an amount for home market selling, general, and administrative (SG&A) expenses, financial expenses, and packing costs. We relied on the COP data submitted by CP Kelco.

We compared the weighted-average COP of CP Kelco's home market sales to home market sales prices of the foreign like product (net of billing adjustments, discounts, any applicable movement expenses, direct and indirect selling expenses, and packing), as required under section 773(b) of the Tariff Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act, whether such sales were made in substantial quantities within an extended period of time, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

D. Results of the Cost Test

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of CP Kelco's sales of a given model were at prices less than the COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. Where 20 percent or more of CP Kelco's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were made: (1) within an extended period of time and in ''substantial quantities'' within the POR, in accordance with section 773(b)(2)(B) and (C) of the Tariff Act, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act (*i.e.*, the sales were made at prices below the weighted-average per-unit COP for the POR). In this review, we have disregarded such sales from our margin calculation. We used the remaining sales as the basis for determining NV, if such sales existed, in accordance with section 773(b)(1) of the Tariff Act.

E. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers. We made adjustments for billing adjustments, early payment discounts, rebates, and factoring charges,[2] where appropriate. We made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Tariff Act. We also reduced foreign inland freight, where appropriate, by the amount of freight revenue paid by the customer to CP Kelco. In accordance with our treatment of freight revenue on U.S. sales of subject merchandise (*see* ''Export Price'' section, above), we capped the amount of freight revenue deducted at no greater than the amount of movement expenses in the home market. In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost (*i.e.*, DIFMER), where those differences were attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and section 351.411 of the Department's regulations. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and section 351.410 of the Department's regulations. We made COS adjustments for imputed credit expenses. We also made an adjustment, where appropriate, for the CEP offset in accordance with section 773(a)(7)(B) of the Tariff Act. *See* ''Level of Trade and CEP Offset'' section below. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act.

F. Constructed Value (CV)

In accordance with section 773(a)(4) of the Tariff Act, we base NV on CV if we are unable to find a contemporaneous comparison market match of identical or similar merchandise for the U.S. sale. Section 773(e) of the Tariff Act provides that CV shall be based on the sum of the cost of materials and fabrication employed in making the subject merchandise, SG&A expenses, profit, and U.S. packing costs. We calculated the cost of materials and fabrication for CP Kelco based on the methodology described in the COP section of this notice. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by CP Kelco in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. However, for these preliminary results, we did not base NV on CV in any instances.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B) of the Tariff Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is based on the starting price of sales in the home market or, when NV is based on CV, on the LOT of the sales from which SG&A expenses and profit are derived.

With respect to CEP transactions in the U.S. market, the CEP LOT is defined as the level of trade of the constructed sale from the exporter to the importer. *See* section 773(a)(7)(A) of the Tariff Act.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. For CEP sales, if the NV LOT is more remote

[2] *See* EP section, above.

from the factory than the CEP LOT and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP offset provision). *See, e.g., Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002) and accompanying Issues and Decisions Memorandum at Comment 8; *see also Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17406, 17410 (April 6, 2005) (unchanged in final results of review, 70 FR 58683 (October 7, 2005)). For CEP sales, we consider only the selling activities reflected in the U.S. price after the deduction of expenses incurred in the U.S. and CEP profit under section 772(d) of the Tariff Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. S*ee Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decisions Memorandum at Comment 6.

CP Kelco reported it sold CMC to end users and distributors in the home market and to end users and distributors in the United States. CP Kelco identified two channels of distribution for sales in both the home market and the U.S. market: end users (channel 1) and distributors (channel 2). *See* CP Kelco's Section A Response at page A–16 to A–17, and CP Kelco's Sections B and C Response at pages B–19 to B–20. CP Kelco claims that it does not sell other products at different levels of trade in the home market, including at a level of trade comparable to the CEP level of trade. CP Kelco claims that as a result, it cannot quantify a specific level of trade adjustment within the meaning of section 773(a)(7)(A) of the Tariff Act. Therefore, CP Kelco requests the Department make an adjustment to NV for its CEP sales pursuant to section 773(a)(7)(B) of the Tariff Act (the CEP offset). *See* CP Kelco's Section A Response at page A–32 to A–33, and CP Kelco's Sections B and C Response at page B–20.

The Department found in the previous review that there was only one LOT in the home market. *See Purified Carboxymethylcellulose From Finland; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 45948, 45953 (August 7, 2008) (unchanged in *Purified Carboxymethylcellulose From Finland; Final Results of Antidumping Duty Administrative Review*, 73 FR 75397 (December 11, 2008)). Therefore, CP Kelco reported only one level of trade in its home market sales listing. *See* CP Kelco's Section C Response at page C–20.

As described above, CP Kelco made both direct (EP) sales of subject merchandise to U.S. customers and CEP sales of subject merchandise through its affiliate, CP Kelco U.S., Inc. CP Kelco reported that its EP sales to both end users and distributors were made at the same LOT as sales made to home market end users and distributors. *See* CP Kelco's Section A Response at page A–33. However, CP Kelco reported that its CEP sales were made at a different LOT. *Id. See also*, CP Kelco's Sections B and C Response at page B–20.

We obtained information from CP Kelco regarding the marketing stages involved in making its reported home market and U.S. sales. CP Kelco described all selling activities performed, and provided a table comparing the selling functions performed among each channel of distribution for both markets. *See* CP Kelco's Section A response at pages A–18 to A–31. We reviewed the nature of the selling functions and the intensity to which all selling functions were performed for each home market channel of distribution and customer category and between CP Kelco's EP and home market channels of distribution and customer categories.

While we found differences in the levels of intensity performed for some of these functions between the home market end user and distributor channels of distribution, such differences are minor and do not establish distinct and separate levels of trade in Finland. Based on our analysis of all of CP Kelco's home market selling functions, we find all home market sales were made at the same LOT. Further, we find only minor differences between the sole home market LOT and that of CP Kelco's EP sales. Accordingly, we preliminarily determine CP Kelco's home market and EP sales were made at the same LOT.

We then compared the NV LOT, based on the selling activities associated with the transactions between CP Kelco and its customers in the home market, to the CEP LOT, which is based on the selling activities associated with the transaction between CP Kelco and its affiliated importer, CP Kelco U.S., Inc. Our analysis indicates the selling functions performed for home market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for CP Kelco U.S., Inc. For example, in comparing CP Kelco's selling activities, we find most of the reported selling functions performed in the home market are not a part of CEP transactions (*i.e.*, sales negotiations, credit risk management, collection, sales promotion, direct sales personnel, technical support, guarantees, and discounts). For those selling activities performed for both home market sales and CEP sales (*i.e.*, customer care, logistics, inventory maintenance, packing, and freight/delivery), CP Kelco reported it performed each activity at either the same or at a higher level of intensity in one or both of the home market channels of distribution. For both the packing and the freight/delivery selling functions, each function is performed at the same level of intensity in one home market channel of distribution, but at a lower level of intensity in the other home market channel of distribution.

We note that CEP sales from CP Kelco to CP Kelco U.S., Inc. generally occur at the beginning of the distribution chain, representing essentially a logistical transfer of inventory. In contrast, all sales in the home market occur closer to the end of the distribution chain and involve smaller volumes and more customer interaction which, in turn, require the performance of more selling functions. Based on the foregoing, we conclude that the NV LOT is at a more advanced stage than the CEP LOT.

Because we found the home market and U.S. CEP sales were made at different LOTs, we examined whether a LOT adjustment or a CEP offset may be appropriate in this review. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market sales, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the CEP sales. *See* 19 CFR 351.412(d)(1)(ii). Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment. Because the data available do not form an appropriate basis for making a LOT adjustment, and because the NV LOT is at a more advanced stage of distribution than the CEP LOT, we have made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Tariff Act.

Currency Conversions

CP Kelco reported certain U.S. sales prices and certain U.S. expenses and adjustments in euros. Therefore, we made euro-U.S. dollar currency conversions, where appropriate, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Board, in accordance with section 773A(a) of the Tariff Act.

Preliminary Results of Review

As a result of our review, we preliminarily find the following weighted-average dumping margin exists for the period July 1, 2007, through June 30, 2008:

Manufacturer / Exporter	Weighted Average Margin (percentage)
CP Kelco	11.94%

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with section 351.224(b) of the Department's regulations. An interested party may request a hearing within thirty days of publication. *See* section 351.310(c) of the Department's regulations. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to section 351.310(d) of the Department's regulations. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

Comments

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit arguments in these proceedings are requested to submit with the argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, pursuant to section 351.212(b) of the Department's regulations, the Department will calculate an assessment rate on all appropriate entries. CP Kelco has reported entered values for all of its sales of subject merchandise to the U.S. during the POR. Therefore, in accordance with section 351.212(b)(1) of the Department's regulations, we will calculate importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales of that importer. These rates will be assessed uniformly on all entries the respective importers made during the POR. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department will issue appropriate assessment instructions directly to CBP fifteen days after publication of the final results of 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). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un-reviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. *Id.*

Cash Deposit Requirements

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of CMC from Finland 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)(1) of the Tariff Act: 1) the cash deposit rate for CP Kelco will be the rate established in the final results of review; 2) if the exporter is not a firm covered in this review or the 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 3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all-others rate of 6.65 percent *ad valorem* from the LTFV investigation. *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden*, 70 FR 39734 (July 11, 2005). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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 the antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: April 2, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–8113 Filed 4–8–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Panel Review of the Final Results of Full Sunset Review made by the International Trade Commission, respecting Gray Portland Cement and Clinker from Mexico, Secretariat File No. USA–MEX–2000–1904–10.

SUMMARY: Pursuant to the negotiated settlement between the United States and Mexican industries, the panel

proceedings of the above-noted case were stayed as of April 3, 2006 until April 1, 2009. A panel was appointed to this panel review and no further action was taken in the administration of the case effective April 3, 2006 through April 1, 2009. The U.S. Department of Commerce has revoked, as of April 1, 2009, the antidumping duty order on Gray Portland Cement and Clinker from Mexico.

FOR FURTHER INFORMATION CONTACT: Valerie Dees, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') established a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada, and the Government of Mexico established Rules of Procedure for Article 1904 Binational Panel Reviews (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested.

Pursuant to these Rules and terminated in accordance with the settlement agreement.

Dated: April 3, 2009.

Valerie Dees,

United States Secretary, NAFTA Secretariat.

[FR Doc. E9–8055 Filed 4–8–09; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XO51

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Essential Fish Habitat Review Committee (EFHRC) will hold a work session, which is open to the public, to evaluate proposals to change areas closed to bottom contact fishing gear and for modifications to groundfish Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPC).

DATES: The work session will be held Tuesday, May 12, 2009, from 9 a.m. to 5 p.m., and Wednesday, May 13, 2009, from 8 a.m. to 3 p.m.

ADDRESSES: The work session will be held at the Pacific Fishery Management Council Office, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to review and evaluate proposals for changes to areas closed to bottom contact gear and modifications to groundfish EFH and HAPC, and to develop recommendations for advancing proposals in the Council process. Desired proposal contents and evaluation criteria are included in the Terms of Reference (TOR) document available from the Council office or on the Council web site (*www.pcouncil.org*) Applicants must submit proposals to the Council office no later than 4:30 p.m. May 1, 2009, and can be sent by mail, email (*pfmc.comments@noaa.gov*) or fax (503–820–2299). Proposals are tentatively scheduled to be presented to the Council for initial approval at the June, 2009 Council meeting in Spokane, WA.

Although non-emergency issues not contained in the meeting agenda may come before the EFHRC for discussion, those issues may not be the subject of formal EFHRC action during this meeting. EFHRC 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 EFHRC's 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: April 6, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–8125 Filed 4–8–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XO52

Fisheries of the South Atlantic, Gulf of Mexico, and Caribbean; Southeastern Data, Assessment, and Review (SEDAR) Steering Committee; Public Meeting

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

ACTION: Notice of SEDAR Steering Committee meeting.

SUMMARY: The SEDAR Steering Committee will meet to discuss the SEDAR assessment schedule and the SEDAR process. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR Steering Committee will meet on Monday, May 18, 2009, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Boston Marriott Long Wharf, 296 State Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: John Carmichael, SEDAR Program Manager, SEDAR/SAFMC, 4055 Faber Place, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520.

SUPPLEMENTARY INFORMATION: The South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils; in conjunction with NOAA Fisheries, the Atlantic States Marine Fisheries Commission, and the Gulf States Marine Fisheries Commission; implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks. The SEDAR Steering Committee meets twice annually to provide oversight of the SEDAR process, establish assessment priorities, and provide coordination between assessment efforts and management activities.

During this meeting, the Steering Committee will receive reports on recent SEDAR activities, consider benchmark and update assessment scheduling for 2010–14, receive reports from the Councils regarding research and monitoring priorities, and discuss procedural issues that have arisen since the previous meeting.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the South Atlantic Fishery Management Council office at the address listed above at least 15 business days prior to the meeting.

Dated: April 6, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–8126 Filed 4–8–09; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0043, Rules Relating To Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on rules relating to review of National Futures Association decisions in disciplinary, membership denial, registration, and member responsibility actions.

DATES: Comments must be submitted on or before June 8, 2009.

ADDRESSES: Comments may be mailed to Gail B. Scott, Office of General Counsel, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Gail Scott, (202) 418–5139; *Fax:* (202) 418–5524; *e-mail: gscott@cftc.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions, OMB control number 3038–0043—Extension

These rules establish procedures and standards for Commission review of registered futures association procedures for membership and disciplinary actions.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR Part 171	25	On occasion	51.3	.5	25.6

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: April 3, 2009.

David A. Stawick,

Secretary of the Commission, Commodity Futures Trading Commission.

[FR Doc. E9–8017 Filed 4–8–09; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ EIR) for the Aliso Creek, Orange County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The purpose of the study is to evaluate an approximately 7-mile reach of the Aliso Creek and 1,000 feet of the Wood Canyon tributary to Aliso Creek located in Orange County in the Cities of Laguna Beach, Laguna Nigel, and Aliso Viejo, CA and unincorporated Orange County. Much of the 7-mile reach is located within the Aliso and Wood Canyons Wilderness Park, which is owned and managed by Orange County. The focus of the project will be on watershed improvements to restore the creek's dynamic function and habitat for endangered species by developing alternatives for ecosystem restoration for impacted reaches of the creek. The restoration project will focus on revitalization of the riparian vegetation community; establishment of an environmental corridor to benefit wildlife and sensitive species; creek stabilization, and addressing flood risk management. The 7-mile reach of Aliso Creek is located entirely within Orange County, CA.

DATES: Provide comments by May 10, 2009.

ADDRESSES: Submit comments to Deborah Lamb at U.S. Army Corps of Engineers, Los Angeles District, CESPL–PD–RL, P.O. Box 532711, Los Angeles, CA 90053–2325.

FOR FURTHER INFORMATION CONTACT: Deborah Lamb, Regional Planning Section at (213) 452–3798; fax (213) 452–4204 or e-mail at *Deborah.L.Lamb@usace.army.mil*

SUPPLEMENTARY INFORMATION:

1. *Authorization.* The proposed study is authorized by House Document No. 838, 76th Congress 3rd Session, dated May 1954, which reads as follows:

"Resolved by the Committee on Public Works of the House of Representatives, United States, that the Board of Engineers for Rivers and Harbors is hereby requested to review the reports on (a) San Gabriel River and Tributaries, published as House Document No. 838, 76th Congress, 3rd Session; and (b) Santa Ana River and Tributaries, published as House Document No. 135, 81st Congress, 1st Session; and (c) the project authorized by the Flood Control Act of 1936 for the protection of the metropolitan area in Orange County, with a view toward determining the advisability of modification of the authorized projects in the interest of flood control and related purposes."

2. *Background.* Aliso Creek. While much of the Aliso Creek project area is within an Orange County wilderness park and within the Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP) Nature Reserve of Orange County (NROC), the creek is in a highly urbanized area with a high population concentration. As such, Aliso Creek has numerous water resource issues related to both human actions and natural processes which have raised concerns about the long-term survival of the watershed ecosystem. Fundamental problems that have been identified include channel instability, degraded water quality, loss of fish and wildlife habitat, and flood damage. Since 1997, there has been a multi-jurisdictional effort to address problems within the Aliso Creek watershed. The Aliso Creek Watershed Management Feasibility Study, sponsored by the U.S. Army Corps of Engineers, Orange County, and municipalities and water districts within the Aliso Creek watershed boundary, was completed in July 1999. A wide range of technical studies have since been completed. Re-establishment of a healthy and sustainable watershed environment would serve to improve the environmental and economic conditions of the creek, including improving water quality, native habitat, and reducing flood damage.

Alternatives to be considered are those that will further reduce degradation of the creek and the riparian ecosystem, improve ground and surface water quality, and reduce adverse water quality impacts from runoff.

3. *Scoping Process.* a. A scoping meeting is scheduled for 7, May 2009, 6:30pm to 8:30pm at Mission Viejo City Council Chamber, 200 Civic Center Mission Viejo, CA 92691, (949) 470–3000.

For additional information on dates, times and locations please contact Deborah Lamb (see **ADDRESSES**), or at (213) 452–3798 or e-mail at: *deborah.l.lamb@usace.army.mil*.

Potential impacts associated with the proposed action will be evaluated. Resource categories that will be analyzed include: Physical environment, geology, biological resources, air quality, water quality, recreational usage, aesthetics, cultural resources, transportation, noise, hazardous waste, socioeconomics, safety, and sustainability.

b. Participation of affected Federal, state and local resource agencies, Native American groups and concerned interest groups/individuals is encouraged in the scoping process. Public participation will be especially important in defining the scope of analysis in the Draft EIS/ EIR, identifying significant environmental issues and impact analysis of the Draft EIS/EIR and providing useful information such as published and unpublished data, personal knowledge of relevant issues and recommending mitigation measures associated with the proposed action.

c. Those interested in providing information or data relevant to the environmental or social impacts that should be included or considered in the environmental analysis can furnish this information by writing to the points of contact indicated above or by attending the public scoping meeting. A mailing list will also be established so pertinent data may be distributed to interested parties.

Dated: March 27, 2009.

Thomas H. Magness,

Colonel, U.S. Army, District Commander.

[FR Doc. E9–8107 Filed 4–8–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Town of Nags Head, Beach Nourishment Project in Dare County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (COE), Wilmington District, Regulatory Division, has received a request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899, from the Town of Nags Head to dredge

up to 4.6 million cubic yards of beach-quality sediment from an offshore borrow source, and deposit the material along approximately 10 miles of ocean shoreline in the Town of Nags Head.

The applicant proposes to utilize a self-contained hopper dredge during a proposed construction window from April through September to undertake the dredging operations and discharge the sand on the beach via submerged pipeline. In addition, the applicant's proposed offshore borrow areas include sites identified in the U.S. Army Corps of Engineers, Wilmington District's EIS, entitled *Final Feasibility Report and Environmental Impact Statement on Hurricane Protection and Beach Erosion Control*, dated September 2000.

DATES: A public scoping meeting for the Draft Environmental Impact Statement (DEIS) will be held at the Nags Head Fire Station #16, at 5314 S. Croatan Highway, Nags Head, NC 27959 on April 28, 2009 at 3:30 p.m.

ADDRESSES: Copies of comments and questions regarding scoping of the Draft EIS may be addressed to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division—Washington Regulatory Field Office, 107 Union Drive, Suite 205, Washington, NC 27889, *Attn:* File Number SAW 2006–40282.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be directed to Mr. Raleigh Bland, Regulatory Division, *telephone:* (252) 975–1616, Extension 23.

SUPPLEMENTARY INFORMATION: The project site is located off NC Highway 12, adjacent to the Atlantic Ocean, in the Town of Nags Head, Dare County, North Carolina. The proposed project totals approximately 10 miles of ocean shoreline beginning approximately 1 mile from the town's northern limit and extending south to the town line adjacent to the Cape Hatteras National Seashore. The proposed borrow area is located in the Atlantic Ocean approximately 2–3 miles offshore of the project site. The Town of Nags Head encompasses approximately 11 miles of ocean shoreline on a barrier island located at the northern end of North Carolina's Outer Banks. The width of the berm of the island's dune system varies considerably with location along the town's beach and with the season. Along most of the project area, the winter berm is non-existent due to continuing erosion processes. Dune habitat is currently decreasing due to excessive erosion of the base or toe of the dunes by waves that travel unimpeded over eroded wet beach to directly impact dunes.

The Town of Nags Head has provided the following information about the purpose of the proposed project:

The purpose of the proposed project is to nourish the island's ocean shoreline to restore eroded areas to a condition that would be able to sustain chronic erosion and the short-term impact of storms for at least 4–5 years, protect upland property, infrastructure, and tax base, and widen the recreational beach by 50–125 feet waterward of the ordinary high water mark.

The proposed borrow area includes portions of offshore areas identified by the Corps of Engineers in the 2000 Federal Dare County Project. Several sub areas have been sampled and tested for sediment compatibility. Water depths in the borrow area are approximately 40–55 feet. The anticipated optimal equipment for excavations will include ocean-certified, self-contained hopper dredges. Such equipment typically excavates shallow trenches (approximately 2–3 foot sections) in each pass (leaving narrow undisturbed areas at the margin of each cut), then travels to a buoyed pipeline anchored close to shore. Discharge to the beach is via submerged pipeline across the surf zone, then by way of shore-based pipe positioned along the dry beach. Only a small area of the Corps borrow area will be required to provide up to 4.6 million cubic yards of beach quality material. The applicant is coordinating the specific area for use in the proposed project with the Corps with the following understanding: (1) The final borrow area required for the emergency beach nourishment project can be limited to the equivalent of a 0.9 square-mile (approximately 575 acres) area, (2) the borrow area used will be contiguous rather than a series of small impact areas, (3) once used, the borrow area will no longer be available for use, consistent with the Dare County Project, and (4) the borrow area will be delineated so as to avoid ongoing biological monitoring stations established by the Corps in connection with the Dare County Project. The project will be built in approximate 1–2 mile sections, optimizing the disposition of pipeline. Sections will be pumped into place with the aid of temporary dikes pushed up by bulldozers in the surf zone. Daily operations will impact approximately 500–1,000 linear feet of shoreline as work progresses in either direction from the submerged pipeline. Upon completion of a section, the submerged pipe and beach-building equipment will be shifted to the next section. As construction progresses, sections will be graded to final contours, dressed to eliminate low areas, and opened for use by the public. Support equipment will be shifted out of completed sections as soon as practicable, so that construction activities in a particular reach will not disrupt normal beach use for only a month or so at any locality. The finished sections will be allowed to adjust to natural processes for several months. The final process will include the placement of dune fencing and/or dune plantings as needed or required.

Proposed Impacts to Wetlands and Surface Waters: Surface waters and jurisdictional areas have been identified for the proposed project site. Field reviews of the project area have revealed that there are no vegetated freshwater or coastal wetlands located in the project area. The proposed project will impact approximately 10 miles of ocean beach shoreline and 575 acres of ocean bottom.

Scope of Investigations: Based upon the proposed impacts to waters of the United States, the Town of Nags Head, and their consultant, Coastal Science & Engineering, has indicated to the U.S. Army Corps of Engineers that they are willing to pursue an Environmental Impact Statement (EIS) for the proposed Project. The scope of the EIS investigation will include the following: Alternatives analyses, affected environment, environmental consequences, and secondary and cumulative environmental impacts.

Alternatives Analyses: Council on Environmental Quality (CEQ) regulations (40 CFR 1502.14(a)) require an EIS to ''rigorously explore and objectively evaluate all reasonable alternatives'' for a proposed action. The regulations (40 CFR 1502.14(b)) further require that substantial treatment be made of each alternative considered in detail, including the proposed action. The Town of Nags Head has identified three alternatives for the proposed project, including (1) no action; (2) abandon property, retreat, and relocate; and (3) nourish the beach. The factors used to compare the alternatives will be the same for each of the alternatives.

Affected Environment: CEQ regulations (40 CFR 1502.15) require the EIS to describe the environment of the areas to be affected or created by the alternatives under consideration. The data and analysis shall be commensurate with the importance of the impact. Based upon preliminary evaluation of the proposed Project, it appears the primary areas of environmental concern will focus on the use of a hopper dredge during the warm weather season and the potential effect on marine and threatened and endangered resources.

In preparation for the EIS, the following studies have been completed or are ongoing for the proposed Project:

- Meetings with Federal and State regulatory and resource agencies (2005 to present).
- DA application and Draft Environmental Impact Statement (2006).
- Data compilations and surveys including, but not limited to littoral processes, cultural resources, biological surveys, sediment characteristics, economic, draft Essential Fish Habitat, hopper dredge protocol, and a Biological Assessment (2006 to present).
- Public Notice (2006).
- Federal Project Comparison (2007).
- SEPA (2007).
- Biological Opinion/USFWS (2008).
- EFH Assessment/NMFS (2008).
- State SEPA Record of Decision (2009).

Environmental Consequences: CEQ regulations (40 CFR 1502.16) state the EIS will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. The EIS will identify and disclose the direct impacts of the proposed project and study a reasonable number of alternatives on the following: topography, geology, soils, climate, biotic communities, wetlands, fish and wildlife resources, endangered and threatened species, hydrology, water resources and water quality, floodplains, hazardous materials, air quality, noise, aesthetics, recreational resources, historical and cultural resources, socio-economic, land use, public health and safety, energy requirements and conservation, natural or non-renewable resources, drinking waters, and environmental justice.

Secondary and Cumulative Environmental Impacts: Cumulative impacts result from the incremental impact of the proposed action when added to past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes the action. Geographic Information System (GIS) data and mapping will be used to evaluate and quantify secondary and cumulative impacts of the proposed Project with particular emphasis given to waters and marine resources.

Mitigation: CEQ regulations (40 CFR 1502.14, 1502.16, and 1508.20) require the EIS to include appropriate mitigation measures, if applicable. The USACE has adopted, through the CEQ, a mitigation policy which embraces the concepts of ''no net loss of wetlands'' and project sequencing. The purpose of this policy is to restore and maintain the chemical, biological, and physical integrity of ''Waters of the United States,'' specifically wetlands. Mitigation of wetland impacts has been defined by the CEQ to include: avoidance of impacts (to wetlands), minimizing impacts, rectifying impacts, reducing impacts over time, and compensating for impacts (40 CFR 1508.20). Each of these aspects (avoidance, minimization, and compensatory mitigation) must be considered in sequential order. As part of the EIS, if applicable, the applicant will develop a compensatory mitigation plan detailing the methodology and approach to compensate for unavoidable impacts to waters of the U.S.

NEPA/SEPA Preparation and Permitting: Because the proposed Nags Head project requires approvals from Federal and State agencies under both the National Environmental Policy Act (NEPA) and the State Environmental Policy Act (SEPA), a joint Federal and State Environmental Impact Statement (EIS) will be prepared. The U.S. Army Corps of Engineers will serve as the lead agency for the process. The EIS will be the NEPA document for the Corps of Engineers (404 permit) and the SEPA document for the State of North Carolina (401 permit).

Based on the size, complexity, and potential impacts of the proposed project, the Applicant has been advised by the U.S. Army Corps of Engineers to identify and disclose the environmental impacts of the proposed project in an Environmental Impact Statement (EIS). Within the EIS, the Applicant will conduct a thorough environmental review, including an evaluation of a reasonable number of alternatives. After distribution and review of the Draft EIS and Final EIS, the Applicant understands that the U.S. Army Corps of Engineers will issue a Record of Decision (ROD) for the project. The ROD will document the completion of the EIS process and will serve as a basis for permitting decisions by Federal and State agencies.

Jefferson M. Ryscavage,

Colonel, U.S. Army, District Commander.

[FR Doc. E9–8084 Filed 4–8–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 8, 2009.

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 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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 3, 2009.

Angela C. Arrington,

Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title: Evaluation of the Teacher Incentive Fund (TIF) Program: Data Collection Instruments.

Frequency: On occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 1,180.

Burden Hours: 1,180.

Abstract: To assist schools in attracting, retaining and motivating effective teachers and principals, in 2006 the U.S. Department of Education launched the Teacher Incentive Fund, which supports comprehensive compensation reform activities including bonus pay-for-performance (PFP), career advancement and professional development. The purpose of this evaluation is to describe the implementation of the program and its relationship to any increases in recruitment and retention of effective teachers and principals. If feasible, this evaluation will also seek to analyze TIF's relationship to increasing student achievement.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3999. 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 *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. E9–8039 Filed 4–8–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 8, 2009.

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 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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 3, 2009.

Angela C. Arrington,

Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: .

Frequency: On occasion.

Affected Public: Businesses or other for profit; individuals or household; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 690,000.

Burden Hours: 345,000.

Abstract: The Federal Perkins Loan Master Promissory Note (MPN) is a promissory note under which a borrower may receive loans for a single academic year or multiple academic years. The adoption of the MPN in the Perkins Loan Program has simplified the loan process by eliminating the need for institutions to prepare, and students to sign, a promissory note each award year.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4005. 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 *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. E9–8119 Filed 4–8–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Employees Occupational Illness Compensation Program Act of 2000; Revision to List of Covered Facilities

AGENCY: Department of Energy.

ACTION: Notice of revision of listing of covered facilities.

SUMMARY: The Department of Energy (''Department'' or ''DOE'') periodically

publishes or revises a list of facilities covered under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (''EEOICPA'' or ''Act''). This notice revises the previous lists because (1) Some designated atomic weapons employers (AWE) should not have been so designated; (2) one listed facility's name has changed; and (3) one university was incorrectly designated as a covered facility rather than the laboratory operated by the university. Previous lists or revisions were published on June 28, 2007, November 30, 2005, August 23, 2004, July 21, 2003, December 27, 2002, June 11, 2001, and January 17, 2001.

FOR FURTHER INFORMATION CONTACT: Patricia R. Worthington, PhD, Director, Office of Health and Safety (HS–10), (301) 903–5926.

ADDRESSES: The Department welcomes comments on this notice. Comments should be addressed to: Patricia R. Worthington, PhD, Director, Office of Health and Safety (HS–10), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Purpose

The Act establishes a program to provide compensation to certain employees who develop illnesses as a result of their employment with DOE, its predecessor Agencies, certain of its contractors and subcontractors and listed beryllium vendors. Section 3621 of the Act (codified at 42 U.S.C. 7384l) defines an AWE as ''an entity, other than the United States, that—(A) processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and (B) is designated by the Secretary of Energy as an [AWE] for the purposes of the compensation program.'' Section 3621 defines an AWE facility as ''a facility, owned by an [AWE], that is or was used to process or produce, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining or milling.'' The Act defines a DOE facility, in pertinent part, as ''any building, structure, or premise, including the grounds upon which such building, structure, or premise is located—(A) in which operations are, or have been, conducted by, or on behalf of, the Department of Energy * * *; and (B) with regard to which the Department of Energy has or had—(i) a proprietary interest; or (ii) entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services.''

It has recently come to the attention of the Department that (1) Certain entities were previously mistakenly designated as AWEs because the designated entities were Agencies of the U.S. Government and the statutory definition of an AWE excludes the United States; (2) one listed facility has changed its name; and (3) one university was incorrectly designated as a covered facility rather than the laboratory operated by the university.

This notice formally makes the following changes to the list:

- Albany Research Center in Albany, Oregon, is no longer designated as an AWE, but will keep its designation as a DOE facility;
- General Electric in Cincinnati/Evandale, Ohio, is no longer designated as an AWE, but will keep its designation as a DOE and beryllium (Be) facility;
- Granite City Steel in Granite City, Illinois, will now be listed as General Steel Industries (also known as Granite City Steel) because the facility was named General City Steel for the majority of the covered period;
- The University of California in Berkeley, California, is no longer designated as a covered facility (AWE nor DOE). The University of California is the management and operating contractor for Lawrence Berkeley National Laboratory (LBNL) and any University of California facilities that may have been used for weapons development are now covered under the LBNL facility.

Issued in Washington, DC, on March 31, 2009.

Glenn S. Podonsky,

Chief Health, Safety and Security Officer, Office of Health, Safety and Security.

[FR Doc. E9–8105 Filed 4–8–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

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), Nevada Test 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: Wednesday, May 6, 2009, 6 p.m.

ADDRESSES: Ruud Community Center, 150 North Highway 160, Pahrump, Nevada 89048.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. *Phone:* (702) 657–9088; *Fax* (702) 295–5300 or *E-mail: ntscab@nv.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation: Community Advisory Board Road Show.
2. Sandia National Laboratory Presentation: Waste Transportation Study.
3. Sub-Committee Reports.

A. Outreach/Environmental Management Public Information Review Effort Committee.

B. Transportation/Waste Committee.

C. Underground Test Area Committee.

Public Participation: The EM SSAB, Nevada Test 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 Denise Rupp 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 presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Denise Rupp at the address listed above or at the following Web site: *http://www.ntscab.com/MeetingMinutes.htm*.

Issued at Washington, DC on April 6, 2009.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. E9–8100 Filed 4–8–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–017]

Energy Conservation Program for Commercial Equipment: Decision and Order Granting a Waiver to Sanyo Fisher Company From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedure and Denying a Waiver From the Residential Central Air Conditioner and Heat Pump Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: This notice publishes the Department of Energy's Decision and Order in Case No. CAC–017, which grants a waiver to Sanyo Fisher Company (Sanyo) from the existing Department of Energy (DOE) commercial package air conditioner and heat pump test procedure. The waiver is specific to the Sanyo Variable Refrigerant Flow (VRF) ECO–i multi-split heat pumps and heat recovery systems. As a condition of this waiver, Sanyo must test and rate its ECO–i VRF multi-split products according to the alternate test procedure set forth in this notice. DOE is denying as moot Sanyo's request for a waiver from the residential central air conditioner and heat pump test procedures, because those test procedures, as amended and currently effective, can be used to test Sanyo's ECO–i VRF multi-split residential products.

DATES: This Decision and Order is effective April 9, 2009 and will remain in effect until the effective date of a DOE final rule prescribing amended test procedures appropriate for the model series of Sanyo ECO–i VRF multi-split central air conditioners and heat pumps covered by this waiver.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: AS_Waiver_Requests@ee.doe.gov.*

Francine Pinto or Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–9507. *E-mail: Francine.Pinto@hq.doe.gov* or *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 431.401(f)(4), DOE gives notice of the issuance of its Decision and Order as set forth below. In this Decision and Order, DOE grants Sanyo a waiver from the existing DOE commercial package air conditioner and heat pump test procedures[1] for its VRF multi-split products, subject to a condition requiring Sanyo to test and rate its VRF multi-split products pursuant to the alternate test procedure provided in this notice. Further, today's Decision and Order requires that Sanyo may not make any representations concerning the energy efficiency of these products unless such product has been tested in accordance with the DOE test procedure, consistent with the provisions and restrictions of the alternate test procedure set forth in the Decision and Order below, and unless such representations fairly disclose the results of such testing.[2] 42 U.S.C. 6314(d).

DOE is denying as moot Sanyo's request for a waiver from the DOE residential central air conditioner and heat pump test procedures for its VRF multi-split products. As amended, the applicable DOE test procedure for these residential products will allow Sanyo to test and rate its residential VRF multi-split products.

Issued in Washington, DC, on March 30, 2009.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Sanyo Fisher Company (Sanyo) (Case No. CAC–017).

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part A[3] of Title III which establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' 42 U.S.C. 6291–6309. Similar to the program in Part A, Part A–1[4] of Title III provides for an energy efficiency program titled, ''Certain Industrial Equipment,'' which includes commercial air conditioning equipment, package boilers, water heaters, and other types of commercial equipment. 42 U.S.C. 6311–6317.

Today's notice involves residential products under Part A, as well as commercial equipment under Part A–1. Under both parts, the statute specifically includes definitions, test procedures, labeling provisions, energy conservation standards, and provides the Secretary of Energy (the Secretary) with the authority to require information and reports from manufacturers. 42 U.S.C. 6291–6309; 42 U.S.C. 6311–6317. With respect to test procedures, both parts generally authorize the Secretary to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. 42 U.S.C. 6293(b)(3), 6314(a)(2).

Relevant to the current Petition for Waiver, the test procedure for residential central air conditioning and heat pump products is set forth in 10 CFR Part 430, subpart B, Appendix M. On October 22, 2007, DOE amended the test procedures for residential central air conditioners and central air conditioning heat pumps. 72 FR 59906 (October 22, 2007). That final rule, which became effective on April 21, 2008, addressed issues that led to the requesting and granting of test procedure waivers for several models of residential multi-split systems. All waivers concerning *residential* modulating multi-split systems terminated on the effective date of that final rule. These amendments to the DOE test procedures, which are now incorporated in 10 CFR Part 430, subpart B, Appendix M, allow Sanyo to effectively test its ECO–i VRF residential multi-split air conditioners and heat pumps. Therefore, a waiver is no longer necessary for Sanyo's ECO–i VRF residential multi-split air conditioners and heat pumps. Accordingly, the following discussion will focus only on Sanyo's commercial ECO–i VRF multi-split products, for

[1] For commercial products, the applicable test procedure is the Air-Conditioning and Refrigeration Institute (ARI) Standard 340/360–2004, ''Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment'' (incorporated by reference at 10 CFR 431.95(b)(2)).

[2] Consistent with the statute, distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

[3] Part B of Title III of EPCA was redesignated Part A in the United States Code for editorial reasons.

[4] Part C of Title III of EPCA was redesignated Part A–1 in the United States Code for editorial reasons.

which its waiver request remains pertinent.

For commercial package air-conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' 42 U.S.C. 6314(a)(4)(A). EPCA further directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3). 42 U.S.C. 6314(a)(4)(B).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340 (December 8, 2006). DOE adopted ARI Standard 210/240–2003 for commercial package air conditioning and heating equipment with capacities <65,000 British thermal units per hour (Btu/h) and ARI Standard 340/360–2004 for commercial package air conditioning and heating equipment with capacities ≥65,000 Btu/h and <240,000 Btu/h. *Id.* at 71371. DOE's regulations incorporate by reference the relevant ARI Standards. 10 CFR 431.95(b)(1) and (2). Table 1 of 10 CFR 431.96 directs manufacturers of commercial package air-cooled air conditioning and heating equipment to use the appropriate procedure when measuring the energy efficiency of those products. The cooling capacities of Sanyo's ECO–i VRF commercial multi-split products fall in the range covered by ARI Standard 340/360–2004.

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered commercial equipment, for which the petitioner's basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petitions any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). In general, a waiver terminates on the effective date of a final rule, published in the **Federal Register**, which prescribes amended test procedures appropriate to the model series manufactured by the petitioner, thereby eliminating any need for the continuation of the waiver. 10 CFR 431.401(g).

The waiver process also allows any interested person who has submitted a Petition for Waiver to file an Application for Interim Waiver from the applicable test procedure requirements. 10 CFR 431.401(a)(2). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever occurs first, and may be extended by DOE for an additional 180 days, if necessary. 10 CFR 431.401(e)(4).

On February 22, 2007, Sanyo filed a Petition for Waiver and an Application for Interim Waiver from the test procedures applicable to residential and commercial package air-conditioning and heating equipment. The petition was published in the **Federal Register** on January 2, 2008. *See* 73 FR 179. Sanyo did not include an alternate test procedure in its Petition for Waiver.

In a similar and relevant case, DOE published a Petition for Waiver from Mitsubishi Electric and Electronics USA, Inc. (MEUS) for commercial variable refrigerant flow multi-split products very similar to Sanyo's VRF multi-split products. 71 FR 14858 (March 24, 2006). In the March 24, 2006, **Federal Register** notice, DOE also published and requested comment on an alternate test procedure for the MEUS products at issue. DOE stated that if it specified an alternate test procedure for MEUS in the subsequent Decision and Order, DOE would consider applying the same procedure to similar waivers for residential and commercial central air conditioners and heat pumps, including such products for which waivers had previously been granted. *Id.* at 14861. Comments were published along with the MEUS Decision and Order in the **Federal Register** on April 9, 2007. 72 FR 17528 (April 9, 2007). Most of the comments responded favorably to DOE's proposed alternate test procedure. *Id.* at 17529. Also, there was general agreement that an alternate test procedure is necessary while a final test procedure for these types of products is being developed. *Id.* The MEUS Decision and Order included the alternate test procedure adopted by DOE. *Id.*

DOE received no comments on the Sanyo petition.

Assertions and Determinations

Sanyo's Petition for Waiver

Sanyo seeks a waiver and interim waiver from the test procedures applicable to residential and commercial package air-conditioning and heating equipment. It seeks a waiver on the grounds that it's ECO–i VRF multi-split heat pump and heat recovery systems contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Sanyo asserts that the two primary factors that prevent testing of multi-split variable speed products, regardless of manufacturer, are the same factors stated in the waiver granted to MEUS for a similar line of commercial multi-splits:

- Testing laboratories cannot test products with so many indoor units; and
- There are too many possible combinations of indoor and outdoor units to test. 69 FR 52660, 52661 (August 27, 2004); 72 FR 17529.

Further, Sanyo states that its ECO–i product offering is a multi-split system incorporating a diverse amount and configuration of indoor units for connection to a single outdoor unit, and that it is impractical to test the performance of each system under the current DOE test procedure. The number of connectable indoor units for each outdoor unit ranges from 6 to 28. Furthermore, the indoor units are designed to operate at many different external static pressure values, which compounds the difficulty of testing. A testing facility could not manage proper airflow at several different external static pressure values for the many indoor units that would be connected to an ECO–i outdoor unit. Accordingly, Sanyo requests that DOE grant a waiver from the applicable test procedure for its ECO–i product designs until a suitable test procedure can be prescribed.

Previously, in addressing MEUS's R410A CITY MULTI VRFZ products, which are similar to the Sanyo ECO–i products at issue here, DOE stated:

> To provide a test procedure from which manufacturers can make valid representations, the Department is considering setting an alternate test procedure for MEUS in the subsequent Decision and Order. Furthermore, if DOE specifies an alternate test procedure for MEUS, DOE is considering applying the alternate test procedure to similar waivers for residential and commercial central air

conditioners and heat pumps. Such cases include Samsung's petition for its DVM products (70 FR 9629, February 28, 2005), Fujitsu's petition for its Airstage variable refrigerant flow (VRF) products (70 FR 5980, February 4, 2005), and MEUS's petition for its R22 CITY MULTI VRFZ products. (69 FR 52660, August 27, 2004).

71 FR 14861.

In general, DOE understands that existing testing facilities have a limited ability to test multiple indoor units at one time, and the number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems is impractical to test. We further note that subsequent to the waiver that DOE granted for MEUS's R22 multi-split products, ARI formed a committee to discuss the issue and to work on developing an appropriate testing protocol for variable refrigerant flow systems.

Furthermore, DOE stated in the notice publishing the MEUS Petition for Waiver that if DOE decided to specify an alternate test procedure for MEUS, it would consider applying the procedure to waivers for similar residential and commercial central air conditioners and heat pumps produced by other manufacturers. 71 FR 14861. Most of the comments received by DOE in response to the March 2006 notice favored the proposed alternate test procedure. 72 FR 17529. The comments generally agreed that an alternate test procedure is appropriate for an interim period while a final test procedure for these products is being developed. *Id.*

DOE believes that the ECO–i Sanyo equipment and equipment for which waivers have previously been granted are alike with respect to the factors that make them eligible for test procedure waivers. DOE is therefore granting to Sanyo an ECO–i product waiver similar to the previous MEUS multi-split waivers.

To enable Sanyo to make energy efficiency representations for its specified ECO–i multi-split products, DOE has decided to require use of the alternate test procedure described below, as a condition of Sanyo's waiver. This alternate test procedure is substantially the same as the one that DOE applied to the waiver for MEUS's R22 and R410A products, which was published at 72 FR 17528.

Therefore, as discussed below, as a condition for granting this Waiver to Sanyo, DOE is including an alternate test procedure similar to those granted to MEUS for its R22 and R410A products. That alternate test procedure served as the basis for the October 22, 2007 final rule's amendments to the test procedures for residential central air conditioners and central air conditioning heat pumps, which became effective April 21, 2008. Since the residential test procedure is now in place for central air conditioners and central air conditioning heat pumps, Sanyo is able to make energy efficiency representations for its specified VRF residential multi-split products. Accordingly, a waiver for Sanyo's residential units is no longer necessary.

However, the same problem described above still applies to Sanyo's commercial products. Therefore, DOE is issuing today's Decision and Order granting Sanyo a test procedure waiver for its commercial VRF multi-split heat pumps and heat recovery systems, but is requiring the use of the alternate test procedure described below as a condition of Sanyo's waiver. This alternate test procedure is substantially the same as the one that DOE applied to the MEUS waiver published on April 9, 2007. *Id.*

Alternate Test Procedure

The alternate test procedure developed in conjunction with the MEUS waiver has two basic components. First, it permits Sanyo to designate a ''tested combination'' for each model of outdoor unit. The indoor units designated as part of the tested combination must meet specific requirements. For example, the tested combination must have from two to eight [5] indoor units so that it can be tested in available test facilities. The tested combination must be tested according to the applicable DOE test procedure, as modified by the provisions of the alternate test procedure as set forth below.

Second, the alternate test procedure allows Sanyo to represent the energy efficiency of that product. The DOE test procedure, as modified by the alternate test procedure set forth in this Decision and Order, provides for testing of a non-tested combination in two ways: (1) At an energy efficiency level determined under a DOE-approved alternative rating method; or, if the first method is not available, (2) at the efficiency level of the tested combination utilizing the same outdoor unit. Until an alternative rating method is developed, all combinations with a particular outdoor unit may use the rating of the combination tested with that outdoor unit.

[5] The ''tested combination'' was originally defined to consist of one outdoor unit matched with between 2 and 5 indoor units. The maximum number of indoor units in a tested combination is here increased from 5 to 8 to account for the fact that these larger-capacity products can accommodate a greater number of indoor units.

As in the case of the MEUS waiver and alternate testing procedures, DOE believes that allowing Sanyo to make energy efficiency representations for non-tested combinations by adopting this alternative test procedure is reasonable because the outdoor unit is the principal efficiency driver. The current DOE test procedure for commercial products tends to rate these products conservatively. The multi-zoning feature of these products, which enables them to cool only those portions of the building that require cooling, would be expected to use less energy than if the unit is operated to cool the entire home or a comparatively larger area of a commercial building in response to a single thermostat. This feature would not be captured by the current test procedure, which requires full-load testing. Full load testing, under which the entire building would require cooling, disadvantages these products because they are optimized for best efficiency when operating with less than full loads. In fact, these products normally operate at part-load conditions. Therefore, the alternate test procedure will provide a conservative basis for assessing the energy efficiency for such products.

With regard to the laboratory testing of commercial products, some of the difficulties associated with the existing test procedure are avoided by the alternate test procedure's requirements for choosing the indoor units to be used in the manufacturer-specified tested combination. For example, in addition to limiting the number of indoor units, another requirement is that all of the indoor units must meet the same minimum external static pressure. This requirement allows the test lab to manifold the outlets from each indoor unit into a common plenum that supplies air to a single airflow measuring apparatus. This requirement eliminates situations in which some of the indoor units are ducted and some are non-ducted. Without this requirement, the laboratory must evaluate the capacity of a subgroup of indoor coils separately, and then sum the separate capacities to obtain the overall system capacity. This would require that the test laboratory must be equipped with multiple airflow measuring apparatuses (which is unlikely), or that the test laboratory connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit has been measured.

Based on the discussion above, DOE believes that the testing problems described above would prevent testing of Sanyo's ECO–i VRF multi-split basic

models according to the test procedures currently prescribed in ARI Standard 340/360–2004 and incorporated by reference in DOE's regulations at 10 CFR 431.95(b)(2). After careful consideration, DOE has decided to adopt the alternate test procedure for Sanyo's commercial products, with the clarifications discussed above.

Consultations With Other Agencies

DOE consulted with the FTC staff concerning the Sanyo Petition for Waiver. The FTC staff did not have any objections to the issuance of a waiver to Sanyo.

Conclusion

After careful consideration of all the materials submitted by Sanyo, and consultation with the FTC staff, it is ordered that:

(1) The ''Petition for Waiver'' filed by Sanyo Fisher Company (Sanyo) (Case No. CAC–017) is hereby granted as set forth in the paragraphs below.

(2) Sanyo shall not be required to test or rate its commercial ECO–i VRF multi-split air conditioner and heat pump models listed below on the basis of the current test procedure contained in 10 CFR 431.96, specifically, ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2)), but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

Outdoor units:

ECO–I OUTDOOR MODEL IDENTIFICATION

Model No.	Nominal Capacity		Type	Phase	Voltage	Connectable indoor units
	Cooling	Heating				
CHDX09053	95,500	107,500	Heat Pump	3	208–230	16
CHDZ09053	95,500	107,500	Heat Recovery (Simultaneous heating/cooling).	3	208–230	16
CHDX14053	153,600	170,600	Heat Pump	3	208–230	28
CHDZ14053	153,600	170,600	Heat Recovery (Simultaneous heating/cooling).	3	208–230	28

Indoor units:

- AHX**52 Series; Ceiling Cassette, 1 Way Air Discharge, 7,500/9,600/12,000 BTU/hr nominal capacities.
- DHX**52 Series; Concealed Ducted, Medium External Static, 36,000/47,800 BTU/hr nominal capacities.
- FHX**52 Series; Exposed Floor Standing, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.
- FMHX**52 Series; Concealed Floor Standing, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.
- KHX**52 Series; Wall Mounted, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.
- LHX**52 Series; Ceiling Mount Slim Design 1 Way Air Discharge, 12,000/19,000/25,000 BTU/hr nominal capacities.
- SHX**52 Series; Ceiling Cassette, 2 Way Air Discharge, 7,500/9,600/12,000/19,000/25,000/36,000/47,800 BTU/hr nominal capacities.
- THX**52 Series; Ceiling Suspended, 12,000/19,000/25,000 BTU/hr nominal capacities.
- UHX**52 Series; Concealed Ducted, Low External Static, 7,500/9,600/12,000/19,000/25,000/36,000 BTU/hr nominal capacities.
- UMHX**52 Series; Concealed Slim Ducted, Low External Static, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.
- XHX**52 Series; Ceiling Cassette, 4 Way Air Discharge, 12,000/19,000/25,000/36,000 BTU/hr nominal capacities.
- XMHX**52 Series, Mini Ceiling Cassette, 4 Way Air Discharge, 7,500/9,600/12,000/19,000/25,000 BTU/hr nominal capacities.

(3) *Alternate test procedure.*

(A) *Test procedures.* Sanyo shall be required to test the products listed in paragraph (2) according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96, except that Sanyo shall test a ''tested combination'' selected in accordance with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, Sanyo shall make representations concerning the ECO–i VRF multi-split products covered in this waiver according to the provisions of subparagraph (C) below.

(B) *Tested combination.* The term ''tested combination'' means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(i) The basic model of a variable refrigerant flow system used as a tested combination shall consist of an outdoor unit that is matched with between two and eight indoor units; for multi-split systems, each of these indoor units shall be designed for individual operation.

(ii) The indoor units shall:

(a) Represent the highest sales model family, or another indoor model family if the highest sales model family does not provide sufficient capacity to meet the requirements of (b);

(b) Together, have a nominal cooling capacity that is between 95 percent and 105 percent of the nominal cooling capacity of the outdoor unit;

(c) Not, individually, have a nominal cooling capacity that is greater than 50 percent of the nominal cooling capacity of the outdoor unit;

(d) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(e) All be subject to the same minimum external static pressure requirement.

(C) *Representations.* In making representations about the energy efficiency of its ECO–i VRF multi-split products, for compliance, marketing, or other purposes, Sanyo must fairly disclose the results of testing under the DOE test procedure, doing so in a manner consistent with the provisions outlined below:

(i) For ECO–i VRF multi-split combinations tested in accordance with this alternate test procedure, Sanyo may make representations based on these test results.

(ii) For ECO–i VRF multi-split combinations that have not been tested, Sanyo may make representations based on the testing results for the tested combination and which are consistent with either of the two following methods, except that only method (a) may be used, if available:

(a) Representation of non-tested combinations according to an alternative rating method approved by DOE; or

(b) Representation of non-tested combinations at the same energy efficiency level as the tested

combination with the same outdoor unit.

(4) This waiver shall remain in effect from the date of issuance of this Order until the effective date of a DOE final rule prescribing amended test procedures appropriate to the model series manufactured by Sanyo listed above.

(5) This waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect, or DOE determines that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on March 30, 2009.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9–7942 Filed 4–8–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–585–001]

Commission Information Collection Activities (FERC–585); Comment Request; Submitted for OMB Review

April 2, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 USC 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to the **Federal Register** notice (74 FR 5150, 1/29/09) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by May 12, 2009.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0138 as a point of reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC09–585–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide/electronic-media.asp*. To file the document electronically, access the Commission's Web site and click on Documents & Filing, E–Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, an original and 2 copies of the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC09–585–001.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *fercolinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *ellen.brown@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–585 ''Reporting of Electric Energy Shortages and Contingency Plans under PURPA'' (OMB No. 1902–0138) is used by the Commission to implement the statutory provisions of section 206 of the Public Utility Regulatory Policies Act of 1979 (PURPA) Public Law 95–617, 92 Stat. 3117. Section 206 of PURPA amended the Federal Power Act (FPA) by adding a new subsection (g) to section 202, under which the Commission by rule, was to require each public utility to (1) report to the Commission and appropriate state regulatory authorities of any anticipated shortages of electric energy or capacity which would affect the utility's capability to serve its wholesale customers; and (2) report to the Commission and any appropriate state regulatory authority with a contingency plan that would outline what circumstances might give rise to such occurrences.

In Order No. 575, the Commission modified the reporting requirements in 18 CFR 294.101(b) to provide that, if a public utility includes in its rates schedule, provisions that: (a) During electric energy and capacity shortages it will treat firm power wholesale customers without undue discrimination or preference; and (b) it will report any modifications to its contingency plan for accommodating shortages within 15 days to the appropriate state regulatory agency and to the affected wholesale customers, then the utility need not file with the Commission an additional statement of the contingency plan for accommodating such shortages. This revision merely changed the reporting mechanism; the public utility's contingency plan would be located in its filed rate rather than in a separate document.

In Order No. 659, the Commission modified the reporting requirements in 18 CFR 294.101(e) to provide that the means by which public utilities must comply with the requirements to report shortages and anticipated shortages is to submit this information electronically using the Office of Electric Reliability's pager system at *emergency@ferc.gov* in lieu of submitting an original and two copies with the Secretary of the Commission.

The Commission uses the information to evaluate and formulate an appropriate option for action in the event an unanticipated shortage is reported and/or materializes. Without this information, the Commission and State agencies would be unable to: (1) Examine and approve or modify utility actions, (2) prepare a response to anticipated disruptions in electric energy, and (3) ensure equitable treatment of all public utility customers under the shortage situations. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 294.

Action: The Commission is requesting a three-year extension of the current expiration date, with no change to the existing requirements.

Burden Statement: Public reporting burden for this collection is estimated as:

FERC–585	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
Contingency Plan	1	1	73	73
Capacity Shortage	1	1	0.25	0.25

Estimated annual cost to respondents is $4,518.15 (73.25 hours/2080 hours [1] times $128,297 [2] = $4,518.15).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8045 Filed 4–8–09; 8:45 am]

BILLING CODE 6717–01–P

[1] The number of hours an employee works each year is estimated to be 2,080.

[2] The average annual salary per employee is estimated to be $128,297.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–587–001]

Commission Information Collection Activities (FERC–587); Comment Request; Submitted for OMB Review

April 2, 2009.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to the **Federal Register** notice (74 FR 2573, 1/15/2009) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by May 11, 2009.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0145 as a point of reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC09–587–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide/electronic-media.asp*. To file the document electronically, access the Commission's Web site and click on Documents & Filing, E–Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, an original and 2 copies of the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC09–587–001.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *fercolinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *ellen.brown@ferc.gov*.

SUPPLEMENTARY INFORMATION: The FERC uses the FERC Form No. 587 (''Land

Description (Public Land States/Non-Public Land States (Rectangular or Non-Rectangular Survey System Lands in Public Land States))''; OMB Control Number 1902–0145) to collect information required by the statutory provisions of Section 24 of the Federal Power Act (FPA), (16 U.S.C.818).

Applicants proposing hydropower projects, or changes to existing projects located on lands owned by the United States are required to provide a description of the U.S. lands affected, to the Commission and Secretary of Interior. FERC Form No. 587 consolidates the information required, and identifies hydropower project boundary maps associated with lands of the United States. The Commission verifies the accuracy of the information supplied and coordinates with the Bureau Land of Management State Offices (BLM), so the U.S. lands can be reserved as hydropower sites and withdrawn from other uses.

When the filer submits the FERC–587, the filer is also required to submit exhibit drawings (*e.g.*, on aperture cards and/or electronic files). The FERC–587 serves as a ''table of contents'' for the Federal lands that are shown in the drawings. The reporting requirements and burdens related to the preparation and submittal of the actual drawings are included, as appropriate, in: FERC–512 (Application for Preliminary Permits; OMB Control No.: 1902–0073), FERC–500 (Application for License/Relicense for Water Projects with Capacity Greater than 5 MW; OMB Control No. 1902–0058), and FERC–505 (Application for License/Relicense for Water Projects with Capacity 5 MW or Less; OMB Control No. 1902–0115).)

Action: The Commission is requesting a three-year extension of the current expiration date, with no change to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

FERC data collection	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
FERC–587	250	1	1	250

The total estimated annual cost is $12,500 (250 hours at $50/hour). The estimated annual cost per respondent is $50. [These figures are based on the estimated median salary (adjusted for inflation) for a civil engineering technician, from the Bureau of Labor Statistics, Occupational Employment Statistics.]

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8046 Filed 4–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2503–136]

Duke Energy Carolinas, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

April 2, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands.

b. *Project No.:* 2503–136.

c. *Date Filed:* February 26, 2009.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Keowee & Jocassee.

f. *Location:* The proposed non-project use is on Lake Keowee in Oconee County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Kelvin Reagan, Duke Energy Carolinas, LLC, P.O. Box 1006, Charlotte, NC, 28201–1006; (704) 382–9386.

i. *FERC Contact:* Mark Carter, (202) 502–6554, *mark.carter@ferc.gov.*

j. *Deadline for Filing Comments, Motions to Intervene, and Protests:* May 04, 2009. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Duke Energy Carolinas, LLC requests Commission approval to grant Sleppy, LLC permission to construct the following facilities on project lands: (1) Two cluster docks consisting of a total of thirty boat slips; and (2) one boat ramp to serve a dry dock facility located outside the project boundary. These facilities would serve a 47-home subdivision named Wilderness Cove. Prior to filing of the application, Sleppy, LLC consulted with appropriate agencies and other entities, including the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, South Carolina Department of Archives & History, South Carolina Institute of Archaeology and Anthropology, South Carolina Department of Natural Resources, and Eastern Band of Cherokee Indians.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8041 Filed 4–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13353–000]

Riverbank Sparta, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

April 2, 2009.

On January 21, 2009, Riverbank Sparta, LLC, filed an application pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Sparta Pumped Storage Project No. 13353–000, to be located at the Limecrest Quarry in Sparta Township, Sussex County, New Jersey.

The proposed Sparta Pumped Storage Project would consists of: (1) The existing Limecrest Quarry (upper reservoir); (2) four new 13-foot-diameter vertical penstocks leading to a powerhouse 2,000 feet underground; (3) a new powerhouse containing four 250-megawatt (MW) generating units with a total installed capacity of 1,000 MW; (4) water leaving the turbines, would temporarily be stored in six new underground storage galleries (lower reservoir); (5) a new 5.7-mile-long, 500 kV double circuit transmission line; and (6) appurtenant facilities. The estimated average annual energy production is 2,190 gigawatt-hours.

Applicant Contact: Mr. John Douglas, President and CEO; c/o Riverbank Power Corporation; Royal Bank Plaza; South Tower, Box 166; 200 Bay Street, Suite 3110; Toronto, Ontario; M5J2J4 Canada; 416–861–0092 ext. 156.

FERC Contact: Patrick Murphy, (202) 502–8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance date of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13353) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8050 Filed 4–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

March 31, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP95–408–073.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits Report on Sharing of Profits from Base Gas Sales with Customers under the provisions of the Stipulation.
Filed Date: 03/26/2009.
Accession Number: 20090327–0023.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 07, 2009.

Docket Numbers: RP96–200–205.
Applicants: CenterPoint Energy Gas Transmission Company.
Description: CenterPoint Energy Gas Transmission Company submits Amended Negotiated Rate Agreement with Enbridge Marketing, LP under RP96–200.
Filed Date: 03/26/2009.
Accession Number: 20090327–0024.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 07, 2009.

Docket Numbers: RP99–176–192.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: Natural Gas Pipeline Company of America LLC submits First Revised Sheet 33H. 02 *et al.* to its FERC Gas Tariff, Seventh Revised Volume 1, to be effective 4/1/09.
Filed Date: 03/27/2009.
Accession Number: 20090330–0016.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 08, 2009.

Docket Numbers: RP99–176–193.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: Natural Gas Pipeline Company of America, LLC submits Original Sheet 34L.01 *et al.* to its FERC Gas Tariff, Seventh Revised Volume 1, to be effective 4/1/09.
Filed Date: 03/27/2009.
Accession Number: 20090330–0017.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 08, 2009.

Docket Numbers: RP99–513–048.
Applicants: Questar Pipeline Company.
Description: Questar Pipeline Company submits Sixth Revised Sheet 7.01 *et al.* to FERC Gas Tariff, First Revised Volume 1.
Filed Date: 03/27/2009.
Accession Number: 20090330–0015.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 08, 2009.

Docket Numbers: RP00–426–042.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits Original Sheet No 77 *et al.* to FERC Gas Tariff, Third Revised Volume No 1, to be effective 4/1/09.
Filed Date: 03/27/2009.
Accession Number: 20090330–0020.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 08, 2009.

Docket Numbers: RP04–274–018.
Applicants: Kern River Gas Transmission Company.
Description: Kern River Gas Transmission Company submits First Revised Sheet 5.01 *et al.* to its FERC Gas Tariff, Second Revised Volume 1, to be effective 1/1/09.
Filed Date: 03/27/2009.
Accession Number: 20090330–0014.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 08, 2009.

Docket Numbers: RP09–260–002.
Applicants: Tres Palacios Gas Storage, LLC.
Description: Tres Palacios Gas Storage LLC's submission of additional information and revised tariff sheets in response to the Commission 2/24/09 Order.
Filed Date: 03/26/2009.
Accession Number: 20090327–0029.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 07, 2009.

Docket Numbers: RP09–306–002.
Applicants: Kern River Gas Transmission Company.
Description: Kern River Gas Transmission Company submits Substitute Third Revised Sheet 143 to its FERC Gas Tariff, Second Revised Volume 1, to be effective 7/30/08.
Filed Date: 03/27/2009.
Accession Number: 20090330–0018.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 08, 2009.

Docket Numbers: RP09–465–002.
Applicants: Kern River Gas Transmission Company.
Description: Kern River Gas Transmission Company submits Fourth Revised Sheet 301 *et al.* to its FERC Gas Tariff, Second Revised Volume 1, to be effective 4/20/09.
Filed Date: 03/27/2009.
Accession Number: 20090330–0019.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 08, 2009.

Docket Numbers: RP09–469–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Southern Star Central Gas Pipeline, Inc submits Second Revised Sheet 150 *et al.* to FERC Gas Tariff, Original Volume No 1, to be effective 5/1/09.
Filed Date: 03/27/2009.
Accession Number: 20090330–0021.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 08, 2009.

Docket Numbers: RP09–470–000.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits First Revised Sheet 2000 to its FERC Gas Tariff, Third Revised Volume 1, to be effective 5/1/09.
Filed Date: 03/27/2009.
Accession Number: 20090330–0013.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 08, 2009.

Docket Numbers: RP09–471–000.
Applicants: White River Hub, LLC.
Description: White River Hub, LLC submits Second Revised Sheet 7 *et al.* to its FERC Gas Tariff, Original Volume 1, to be effective 4/28/08.
Filed Date: 03/27/2009.
Accession Number: 20090330–0012.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 08, 2009.

Docket Numbers: RP09–472–000.
Applicants: Southern LNG Inc.
Description: Southern LNG, Inc submits Second Revised Sheet 75 *et al.* to its FERC Gas Tariff, Original Volume 1, to be effective 7/30/08 pursuant to Order 712.
Filed Date: 03/27/2009.
Accession Number: 20090330–0011.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 08, 2009.

Docket Numbers: RP09–473–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Midcontinent Express Pipeline submits First Revised Sheet 6 *et al.* to its FERC Gas Tariff, Original Volume 1, to be effective 4/1/09.
Filed Date: 03/27/2009.
Accession Number: 20090330–0010.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 08, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be

listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–8036 Filed 4–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

April 01, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–272–089.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submit Fifth Revised Sheet No 66B.01a *et al.* to FERC Gas Tariff, Fifth Revised Volume No 1, to be effective 4/1/09.
Filed Date: 03/31/2009.
Accession Number: 20090331–0067.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP96–320–104.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company submits a capacity release agreement containing Negotiated Rate provisions executed by Gulf South and Texla Energy Management, Inc.
Filed Date: 03/30/2009.
Accession Number: 20090331–0057.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP99–176–194.
Applicants: Natural Gas Pipeline Co of America LLC.
Description: Natural Gas Pipeline Company of America LLC submits First Revised Sheet No 35B *et al.* to FERC Gas Tariff, Seventh Revised Volume No 1, to be effective 4/1/09.
Filed Date: 03/31/2009.
Accession Number: 20090331–0065.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP99–176–195.
Applicants: Natural Gas Pipeline Co of America LLC.
Description: Natural Gas Pipeline Company of America LLC submit Second Revised Sheet No 35C *et al.* to FERC Gas Tariff, Seventh Revised Volume No 1, to be effective 4/1/09.
Filed Date: 03/31/2009.
Accession Number: 20090331–0075.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP00–426–043.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits Original Sheet 91 *et al.* to its FERC Gas Tariff, Third Revised Volume, and a Negotiated Rate Agreements related to the Henderson Dogtown Lateral Project.
Filed Date: 03/30/2009.
Accession Number: 20090331–0055.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP07–139–006.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits Third Revised Sheet 513 to its FERC Gas Tariff, Fifth Revised Volume 1, to be effective 3/1/09.
Filed Date: 03/30/2009.
Accession Number: 20090331–0054.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP08–479–002.
Applicants: Saltville Gas Storage Company LLC.
Description: Saltville Gas Storage Company, LLC submits Substitute Fifth Revised Sheet 107 *et al.* to its FERC Gas Tariff, Original Volume 1, to be effective 3/1/09.
Filed Date: 03/30/2009.
Accession Number: 20090331–0052.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP08–487–002.
Applicants: East Tennessee Natural Gas, LLC.
Description: East Tennessee Natural Gas, LLC submits Substitute Second Revised Sheet 313 *et al.* to its FERC Gas Tariff, Third Revised Volume 1, to be effective 3/1/09.
Filed Date: 03/30/2009.
Accession Number: 20090331–0053.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP09–61–005.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Company LLC submits replacement amendment to negotiated rate letter agreement re the Gulf Crossing Project.
Filed Date: 03/30/2009.
Accession Number: 20090331–0059.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP09–304–001.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits Substitute First Revised Sheet No 2805 *et al.* to FERC Gas Tariff, Third Revised Volume No 1, to be effective 3/1/09.
Filed Date: 03/30/2009.
Accession Number: 20090331–0058.
Comment Date: 5 p.m. Eastern Time on Monday, April 20, 2009.

Docket Numbers: RP09–474–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC. submits Transportation Rate Schedule FTS Agreement dated 3/9/04 with Tenaska Marketing Ventures, to be effective 4/1/09.
Filed Date: 03/31/2009.
Accession Number: 20090331–0066.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP09–475–000.
Applicants: Vector Pipeline, LP.
Description: Vector Pipeline LP submits their Annual Fuel Use Report.
Filed Date: 03/31/2009.
Accession Number: 20090331–0068.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP09–477–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: Panhandle Eastern Pipe Line Company, LP submits work papers in support of its Annual Flow Through of Cash Out Revenues in Excess of Costs and Scheduling Charges Assessed Against Affiliates.
Filed Date: 03/31/2009.
Accession Number: 20090331–0069.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP09–478–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: Panhandle Eastern Pipe Line Company, LP submits Annual Report of Flow Through of Penalty Revenues.

Filed Date: 03/31/2009.
Accession Number: 20090331–0070.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP09–479–000.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company submits First Revised Sheet No. 333D *et al.* to FERC Gas Tariff, Second Revised Volume No. 1, to be effective 5/1/09.
Filed Date: 03/31/2009.
Accession Number: 20090331–0071.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP09–480–000.
Applicants: Horizon Pipeline Company, LLC.
Description: Horizon Pipeline Company, LLC submits Second Revised Sheet No. 7C *et al.* to FERC Gas Tariff, Original Volume No. 1, to be effective 4/1/09.
Filed Date: 03/31/2009.
Accession Number: 20090331–0072.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP09–481–000.
Applicants: CenterPoint Energy Gas Transmission Company.
Description: CenterPoint Energy Gas Transmission Company submits annual revenue crediting filing pursuant to its FERC Gas Tariff, Sixth Revised Volume No. 1 etc.
Filed Date: 03/31/2009.
Accession Number: 20090331–0073.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP09–482–000.
Applicants: Horizon Pipeline Company, LLC.
Description: Horizon Pipeline Company, LLC submits its Penalty Revenue Crediting Report for the period 1/1/08 to 12/31/08.
Filed Date: 03/31/2009.
Accession Number: 20090331–0074.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP09–483–000.
Applicants: Quest Pipelines (KPC).
Description: Quest Pipelines submits Third Revised Sheet No. 21 *et al.* to FERC Gas Tariff, Second Revised Volume No. 1, to be effective 4/1/09.
Filed Date: 03/31/2009.
Accession Number: 20090331–0076.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP09–484–000.
Applicants: Kern River Gas Transmission Company.
Description: Report of Kern River Gas Transmission Company on Annual Fuel and Lost and Unaccounted-For Gas Factor Report for calendar year 2008.
Filed Date: 03/30/2009.
Accession Number: 20090330–5178.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Docket Numbers: RP09–485–000.
Applicants: Rockies Express Pipeline LLC.
Description: Annual Incidental Purchases and Sales Report of Rockies Express Pipeline LLC.
Filed Date: 04/01/2009.
Accession Number: 20090401–5030.
Comment Date: 5 p.m. Eastern Time on Monday, April 13, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–8035 Filed 4–8–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

March 26, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP07–504–002.
Applicants: Algonquin Gas Transmission Company.
Description: Algonquin Gas Transmission, LLC submits Second Revised Sheet 519 *et al.* to FERC Gas Tariff, Fifth Revised Volume 1, to be effective 3/23/09.
Filed Date: 03/23/2009.
Accession Number: 20090324–0254.
Comment Date: 5 p.m. Eastern Time on Monday, April 06, 2009.

Docket Numbers: RP08–421–003.
Applicants: Petal Gas Storage, L.L.C.
Description: Petal Gas Storage LLC submits 2nd Substitute Fourth Revised Sheet 113 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 7/25/09.
Filed Date: 03/24/2009.
Accession Number: 20090325–0125.
Comment Date: 5 p.m. Eastern Time on Monday, April 06, 2009.

Docket Numbers: RP09–282–001.
Applicants: Tennessee Gas Pipeline Company.
Description: Tennessee Gas Pipeline Company submits Substitute Fifth Revised Sheet 328 *et al.* to FERC Gas Tariff, Fifth Revised Volume 1, to be effective 2/26/09.
Filed Date: 03/24/2009.
Accession Number: 20090325–0127.
Comment Date: 5 p.m. Eastern Time on Monday, April 06, 2009.

Docket Numbers: RP09–412–001.
Applicants: Williston Basin Interstate Pipeline Company.
Description: Williston Basin Interstate Pipeline Company submits Substitute Fifteenth Revised Sheet 724 *et al.* to FERC Gas Tariff, Second Revised Volume 1, to be effective 3/1/09.
Filed Date: 03/24/2009.
Accession Number: 20090325–0126.
Comment Date: 5 p.m. Eastern Time on Monday, April 06, 2009.

Docket Numbers: RP09–465–001.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company withdraws their 3/20/09 filing that revised the pro forma transportation service agreements and provides substitutes.

Filed Date: 03/25/2009.

Accession Number: 20090326–0025.

Comment Date: 5 p.m. Eastern Time on Monday, April 06, 2009.

Docket Numbers: RP09–467–000.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits Notice of Contract Termination of the Transportation Service Agreement with Beaird Co, Ltd, to be effective 4/23/09.

Filed Date: 03/24/2009.

Accession Number: 20090325–0124.

Comment Date: 5 p.m. Eastern Time on Monday, April 06, 2009.

Docket Numbers: RP09–468–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits First Revised Sheet 1 *et al.* to FERC Gas Tariff, Third Revised Volume 1.

Filed Date: 03/25/2009.

Accession Number: 20090326–0026.

Comment Date: 5 p.m. Eastern Time on Monday, April 06, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–8037 Filed 4–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–3281–005]

Abel, James E.; Notice of Filing

April 2, 2009.

Take notice that on March 31, 2009, James E. Abel filed an application for authorization to hold interlocking positions pursuant to section 305(b) of the Federal Power Act and part 45 of the regulations of the Federal Energy Regulatory Commission, 18 CFR part 45 (2008).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 23, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8047 Filed 4–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL08–14–002]

Black Oak Energy, LLC, EPIC Merchant Energy, LP, SESCO Enterprises, LLC, Joint Complainants v. PJM Interconnection, Inc., Respondent; Notice of Filing

April 2, 2009.

Take notice that on March 26, 2009, PJM Interconnection, L.L.C. submit revised PJM Open Access Transmission Tariff and PJM Amended and Restated Operating Agreement sheets, in compliance with the Commission's February 24, 2009 Order, *Black Oak Energy, et al.* v. *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,164 (2009) (February 24 Order).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy

of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 pm Eastern Time on April 16, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8052 Filed 4–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–3894–003]

Duane, Elizabeth Stevens; Notice of Filing

April 2, 2009.

Take notice that on March 31, 2009, Elizabeth Stevens Duane filed a supplemental application for authorization to hold interlocking positions pursuant to section 305(b) of the Federal Power Act of the regulations of the Federal Energy Regulatory Commission, 18 CFR Part 45 (2008).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 21, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8048 Filed 4–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–5728–001]

Kroboth, Michael E.; Notice of Filing

April 2, 2009.

Take notice that on March 31, 2009, Michael E. Kroboth filed an informational report of interlocking positions and supplemental application to hold interlocking positions pursuant to section 305(b) of the Federal Power Act and part 45 of the regulations of the Federal Energy Regulatory Commission, 18 CFR part 45 (2008).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 21, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8049 Filed 4–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–886–000]

Connectiv Vineland Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 2, 2009.

This is a supplemental notice in the above-referenced proceeding of Connectiv Vineland Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is April 22, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8042 Filed 4–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–897–000]

DC Energy Dakota, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 2, 2009.

This is a supplemental notice in the above-referenced proceeding of DC Energy Dakota, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is April 22, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC, 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8044 Filed 4–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–890–000]

Windhorse Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

April 2, 2009.

This is a supplemental notice in the above-referenced proceeding of Windhorse Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is April 22, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC, 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8043 Filed 4–8–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2030–186]

Portland General Company and The Confederated Tribes of Warm Springs; Notice of Filing of Petition for Declaratory Order

April 2, 2009.

Take notice that on March 6, 2009, Anita Jackson, Charles Jackson, Deborah Jackson, and Mark Jackson (Jackson family or petitioners) filed a petition for declaratory order requesting the Commission to issue a order finding that the licensee for the Pelton Round Butte Project No. 2030 is required to pay reasonable charges pursuant to section 10(e) of the Federal Power Act to the Jackson family for use of their land in the operation of the Round Butte Hydroelectric Project. The petition states that the named members of the Jackson family are members of the Confederated Tribe of Warm Springs and own an undivided one-third beneficial interest in allotments 527, 528, and 532 within the Warm Springs Reservation. The petition notes that the Confederated Tribes of Warm Springs owns the remaining undivided two-thirds beneficial interest in the allotments, and the Bureau of Indian Affairs is the trustee for the allotments.

The deadline for filing (1) comments in response to this filing, or (2) motions to intervene to become a party (pursuant to 18 CFR 385.214) is 30 days from the issuance of this notice.

All filings should be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings *see* 18 CFR 385.2001 and 385.2003 or go to the Commission's Web site located at *http://www.ferc.gov/help/filing-guide/file-hardcopy-elec.asp.*

More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–2030) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–8051 Filed 4–8–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8790–7]

Farm, Ranch, and Rural Communities Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a meeting of the Farm, Ranch, and Rural Communities Committee (FRRCC). The purpose of the FRRCC is to provide advice to the Administrator of EPA on environmental issues and programs that impact, or are of concern to, farms, ranches, and rural communities. The FRRCC is a part of EPA's efforts to expand cooperative working relationships with the agriculture industry and others who are interested in agricultural issues to achieve greater progress in environmental protection.

The purpose of this teleconference is to discuss and approve the draft FRRCC Land Use advice letter to the EPA. A copy of the meeting agenda will be posted at *http://www.epa.gov/ocem/frrcc.*

DATES: FRRCC will hold a public teleconference on Tuesday, May 19, 2009, from 2 p.m.–4 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held in the U.S. EPA East Building, 1201 Constitution Ave., NW., Room 1132, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Alicia Kaiser, Designated Federal Officer, *kaiser.alicia@epa.gov*, 202–564–7273, U.S. EPA, Office of the Administrator (1101A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or Christopher Ashcraft, Junior Designated Federal Officer, *ashcraft.christopher@epa.gov*, 202–564–2432, U.S. EPA, Office of the Administrator (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to the FRRCC should be sent to Alicia Kaiser, Designated Federal Officer, at the contact information above by Tuesday, May 12, 2009. The public is welcome to attend all portions of the meeting, but seating is limited and is allocated on a first-come, first-serve basis. Members of the public wishing to gain access to the teleconference must contact Alicia Kaiser at (202) 564–7273 or *kaiser.alicia@epa.gov* by May 12, 2009.

Meeting Access: For information on access or services for individuals with disabilities, please contact Alicia Kaiser at 202–564–7273 or *kaiser.alicia@epa.gov*. To request accommodation of a disability, please contact Alicia Kaiser, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 26, 2009.

Alicia Kaiser,

Designated Federal Officer.

[FR Doc. E9–8114 Filed 4–8–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8790–8]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a meeting of the National Advisory Committee (NAC) and Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC). The National and Governmental Advisory Committees advise the EPA Administrator in her capacity as the U.S. Representative to the CEC Council. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement Implementation Act, Public Law 103–182, and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on

Environmental Cooperation.'' The NAC is composed of 12 members representing academia, environmental non-governmental organizations, and private industry. The GAC consists of 12 members representing state, local, and Tribal governments. The Committees are responsible for providing advice to the U.S. Representative on a wide range of strategic, scientific, technological, regulatory, and economic issues related to implementation and further elaboration of the NAAEC.

The purpose of the meeting is to review elements of the CEC's draft 2010–2015 Strategic Plan and assist in the development of U.S. priorities for the CEC Council Session in June 2009. The meeting will also include a public comment session. A copy of the agenda will be posted at *http://www.epa.gov/ocem/nacgac-page.htm*.

DATES: The National and Governmental Advisory Committees will hold an open meeting on Monday, April 27, from 8:30 a.m. to 5:30 p.m., and Tuesday, April 28, from 8:30 a.m. until 2:30 p.m.

ADDRESSES: The meeting will be held at the Hilton Alexandria Old Town Hotel, 1767 King Street, Alexandria, VA 22314. Telephone: 703–837–0440. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Oscar Carrillo, Designated Federal Officer, *carrillo.oscar@epa.gov*, 202–564–0347, U.S. EPA, Office of Cooperative Environmental Management (1601–M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or provide written comments to the Committees should be sent to Oscar Carrillo, Designated Federal Officer, at the contact information above.

Meeting Access: For information on access or services for individuals with disabilities, please contact Oscar Carrillo at 202–564–0347 or *carrillo.oscar@epa.gov*. To request accommodation of a disability, please contact Oscar Carrillo, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 25, 2009.

Oscar Carrillo,

Designated Federal Officer.

[FR Doc. E9–8108 Filed 4–8–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 24, 2009.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Bruce J. Essex, Yvonne M. Essex, both of Whitehall, Michigan, and Bruce J. Essex, Jr., North Muskegon, Michigan; to retain voting shares of Community Shores Bank Corporation, and thereby indirectly retain control of Community Shores Bank, both of Muskegon, Michigan.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Terry R. Fuller, Jerry W. Fuller, Mary S. Fuller, and the estate of Ray C. Fuller (co-executors are Terry R. Fuller, Jerry W. Fuller, and Cheryl F. Heuer), all of Poplar Grove, Arkansas, as a group acting in concert; to acquire voting shares of Helena Bancshares, Inc., and thereby indirectly acquire voting shares of Helena National Bank, both of Helena, Arkansas.

Board of Governors of the Federal Reserve System, April 6, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–8120 Filed 4–8–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 081 0265]

BASF SE; Analysis of Agreement Containing Consent Orders to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 1, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to''BASF SE, File No. 081 0265'' to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://*

[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

secure.commentworks.com/ftc-BASF) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-BASF*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''BASF, File No. 081 0265'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Wallace W. Easterling, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2936.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 18, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/2009/04/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from BASF SE (''BASF'' or ''Respondent'') to remedy the anticompetitive effects stemming from BASF's proposed acquisition of Ciba Holding Inc. (''Ciba''). Under the terms of the Consent Agreement, BASF is required to divest to a Commission-approved buyer certain Ciba assets and intellectual property relating to two of its high performance pigment businesses.

The proposed Consent Agreement has been placed on the public record for thirty (30) days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw from the proposed Consent Agreement, modify it, or make final the Consent Agreement's proposed Decision and Order.

Pursuant to an Agreement and Plan of Merger dated September 15, 2008, BASF proposes to purchase all of Ciba's outstanding stock in a transaction valued at approximately $5.1 billion. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act (''FTC Act''), as amended, 15 U.S.C. § 45, by lessening competition in the world markets for the research, development, manufacture and sale of bismuth vanadate and indanthrone blue pigments. The Consent Agreement will remedy the alleged violation by divesting certain Ciba assets and intellectual property to a third party thereby replacing the lost competition that would result from the acquisition in these markets.

II. The Parties

BASF, headquartered in Ludwigshafen, Germany, is the world's leading chemical company. It manufactures, among other things, chemicals, plastics, agricultural products, fine chemicals and high performance pigments. BASF is a leading supplier of several high performance pigments including bismuth vanadate and indanthrone blue. In 2008, BASF's worldwide sales were approximately $79.5 billion.

Ciba, headquartered in Basel, Switzerland, is a leading supplier of chemicals used to, among other things, provide color performance and care for plastics, coatings, textile, paper, home and personal care products. Ciba is a leading supplier of high performance pigments including bismuth vanadate and indanthrone blue. In 2008, Ciba's worldwide sales were approximately $5.4 billion.

III. The Complaint

According to the Commission's Complaint, the relevant lines of commerce in which to analyze the effects of the proposed acquisition are the markets for the research, development, manufacture, and sale of bismuth vanadate and indanthrone blue pigments. Pigments are small particles that are used to impart color to a wide variety of products including inks, coatings, plastics and fibers. Bismuth vanadate and indanthrone blue are high performance pigments. High performance pigments are pigments that offer superior durability and light fastness compared to other pigments such as commodity pigments. As a result, high performance pigments are particularly suited for use in products that are exposed to sunlight and weather, such as automotive coatings.

Bismuth vanadate is a high performance pigment that imparts a brilliant yellow coloration with a green tint. Bismuth vanadate is primarily used in applications requiring exposure to high temperatures because of its durability under such conditions. Because no other pigment offers the same combination of unique color and high performance characteristics that bismuth vanadate provides, customers

of bismuth vanadate could not achieve the same colors and performance levels in their products without it. Thus, there are no substitute products that customers of bismuth vanadate could turn to even in the face of a significant price increase.

Indanthrone blue is a high performance pigment that imparts a blue coloration with a tinge of red. Because of its durability and light fastness, indanthrone blue is used primarily in automotive coatings. Similar to bismuth vanadate, no other pigment offers the same combination of unique color and high performance characteristics that indanthrone blue provides and customers of indanthrone blue could not achieve the same colors and performance levels in their products without it. Thus, there are no substitute products that customers of indanthrone blue could turn to even if faced with a significant price increase.

The Complaint alleges that the relevant geographic market in which to analyze the anticompetitive effects of the proposed acquisition is the world. Transportation costs and technical barriers to worldwide shipment of the relevant products are insignificant. As a result, several pigment suppliers manufacture these products in a single location and ship them worldwide. For example, BASF and Ciba supply the relevant products for their customers worldwide from their production facilities in Europe.

The Complaint further alleges that the relevant markets are highly concentrated. In the bismuth vanadate market, the proposed transaction would reduce the number of significant players in that market from four to three and the combined entity would have a market share of approximately 60 percent based on sales. The market for indanthrone blue is also highly concentrated with BASF and Ciba constituting two of only three significant suppliers. In that market, the combined entity's market share would be approximately 56 percent based on sales. By eliminating competition between BASF and Ciba in the relevant markets, the proposed transaction would allow the combined firm to unilaterally exercise market power, as well as increase the likelihood of coordinated interaction among the remaining suppliers. As a result, the proposed transaction would increase the likelihood that purchasers of bismuth vanadate and indanthrone blue would be forced to pay higher prices for these products and that innovation and service in these markets would decline.

Entry into either relevant market is not likely and would not be timely or sufficient to deter or counteract the anticompetitive effects that would result from the proposed merger. It would take a new entrant well over two years to complete all of the requisite steps for entry, including: researching and developing the pigment technology; building a manufacturing facility; and passing the rigorous qualification testing required to get customer approval. Additionally, new entry into either the bismuth vanadate or indanthrone blue markets is unlikely to occur because the capital investment to become a viable supplier is high relative to the limited sales opportunities available to new entrants.

IV. Terms of the Proposed Order

The proposed Consent Agreement effectively remedies the proposed merger's anticompetitive effects in the markets for bismuth vanadate and indanthrone blue pigments. BASF is required to divest assets used to research, develop, manufacture, and sell those products. The divested assets will permit the acquirer to become a viable competitor in the relevant markets.

The assets to be divested include Ciba's bismuth vanadate production assets which are located in Europe, or provides a mechanism for, at the acquirer's option, production to be relocated to the acquirer's production facilities. More specifically, BASF can either: (1) divest the Ciba bismuth vanadate production facility, (2) lease the production facility to the acquirer, or (3) enter into a tolling agreement that provides sufficient time for the acquirer to begin production at its own facilities and to qualify that production with customers. The indanthrone blue production assets will be used to produce that product pursuant to a tolling arrangement at the Ciba facilities until the acquirer of those assets is prepared to shift production to its own facilities. All tangible assets and intellectual property used to produce the relevant products will also be divested. Several credible acquirers have expressed interest in purchasing the assets to be divested.

The provisions ordering the two divestitures further include ancillary relief such as supply agreements, protections for confidential information, assistance in hiring of key employees, and the appointment of a monitor to oversee the divestiture process to ensure that the acquirer, or acquirers, of the relevant assets will be able to effectively compete in the research, development, manufacture, and sale of bismuth vanadate and indanthrone blue pigments. A final Order to Maintain Assets has also been issued.

The proposed Consent Agreement includes a provision that allows the Commission to appoint an interim monitor to ensure that BASF expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Commission's Decision and Order. If appointed, the interim monitor would be required to file periodic reports with the Commission to ensure that the Commission remains informed about the status of the divestitures and the efforts being made to accomplish the divestitures.

Finally, the Consent Agreement contains provisions that allow the Commission to appoint a divestiture trustee to divest the assets that are the subject of the Commission's Decision and Order if BASF fails to divest the designated assets within six (6) months after the Consent Agreement is accepted by the Commission for Public Comment. To ensure that the Commission remains informed about the status of the proposed divestitures and the transfer of the assets, the proposed Consent Agreement requires BASF to file reports with the Commission periodically until the divestitures and transfers are accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Decision and Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement and the proposed Decision and Order.

By direction of the Commission.

Richard C. Donohue,

Acting Secretary.

[FR Doc. E9–8203 Filed 4–8–09: 8:45 am]

BILLING CODE 6750–01–S

FEDERAL TRADE COMMISSION

[Docket No. 9328]

Native Essence Herb Company, et al.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 4, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to''Native Essence, Docket No. 9328'' to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*http://secure.commentworks.com/ftc-NativeEssence*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*http://secure.commentworks.com/ftc-NativeEssence*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Native Essence, et al., Docket No. 9328'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Erika Wodinsky, Western Region, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (415) 848-5100.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 3.25(f) the Commission Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 3, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/2009/04/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Native Essence Herb Company, a corporation, Mark J. Hershiser, individually, d/b/a Native Essence Herb Company, and as an officer of the corporation, and Marianne Hershiser, individually, d/b/a Native Essence Herb Company, and as an officer of the corporation (''respondents'').

The proposed consent order has been placed on the public record for thirty days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns the respondents' advertising and promotion of Native Essense (Rene Caisse) Formula tea and extract, Native Essense Plus tea and extract, Native Essense with Cat's Claw tea and extract, chaparral herb, Maitake mushroom extract, and Mai-T Mushroom Plus Formula extract. The complaint alleges that respondents have made a number of deceptive claims regarding the efficacy of these products in the prevention, treatment or cure of cancer.

Specifically, the Commission's complaint alleges that respondents have claimed that their Native Essense Original Formula, Native Essense Plus, and Native Essense with Cat's Claw products are effective in treating and curing cancer, including but not limited to lymphoma, colon cancer, rectal cancer, and prostate cancer. The complaint also alleges that respondents have claimed that these products are effective in reducing the size of, or eliminating, cancerous tumors. The complaint further alleges that respondents have claimed that Native Essense Plus is effective in preventing breast cancer. The complaint alleges that respondents did not have a

[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

reasonable basis for these claims. The complaint also alleges that respondents falsely claimed that scientific research proves that Native Essense Plus prevents breast cancer, and that scientific studies prove that Native Essense with Cat's Claw is effective in the treatment of cancer.

Regarding chaparral herb, the Commission's complaint alleges that respondents claimed that chaparral herb is effective in treating and curing cancer, is effective in causing people with cancer to go into complete remission without the need for any other form of treatment, and is effective in shrinking or eliminating cancerous tumors. The complaint alleges that respondents lacked a reasonable basis for these claims.

The complaint also alleges that respondents lacked a reasonable basis for the claims that Mai-T Mushroom Plus is effective in preventing, treating and curing cancer, including but not limited to lung cancer, stomach cancer, hepatocellular cancer, leukemia, and Kaposi's sarcoma; and that Mai-T Mushroom Plus is effective in inhibiting the growth of cancerous tumors. Finally, the complaint alleges that respondents falsely claimed that clinical studies prove that Maitake mushrooms and Mai-T Mushroom Plus prevent and treat lung cancer, stomach cancer, hepatocellular cancer, leukemia, and Karposi's sarcoma, and inhibit tumor growth.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future. Part I requires respondents to have competent and reliable scientific evidence substantiating any claim that Native Essense (Rene Caisse) Formula tea or extract, Native Essense Plus tea or extract, Native Essense with Cat's Claw tea or extract, chaparral herb (or any product containing chaparral herb), Maitake mushroom extract, or Mai-T Mushroom Plus Formula extract, or any other covered product or service, is effective in the treatment or cure of cancer; prevents or lowers the risk of cancer; is effective in reducing the size of, or eliminating, cancerous tumors; or is safe or non-toxic or has no side effects. A ''covered product or service'' is defined as any food, dietary supplement, or drug, including, but not limited to any of the above products, or any other health-related product, service, or program.

Part II requires that any future claim about the efficacy, performance, or health-related benefits of any covered product or service be truthful and supported by competent and reliable scientific evidence. Part III requires that respondents, in connection with the advertising of any product, shall not misrepresent, in any manner, expressly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Part IV of the proposed order provides that the order does not prohibit respondents from making representations for any drug that are permitted in labeling for the drug under any tentative or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA, and representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Part V of the proposed order requires respondents to compile a list of all consumers who purchased Native Essense (Rene Caisse) Formula tea or extract, Native Essense Plus tea or extract, Native Essense with Cat's Claw tea or extract, chaparral herb (or any product containing chaparral herb), Maitake mushroom extract, or Mai-T Mushroom Plus Formula extract from respondents since July 1, 2005, and to mail a letter (attached to the proposed order as Attachment A) to each such purchaser describing the scientific evidence related to these products. Part V also prohibits respondents from providing any identifying information about these purchasers to anyone other than the Commission, another law enforcement agency, or as required by law.

Part VI of the proposed order requires respondents to keep copies of relevant advertisements and materials that substantiate claims made in the advertisements. Part VII requires respondents to provide copies of the order to certain of their employees. Part VIII requires the corporate respondent to notify the Commission at least thirty days prior to any change in the corporation that may affect compliance obligations arising under this order. Part IX requires the individual respondents to notify the Commission of their affiliation with any new business or employment. Part X requires respondents to file compliance reports with the Commission. Part XI of the proposed order is a ''sunset'' provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Richard C. Donohue,

Acting Secretary.

[FR Doc. E9–8140 Filed 4–8–09: 8:45 am]

BILLING CODE: 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Council for the Elimination of Tuberculosis, Department of Health and Human Services, has been renewed for a 2-year period through March 15, 2011.

For information, contact Hazel Dean, Sc.D., M.P.H., Executive Secretary, Advisory Council for the Elimination of Tuberculosis, Department of Health and Human Services, 1600 Clifton Road, NE., Mailstop E–10, Atlanta, Georgia 30333, telephone 404/639–8000 or fax 404/639–8600.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 31, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–8072 Filed 4–8–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC/Health Resources and Services Administration (HRSA) Advisory Committee on HIV and STD Prevention and Treatment

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC announces

the following meeting of the aforementioned committee:

Times and Dates:
8 a.m.–5 p.m., May 19, 2009
8 a.m.–3 p.m., May 20, 2009

Place: JW Marriott Buckhead, 3300 Lenox Road, Atlanta, Georgia 30326, *Telephone:* (404) 262–3344, *Fax:* (404) 262–8689.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Purpose: This Committee is charged with advising the Director, CDC and the Administrator, HRSA, regarding activities related to prevention and control of HIV/AIDS and other STDs; the support of health care services to persons living with HIV/AIDS; and education of health professionals and the public about HIV/AIDS and other STDs.

Matters To Be Discussed: Agenda items include issues pertaining to: (1) Updates on HIV Testing, Syphilis Elimination and Viral Hepatitis Prevention; (2) Preventing HIV, STD, Hepatitis and TB in Correctional Settings; (3) Update on HIV Surveillance; and (4) Challenges and Opportunities to STD Prevention. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Margie Scott-Cseh, Committee Management Specialist, CDC, Strategic Business Unit, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333, *Telephone:* (404) 639–8317, *Fax:* (404) 639–8600, *E-mail: zkr7@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 3, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–8071 Filed 4–8–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Court Improvement Program.

OMB No.: 0970–0245.

Description: The Court Improvement Program provides grants to State court systems to conduct assessments of their foster care and adoption laws and judicial processes and to develop and implement a plan for system improvement. ACF proposes to collect information from the States about this program (applications, program reports) by way of a Program Instruction, which (1) describes the requirements for States under the reauthorization of the Court Improvement Program; (2) outlines the programmatic and fiscal provisions and reporting requirements of the program; (3) specifies the application submittal and approval procedures for the program for Fiscal Years 2007 through 2011; and (4) identifies technical resources for use by State courts during the course of the program. This Program Instruction contains information collection requirements pursuant to receiving a grant award that are found in Public Law 103–66, as amended by Public Law 105–89, Public Law 107–133, Public Law 109–239, and Public Law 109–288. The agency will use the information received to ensure compliance with the statute and provide training and technical assistance to the grantees.

Respondents: State Courts.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	52	1	40	2,080
Annual program report	52	1	36	1,872

Estimated Total Annual Burden Hours: 3,952.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–6974, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: April 2, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–8008 Filed 4–8–09; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects

Title: Territory TANF Financial Report (ACF–196TR).

OMB No.: New collection.

Description: Authority to collect and report this information is found in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104–193. Territories with approved plans for implementation of the TANF program are required by statute to report financial data. Form ACF–196TR provides for collection of Federal expenditures data. Failure to collect this data would seriously compromise the Administration for Children and Families (ACF) ability to monitor expenditures and maintain financial management of the Territories TANF program. The financial data collected is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress. Federal policy requires the strictest controls on funding requirements, which necessitates review of documentation in support of Territories expenditures for reimbursement.

Respondents: All Territories TANF Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196TR	3	4	8	96

Estimated Total Annual Burden Hours: 96.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 06, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–8058 Filed 4–8–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Financial Status Reporting Form for State Councils on Developmental Disabilities Program.

OMB No.: 0980–0212.

Description: For the program of the State Councils on Developmental Disabilities, funds are awarded to State agencies contingent on fiscal requirements in subtitle B of the Developmental Disabilities Assistance and Bill of Rights Act. The SF–269, ordinarily mandated in the revised OMB Circular A–102, provides no accounting breakouts necessary for proper stewardship. Consequently, the proposed streamlined form will substitute for the SF–269 and will allow compliance monitoring and proactive compliance maintenance and technical assistance.

Respondents: State Councils and Designated State Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Financial Status Reporting Form for State Councils on Developmental Disabilities Program	55	3	5.10	841.50

Estimated Total Annual Burden Hours: 841.50.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–6974, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: April 6, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–8123 Filed 4–8–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–M–0101]

Medical Devices; Order for Certain Class III Devices; Submission of Safety and Effectiveness Information

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order requiring manufacturers of remaining preamendments class III devices for which regulations requiring submission of premarket approval applications (PMAs) have not been issued to submit to FDA a summary of,

and a citation to, any information known or otherwise available to them respecting such devices, including adverse safety or effectiveness information concerning the devices which has not been submitted under the Federal Food, Drug, and Cosmetic Act (the act). FDA is requiring the submission of this information in order to determine, for each device, whether the classification of the device should be revised to require the submission of a PMA or a notice of completion of a Product Development Protocol (PDP), or whether the device should be reclassified into class I or II.

DATES: Summaries and citations must be submitted by August 7, 2009.

ADDRESSES: Submit paper copies of summaries and citations to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic copies of summaries and citations to *http://www.regulations.gov*. Identify summaries and citations with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Sarah K. Morabito, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3975.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The act (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act (SMDA) (Public Law 101–629), the Food and Drug Administration Modernization Act of 1997 (Public Law 105–115), the Medical Device User Fee and Modernization Act of 2002 (Public Law 107–250), the Medical Devices Technical Corrections Act (Public Law 108–214), and the Food and Drug Administration Amendments Act of 2007 (Public Law 110–85), establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: Class I (general controls), class II (special controls), or class III (premarket approval). Generally, devices that were on the market before May 28, 1976, the date of enactment of the 1976 amendments, and devices marketed on or after that date that are substantially equivalent to such devices, have been classified by FDA. This order refers to both the class III devices that were on the market before May 28, 1976, and the devices found to be substantially equivalent to them that were marketed on or after that date, as ''preamendments devices.''

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. However, submission of a PMA (or a notice of completion of a PDP) is not required until 90 days after FDA promulgates a final rule requiring premarket approval for the device, or 30 months after final classification of the device, whichever is later. See section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)). The device may, however, be distributed only for investigational use if the manufacturer, importer, or other sponsor of the device complies with the investigational device exemption (IDE) requirements.

The SMDA changed the definition of class II devices from those for which a performance standard is necessary to provide reasonable assurance of safety and effectiveness to those for which there is sufficient information to establish special controls to provide such assurance. Special controls include performance standards, postmarket surveillance, patient registries, guidelines (including guidelines for the submission of clinical data in premarket notification submissions in accordance with section 510(k) of the act (21 U.S.C. 360(k))), recommendations, and other appropriate actions the agency deems necessary to provide such assurance. Thus, the SMDA modified the definition of class II devices to permit reliance on special controls, rather than performance standards alone, to provide reasonable assurance of safety and effectiveness.

The SMDA also added section 515(i) (21 U.S.C. 360e(i)) to the act. This section requires FDA to order manufacturers of preamendments class III devices for which no final regulation has been issued requiring the submission of PMAs to submit to the agency a summary of, and a citation to, any information known or otherwise available to them respecting such devices, including adverse safety and effectiveness information that has not been submitted under section 519 of the act (21 U.S.C. 360i). Section 519 of the act requires manufacturers, importers, and distributors to maintain records and to report information that reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury or that a malfunction of the device is likely to cause death or serious injury on recurrence. Section 515(i) of the act also directs FDA to either revise the classification of the device into class I or class II or require the device to remain in class III; and for devices remaining in class III, to establish a schedule for the promulgation of a rule requiring the submission of PMAs for the device.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA announced the availability of a notice setting forth its strategy for addressing the remaining class III preamendments devices. Of the approximately 149 preamendments devices FDA initially classified or proposed to classify into class III (48 FR 40272, September 6, 1983), FDA has either reclassified into class I or II, or issued regulations requiring the submission of PMAs for, all but 27 devices. Of the 27 devices, 25 are the subject of this notice. The two remaining devices, Herpes simplex virus serological assays (21 CFR 866.3305) and Topical oxygen chamber for extremities (21 CFR 878.5650), will be addressed in separate orders.

II. Statutory Authority and Enforcement

In addition to the provisions of section 515(i) of the act described in section I of this document, this order is issued under section 519 of the act, as implemented by § 860.7(g)(2) (21 CFR 860.7(g)(2)). Section 860.7(g)(2) authorizes FDA to require reports or other information bearing on the classification of a device. Section 519 of the act also requires the reporting of any death or serious injury caused by a device or by its malfunction.

Failure to comply with this order results in the device being misbranded under section 502(t) of the act (21 U.S.C. 352(t)) and is a prohibited act under sections 301(a) and (q) of the act (21 U.S.C. 331(a) and (q)). The agency will use its enforcement powers to deter noncompliance. Violations of section 301 of the act may be subject to seizure or injunction under sections 302(a) and 304(a) of the act (21 U.S.C. 332(a) and 334(a)). In addition, violations under section 301 of the act may be subject to civil penalties under section 303(f) of the act (21 U.S.C. 333(f)) and criminal prosecution under section 303(a) of the act (21 U.S.C. 333(a)).

III. Order

The agency is hereby issuing this order under sections 515(i) and 519 of the act and § 860.7(g)(1) of the regulations. Under the order, the required information must be submitted by the date set forth in this document (see **DATES**) so that FDA may begin the process established by section 515(i) of

the act to either reclassify these devices into class I or II or initiate rulemaking to require submission of PMAs or PDPs for them. FDA does not anticipate extending the time for submitting the required information.

For the following 25 devices, the required information must be submitted by August 7, 2009.

1. 21 CFR 868.5610 Membrane lung for long-term pulmonary support.
2. 21 CFR 870.3535 Intra-aortic balloon and control system.
3. 21 CFR 870.3545 Ventricular bypass (assist) device.
4. 21 CFR 870.3600 External pacemaker pulse generator.
5. 21 CFR 870.3610 Implantable pacemaker pulse generator.
6. 21 CFR 870.3680(b) Cardiovascular permanent pacemaker electrode.
7. 21 CFR 870.3700 Pacemaker programmers.
8. 21 CFR 870.3710 Pacemaker repair or replacement material.
9. 21 CFR 870.4360 Nonroller-type cardiopulmonary bypass blood pump.
10. 21 CFR 870.5200 External cardiac compressor.
11. 21 CFR 870.5225 External counter-pulsating device.
12. 21 CFR 870.5310 Automated external defibrillator.
13. 21 CFR 872.3640(b)(2) Endosseous dental implant (blade form).
14. 21 CFR 872.3960 Mandibular condyle prosthesis (temporary implant).
15. 21 CFR 876.5540(b)(1) Implanted blood access device.
16. 21 CFR 876.5870 Sorbent hemoperfusion system.
17. 21 CFR 882.5800 Cranial electrotherapy stimulator.
18. 21 CFR 882.5940 Electroconvulsive therapy device.
19. 21 CFR 884.5330 Female condom.
20. 21 CFR 888.3070(b)(2) Pedicle screw spinal system (certain uses).
21. 21 CFR 888.3320 Hip joint metal/metal semi-constrained, with a cemented acetabular component, prosthesis.
22. 21 CFR 888.3330 Hip joint metal/metal semi-constrained, with an uncemented acetabular component, prosthesis.
23. 21 CFR 890.5290(b) Shortwave diathermy (certain uses).
24. 21 CFR 890.5525(b) Iontophoresis device (certain uses).
25. 892.1990 Transilluminator for breast evaluation.

Required Contents of Submissions

By the date listed in the **DATES** section of this document, all manufacturers currently marketing the preamendments class III devices subject to this order shall provide a summary of, and citation to, any information known or otherwise available to them respecting the devices, including adverse safety and effectiveness data that has not been submitted under section 519 of the act. FDA suggests that it may be in the best interest of submitters to summarize the information submitted under section 519 of the act to facilitate FDA's decisionmaking.

The information should be submitted in one of the two following formats depending on whether the manufacturer is aware of information that would support the reclassification of the device into class I (general controls) or class II (special controls). Information that would support the reclassification of the device must consist of adequate, valid scientific evidence showing that general controls alone, or general controls along with special controls, will provide a reasonable assurance of the safety and effectiveness of the device.

If a manufacturer is not aware of information that would support the reclassification of its device into class I or class II, the information should be submitted in the following format:

1. *Indications for use*. A general description of the disease or condition to be diagnosed, treated, cured, mitigated, or prevented, including a description of the patient population for which the device is intended.

2. *Device description*. An explanation of how the device functions, significant physical and performance characteristics of the device, and basic scientific concepts that form the basis for the device.

3. *Other device labeling*. Other device labeling that includes contraindications, warnings and precautions and/or promotional materials.

4. *Risks*. A summary of all adverse safety and effectiveness information and identification of the risks presented by the device as well as any mechanisms or procedures which will control the risk.

5. *Alternative practices and procedures*. A description of alternative practices or procedures for diagnosing, treating, preventing, curing, or mitigating the disease or condition for which the device is intended.

6. *Summary of preclinical and clinical data*. The summary of preclinical and clinical data should include the conclusions drawn from the studies that support the safety and effectiveness of the device, and that address the adverse effects of the device on health. The summary should include a brief description of the objective of the studies, the experimental design, how the data were collected and analyzed, and a brief description of the results of the studies, whether positive, negative, or inconclusive. The summary of the clinical study should also include a discussion of the subject inclusion and exclusion criteria, the study population, reasons for patient discontinuations, and results of statistical analyses.

7. *Bibliography*. A copy of each key reference, a brief summary of the salient features of each key reference, and a brief discussion of why the reference is relevant to an evaluation of the safety and effectiveness of the device.

Any manufacturer who is aware of information that would support the reclassification of its device into class I or class II may either submit information using the format described below or may submit a formal reclassification petition, which as described in 21 CFR 860.123(a)(3) and (a)(4), should include:

1. *Identification*. A brief narrative identification of the device. This identification should be specific enough to distinguish a particular device from a generic type of device. Where appropriate, this identification should include a listing of the materials, and the component parts, and a description of the intended use of the device.

2. *Risks to health*. An identification of the risks to health. This section should summarize all adverse safety and effectiveness information that has not been submitted under section 519 of the act, particularly the most significant information. The mechanisms or procedures that will control the risk should be described. A list of the general hazards associated with the device and a bibliography with copies of the referenced material should be provided.

3. *Recommendation*. A statement whether the manufacturer believes the device should be reclassified into class I or class II.

4. *Summary of reasons for recommendation*. Each manufacturer should include a summary of the reasons for requesting reclassification of its device and an explanation of why it believes the device meets the statutory criteria for reclassification into class I or class II. Each manufacturer should also identify the special controls that it believes would be sufficient to provide reasonable assurance of the safety and effectiveness of its device if it believes the device should be reclassified into class II.

5. *Summary of valid scientific evidence on which the recommendation is based*. Manufacturers are advised that, when considering a formal reclassification petition, FDA will rely

only upon valid scientific evidence to determine whether there is reasonable assurance of the safety and effectiveness of the device, if regulated by general controls alone (class I) or by general controls and special controls (class II). Valid scientific evidence consists of evidence from well-controlled investigations, partially controlled studies, studies and objective trials without matched controls, well-documented case histories conducted by qualified experts, and reports of significant human experience with a marketed device, from which it can fairly and responsibly be concluded by qualified experts that there is reasonable assurance of the safety and effectiveness of a device under its conditions of use. The evidence required may vary according to the characteristics of the device, its conditions of use, the existence and adequacy of warnings and other restrictions, and the extent of experience with its use. Isolated case reports, random experience, reports lacking sufficient details to permit scientific evaluation, and unsubstantiated opinions are not regarded as valid scientific evidence to show safety or effectiveness (see § 860.7(c)(2)).

According to § 860.7(d)(1), there is reasonable assurance that a device is safe when it can be determined, based upon valid scientific evidence, that the probable benefits to health from use of the device for its intended uses and conditions of use, when accompanied by adequate directions and warnings against unsafe use, outweigh any probable risks. The valid scientific evidence used to determine the safety of a device shall adequately demonstrate the absence of unreasonable risk of illness or injury associated with the use of the device for its intended uses and conditions for use. Moreover, under § 860.7(e)(1), there is reasonable assurance that a device is effective when it can be determined, based upon valid scientific evidence, that in a significant portion of the target population, the use of the device for its intended uses and conditions of use, when accompanied by adequate directions for use and warnings against unsafe use, will provide clinically significant results.

IV. Submission of Required Information

The summary of, and citation to, any information required by the act must be submitted by the dates listed in the **DATES** section of this document to the Division of Dockets Management (see **ADDRESSES**).

V. Paperwork Reduction Act of 1995

This order refers to collections of information necessary to comply with the requirements found in sections 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807, subpart E or the requirements of 515(b) of the act (21 U.S.C. 360e(b)), 21 CFR part 860, and 21 CFR part 814. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 860.123 have been approved under OMB control number 0910–0138; the collections of information in 21 CFR part 814, have been approved under OMB control number 0910–0231; and the collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120.

Dated: April 2, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–8022 Filed 4–8–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

The 12th Annual Food and Drug Administration-Orange County Regulatory Affairs Educational Conference; ''Regulatory Affairs: The Challenges of Ensuring Product Safety''

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA) is announcing the following conference: 12th Annual Educational Conference co-sponsored with the Orange County Regulatory Affairs Discussion Group (OCRA). The conference is intended to provide the Drug, Device, and Biologics industries with an opportunity to interact with FDA reviewers and compliance officers from the Centers and District Offices, as well as other industry experts. The main focus of this interactive conference will be product approval, compliance, and risk management in the three medical product areas. Industry speakers, interactive questions and answers, and workshop sessions will also be included to assure open exchange and dialogue on the relevant regulatory issues.

Date and Time: The conference will be held on June 9 and 10, 2009, from 7:30 a.m. to 5 p.m.

Location: The conference will be held at the Irvine Marriott Hotel, 18000 Von Karman Ave., Irvine, CA 92612.

Contact: Linda Hartley, Food and Drug Administration, 19701 Fairchild, Irvine, CA 92612, 949–608–4413, FAX: 949–608–4417, or OCRA, Attention to Detail, 5319 University Dr., suite 641, Irvine, CA 92612, 949–387–9046, FAX: 949–387–9047, Web site: *http://www.ocra-dg.org*.

Registration and Meeting Information: See OCRA Web site, *http://www.ocra-dg.org*. Contact Attention to Detail at 949–387–9046.

Before May 8, 2009, registration fees are as follows: $675.00 for members, $725.00 for nonmembers and $475.00 for FDA/Govt/Students.[1] After May 8, 2009, $725.00 for members, $775.00 for nonmembers, and $475.00 for FDA/Govt/Students.[1]

The registration fee will cover actual expenses including refreshments, lunch, materials, parking, and speaker expenses.

If you need special accommodations due to a disability, please contact Linda Hartley at least 10 days in advance.

Dated: April 6, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–8135 Filed 4–8–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management

[1] OCRA Student Rate applies to those individuals enrolled in a Regulatory or Quality related academic program at an accredited institution. Proof of enrollment required.

and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Uncompensated Services Assurance Report (OMB No. 0915–0077)—[Extension]

Under the Hill-Burton Act, the government provides grants and loans for construction or renovation of health care facilities. As a condition of receiving this construction assistance, facilities are required to provide services to persons unable to pay. A condition of receiving this assistance requires facilities to provide assurances periodically that the required level of uncompensated care is being provided, and that certain notification and record keeping procedures are being followed. These requirements are referred to as the uncompensated services assurance.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Disclosure Burden (42 CFR)					
Published Notices (124.504(c))	86	1	86	0.75	64.5
Individual Notices (124.504(c))	86	1	86	43.6	3,749.6
Determinations of Eligibility (124.507)	86	99	8,514	0.75	6,385.50
Subtotal disclosure burden					10,199.60
Reporting					
Uncompensated Services Report—HRSA–710 Form (124.509(a))	10	1	10	11.0	110
Application for Compliance Alternatives:					
Public Facilities (124.513)	4	1	4	6.0	24
Small Obligation Facilities (124.514(c))	0				
Charitable Facilities (124.516(c))	2	1	2	6.0	12
Annual Certification for Compliance Alternatives:					
Public Facilities (124.509(b))	37	1	37	0.5	18.5
Charitable Facilities (124.509(b))	14	1	14	0.5	7
Small Obligation Facilities (124.509(c))	0	1	0	0.5	0
Complaint Information (124.511(a)):					
Individuals	10	1	10	0.25	2.5
Facilities	10	1	10	0.5	5
Subtotal reporting burden					179

Recordkeeping	Number of recordkeepers	Hours per year	Total hour burden
Non-alternative Facilities (124.510(a))	86	50	4,300
Subtotal recordkeeping burden			4,300

The total burden for this project is estimated to be 14,678.60 hours. Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: April 3, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–8141 Filed 4–8–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC); Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Heritable Disorders in Newborns and Children.

Date and Time: May 12, 2009, 1 p.m.–5 p.m. EST.

Place: Web cast.

The ACHDNC will meet on Tuesday, May 12, 2009 from 1 p.m. to 5 p.m. EST. The general public can join the meeting via Webcast by logging onto *http://altarum.na3.acrobat.com/achdnc/*; next select ''enter as a guest,'' type in your full name, and click ''enter room.'' Participants must also dial the toll free phone number for audio (listen only). The dial-in number is 1 (877) 551–8166; when prompted say the password ''HRSA Genetics''. Participants should call no later than 12:50 p.m. EST in order for the logistics to be established for participation in the call. If there are technical problems gaining access to the call, please contact Alison Gary, Web Meetings Coordinator, Altarum Institute, telephone (202) 828–5100, or e-mail *webmeeting@altarum.org.*

Meeting Registration: General public participants are asked to register for the conference by going to the meeting Web site at *http://events.SignUp4.com/achdnc0509.* The registration deadline is Monday, May 11, 2009.

Special Accommodations: Attendees requiring special needs such as large print materials or additional special needs may make comments when registering at the Online Web site. Or you may wish to contact Tamar R. Shealy, Senior Meetings Manager, Conference and Meetings Management, Conference, Web and Communication Services, Altarum Institute; telephone (202) 828–5100, or e-mail Tamar Shealy at *conferences@altarum.org.*

Agenda: The meeting will include (1) A presentation of the external review

workgroup's preliminary report on the nomination of Krabbe disease to the uniform newborn screening panel, (2) a discussion of the Committee's draft issue brief for recommending policies to states for the use and storage of newborn screening Residual Blood Spots, and (3) a discussion of the impact of the present economy on State newborn screening program infrastructures. Agenda items are subject to change as priorities dictate. You can also locate the Agenda, presentations, and meeting materials at the home page of the meeting Web site at *http://events.SignUp4.com/achdnc0509*.

Public Comments: Members of the public may present oral comments during the public comment session. Individuals must register at the meeting Web site at *http://events.SignUp4.com/achdnc0509* by Monday, May 11, 2009 to receive via e-mail their assigned presentation time. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. Those presenting oral comments are requested to submit their comments in writing for distribution to Committee members by Monday, May 11, 2009. Comments should be submitted to Tamar R. Shealy, Senior Meetings Manager, Conference and Meetings Management, Conference, Web and Communication Services, Altarum Institute; telephone (202) 828–5100, fax (202) 785–3083, or e-mail Tamar Shealy at *conferences@altarum.org*.

For Further Information Contact: Anyone interested in obtaining other relevant information should contact Alaina M. Harris, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0721, *aharris@hrsa.gov*. More information on the Advisory Committee is available at *http://www.hrsa.gov/heritabledisorderscommittee/*.

Supplementary Information: The ACHDNC was chartered originally under Section 1111 of the Public Health Service (PHS) Act, 42 U.S.C. 300b–10 in February 2003 to advise the Secretary of the U.S. Department of Health and Human Services and as amended in the Newborn Screening Saves Lives Act. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. App. 2), and 41 CFR part 102–3, which sets forth standards for the formation and use of advisory committees. The ACHDNC is directed to review and report regularly on newborn and childhood screening practices for heritable disorders and to recommend improvements in the national newborn and childhood heritable screening programs.

Dated: April 3, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–8136 Filed —; 8:45 am]

BILLING CODE 4165–15–P

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: May 28–29, 2009.

Closed: May 28, 2009, 10:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D/E, Rockville, MD 20852.

Open: May 29, 2009, 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: April 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–8015 Filed 4–8–09; 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 Meeting

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 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: Center for Scientific Review Special Emphasis; Panel Member Conflicts: Sensory Neurophysiology.

Date: April 13, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael Selmanoff, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 31, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7725 Filed 4–8–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ''MRI Analysis''.

Date: May 8, 2009.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Norman Chang, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–8010 Filed 4–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 Council on Drug Abuse.

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 Council on Drug Abuse.

Date: May 12, 2009.

Closed: 8:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C & D, Rockville, MD 20852.

Open: 11 a.m. to 2:30 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C & D, Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD. Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 443–2755.

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.

Information is also available on the Institute's/Center's home page *http://www.drugabuse.gov/NACDAINACDAHomehtml*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: March 31, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7727 Filed 4–8–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

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 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NO1DA–9–8881: GMP Synthesis of Bulk Drug Substances.

Date: May 13, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Minna Liang, PhD, Scientific Review Officer, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, 6101 Executive Blvd., Room 220, MSC 8401, Bethesda, MD 20852, 301–435–1432, *liangm@nida.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: March 31, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7728 Filed 4–8–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 on Drug Abuse Special Emphasis Panel; B/START Review.

Date: May 14, 2009.

Time: 8:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401, 301–402–6626, *gm145a@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Interactions Between Physical Activity and Drug Abuse (RO1 and R03).

Date: June 2–3, 2009.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza, 10 Thomas Circle NW., Monroe Room, Washington, DC 20005.

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401, 301–402–6626, *gm145a@nih.gov*.

Name of Committee: National Institute on Drug Abuse Initial Review Group; Medication Development Research Subcommittee.

Date: June 11, 2009.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Jose F Ruiz, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Blvd., Rm. 213, MSC 8401, Bethesda, MD 20892, 301–451–3086, *ruizjf@nida.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: March 31, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7729 Filed 4–8–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 Council on Alcohol Abuse and Alcoholism.

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 Council on Alcohol Abuse and Alcoholism.

Date: June 10–11, 2009.

Closed: June 10, 2009, 5:30 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Open: June 11, 2009, 9 a.m. to 3:30 p.m.

Agenda: Program reports and presentations.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Abraham P. Bautista, PhD, Executive Secretary, National Institute On Alcohol Abuse & Alcoholism, National Institutes Of Health, 5635 Fishers Lane, rm 2085, Rockville, MD 20852, 301–443–9737, *bautistaa@mail.nih.gov*.

Information is also available on the Institute's/Centers home page: *silk.nih.gov/silk/niaaal/about/roster.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 31, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–7730 Filed 4–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel. The Genes, Environment and Health Initiative.
Date: April 27, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
Contact Person: Vinod Charles, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606 301–443–1606.

(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: April 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–8012 Filed 4–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Continuation of a National Endoscopic Database.
Date: April 29, 2009.
Time: 2:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894. *matsumotod@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 3, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–8097 Filed 4–8–09; 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 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 Vaccine Research Center Board of Scientific Counselors, NIAID. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Vaccine Research Center Board of Scientific Counselors, NIAID.
Date: May 21–22, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: National Institutes of Health, Vaccine Research Center, 40 Convent Drive, Bethesda, MD 20892.
Contact Person: Gary J. Nabel, MD, PhD, Director, Vaccine Research Center, NIAID/NIH, 40 Convent Drive, Bldg. 40, Room 4502, Bethesda, MD 20892. 301–496–1852. *gnabel@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: April 3, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–8099 Filed 4–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 following meeting.

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 portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.
Date: June 18–19, 2009.
Open: June 18, 2009, 9 a.m. to 11 a.m.
Agenda: Administrative reports and program discussion.
Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.
Closed: June 18, 2009, 11 a.m. to 5 p.m.
Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.
Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.
Closed: June 19, 2009, 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.
Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.
Contact Person: Sheldon Kotzin, MLS, Associate Director, Division of Library Operations, National Library of Medicine, 8600 Rockville Pike, Bldg 38/Room 2W06,

Bethesda, MD 20894. 301–496–6921. *Sheldon Kotzin@nlm.nih.gov*.

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 into the building by nongovernment employees. Persons without a government I.D. will need to show a photo ID. and sign in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, I–IHS)

Dated: March 31, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. E9–7731 Filed 4–8–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of a Meeting of a Working Group of the NIH Blue Ribbon Panel

The purpose of this notice is to inform the public about a meeting of the NIH Blue Ribbon Panel to Advise on the Risk Assessment of the National Emerging Infectious Diseases Laboratories at Boston University Medical Center.

The meeting will be held Tuesday, May 5, 2009 at the National Institutes of Health, Building 31, 31 Center Drive, Floor 6C, Room 6, Bethesda, MD 20892 from approximately 9 a.m. to 12 p.m. The purpose of the meeting is for the Panel to review and discuss progress on the supplementary risk assessment being conducted for the Boston University NEIDL. The National Research Council Committee on Technical Input will participate in this discussion and provide its views.

Public comment will begin at approximately 11:30 a.m. In the event that time does not allow for all those interested to present oral comments, anyone may file written comments by sending them to the address below. Comments should include the name, address, telephone number and when applicable, the business or professional affiliation of the commenter.

The meeting will be open to the public, with attendance limited to space available. There will be a live Web cast of the meeting which can be accessed at *http://nihblueribbonpanel-bumc-neidl.od.nih.gov/*. 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.

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.

A draft agenda and slides for the meeting may be obtained by connecting to *http://nihblueribbonpanel-bumc-neidl.od.nih.gov/*. For additional information concerning this meeting, contact Ms. Laurie Lewallen, Advisory Committee Coordinator, Office of Biotechnology Activities, Office of Science Policy, Office of the Director, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892–7985; telephone 301–496–9838; e-mail *lewallenl@od.nih.gov.*

Dated: April 2, 2009.

Amy P. Patterson,

Acting Director, Office of Science Policy, National Institutes of Health.

[FR Doc. E9–8009 Filed 4–8–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2009 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a Single Source Grant to Case Management, Inc. (CMI), Memphis, TN.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award approximately $500,000 (total costs) per year for up to two years to Case Management, Inc. (CMI), Memphis, TN. This is not a formal request for applications. Assistance will be provided only to Case Management, Inc. (CMI) based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Title: Services Grant Program for Residential Treatment for Pregnant and Postpartum Women—Babylove II; TI–09–009.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section 508 of the Public Health Service Act, as amended.

Justification: Only Case Management, Inc. (CMI) is eligible to apply. The Substance Abuse and Mental Health Services Administration (SAMHSA) is seeking to award a single source grant to Case Management, Inc. (CMI) to carry out the remainder of the CSAT-funded FY 2008 PPW Babylove II Project.

Midtown Mental Health Center (MMHC), the recipient of an FY 2008 CSAT PPW grant award, notified SAMHSA that it: had ceased business; had been recently acquired by Case Management, Inc. (CMI); and transferred its contacts and patients to CMI effective September 16, 2008. Furthermore, CMI had assumed all of MMHC's existing obligations under patient care contracts and/or grants. This transfer included relinquishing the FY 2008 CSAT PPW grant award issued on September 1, 2008, and transferring all associated patient services provided by the SAMHSA/CSAT grant-funded Babylove II Program.

The Babylove II PPW Project is currently the only program in West Tennessee that provides specialized long-term residential treatment services for pregnant and postpartum women with co-occurring disorders, where the children can reside in the residential treatment facility with their mothers.

CMI has been approved by SAMHSA/CSAT Grants Management as the replacement grantee for the remainder of the current budget period (12/16/08–9/29/09). According to the Awarding Agency Grants Administration Manual (AAGAM), as a replacement grantee, CMI is not automatically approved for the future budget years (*i.e.*, years 2 and 3). This sole source grant will cover the future budget years of this 3 year grant program.

Contact: Shelly Hara, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 8–1081, Rockville, MD 20857; *telephone:* (240) 276–2321; *e-mail: shelly.hara@samhsa.hhs.gov*.

Toian Vaughn,

SAMHSA Committee Management Officer.

[FR Doc. E9–8053 Filed 4–8–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Advisory Committee for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) Advisory Committee for Women's Services on May 11–12, 2009.

The meeting is open and will include remarks by SAMHSA's Acting Administrator and Acting Associate Administrator for Women's Services. The meeting will also include a panel presentation and discussion on Advancing Behavioral Health of Women and Girls in the Health Care Reform Environment, a roundtable discussion with SAMHSA's Centers' Directors, as well as updates on the Indigenous Communities' Trauma Informed Care Work Group and on the Expert Panel Workgroup Meeting for Developing Core Competencies for Working with Women and Girls in Behavioral Health.

Attendance by the public will be limited to the space available. Public comments are welcome. Please communicate with the Committee's Designated Federal Official, Ms. Nevine Gahed (*see* contact information below) to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Committee members may be obtained either by accessing the SAMHSA Committees' Web site at *https://nac.samhsa.gov/WomenServices/index.aspx* as soon as possible after the meeting, or by contacting Ms. Gahed. The transcript for the meeting will also be available on the SAMHSA Committees' Web site within three weeks after the meeting.

Committee Name: Advisory Committee for Women's Services.

Date/Time/Type: Monday, May 11, 2009, from 9 a.m. to 4:30 p.m.: Open. Tuesday, May 12, 2009, from 9 a.m. to 11:30 a.m.: Open.

Place: 1 Choke Cherry Road, Seneca Conference Room, Rockville, Maryland 20857.

Contact: Nevine Gahed, Designated Federal Official, SAMHSA Advisory Committee for Women's Services, 1 Choke Cherry Road, Room 8–1112, Rockville, Maryland 20857. *Telephone:* (240) 276–2331; *Fax:* (240) 276–2220 and *E-mail: nevine.gahed@samhsa.hhs.gov*.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E9–8096 Filed 4–8–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Welcome to the DHS Enterprise e-Recruitment System

AGENCY: Office of the Chief Human Capital Officer, DHS.

ACTION: 30-day notice and request for comments; Information Collection submission for OMB Review; welcome to the DHS Enterprise e-Recruitment System.

SUMMARY: The Department of Homeland Security, Office of the Chief Human Capital Officer has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until May 11, 2009. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, Office of the Chief Human Capital Officer, DHS, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: the Department of Homeland Security (DHS), Office of the Chief Human Capital Officer, Barbara Zakrison, 202–357–8147 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS), Office of the Chief Human Capital Officer (OCHCO) is implementing an enterprise e-Recruitment system for DHS. The use of an automated recruitment solution is necessary to meet mission critical needs of DHS and comply with the 45-day hiring model under the President's Management Agenda.

Technology-enabled recruitment can deliver both time savings and improved results. Based on an internal inventory of DHS human resource (HR) systems, more than 50 systems are currently used by DHS components to perform hiring/recruitment related activities. As part of the effort to consolidate and modernize the HR systems, the OCHCO is leading an effort to consolidate towards an automated enterprise solution that can contribute to material improvements in the overall hiring process.

Working in close collaboration, OCHCO's Human Capital Business System (HCBS) and Human Capital units defined the key project goals. The overall vision for the e-Recruitment initiative is to implement a state-of-the-art system that automates hiring/recruitment processes across DHS and seamlessly integrates with other related DHS services.

Analysis

Agency: Department of Homeland Security, Office of the Chief Human Capital Officer.

Title: DHS Enterprise e-Recruitment System.

OMB Number: 1601–New.

Frequency: On-going collection.

Affected Public: All individuals anticipating applying for an employment opportunity with the Department of Homeland Security Headquarters Division.

Number of Respondents: 10,000.

Estimated Time per Respondent: 2 hours.

Total Burden Hours: 10,000 × 2 = 20,000.

Total Burden Cost (Capital/Startup): $20,341,958.00.

Total Burden Cost (Operating/Maintaining): $39,845,675.00.

Dated: April 1, 2009.

Margaret Graves,

Chief Information Officer.

[FR Doc. E9–8138 Filed 4–8–09; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0097; FEMA Form—None.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning Citizen Corps Affiliate Programs and Organizations Application to operate effectively and efficiently to regularize and coordinate activities between Citizen Corps and those groups active in its mission areas.

DATES: Comments must be submitted on or before June 8, 2009.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online*. Submit comments at *http://www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail*. Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile*. Submit comments to (703) 483–2999.

(4) *E-mail*. Submit comments to *FEMA-POLICY@dhs.gov*. Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Penny Burke, Program Specialist, FEMA, NPD CPD, 202–786–9610 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

SUPPLEMENTARY INFORMATION: Citizen Corps, an initiative launched by President George W. Bush in January 2002, is authorized by Executive Order 13254. Citizen Corps Affiliate Programs and Organizations offer communities resources for public education, outreach, and training; represent volunteers interested in helping make their community safer; or offer volunteer service opportunities to support first responders, disaster relief activities, and community safety efforts. Providing formal recognition to these programs and similar organizations by affiliating with Citizen Corps assists the program reach its goal of having every American participate in making their communities and families safer. In order to ensure that interested parties appropriately further the Citizen Corps mission, Citizen Corps requests supporting information from those programs and organizations seeking to become affiliates.

Collection of Information

Title: Citizen Corps Affiliate Programs and Organizations Application.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0097.

Form Titles and Numbers: None.

Abstract: Citizen Corps Affiliate Programs and Organizations offer communities resources for public education, outreach, and training; represent volunteers interested in helping to make their community safer; or offer volunteer service opportunities to support first responders, disaster relief activities, and community safety efforts. Providing formal recognition to these programs and similar organizations through Affiliation with Citizen Corps, the program reaches a broader audience which can assist in reaching the goal of having every American participate in making their communities and families safer.

Affected Public: ''Not-for-profit Institutions''.

Estimated Total Annual Burden Hours: 32 burden hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	No. of respondents	No. of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Not-for-Profit Institutions ...	Application Process	8	1	4	32	15.00	$480.00
Total	.....	8	.....	.....	32	.....	$480.00

Estimated Cost: The estimated annualized cost to respondents based on wage rate categories is $480.00.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–8059 Filed 4–8–09; 8:45 am]

BILLING CODE 9111–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Importer's ID Input Record

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-day notice and request for comments; extension of an existing collection of information: 1651–0064.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Importer's ID Input Record. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 8, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to the U.S. Customs and Border Protection, *Attn:* Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the U.S. Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Importer's ID Input Record.

OMB Number: 1651–0064.

Form Number: Form 5106.

Abstract: This document is filed with the first formal entry which is submitted or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. The number, name, and address conveyed on the Form 5106 is the basis for establishing bond coverage, release and entry of merchandise, liquidation, issuance of bills and refunds, and processing of drawback and FP&F actions.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 500.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Number of Total Annual Responses: 1000.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 100.

Dated: April 1, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–8085 Filed 4–8–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Certificate of Registration

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0010.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Certificate of Registration (Forms 4455 and 4457). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 8, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to the U.S. Customs and Border Protection, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the U.S. Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of

Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Certificate of Registration.

OMB Number: 1651–0010.

Form Number: Forms 4455 and 4457.

Abstract: The Certificate of Registration is used to expedite free entry or entry at a reduced rate on foreign made personal articles that are taken abroad. The articles are dutiable each time they are brought into the United States unless there is acceptable proof of prior possession.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, Travelers.

Estimated Number of Respondents: 200,000.

Estimated Number of Annual Responses per Respondent: 200,000.

Estimated Time per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 10,000.

Dated: April 1, 2009.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E9–8128 Filed 4–8–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Protest

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-day notice and request for comments; extension of an existing collection of information: 1651–0017.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning Protest. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 8, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to the U.S. Customs and Border Protection, Attn: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the U.S. Customs and Border Protection, Attn: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Protest.

OMB Number: 1651–0017.

Form Number: Form 19.

Abstract: This collection is used by an importer, filer, or any party at interest to petition CBP, or Protest, any action or charge, made by the port director on or against any imported merchandise.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 3750.

Estimated Number of Annual Responses Per Respondent: 12.

Estimated Number of Total Annual Responses: 45,330.

Estimated Time per Respondent: 63 minutes.

Estimated Total Annual Burden Hours: 47,596.

Dated: April 1, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–8129 Filed 4–8–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Exportation of Used Self-Propelled Vehicles

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-day notice and request for comments; extension of an existing collection of information: 1651–0054.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Exportation of Used Self-Propelled Vehicles. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 8, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to the U.S. Customs and Border Protection, Attn: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the U.S. Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity

of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Exportation of Used-Propelled Vehicles.

OMB Number: 1651–0054.

Form Number: None.

Abstract: 19 U.S.C. 1627 requires the exporter of a used self-propelled vehicle to present both the vehicle and a document describing it (which includes the vehicle identification number) to CBP prior to lading if the vehicle is to be transported by vessel or aircraft, or prior to export if the vehicle is transported by rail, highway, or under its own power. This information helps CBP ensure that stolen vehicles are not exported from the U.S.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals.

Estimated Number of Respondents: 750,000.

Estimated Number of Total Annual Responses: 750,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 125,000.

Dated: April 1, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–8130 Filed 4–8–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Petroleum Refineries in Foreign Trade Subzones

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-day notice and request for comments; extension of an existing collection of information: 1651–0063.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Petroleum Refineries in Foreign Trade Subzones. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 8, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to the U.S. Customs and Border Protection, *Attn:* Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the U.S. Customs and Border Protection, *Attn.*: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Petroleum Refineries in Foreign Trade Subzones.

OMB Number: 1651–0063.

Form Number: None.

Abstract: This is a recordkeeping requirement that involves data necessary to account for admissions into, and operations occurring within each phase of the refining operation for all withdrawals of crude petroleum from Foreign Trade Subzones.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents/Recordkeepers: 81.

Estimated Time per Respondent/Recordkeeper: 1000 hours.

Estimated Total Annual Burden Hours: 81,000.

Dated: April 1, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–8131 Filed 4–8–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Western Hemisphere Travel Initiative (WHTI)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-day notice and request for comments; extension of an existing collection of information: 1651–0132.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Western Hemisphere Travel Initiative (WHTI). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 8, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to the U.S. Customs and Border Protection, *Attn:* Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the U.S. Customs and Border Protection, *Attn:*. Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW.,

Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Western Hemisphere Travel Initiative.

OMB Number: 1651–0132.

Form Number: None.

Abstract: DHS has developed alternate procedures to comply with WHTI for U.S. and Canadian citizen children through age 18, traveling with public or private school groups, religious groups, social or cultural organizations, or teams associated with youth sport organizations that arrive at U.S. sea or land ports-of-entry. In lieu of requiring a passport, these children will be permitted to present an original or a copy of a birth certificate (rather than a passport), when the groups are under the supervision of an adult affiliated with the organization (including a parent of one of the accompanied children who is only affiliated with the organization for purposes of a particular trip) and when all the children have parental or legal guardian consent to travel. For purposes of this alternative procedure, an adult would be considered to be a person age 19 or older, and a group would consist of two or more people.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals.

Estimated Number of Respondents: 6,500.

Estimated Number of Total Annual Responses: 6,500.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1,625.

Dated: April 1, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–8132 Filed 4–8–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application for Identification Card

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-day notice and request for comments; extension of an existing collection of information: 1651–0008.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Identification Card (Form 3078). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 8, 2009, to be assured of consideration.

ADDRESSES: Direct all written comments to the U.S. Customs and Border Protection, Attn: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the U.S. Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Identification Card.

OMB Number: 1651–0008.

Form Number: CBP Form 3078.

Abstract: CBP Form 3078 is used by licensed Cartmen, Lightermen, Warehousemen, brokerage firms, foreign trade zones, container station operators, their employees, and employees requiring access to CBP secure areas to apply for an identification card so that they may legally handle merchandise which is in CBP custody.

Current Actions: This submission is being submitted to extend the expiration date. There is an increase in the burden hours due to a revised estimate by CBP in the number of respondents.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 150,000.

Estimated Number of Total Annual Responses: 150,000.

Estimated Time per Response: 17 minutes.

Estimated Total Annual Burden Hours: 42,450.

Dated: April 1, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–8133 Filed 4–8–09; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–11]

Notice of Proposed Information Collection: Comment Request; FHA–Insured Mortgage Loan Servicing Involving the Claims and Conveyance Process, Property Inspection/Preservation

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 8, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Donna Tomposki, Director, Valuation Policy Division, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Appraisal Industry Forms.

OMB Control Number, if Applicable: 2502–0538.

Description of the Need for the Information and Proposed Use: HUD requires that appraisals and inspections be performed on certain FHA insured properties and the FHA Appraiser and Inspector rosters assure that HUD has the ability to track the performance of appraisers and inspectors and sanction those who are not performing adequately, this is necessary to protect the FHA insurance fund.

Agency Form Numbers, if Applicable: HUD–92563I, HUD 92563A, HUD 92564–CN, Fannie Mae Forms: 1004, 1004c, 1004mc, 1025, 1073, 1075, 2055 1004MC.

Estimation of the Total Numbers of Hours Needed to Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response: The number of burden hours is 25,184. The number of respondents is 17,650, the number of responses is 468,150, the frequency of response is on occasion, and the burden hour per response is less than 15 minutes.

Status of the Proposed Information Collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–8031 Filed 4–8–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Central Utah Project Completion Act

AGENCIES: Department of the Interior, Office of the Assistant Secretary—Water and Science.

ACTION: Notice of Intent to Prepare an Environmental Assessment for the Wasatch County Water Efficiency Recycled Water Project.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Central Utah Water Conservancy District and the Department of the Interior announce their intent to prepare an Environmental Assessment on the Wasatch County Water Efficiency Recycled Water Project. The project would make recycled water, which would be part of Central Utah Project (CUP) water, available in the facilities of the Wasatch County Water Efficiency Project (WCWEP), Bonneville Unit, CUP. It would provide an opportunity for more effective and efficient management of water, make efficient use of recycled water as an additional water supply, create opportunities to exchange water for stream and wetland benefits, and encourage the conservation and wise use of water, all of which are objectives of the Central Utah Project Completion Act.

The proposed action would make recycled water which would be part of CUP water available in the WCWEP facilities. All water supply commitments under the existing contracts and agreements will continue to be met.

FOR FURTHER INFORMATION CONTACT: Additional information pertaining to this action may be obtained by contacting Mr. Lynn Hansen, Program Coordinator, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606, by calling (801) 379–1238, or e-mail at *lhansen@uc.usbr.gov*.

Dated: April 3, 2009.

Reed R. Murray,

Program Director, Central Utah Project Completion Act, Department of the Interior.

[FR Doc. E9–8086 Filed 4–8–09; 8:45 am]

BILLING CODE

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2009–N0032]; [40120–1113–0000–C4]

Endangered and Threatened Wildlife and Plants; 5-Year Status Reviews of 13 Southeastern Plant Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) are initiating 5-year status reviews of 13 species under the Endangered Species Act of 1973, as amended (Act). We conduct these reviews to ensure that the classification of species as threatened or endangered on the Lists of Endangered and Threatened Wildlife and Plants is accurate. A 5-year review is an

assessment of the best scientific and commercial data available at the time of the review.

DATES: To allow us adequate time to conduct these reviews, we must receive your comments or information on or before June 8, 2009. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information and review information we receive on these species, *see* ''Request for New Information.''

FOR FURTHER INFORMATION CONTACT: For species-specific information, contact the appropriate person under ''Request for New Information.''

SUPPLEMENTARY INFORMATION: Under the Act (16 U.S.C. 1531 *et seq.*), we maintain lists of endangered and threatened wildlife and plant species in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for wildlife) and 17.12 (for plants) (collectively referred to as the List). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews, under section 4(c)(2)(B), we determine whether or not any species should be removed from the Lists (delisted), or reclassified from endangered to threatened or from threatened to endangered. If we consider delisting a species, we must support the action by the best scientific and commercial data available, and we must consider if these data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification requires a separate rulemaking process. We make amendments to the List in the CFR through final rules published in the **Federal Register.**

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under our active review. This notice announces our active review of 13 species that are currently listed as endangered: The Brooksville bellflower (*Campanula robinsiae*), fragrant prickly-apple (*Cereus eriophorus* var. *fragrans*), pygmy fringe-tree (*Chionanthus pygmaeus*), snakeroot (*Eryngium cuneifolium*), Cooley's water-willow (*Justicia cooleyi*), scrub blazingstar (*Liatris ohlingerae*), Britton's beargrass *(Nolina brittoniana)*, Key tree-cactus (*Pilosocereus robinii*), Lewton's polygala (*Polygala lewtonii*), wireweed (*Polygonella basiramia*), sandlace (*Polygonella myriophylla*), Chapman's rhododendron (*Rhododendron chapmanii*), and Florida torreya (*Torreya taxifolia).* The List is also available on our internet site at *http://endangered.fws.gov/wildlife.html#Species.*

What Information Do We Consider in a 5-Year Review?

A 5-year review considers the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading ''How do we determine whether a species is endangered or threatened?''); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Definitions

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

What Could Happen Because of This 5-Year Review?

If we find that there is new information concerning any of these 13 species indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from endangered to threatened; (b) reclassify the species from threatened to endangered; or (c) delist the species. If we determine that a change in classification is not warranted, then the species will remain on the List under its current status.

Request for New Information

To do any of the following, contact the person associated with the species you are interested in below:

(a) To get more information on a species,

(b) To submit information on a species, or

(c) To review information we receive, which will be available for public inspection by appointment, during normal business hours, at the listed addresses.

- *Brooksville bellflower, Cooley's water-willow, and Britton's beargrass:* Sandy MacPherson, Jacksonville Field Office, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256–7517; fax: 904–731–3045; *telephone:* 904/731–3328; *e-mail: sandy_macpherson@fws.gov*.
- *Fragrant prickly-apple, pygmy fringe-tree, snakeroot, scrub blazingstar, Key tree-cactus, Lewton's polygala, wireweed, and sandlace:* Chris Belden, South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960; fax: 772–562–4288; *telephone:* 772/562–3909, ext. 237; *e-mail: chris_belden@fws.gov*.
- *Chapman's rhododendron and Florida torreya:* Janet Mizzi, Panama City Field Office, U.S. Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, FL 32405; fax: 850–763–2177; *telephone:* 850/769–0552, ext. 247; *e-mail janet_mizzi@fws.gov*

We request any new information concerning the status of any of these 13 species. *See* ''What Information Do We Consider in a 5-Year Review?'' heading for specific criteria. Support your information by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other

personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We publish this document under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: February 25, 2009.

Michael L. Piccirilli,

Acting Regional Director, Southeast Region.

[FR Doc. E9–8078 Filed 4–8–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2009–N0059; 20124–11130000–C2]

Endangered and Threatened Wildlife and Plants; Recovery Plan for the Rio Grande Silvery Minnow (Hybognathus amarus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability: draft amendment and supplement to the 2007 Draft revised recovery plan for Rio Grande Silvery Minnow.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of an amendment and supplement to our draft revised Recovery Plan (Recovery Plan) for the Rio Grande silvery minnow (*Hybognathus amarus*) under the Endangered Species Act of 1973, as amended (Act). The species currently inhabits the Rio Grande in New Mexico and has been introduced to the Big Bend area of Texas. This amendment and supplement consist of revised draft recovery criteria and a population viability assessment (PVA, or draft Appendix H), respectively. We invite public review and comment on these documents. After review we will incorporate the documents into the Final Recovery Plan (the PVA as Appendix H).

DATES: To ensure consideration, we must receive any comments no later than May 26, 2009.

ADDRESSES: If you wish to review the revised draft recovery criteria and PVA/draft Appendix H, you may obtain a copy from Jennifer Norris, Rio Grande Endangered Species Act Coordinator, by U.S. mail at New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna Road, Albuquerque, NM 87113; by telephone at 505–761–4710; by facsimile at 505–346–2542; or by e-mail at: *Jennifer_Norris@fws.gov*. You may also download the documents from *http://www.fws.gov/endangered*. For more on obtaining and commenting on documents, see ''Document Availability.''

FOR FURTHER INFORMATION CONTACT: Jennifer Norris, by telephone at 505–761–4710, by any means under **ADDRESSES**.

SUPPLEMENTARY INFORMATION:

Background

The Rio Grande silvery minnow was extirpated from about 93 percent of its original range, persisting in only one 280-kilometer (km) ((174-mile (mi))) reach of the Rio Grande in New Mexico, from just downstream of Cochiti Dam to the headwaters of the Elephant Butte Reservoir. As part of our efforts to recover the species, on December 17, 2008, we reintroduced Rio Grande silvery minnows to the Big Bend area of the Rio Grande under Section 10(j) of the Act (16 U.S.C. 1531 *et seq.*) (73 FR 74357, December 8, 2008). We listed the species as federally endangered in 1994 (July 20, 1994, 59 FR 36988) and designated critical habitat in 2003 (February 19, 2003, 68 FR 8088). Throughout much of its historic range, the decline of the Rio Grande silvery minnow may be attributed in part to destruction and modification of its habitat due to dewatering and diversion of water, water impoundment, and modification of the river (channelization). Competition and predation by introduced non-native species, water quality degradation, and other factors may also have contributed to its decline.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures. The recovery criteria form the basis from which to gauge the species' recovery and subsequent risk of extinction.

Our draft revised recovery plan, which we announced and took comments on in early 2007 (January 18, 2007, 72 FR 2301), includes scientific information about the species and provides criteria and actions needed to reclassify or delist (recover) the species. We may consider reclassifying the Rio Grande silvery minnow from endangered to threatened when three populations (including at least two that are self-sustaining) have been established within the historical range of the species and have been maintained for at least 5 years each. We may consider delisting when three self-sustaining populations have been established within the historical range of the species and have been maintained for at least 10 years each. The revised recovery criteria provide objective measures by which we may determine that populations of silvery minnow are self-sustaining.

We finalized our original Rio Grande Silvery Minnow Recovery Plan in 1999. On January 18, 2007, we issued a notice of availability and request for comments on our draft revised plan (72 FR 2301). After receiving and considering public and peer review comments on the original draft revised criteria, we developed the revised criteria and PVA document which we announce and make available with this notice. We will not re-release the draft revised plan and take further comments. After consideration of comments we received during this public comment period, we will finalize the recovery plan and make it available to the public through a **Federal Register** notice.

Document Availability

To download review copies of the documents from the internet, go to *http://www.fws.gov/endangered* and find ''Search For a Species:'' in the left-side menu. Type ''silvery minnow'' in the text box and click on ''Search.'' Although we are no longer accepting comments on the January 2007 draft revised recovery plan, a copy of the plan may be useful for your review of the revised draft criteria and PVA/draft Appendix H. The draft revised recovery plan may be also obtained through the methods outlined above.

Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office in Albuquerque (see **ADDRESSES**).

Request for Public Comments

We are accepting written comments and information during this comment period on the revised draft recovery

criteria and draft Appendix H. You may submit written comments by any one of the means under **ADDRESSES**. If you submitted comments previously on the original draft revision to the Recovery Plan (January 2007), you need not resubmit them, as we will incorporate them into the public record and fully consider them as we prepare our final revised plan.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 5, 2009.

Brian A Millsap,

Regional Director, Region 2.

[FR Doc. E9–8083 Filed 4–8–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Colorado River Basin Salinity Control Advisory Council (Council) was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise Federal agencies on implementing the Act. In accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Council will meet as detailed below.

DATES: *Dates and Location:* The Council will conduct a meeting at the following time and location:

Thursday, May 7, 2009—Moab Utah—The meeting will be held at the Pancake Haus Restaurant, 182 South Main Street, Moab, Utah. The meeting will begin at 8 a.m., recess at approximately 12 p.m., and may reconvene later in the day.

ADDRESSES: The meeting of the Council is open to the public. Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting either in person or by mail. To the extent that time permits, the Council chairman will allow public presentation of oral comments at the meeting. To allow full consideration of information by Council members, written notice must be provided to Mr. Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3753; facsimile (801) 524–3826; e-mail at: *kjacobson@uc.usbr.gov* at least five (5) days prior to the meeting. Any written comments received prior to the meeting will be provided to Council members at the meeting.

FOR FURTHER INFORMATION CONTACT: Kib Jacobson, telephone (801) 524–3753; facsimile (801) 524–3826; e-mail at: *kjacobson@uc.usbr.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to discuss and take appropriate actions regarding the following: (1) The Basin States Program created by Public Law 110–246, amending the Act; (2) responses to the Advisory Council Report; and (3) other items within the jurisdiction of the Council.

Public Disclosure

Before including your name, address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 16, 2009.

Larry Walkoviak,

Regional Director—UC Region.

[FR Doc. E9–8077 Filed 4–8–09; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1021 (Review)]

Malleable Iron Pipe Fittings From China

Determination

On the basis of the record[1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on malleable iron pipe fittings from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on November 3, 2008 (73 FR 65401) and determined on February 6, 2009 that it would conduct an expedited review (74 FR 7703). Notice of the scheduling of the Commission's review was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 19, 2009 (74 FR 7703).

The Commission is scheduled to transmit its determination in this review to the Secretary of Commerce on April 1, 2009. The views of the Commission are contained in USITC Publication 4069 (April 2009), entitled *Malleable Iron Pipe Fittings from China (Inv. No. 731–TA–1021 (Review)*).

Issued: April 1, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–8014 Filed 4–8–09; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA'')

Notice is hereby given that on March 27, 2009, a proposed Consent Decree in *United States* v. *Laquidara Construction, Inc. and Peter V. Laquidara,* CIV No. 09–cv–0358 (N.D.N.Y.) was lodged with the United States District Court for the Northern District of New York.

The proposed Consent Decree is between the United States on behalf of the United States Environmental Protection Agency (''EPA''); the United States Department of Defense (''DOD'') and United States Federal Aviation Administration (''FAA'') (the ''Settling Federal Agencies''); and Laquidara Construction, Inc. and Peter V. Laquidara (the ''Laquidara Entities''). The proposed Consent Decree resolves claims against the Settling Federal Agencies and Laquidara Entities under Sections 106, 107, and 113 of the

Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9606, 9607, 9613 related to the Saratoga Radar Superfund Site in the Town of Stillwater, Saratoga County, New York. Under the proposed Consent Decree, EPA shall receive payments of $732,284.42 from the Settling Federal Agencies and $1500 from the Laquidara Entities towards EPA's unreimbursed environmental response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Laquidara Construction, Inc. and Peter V. Laquidara*, CIV No. 09–cv–0358 (N.D.N.Y.), D.J. Ref. 90–11–3–09109.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of New York, Suite 900, 100 S. Clinton St., Syracuse, NY, 13261–7198 and at the Environmental Protection Agency, Region 2, Office of Regional Counsel, 290 Broadway, New York, New York 10007–1866. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–7997 Filed 4–8–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on March 30, 2009, a proposed Settlement Agreement Regarding Natural Resource Damage Claims for Mineral Creek, the Gila River, and the San Pedro River, Arizona was filed with the United States Bankruptcy Court for the Southern District of Texas in *In re Asarco LLC*, No. 05–21207 (Bankr. S.D. Tex.). The proposed Agreement entered into by the United States (on behalf of the Department of Interior), the State of Arizona, and Asarco LLC provides, *inter alia*, for the transfer of three parcels of land with high ecological value to the State of Arizona, the grant of an allowed general unsecured claim to the United States of $226,396, and the grant of a joint indivisible allowed general unsecured claim to the United States and the State of Arizona of $3,773,604 to fund restoration of injured natural resources. The proposed Agreement covers injured natural resources due to releases of hazardous materials from the Ray Mine Facility in Kelvin, Arizona, and the Hayden Smelter Facility in Hayden, Arizona, to the following waters and their riparian zones: the Gila River from the Ashurst-Hayden Diversion Dam, upstream past the confluence of the San Pedro and Gila Rivers, and for a distance of 5 miles up each of those rivers beyond the confluence, and Mineral Creek from its confluence with the Gila River upstream to a point one mile above the Big Box Canyon Dam.

The Department of Justice will receive comments relating to the proposed Agreement for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Asarco LLC,* DJ Ref. No. 90–11–3–08633.

The proposed Agreement may be examined at the Office of the United States Attorney for the Southern District of Texas, 800 North Shoreline Blvd, #500, Corpus Christi, TX 78476–2001. During the public comment period, the proposed Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the proposed Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.25 (without attachments) or $4.50 (with attachments) (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. E9–7996 Filed 4–8–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on February 2, 2009, Lipomed, Inc., One Broadway, Cambridge, Massachusetts 02142, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Fenethylline (1503)	I
Methaqualone (2565)	I
Gamma Hydroxybutyric Acid (2010).	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I

Drug	Schedule
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Benzylpiperazine (7493)	I
Acetyldihydrocodeine (9051)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Tilidine (9750)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to import analytical reference standards for distribution to its customers for research and analytical purposes.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular or express mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152; and must be filed no later than May 11, 2009.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: April 1, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–8088 Filed 4–8–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 26, 2008 and published in the **Federal Register** on December 5, 2008, (73 FR 74095), GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004–1412, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance listed in schedule II.

The company plans to manufacture a radioactive product used in diagnostic imaging in the diagnosis of Parkinson's Disease and for manufacture in bulk for investigational new drug (IND) submission and clinical trials.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of GE Healthcare to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated GE Healthcare to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: April 1, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–8089 Filed 4–8–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated November 26, 2008 and published in the **Federal Register** on December 5, 2008, (73 FR 74196), ISP Freetown Fine Chemicals, 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Phenylacetone (8501)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II

The company plans to manufacture Phenylacetone to be used in the manufacture of Amphetamine for distribution to its customers. The bulk 2,5-Dimethoxyamphetamine will be used for conversion into non-controlled substances.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of ISP Freetown Fine Chemicals to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated ISP Freetown Fine Chemicals to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. § 823,

and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: April 1, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–8090 Filed 4–8–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment And Training Administration

Announcement Regarding States Triggering ''On'' to the Second-Tier of Emergency Unemployment Compensation 2008 (EUC08)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Announcement regarding Colorado, Maryland, and Texas triggering ''on'' to the Second-Tier of Emergency Unemployment Compensation (EUC08).

Public law 110–449 created a Second-Tier of benefits for qualified unemployed workers claiming benefits in high unemployment states. The Department of Labor produces a trigger notice indicating which States qualify for the Second-Tier of EUC08 benefits and provides the beginning and ending dates of the Second-Tier period for each qualifying state. The trigger notice covering State eligibility for the Second-Tier of the EUC08 program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp.* A new trigger notice is posted at this location each week that the program is in effect.

Beginning April 12, 2009, Colorado, Maryland, and Texas are in a high unemployment period, resulting in their triggering ''on'' to the Second-Tier of the EUC08 program.

Information for Claimants

The duration of benefits payable in the EUC program, and the terms and conditions under which they are payable, are governed by Public Laws 110–252 and 110–449 and the operating instructions issued to the states by the U.S. Department of Labor. The State Workforce Agency in states beginning a high unemployment period will furnish a written notice of potential entitlement to each individual who is potentially eligible for Second-Tier EUC08 benefits.

Persons who believe they may be entitled to additional benefits under the EUC08 program, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Building, Room S–4231, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by *e-mail: gibbons.scott@dol.gov.*

Signed in Washington, DC, this 2nd day of April 2009.

Douglas F. Small,

Deputy Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–8079 Filed 4–8–09; 8:45 am]

BILLING CODE 4510–FW–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0481]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on January 5, 2009.

1. *Type of submission, new, revision, or extension:* Extension/Revision.

2. *The title of the information collection:* 10 CFR part 51—''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''

3. *Current OMB approval number:* 3150–0021.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required:* Upon submittal of an application for a construction permit, operating license, operating license renewal, early site review, design certification review, decommissioning or termination review, or manufacturing license, or upon submittal of a petition for rulemaking.

6. *Who will be required or asked to report:* Licensees and applicants requesting approvals for actions proposed in accordance with the provisions of 10 CFR parts 30, 32, 33, 34, 35, 36, 39, 40, 50, 52, 54, 60, 61, 70, and 72.

7. *An estimate of the number of annual responses:* 23.

8. *The estimated number of annual respondents:* 23.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 92,281.

10. *Abstract:* 10 CFR part 51 specifies information to be provided by applicants and licensees so that the NRC can make determinations necessary to adhere to the policies, regulations, and public laws of the United States, which are to be interpreted and administered in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 11, 2009. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

NRC Desk Officer, Office of Information and Regulatory Affairs (3150–0021), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

The NRC Clearance Officer is Gregory Trussell, (301) 415–6445.

Dated at Rockville, Maryland, this 1st day of April 2009.

For the Nuclear Regulatory Commission.

Gregory Trussell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–8063 Filed 4–8–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0157]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed General Electric—Hitachi Global Laser Enrichment Uranium Enrichment Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Intent (NOI).

SUMMARY: General Electric—Hitachi Global Laser Enrichment, LLC (GLE) submitted an Environmental Report (ER) on January 30, 2009, that proposes the construction, operation, and decommissioning of a laser-based uranium enrichment facility. GLE proposes to locate the facility on the existing General Electric Company (GE)/Global Nuclear Fuel—Americas (GNF–A) site near Wilmington, North Carolina. The U.S. Nuclear Regulatory Commission (NRC), in accordance with the National Environmental Policy Act (NEPA) and its regulations at 10 CFR Part 51, announces its intent to prepare an Environmental Impact Statement (EIS) evaluating this proposed action. The EIS will examine the potential environmental impacts of the proposed GLE facility.

DATES: NRC invites public comments on the appropriate scope of issues to be considered in the EIS. The public scoping process begins with publication of this NOI. Written comments submitted by mail should be postmarked by no later than June 8, 2009, to ensure consideration. Comments mailed after that date will be considered to the extent practical.

The NRC will conduct two public scoping meetings in Wilmington, North Carolina, to assist in defining the appropriate scope of the EIS, and to help identify the significant environmental issues that need to be addressed in detail. The meeting date, times, and location are listed below:

—*Date:* May 19, 2009.

—*Times:* 1 p.m. to 4 p.m. and 7 p.m. to 10 p.m.

—*Location:* Warwick Center, Ballroom 1, University of North Carolina at Wilmington, North Carolina 28403.

ADDRESSES: Members of the public are invited and encouraged to submit written comments regarding the appropriate scope and content of the EIS. Comments may be sent to the Chief, Rules and Directives Branch, Mail Stop TWB 5B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please note Docket No. 70–7016 when submitting comments. Commenters also may send comments electronically to *GLE.EIS@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: For general or technical information associated with the licensing review of the GLE application, please contact Tim Johnson at (301) 492–3121 or *Timothy.Johnson@NRC.gov*. For general information on the NRC NEPA process, or the environmental review process related to the GLE application, please contact Christianne Ridge at (301) 415–5673 or *Christianne.Ridge@NRC.gov*.

Information and documents associated with the GLE project, including the GLE ER (submitted on January 30, 2009), are available for public review through NRC's electronic reading room at *http://www.nrc.gov/reading-rm/adams.html*. Members of the public may access the applicant's ER in NRC's Agencywide Documents Access and Management System (ADAMS) at accession number ML090910573.

A copy of the applicant's ER is available for public inspection at the New Hanover County Library, located at 201 Chestnut Street, Wilmington, North Carolina 28401. Documents also may be obtained from NRC's Public Document Room at U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, Maryland.

SUPPLEMENTARY INFORMATION:

1.0 Background

On January 30, 2009, GLE submitted an ER to NRC as part of its application for authorization to construct and operate a laser-based uranium enrichment facility. To complete its license application, GLE must submit additional information related to facility safety in accordance with the Atomic Energy Act. The EIS will evaluate the potential environmental impacts associated with the proposed GLE enrichment facility. The results of the NRC's safety review will be documented separately in a Safety Evaluation Report. The environmental evaluation will be documented in draft and final EISs in accordance with NEPA and NRC's implementing regulations at 10 CFR Part 51.

If NRC later finds GLE's complete license application to be acceptable for review, a Notice of Hearing and Opportunity to Petition for Leave to Intervene will be published in a future **Federal Register** notice. The purpose of the present notice is to inform the public that the NRC staff will prepare an EIS as part of the review of the application, and to encourage the public to participate in the environmental scoping process as defined in 10 CFR 51.29.

2.0 Proposed GLE Enrichment Facility

The GLE facility, if licensed, would enrich uranium for use in manufacturing commercial nuclear fuel for use in power reactors. Feed material would be natural (not enriched) uranium in the form of uranium hexafluoride (UF_6) which contains the uranium-235 isotope. GLE proposes to use a laser-based technology to enrich this isotope in the UF_6 to up to 8 percent by weight. The capacity of the plant would be up to 6 million separative work units (SWU) [SWU relates to a measure of the work used to enrich uranium]. The enriched UF_6 would be used on-site by GNF–A in its fuel fabrication facility and transported off-site to additional fuel fabrication facilities. The depleted UF_6 would be stored on site until it is either sold, disposed of commercially, or taken by the Department of Energy.

3.0 Alternatives to be Evaluated

No-Action—The no-action alternative would be to not build the proposed uranium enrichment facility. Under this alternative, the NRC would not approve the license application. This serves as a baseline for comparison.

Proposed Action—The proposed action involves the construction, operation, and decommissioning of a laser-based uranium enrichment facility to be located near Wilmington, North Carolina. The applicant would be issued an NRC license under the provisions of 10 CFR Parts 30, 40, and 70.

Other alternatives not listed here may be identified through the scoping process.

4.0 Environmental Impact Areas to be Analyzed

The following areas have been tentatively identified for detailed analysis in the EIS:

—*Land Use:* Plans, policies and controls;

—*Transportation:* Transportation modes, routes, quantities, and risk estimates;

—*Geology and Soils:* Physical geography, topography, geology and soil characteristics;

—*Water Resources:* Surface and groundwater hydrology, water use and quality, and the potential for degradation;

—*Ecology:* Wetlands, aquatic, terrestrial, economically and recreationally important species, and threatened and endangered species;

—*Air Quality:* Meteorological conditions, ambient background,

pollutant sources, and the potential for degradation;
—*Noise:* Ambient, sources, and sensitive receptors;
—*Historical and Cultural Resources:* Historical, archaeological, and traditional cultural resources;
—*Visual and Scenic Resources:* Landscape characteristics, manmade features, and viewshed;
—*Socioeconomics:* Demography, economic base, labor pool, housing, transportation, utilities, public services and facilities, education, recreation, and cultural resources;
—*Environmental Justice:* Potential disproportionately high and adverse impacts to minority and low-income populations;
—*Public and Occupational Health:* Potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios (including natural events);
—*Waste Management:* Types of wastes expected to be generated, handled, and stored; and
—*Cumulative Effects:* Impacts from past, present and reasonably foreseeable actions at and near the site.

This list is not intended to be all inclusive, nor is it a predetermination of potential environmental impacts. The list is presented to facilitate comments on the scope of the EIS. Changes to this list may occur as a result of the public scoping process.

5.0 Scoping Meetings

One purpose of this notice is to solicit public comments on the proposed scope and content of the EIS. Scoping is an early and open process designed to determine the range of actions, alternatives, and potential impacts to be considered in the EIS, and to identify significant issues related to the proposed action. It is intended to solicit input from the public and other agencies so that the analysis can be more clearly focused on issues of genuine concern. The principal goals of the scoping process are to:

—Ensure that concerns are identified early and are properly studied;
—Identify alternatives to be examined;
—Identify significant issues to be analyzed;
—Eliminate unimportant issues from detailed consideration; and
—Identify public concerns.

On May 19, 2009, the NRC will hold two public scoping meetings in Wilmington, North Carolina, to solicit both oral and written comments from interested parties. Both meetings will be transcribed to record public comments. The first meeting will convene at 1 p.m. and will continue until approximately 4 p.m. The second meeting will convene at 7 p.m. and will continue until approximately 10 p.m. Both meetings will begin with NRC staff providing a description of the NRC's role and mission. A brief overview of the licensing process will be followed by a brief description of the environmental review process. Most of the meeting time will be allotted for attendees to make oral comments.

In addition, the NRC staff will host informal discussions for one hour prior to the start of each public meeting. No formal comments on the proposed scope of the EIS will be accepted during the informal discussions. To be considered, comments must be provided either at one of the transcribed public meetings or in writing, as discussed below.

Persons may register to attend or present oral comments at the scoping meetings by contacting Christianne Ridge at (301) 415–5673, or by sending e-mail to *GLE.EIS@nrc.gov* no later than April 30, 2009. Members of the public may also register to speak at the meeting prior to the start of the session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. If special equipment or accommodations are needed to attend or present information at the public meeting, please contact Christianne Ridge no later than April 23, 2009, so that the NRC staff can determine whether the request can be accommodated.

6.0 Scoping Comments

Members of the public may provide comments orally at one of the transcribed public scoping meetings or in writing. Written comments may be sent by e-mail to *GLE.EIS@nrc.gov* or mailed to the address listed above in the **ADDRESSES** Section.

At the conclusion of the scoping process, the NRC staff will prepare a summary of public comments regarding the scope of the environmental review and significant issues identified. NRC staff will send this summary to each participant in the scoping process for whom the staff has an address. This summary and project-related material will be available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm/adams.html*. The scoping meeting summaries and project-related materials will also be available on NRC's GLE Web page: *http://www.nrc.gov/materials/fuel-cycle-fac/laser.html* (case sensitive).

7.0 The NEPA Process

The EIS for the GLE facility will be prepared pursuant to the National Environmental Policy Act of 1969 and NRC's NEPA Regulations at 10 CFR Part 51. After the scoping process is complete, NRC and its contractor will prepare and publish a draft EIS. A 45-day public comment period on the draft EIS is planned, and public meetings to receive comments will be held approximately three weeks after publication of the draft EIS. Availability of the draft EIS, the dates of the public comment period, and information about the public meetings will be announced in the **Federal Register**, on NRC's GLE Web page, and in the local news media. The final EIS will include responses to any comments received on the draft EIS.

Signed in Rockville, Maryland, this 2nd day of April 2009.

For the Nuclear Regulatory Commission.

Patrice M. Bubar,

Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E9–8062 Filed 4–8–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Form 13F; SEC File No. 270–22; OMB Control No. 3235–0006.

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 13(f) [1] of the Securities Exchange Act of 1934 [2] (the ''Exchange Act'') empowers the Commission to: (1) Adopt rules that create a reporting and

[1] 15 U.S.C. 78m(f).
[2] 15 U.S.C. 78a *et seq.*

disclosure system to collect specific information; and (2) disseminate such information to the public. Rule 13f–1 [3] under the Exchange Act requires institutional investment managers that exercise investment discretion over accounts—having in the aggregate a fair market value of at least $100,000,000 of exchange-traded or NASDAQ-quoted equity securities—to file quarterly reports with the Commission on Form 13F.[4]

The information collection requirements apply to institutional investment managers that meet the $100 million reporting threshold. Section 13(f)(5) of the Exchange Act defines an ''institutional investment manager'' as any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person. Form 13F under the Exchange Act defines ''investment discretion'' for purposes of Form 13F reporting.

The reporting system required by Section 13(f) of the Exchange Act is intended, among other things, to create in the Commission a central repository of historical and current data about the investment activities of institutional investment managers, and to improve the body of factual data available to regulators and the public.

The Commission staff estimates that 4,052 respondents make approximately 16,208 responses under the rule each year. The staff estimates that on average, Form 13F filers spend 98.8 hours/year to prepare and submit the report. In addition, the staff estimates that 210 respondents file approximately 840 amendments each year. The staff estimates that on average, Form 13F filers spend 4 hours/year to prepare and submit amendments to Form 13F. The total annual burden of the rule's requirements for all respondents therefore is estimated to be 401,178 hours ((4,052 filers × 98.8 hours) + (210 filers × 4 hours)).

The estimate of average burden hours is 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 control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to 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*.

Dated: April 3, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8067 Filed 4–8–09; 8:45 am]

BILLING CODE 8010–01–P

[3] 17 CFR 240.13f–1.

[4] 17 CFR 249.325.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28686; 812–13564]

Phoenix Life Insurance Company, et al.; Notice of Application

April 3, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application to amend a prior order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would amend and supersede as to them (''Amended Order'') a prior order that permits certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts (''UITs'') both within and outside the same group of investment companies (''Prior Order'').[1] The Amended Order would subject applicants to different conditions than the Prior Order and delete a condition of the Prior Order.

APPLICANTS: (a) Phoenix Life Insurance Company (''Phoenix''), PHL Variable Insurance Company (''PHL Variable'') and Phoenix Life and Annuity Company (''PLAC,'' and together with Phoenix, PHL Variable and any insurance company controlling, controlled by or under common control with Phoenix, PHL Variable or PLAC, the ''Insurance Companies''); (b) Phoenix Edge Series Fund (the ''Edge Fund''), including the currently existing series and all future series thereof; (c) any existing or future registered open-end management investment companies and any series thereof that are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Edge Fund, and are, or will be, advised by Phoenix Variable Advisors, Inc. (''PVA'') or any entity controlling, controlled by or under common control with PVA (together with series of the Edge Fund, ''Phoenix Funds'' or ''Funds''); and (d) PVA.

FILING DATES: The application was filed on August 11, 2008 and amended on March 9, 2009. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. April 27, 2009, and should be accompanied by proof of service on applicants, 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, c/o Kathleen A. McGah, Esq., Phoenix Life Insurance Company, One American Row, H–11, Hartford, CT 06102.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 551–6868, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

[1] Phoenix Life Insurance Co, *et al.*, Investment Company Act Release Nos. 27315 (May 8, 2006) (notice) and 27388 (June 5, 2006) (order). The Prior Order granted relief to the applicants and also to Phoenix Investment Counsel, Inc. (''PIC''), Phoenix Pholios, and certain registered open-end management investment companies and their series advised by PIC or any entity controlling, controlled by or under common control with PIC.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

Applicants' Representations

1. Phoenix is a New York life insurance company and an indirect wholly-owned subsidiary of The Phoenix Companies Inc. (''The Phoenix Companies'') a publicly traded Delaware corporation. PHL Variable is a Connecticut life insurance company and an indirect wholly-owned subsidiary of Phoenix. PLAC is a Connecticut life insurance company and an indirect wholly-owned subsidiary of The Phoenix Companies. The Insurance Companies issue group and individual variable annuity contracts and variable life insurance policies (collectively, the ''Contracts'') that offer opportunities to invest in the Edge Fund through separate accounts registered under the Act (''Registered Separate Accounts'') and separate accounts exempt from registration under the Act (''Unregistered Separate Accounts,'' and together with the Registered Separate Accounts, the ''Separate Accounts''). PVA is an affiliated person of the Insurance Companies, is registered under the Investment Advisers Act of 1940 and serves as investment adviser to each of the Funds that is a series of the Edge Funds.

2. The Edge Fund is a Massachusetts business trust registered under the Act as an open-end management investment company, and currently offers 18 Funds.[2] Except for organizational seed capital for certain of the Funds invested by PVA or an affiliate, shares of the Edge Fund currently are sold exclusively to the Insurance Companies on behalf of their Separate Accounts to fund benefits under the Contracts. Shares of the Edge Fund may also be offered in the future to unaffiliated insurance companies to fund benefits under variable annuity contracts and variable life insurance policies issued by the unaffiliated insurance companies, and directly to certain qualified pension and profit sharing plans pursuant to an order granted by the Commission.[3]

3. The Prior Order permits Funds (each a ''Fund of Funds'') to invest in: (a) Other Funds in the same group of investment companies as the Fund of Funds (''Affiliated Funds''), and/or (b) registered open-end management investment companies (''Unaffiliated Management Companies'') and UITs (''Unaffiliated Trusts'') that are not part of the ''same group of investment companies'' as defined in Section 12(d)(1)(G)(ii) of the Act as the Fund of Funds (''Unaffiliated Funds'', and together with the Affiliated Funds, the ''Underlying Funds''). The Prior Order also permits the Underlying Funds, their principal underwriters, and any broker or dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'') to sell shares of an Underlying Fund to a Fund of Funds. Certain of the Unaffiliated Funds may be ''exchange-traded funds'' that are registered under the Act as UITs or open-end management investment companies and have received exemptive relief to sell their shares on a national securities exchange at negotiated prices (''ETFs''). Any investment adviser to a Fund of Funds that meets the definition of section 2(a)(20)(A) of the Act is referred to as a ''Manager.''

4. The Amended Order would amend and supersede the Prior Order as to the applicants by deleting condition 2, which prohibited a Fund of Funds or its Manager, sub-adviser, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, a ''Fund of Funds Affiliate'') from receiving from an Unaffiliated Fund or its investment adviser(s), sponsor, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, an ''Unaffiliated Fund Affiliate'') any consideration in connection with any services, transactions or the investment by the Fund of Funds in the Unaffiliated Fund. The Amended Order will subject applicants to certain other conditions governing the payment of such consideration consistent with recent Commission precedent.

5. Each Fund of Funds may also make investments in government securities, domestic and foreign common and preferred stock, fixed income securities, futures transactions, options on the foregoing and in other securities or instruments that are not issued by registered investment companies and that are consistent with its investment objective, including money market instruments. Applicants state that the requested relief will provide an efficient and simple method of allowing investors to create a comprehensive asset allocation program.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any broker or dealer from selling the shares of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) of the Act to the extent necessary to permit the Funds of Funds to acquire shares of Underlying Funds and to permit the Underlying Funds, their principal underwriters and any broker or dealer registered under the Exchange Act to sell shares of the Underlying Funds to the Funds of Funds.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption continues to be consistent with the public interest and the protection of investors.

4. Applicants state that the proposed structure will not result in the exercise of undue influence by a Fund of Funds or its affiliated persons over the Underlying Funds. The concern about undue influence does not arise in connection with a Fund of Funds' investment in the Affiliated Funds,

[2] All entities that currently intend to rely on the Amended Order are named as applicants. Any other entity that relies on the Amended Order in the future will comply with the terms and conditions of the application.

[3] The Phoenix Edge Series Fund, Investment Company Act Release Nos. 25687 (July 26, 2002) (notice) and 25703 (August 20, 2002) (order).

since they are part of the same group of investment companies. To limit the control a Fund of Funds or its affiliated persons may have over an Unaffiliated Fund, applicants remain subject to a condition prohibiting: (a) A Manager and any person controlling, controlled by or under common control with such Manager, and any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised or sponsored by the Manager or any person controlling, controlled by or under common control with the Manager (collectively, a ''Group''), and (b) any other investment adviser within the meaning of section 2(a)(20)(B) of the Act to a Fund of Funds (a ''Sub-Adviser''), any person controlling, controlled by or under common control with a Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised by the Sub-Adviser or any person controlling, controlled by or under common control with the Sub-Adviser (collectively, a ''Sub-Adviser Group'') from controlling (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants further state that proposed condition 2 precludes a Fund of Funds or a Fund of Funds Affiliate from taking advantage of an Unaffiliated Fund with respect to transactions between a Fund of Funds or a Fund of Funds Affiliate, and the Unaffiliated Fund or an Unaffiliated Fund Affiliate. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Management Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director, trustee, advisory board member, investment adviser, Sub-Adviser, or employee of the Fund of Funds, or a person of which any such officer, director, trustee, advisory board member, investment adviser, Sub-Adviser, or employee is an affiliated person (each, an ''Underwriting Affiliate,'' except any person whose relationship to the Unaffiliated Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an ''Affiliated Underwriting.''

6. To further assure that an Unaffiliated Management Company understands the implications of an investment by a Fund of Funds under the requested Amended Order, prior to its investment in an Unaffiliated Management Company in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds and Unaffiliated Management Company will execute an agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the Amended Order and agree to fulfill their responsibilities under the Amended Order (''Participation Agreement''). Applicants note that an Unaffiliated Fund (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain the right to reject an investment by a Fund of Funds.[4]

7. Applicants state that they do not believe that the proposed arrangement will involve excessive layering of fees. To assure that the investment advisory fees are not duplicative, applicants state that, prior to reliance on the requested order and subsequently in connection with the approval of any investment advisory contract under section 15 of the Act, the board of directors or trustees (''Board'') of each Fund of Funds, including a majority of the directors or trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), will find that the advisory fees charged under a Fund of Fund's advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract(s). Applicants further state that a Manager will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Fund pursuant to rule 12b–1 under the Act) received from an Unaffiliated Fund by the Manager, or an affiliated person of the Manager, other than any advisory fees paid to the Manager or an affiliated person of the Manager by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Fund.

8. Applicants state that with respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers (''NASD Conduct Rule 2830''), if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

9. Applicants represent that each Fund of Funds will represent in the Participation Agreement that no insurance company sponsoring a registered separate account funding variable insurance contracts will be permitted to invest in the Fund of Funds unless the insurance company has certified to the Fund of Funds that the aggregate of all fees and charges associated with each contract that invests in the Fund of Funds, including fees and charges at the separate account, Fund of Funds, and Underlying Fund levels, will be reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.

10. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except in certain circumstances identified in condition 12 below.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Funds might be deemed to be under common control of the Manager, and therefore affiliated

[4] An Unaffiliated Fund, including an ETF, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

persons of one another. Applicants also state that the Funds of Funds and the Underlying Funds might be deemed to be affiliated persons of one another if a Fund of Funds acquires 5% or more of an Underlying Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.[5]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if 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.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act as the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of each Underlying Fund.[6] Applicants also state that the proposed structure will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that any Amended Order granting the requested relief shall be subject to the following conditions:

1. The members of a Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The members of a Sub-Adviser Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group or the Sub-Adviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, it (except for any member of the Group or the Sub-Adviser Group that is a Separate Account) will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Sub-Adviser Group with respect to an Unaffiliated Fund for which the Sub-Adviser or a person controlling, controlled by, or under common control with the Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Management Company) or as the sponsor (in the case of an Unaffiliated Trust).

A Registered Separate Account will seek voting instructions from its Contract holders and will vote its shares of an Unaffiliated Fund in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either: (i) Vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares; or (ii) seek voting instructions from its Contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that the Manager and any Sub-Adviser are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Management Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Management Company, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Management Company to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Management Company; (b) is within the range of consideration that the Unaffiliated Management Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Management Company and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Management Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Management Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Management Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Management Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Management Company will review these purchases periodically, but no less frequently than annually, to determine whether or not the purchases

[5] Applicants acknowledge that receipt of compensation by: (a) An affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgement.

[6] Applicants note that a Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions at market prices rather than through principal transactions with the Underlying Fund at net asset value. Applicants would not rely on the requested relief from section 17(a) for such secondary market transactions. A Fund of Funds could seek to transact in ''creation units'' directly with an ETF pursuant to the requested Section 17(a) relief.

were influenced by the investment by the Fund of Funds in the Unaffiliated Management Company. The Board of the Unaffiliated Management Company will consider, among other things: (a) Whether or not the purchases were consistent with the investment objectives and policies of the Unaffiliated Management Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether or not the amount of securities purchased by the Unaffiliated Management Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Management Company will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

7. Each Unaffiliated Management Company will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Management Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth the: (a) Party from whom the securities were acquired; (b) identity of the underwriting syndicate's members; (c) terms of the purchase; and (d) information or materials upon which the determinations of the Board of the Unaffiliated Management Company were made.

8. Prior to its investment in shares of an Unaffiliated Management Company in excess of the limit set forth in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Unaffiliated Management Company in excess of the limit set forth in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Management Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Management Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Management Company of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Management Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. Each Manager will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Fund pursuant to rule 12b–1 under the Act) received from an Unaffiliated Fund by the Manager, or an affiliated person of the Manager, other than any advisory fees paid to the Manager or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Sub-Adviser, or an affiliated person of the Sub-Adviser, from an Unaffiliated Fund, other than any advisory fees paid to the Sub-Adviser or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund made at the direction of the Sub-Adviser. In the event that the Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8068 Filed 4–8–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59690; File No. SR–CBOE–2009–019]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Cancellation Fees

April 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Fees Schedule regarding its cancellation fee. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspets of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently charges an executing clearing member $1.50 for each cancelled public customer Order Routing System (''ORS'') order in excess of the number of public customer orders that the executing clearing member executes in a month for itself or for a correspondent firm. The purpose of the fee is to ease order backlogs on ORS and related systems and help the Exchange recoup its increased costs in processing increased order flow traffic. The fee is not charged if less than 500 public customer orders are cancelled in a month by the executing clearing member for itself or for a correspondent firm. The Exchange aggregates and counts as one executed order for purposes of the fee all public customer options orders from the same executing clearing member for itself or for a correspondent firm that are executed in the same series on the same side of the market at the same price within a 30 second period. The following ORS order activity is exempt from the fee: (i) Cancelled ORS orders that improve the Exchange's prevailing bid-offer (BBO) market when received; (ii) fill and cancellation activity occurring within the first one minute of trading following the opening of each options class; (iii) complex order fills and cancels; (iv) unfilled Fill-or-Kill (''FOK'') orders; (v) unfilled Immediate-or-Cancel (''IOC'') orders, and (vi) fill and cancellation activity in Mini-SPX Index Options (XSP).

The level of canceled orders continues to remain quite high. Some customers are seeking to avoid the fee by executing large quantities of small orders in out-of-the-money options to offset their cancellation activity in more actively traded options.

The Exchange proposes the following changes to the fee to help ease system congestion resulting from such activity. First, the Exchange proposes to amend the manner by which it calculates the fee by aggregating together and counting as one cancelled order orders that are executed at the same price in the same underlying symbol, instead of aggregating orders that are executed at the same price in the same series on the same side of the market. The Exchange believes this change should prevent customers from breaking up their orders into a range of options series in the same underlying symbol that trade at the same premium in order to avoid the fee.

Second, the Exchange proposes to extend the current 30 second aggregation interval to 300 seconds. The Exchange believes that extending the aggregation interval to 300 seconds should result in a reduction in the number of orders that are sent to create offsetting trades.

Third, the Exchange proposes to increase the fee from $1.50 to $2.00 per cancelled order. The proposed cancellation fee is similar to the cancellation fee of the International Securities Exchange.[3]

In addition, the Exchange proposes to eliminate the exemption for fill and cancellation activity in XSP options. The Exchange had exempted activity in XSP options from the fee for an indefinite time period in conjunction with a marketing ''re-launch'' of the XSP product.[4] The Exchange has reevaluated the exemption and determined to reapply the fee to activity in XSP options.

Finally, the Exchange proposes to change the name of the fee from ''ORS (Order Routing System) Cancellation Fee'' to ''OHS (Order Handling System) Cancellation Fee'', to reflect the fact that the ORS functionality has been replaced by new OHS functionality built on the CBOEdirect platform.

The proposed fee changes will be operative on April 1, 2009.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4)[6] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities. In particular, the Exchange believes the proposed fee change is justified to address the current level of cancellation activity and its effect on system congestion and Exchange systems costs.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.

Because the foregoing proposed rule change establishes or changes a due, fee, or other charged imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(2)[8] thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[3] *See* Securities Exchange Act Release Nos. 58692 (September 30, 2008), 73 FR 59006 (October 8, 2008); 58898 (November 4, 2008), 73 FR 67238 (November 13, 2008); and 59072 (December 10, 2008), 73 FR 76689 (December 17, 2008).

[4] *See* Securities Exchange Act Release No. 56937 (December 10, 2007), 72 FR 71465 (December 17, 2007).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 19b–4(f)(2).

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2009–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–019. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CBOE–2009–019 and should be submitted on or before April 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–7998 Filed 4–8–09; 8:45 am]

BILLING CODE

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59694; File No. SR–CBOE–2009–023]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Temporary Membership Status and Interim Trading Permit Access Fees

April 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 31, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adjust (i) the monthly access fee for persons granted temporary CBOE membership status (''Temporary Members'') pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 (''Rule 3.19.02'') and (ii) the monthly access fee for Interim Trading Permit (''ITP'') holders under CBOE Rule 3.27. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The current access fee for Temporary Members under Rule 3.19.02[2] and the current access fee for ITP holders under Rule 3.27[3] are both $9,809 per month. Both access fees are currently set at the indicative lease rate (as defined below) for March 2009. The Exchange proposes to adjust both access fees effective at the beginning of April 2009 to be equal to the indicative lease rate for April 2009 (which is $8,817). Specifically, the Exchange proposes to revise both the Temporary Member access fee and the ITP access fee to be $8,817 per month commencing on April 1, 2009.

The indicative lease rate is defined under Rule 3.27(b) as the highest clearing firm floating monthly rate[4] of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases.[5] The Exchange determined the indicative lease rate for April 2009 by polling each of these Clearing Members and obtaining the clearing firm floating monthly rate designated by each of these Clearing Members for that month.

The Exchange used the same process to set the proposed Temporary Member and ITP access fees that it used to set the current Temporary Member and ITP access fees. The only difference is that the Exchange used clearing firm floating monthly rate information for the month of April 2009 to set the proposed access fees (instead of clearing firm floating monthly rate information for the month of March 2009 as was used to set the current access fees) in order to take into account changes in clearing firm

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR–CBOE–2007–107) for a description of the Temporary Membership status under Rule 3.19.02.

[3] *See* Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008) (SR–CBOE–2008–40) for a description of the Interim Trading Permits under Rule 3.27.

[4] Rule 3.27(b) defines the clearing firm floating monthly rate as the floating monthly rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate.

[5] The concepts of an indicative lease rate and of a clearing firm floating month rate were previously utilized in the CBOE rule filings that set and adjusted the Temporary Member access fee. Both concepts are also codified in Rule 3.27(b) in relation to ITPs.

floating monthly rates for the month of April 2009.

The Exchange believes that the process used to set the proposed Temporary Member access fee and the proposed Temporary Member access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–12 with respect to the original Temporary Member access fee.[6] Similarly, the Exchange believes that the process used to set the proposed ITP access fee and the proposed ITP access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–77 with respect to the original ITP access fee.[7]

Each of the proposed access fees will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act[8] to modify the applicable access fee or the applicable status (*i.e.*, the Temporary Membership status or the ITP status) is terminated. Accordingly, the Exchange may, and likely will, further adjust the proposed access fees in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of each proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions relating to the assessment of that access fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(2) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–023. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2009–023 and should be submitted on or before April 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8000 Filed 4–8–09; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR–CBOE–2008–12), which established the original Temporary Member access fee, for detail regarding the rationale in support of the original Temporary Member access fee and the process used to set that fee, which is also applicable to this proposed change to the Temporary Member access fee as well.

[7] *See* Securities Exchange Act Release No. 58200 (July 21, 2008), 73 FR 43805 (July 28, 2008) (SR–CBOE–2008–77), which established the original ITP access fee, for detail regarding the rationale in support of the original ITP access fee and the process used to set that fee, which is also applicable to this proposed change to the ITP access fee as well.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59700; File No. SR–CBOE–2009–009]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Amend its Rules Prohibiting Members From Functioning as Market Makers

April 2, 2009.

I. Introduction

On February 18, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise CBOE Rule 6.8C to eliminate certain restrictions prohibiting members

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

from functioning as market makers. The proposed rule change was published for comment in the **Federal Register** on February 26, 2009.[3] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The Exchange proposes to amend Rule 6.8C, *Prohibition Against Members Functioning as Market Makers*, to eliminate certain of its restrictions. Rule 6.8C currently provides that a member, acting either as principal or agent, may neither enter nor permit the entry of orders into the Exchange's electronic order routing system if (i) the orders are limit orders for the account or accounts of the same beneficial owner(s); and (ii) the limit orders are entered in such a manner that the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such securities on a regular or continuous basis. The Exchange proposes that these restrictions be amended to apply only to customer orders (*i.e.,* non-broker-dealer orders) that are not Voluntary Professional orders.[4] The restrictions would no longer be applicable to instances where a member is acting as principal on its own behalf or is acting as agent on behalf of other broker-dealer orders or Voluntary Professional orders. The Exchange noted that it is retaining the restriction for customers who are not Voluntary Professionals because such customers have priority at any price over the bids and offers of market makers, other broker-dealers, and Voluntary Professionals.

In addition, in those instances where its restrictions are applicable, Rule 6.8C currently provides that, in determining whether a beneficial owner effectively is operating as a market maker, the Exchange will consider, among other things, the simultaneous or near simultaneous entry of limit orders to buy and sell the same security, the entry of multiple limit orders at different prices in the same security, and the multiple acquisition and liquidation of positions in the security during the same day. The Exchange proposes to remove the last condition pertaining to the multiple acquisition and liquidation of positions from its list of factors used for determining whether a beneficial owner is operating as a market maker. The Exchange noted that this activity no longer should be considered as a factor in determining whether a beneficial owner is effectively acting as a market maker.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of Section 6 of the Act.[6] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[7] in that the proposal has been designed to promote just and equitable principles of trade, and to protect investors and the public interest.

The Commission believes that it is consistent with the Act for an options exchange not to prohibit a user of its market from operating as a market maker without registering as such. The Commission previously approved rules at other options exchanges that do not impose such a prohibition,[8] or impose such a prohibition on customers only.[9] The Commission notes that while the Exchange will continue to prohibit customers who are not Voluntary Professionals from operating as market makers, those customers will continue to have priority over the bids and offers of market makers, other broker-dealers, and Voluntary Professionals.

The Commission also believes that the Exchange's proposal to remove the condition pertaining to the multiple acquisition and liquidation of positions from its list of factors used for determining whether a beneficial owner is operating as a market maker is consistent with the Act. The Commission believes that the remaining factors are sufficient to enable the Exchange to determine whether a user of its market is operating as a market maker.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–2009–09) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8002 Filed 4–8–09; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 59425 (February 19, 2009), 74 FR 8829.

[4] The term ''Voluntary Professional'' is defined in CBOE's rules as any person or entity that is not a broker or dealer in securities that elects, in writing, to be treated in the same manner as a broker or dealer in securities for purposes of specified rules relating to priority in the execution of orders, and for cancellation fee calculation purposes. *See* Rule 1.1(fff) and Securities Exchange Act Release No. 58327 (August 7, 2008), 73 FR 47988 (August 15, 2008) (SR–CBOE–2008–09). As part of this proposed rule change, the Exchange is proposing to amend Rule 1.1(fff) to provide that a Voluntary Professional will be treated in the same manner as a broker or dealer in securities for purposes of Rule 6.8C.

[5] The Commission has considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (approving rules governing the trading of options on the NASDAQ Options Market).

[9] *See* Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (approval of rules for the trading of listed options on NYSEAlternext).

The Commission notes that any entity that acts as ''dealer,'' as defined in Section 3(a)(5) of the Act, 15 U.S.C. 78c(a)(5), would be required to register with the Commission under Section 15 of the Act, 15 U.S.C. 78o, and the rules and regulations thereunder, or qualify for any exception or exemption from registration. Activity that may cause a person to be deemed a dealer includes '' 'quoting a market in or publishing quotes for securities (other than quotes on one side of the market on a quotations system generally available to non-broker-dealers, such as a retail screen broker for government securities).' '' *See* Definitions of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Securities Exchange Act Release No. 47364, 68 FR 8686, 8689, note 26 (February 24, 2003) (quoting OTC Derivatives Dealers, Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59370, note 61 (November 3, 1998)).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59701; File No. SR–ISE–2009–15]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Quoting Obligations of Second Market Competitive Market Makers

April 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 25, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend the quoting obligations of Second Market Competitive Market Makers. The text of the proposed rule change is as follows, with deletions in [brackets] and additions in *italics:*

Rule 904. Market Maker Quotes and Orders

(a) Quotes. Except as provided below, all of the requirements of Rules 803, 804, and 805 related to quoting obligations of Primary Market Makers and Competitive Market Makers apply to SMPMMs and SMCMMs respectively. For purposes of the Rules, SMCMMs are considered appointed to all of the options classes listed in the Second Market.

(1) SMCMMs are not required to make markets in a minimum number of options classes in the Second Market. SMCMMs may choose whether to make markets in one or more options classes traded in the Second Market on a daily basis.

(2) If an SMCMM chooses to make markets in one or more options classes in the Second Market, it must [participate in the opening rotation and] make markets and enter into any resulting transactions on a continuous basis in all of the series of the options class until the close of trading that day. *Further,* SMCMMs may [not] initiate quoting in an *additional number of* options class*es* intraday*, up to the number of options classes for which they participated in the opening rotation on that day.*

(b) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the quoting obligations of Second Market Competitive Market Makers (''SMCMMs''). Pursuant to Commission approval, ISE currently lists for trading a number of low-volume options classes that qualify for listing under its Rule 502 in a ''Second Market.'' [3] Among other things, the Second Market has allowed the Exchange to provide an opportunity for additional members to provide liquidity as market makers. Specifically, the Second Market trading rules allow SMCMMs to choose whether to make markets in one or more options classes on a daily basis. Under the current rules, if a SMCMM chooses to make markets in an options class, it must participate in the opening rotation and continue to quote all of the series of the options class through the close that day. Further, SMCMMs are not allowed to initiate quoting in an options class intraday.

The Exchange proposes to amend its Second Market rules as follows: (1) Permit SMCMMs to quote in a greater number of options classes intraday, and (2) relax the requirement that SMCMMs must participate in the opening rotation in the options class that it chooses to make a market in on a specific day. With this proposed rule change, SMCMMs may initiate quoting in an options class intraday. However, the number of options classes in which a SMCMM may initiate quoting shall be limited to a number equal to the number of classes in which the SMCMM participated in the opening rotation on that day. For example, if a SMCMM participates in the opening rotation for 30 options classes, it may initiate quoting intraday in an additional 30 classes. Once an SMCMM starts quoting, it will continue to be required to quote all of the series through the remainder of the day.

The Exchange believes that relaxing the obligation for SMCMMs to participate in the opening and permitting this class of market makers to quote in a greater number of options classes intraday will encourage additional SMCMM participation and add liquidity to these low-volume options classes.

[3] *See* Securities Exchange Act Release No. 54580 (October 6, 2006), 71 FR 60781 (October 16, 2006) (SR–ISE–2006–40).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder and, in particular, the requirements of section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change is designed to attract additional liquidity in low-volume options classes by providing for open access to market makers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change as required by Rule 19b–4(f)(6).[4] The proposed amendment to ISE Rule 904 will allow SMCMMs to quote in a greater number of options classes intraday and thus provide additional liquidity in the low-

[4] 17 CFR 240.19b–4(f)(6).

volume options classes that trade in the Exchange's Second Market. Further, no other exchange requires its market makers to participate in the opening rotation in 100% of the series in options classes in which it makes a market. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 of the Act, as it does not raise any new, unique or substantive issues, and is beneficial for competitive purposes and to promote a free and open market for the benefit of investors.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2009–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–15 and should be submitted on or before April 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8066 Filed 4–8–09; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59697; File No. SR–Phlx–2009–23]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto To Amend the By-Laws, Rules and Option Floor Procedure Advices of NASDAQ OMX PHLX, Inc.

April 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 13, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 25, 2009, Phlx filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its By-Laws, Rules of the Board of Governors and Options Rules (the two sets of rules are together known as the ''Rules''), and Option Floor Procedure Advices (''OFPAs'' or ''Advices'')[3] to make changes to certain standing committees and processes of the Exchange. Specifically, the Exchange proposes to eliminate: (a) The Admissions Committee; (b) the Options Allocation, Evaluation and Securities Committee; (c) the Options Committee; (d) the Foreign Currency Options Committee; and (e) the Weekly Bulletin. Additionally, the Exchange proposes to: (a) make the Finance Committee optional; (b) change the structure of the Business Conduct Committee and eliminate reference to the Hearing Officer; and (c) authorize action in the event of an emergency or extraordinary market conditions.[4]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] OFPAs are discussed in Rule 970, which sets forth the criteria for the imposition of a fine (not to exceed $5,000) on any member, member organization, or any partner, officer, director or person employed by or associated with any member or member organization, for any violation of an OFPA, which violation the Exchange determined is minor in nature (known as the ''Minor Rule Plan''). Such a fine would be imposed in lieu of commencing a ''disciplinary proceeding'' as that term is used in Exchange Rules 960.1–960.12, and would be subject to Rule 19d–1 under the Act.

[4] Certain changes proposed in the present filing may be affected by SR–Phlx–2009–17, which is pending. *See* Securities Exchange Act Release No. 59538 (March 9, 2009), 74 FR 11152 (March 16, 2009). We would amend the present filing if necessary upon approval of SR–Phlx–2009–17.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange was recently acquired by The NASDAQ OMX Group, Inc. (''NASDAQ OMX'').[5]

The purpose of the proposed rule change is to streamline the governance of the Exchange by eliminating and/or consolidating certain standing committees of the Board to make the Exchange's governance process more similar to that of NASDAQ OMX's other U.S. SROs, The NASDAQ Stock Market LLC (the ''NASDAQ Stock Market'') and NASDAQ OMX BX, Inc. (''BX''). The duties of the eliminated committees will generally be administered by Exchange staff or other Board committees. The Exchange also proposes to codify the ability of the Exchange to take emergency action, change how information is provided to Exchange membership, and update the functioning of the Exchange's disciplinary committee.

The Exchange proposes to: Eliminate the Admissions Committee and Allocation, Evaluation and Securities Committee; consolidate the Options Committee and the Foreign Currency Options Committee into the Quality of Markets Committee; and eliminate the use of the Weekly Bulletin. The Exchange also proposes to: Change the membership structure of the Business Conduct Committee and eliminate the Hearing Officer; make the Finance Committee optional at the discretion of the Board; and authorize the Chief Executive Officer and the President of the Exchange to take action in the event of an emergency or extraordinary market conditions. As a result of this filing, eleven standing committees of the Exchange's Board would be reduced to seven, one of which would be optional at the discretion of the Board.[6]

The Exchange believes that its proposal should considerably streamline Exchange governance to the benefit of the Exchange and its membership. Moreover, the Exchange believes that its proposal is conducive to the objective of Phlx, BX, and the NASDAQ Stock Market having similar by-laws and/or rules where practical.

Admissions Committee

The Exchange proposes to amend its By-Law Article X, Section 10–1, Standing Committees, which lists all Exchange standing committees, to eliminate the Admissions Committee. The Exchange proposes to delete its By-Law Article X, Section 10–6, Admissions Committee, which sets forth the duties and functions of the Admissions Committee,[7] and transfer those duties to the Exchange's Membership Department in proposed new Rule 900.1, General Powers and Duties of Membership Department. The Exchange proposes to delete By-Law Article XII, Section 12–5, Application, which sets forth the duties and functions of the Admissions Committee in respect of applications for permits and admission as foreign currency options (''FCO'') participants,[8] and transfer the relevant provisions of Section 12–5 to the Membership Department in new Rule 900.2, Membership Applications.

Over the years, Exchange staff has been involved in virtually all aspects of the Exchange's admission and membership process, including assisting the Admissions Committee in the review of membership applications, renewals and requests for contraction and expansion of membership privileges, and communicating with the Admissions Committee and Phlx membership regarding admission and membership. The Exchange believes that staff time allocated to communicating with the Admissions Committee, organizing its meetings, and communicating on its behalf can be better utilized and redirected to performance of admission and membership-related functions by the new Membership Department, which is currently known as the Membership Services Department. The Exchange therefore proposes to have the Membership Department perform the functions of the Admissions Committee.

The Exchange proposes to expressly provide that the Membership Department will administer the Exchange rules that are currently administered by the Admissions Committee.[9] The Exchange also proposes to delete all references to the Admissions Committee, clarify references to the Membership Department, and generally make changes in a variety of by-laws and rules that correspond to by-law amendments discussed herein.[10]

Proposed new Rule 900.1, which is based on deleted By-Law Article X, Section 10–6, indicates that the Membership Department will be in charge of the membership and admissions processes at the Exchange. As such, the Membership Department will have jurisdiction over, among other things, admission, denial, reinstatement, and revocation of membership to the Exchange; supervision of members, membership organizations and partnership arrangements; qualification, registration, and determinations regarding affiliations of entities as foreign currency options participants; and rights and privileges of permit holders.[11]

---

[5] On July 24, 2008, NASDAQ OMX acquired all of the common stock of the Exchange, which became a wholly owned subsidiary of NASDAQ OMX. The Exchange has continued to operate as a separate self-regulatory organization (''SRO''). *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31). *See also* Securities Exchange Act Release No. 58183 (July 17, 2008), 73 FR 42850 (July 23, 2008) (SR–NASDAQ–2008–035). The Exchange recently changed its name to NASDAQ OMX PHLX. *See* Securities Exchange Act Release No. 58380 (August 18, 2008), 73 FR 49728 (August 22, 2008) (SR–Phlx–2008–61).

[6] The following Exchange Committees would remain after this filing: Executive; Audit; Business Conduct; Compensation; Nominating, Elections and Governance; Quality of Markets; and Finance (optional). *But see* Securities Exchange Act Release No. 59538 (March 9, 2009) (SR–Phlx–2009–17), which discusses, among other things, renaming of the Nominating, Elections and Governance Committee.

[7] Pursuant to By-Law Article X, Section 10–6, the Admissions Committee has jurisdiction over, among other things: the review of applications of non-members seeking to become members, member organizations, permit holders, foreign currency options participants, or foreign currency options participant organizations; changes to membership affiliation and status; determinations regarding affiliations of existing members and member organization firms and determinations regarding inactive nominees [*sic*]; and qualification, revocation and reinstatement of permits and foreign currency options participations.

[8] By-Law Article XII, Section 12–5 describes the processing of applications for permits or admission as FCO participants and indicates, among other things, that: Exchange staff (the Membership Services Department) initially receives, reviews and makes recommendations regarding such applications; the Admissions Committee makes the final application determinations; and applicant names are posted for a period of seven days in the Weekly Bulletin and on the Web site of the Exchange.

[9] *See* Rule 900 (indicating that the Membership Department will administer Rules 901 to 949 and 971 and 972, inclusive).

[10] ''Membership Department'' in By-Law Article I, Section 1–1(mm) replaces the Exchange's Membership Services Department. *See also* By-Law Article I, Section 1–1, Article IV, Section 4–4, Article V, Section 5–8, Article XI, Section 11–1, Article XIII, Sections 13–2, 13–6, 13–8, Article XIV, Section 14–5, Article XV, Sections 15–1, 15–2, 15–3, 15–6, 15–7, 15–8, 15–10 Article XVII, Sections 17–1, 17–2, 17–3, 17–4, 17–5, and Article XXVII, Section 27–4; and Rules 1, 173, 600, 601, 602, 901, 902, 904, 906, 907, 909, 921, 922, 930, 949, and 1090.

[11] The Exchange proposes to transfer from By-Law Article X, Section 10–6 to new Rule 900.1 only those substantive areas that are relevant to the structure of the admissions and membership process overseen by the Membership Department. For example, the provision in Section 10–6 that the Business Conduct Committee share jurisdiction over the revocation of permits and foreign currency options participations in connection with disciplinary matters with the Admissions Committee, and references to the Admissions Committee are not transferred to Rule 900.1.

Proposed new Rule 900.2, which is based on deleted By-Law Article XII, Section 12–5, indicates that applicants for a permit or admission as a member or as a foreign currency options participant shall initiate the procedure by filing an application with the Membership Department in such form as prescribed by the department. All applications will be reviewed and acted on by the Membership Department. Should the Membership Department not approve an application, it shall notify the applicant in writing of the specific grounds for denial.[12]

An applicant that is not approved has a right to an appeal hearing pursuant to By-Law Article XI. The process of appealing from standing committee decisions is set forth in By-Law Article XI, Section 11–1(a), which indicates that appeals from standing committee decisions are initiated by filing with the Secretary of the Exchange a notice of appeal within 10 days after the decision has been rendered. The Exchange proposes to add the Membership Department into By-Law Article XI, Section 11–1(a) to permit appeals from Membership Department decisions. The Exchange proposes to similarly add the Membership Department into By-Law Article XI, Section 11–1(c) to indicate that appeals from decisions of the Membership Department will be heard by a special committee of the Board composed of three Governors, at least one of whom is an Independent Governor (the ''Special Committee''). A decision of the Special Committee is not appealable to the Board.

The Exchange believes that the elimination of the Admissions Committee and transfer of its duties to the Membership Department will begin to align Exchange admissions and membership processing more closely to that of NASDAQ OMX and/or the NASDAQ Stock Market.[13]

Weekly Bulletin

The Exchange proposes to eliminate publication of its Weekly Bulletin (the ''Bulletin''), which contains, among other things, changes in permit holder and member organization status and applications made to the Exchange.[14] The Bulletin invites readers to report information regarding applications and applicants. The current admissions process requires that, if the Admissions Committee votes favorably regarding a request by an applicant, his or her name has to be posted for a period of 7 days in the Bulletin and on the Exchange's Web site. If during this time an objection to provision of a permit or application is received by the Admissions Committee (the ''objection process''), it must reconsider its favorable vote.[15]

The Exchange believes that admission and membership decisions can be administered by the Exchange. The Exchange therefore proposes to eliminate the objection process and notification in the Bulletin and/or on its Web site. The Exchange intends to instead provide notification regarding membership approvals on the Exchange's Web site.

The Exchange believes that the Bulletin, which at one time served as a predominant means of communication regarding exchange matters, is no longer a viable means of communication in today's fast-paced, electronic world. As such, the Exchange proposes to terminate publication of the Bulletin and to provide disciplinary and other relevant information on its Web site.

Allocation Committee

The Exchange proposes to amend its By-Law Article X, Section 10–1, Standing Committees, to eliminate the Options Allocation, Evaluation and Securities Committee (the ''Allocation Committee''). The Exchange proposes to delete its By-Law X, Section 10–7, Options Allocation, Evaluation and Securities Committee, which sets forth the duties and functions of the Allocation Committee.[16] The relevant functions and duties of the committee will be performed by Exchange staff.

Similar to Exchange staff involvement with the admission and membership process, Exchange staff has been involved in all aspects of the Exchange's allocation process through its work with the Allocation Committee. The time allocated by Exchange staff to communicating with and on behalf of the Allocation Committee and organizing its meetings can be better utilized and redirected to performance of allocation-related functions upon elimination of the Allocation Committee.[17] In addition, the allocation process often necessitates a fast turnaround, such that calling committee meetings, particularly during trading hours, is often challenging. Thus, the Exchange believes that allowing Exchange staff to perform the functions of the Allocation Committee should significantly improve the flow and efficiency of the allocation process.

With the elimination of the Allocation Committee, the Exchange proposes to expressly state that the Exchange will administer the rules that are currently administered by the Allocation Committee.[18] The Exchange also proposes to delete all references to the Allocation Committee, clarify references to the Exchange or its staff, and generally make changes in a variety of by-laws, rules, and OFPAs that correspond to by-law amendments discussed herein.[19]

The Exchange believes that the elimination of the Allocation Committee

[12] The Exchange proposes to transfer from deleted By-law Article XII, Section 12–5 to new Rule 900.2 only those substantive areas that are relevant to the processing of applications. Provisions in Section 12–5 regarding posting of applicant names for a seven day period in the Weekly Bulletin and on the Exchange's Web site; references to the Admissions Committee; and references to the Demutualization Merger, *see* Securities Exchange Act Release No. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR–Phlx–2003–73), for example, are not transferred to Rule 900.2.

[13] The NASDAQ Stock Market does not have an Admissions Committee. *See* NASDAQ Stock Market By-Law (''NASDAQ By-Law'') Article III, Sections 5 and 6. Membership application processing and decisions regarding NASDAQ membership are handled by staff. *See* NASDAQ Stock Market Rule (''NASDAQ Rule'') 1000 *et seq.*

[14] The Bulletin, which is currently distributed in electronic form, also provides notice of certain matters such as, for example, the bid, ask and last sales prices for Exchange memberships and NASDAQ OMX Futures Exchange, Inc. (''NFX'') (formerly Philadelphia Board of Trade or ''PBOT'') shares; and disciplinary decisions issued and sanctions imposed by the Exchange's Business Conduct Committee. *See* Supplementary Material to By-Law Article XVIII, Section 18–2 for Board policy of publicizing fines, censures and disciplinary actions regarding members and member organizations. The Exchange intends to provide this information on its Web site.

[15] *See* By-Law Article XII, Section 12–5. *See also* By-Law Article XV, Section 15–1 regarding a 7 day notice in the Bulletin; and By-Law Article XVII, Section 17–5 regarding a 14 day notice in the Bulletin prior to the Admission Committee considering an application. *See also* By-Law Article XV, Section 15–2 regarding a 7 day transfer notice.

[16] Pursuant to By-Law Article X, Section 10–7, the Allocation Committee has jurisdiction over, among other things: the appointment or approval of specialists, Streaming Quote Traders (''SQTs'') and Remote Streaming Quote Traders (''RSQTs''); allocation, retention and transfer of privileges to deal in options on Exchange trading floors; evaluation of the performance of specialists, SQTs and RSQTs; and administration of the 500 series of Exchange rules.

[17] The Exchange's Equity Allocation, Evaluation and Securities Committee was eliminated with the implementation of the Exchange's electronic equity trading system (XLE). *See* Securities Exchange Act Release No. 54329 (August 17, 2006), 71 FR 50482 (August 25, 2006) (SR–Phlx–2006–43). XLE is no longer operating.

[18] *See* Rule 500 (indicating that Rules 500 through 599 will be administered by the Exchange). Unlike the transfer of duties from the Admissions Committee to a specific Membership Department, the transfer of duties from the Allocation Committee is generally to the ''Exchange.'' In addition to the rules, the admission process is described by the Exchange on its Web site.

[19] *See* By-Law Article XI, Section 11–1 and By-Law Article XXVII, Sections 27–3 and 27–4 [*sic*]; Rules 501, 505, 506, 507, 508, 510, 511, 513, 515, 602, and 1014; and OFPA B–6. *See also* Rules 525 and 526 (deleting rules regarding Allocation Committee authority), and 509 (deleting rule referring to outdated subcommittee of the Allocation Committee).

and transfer of its duties to the Exchange should help make the Exchange's allocations structure more similar to that of the NASDAQ Stock Market.[20]

Options Committee and Foreign Currency Options Committee

The Exchange is eliminating the Options Committee and Foreign Currency Options Committee (the ''FCO Committee''), which are now two separate Board committees, and combining them into the Quality of Markets Committee. In particular, the Exchange proposes to amend its By-Law Article X, Section 10–1, Standing Committees to eliminate the Options Committee and the FCO Committee from the list of Exchange committees. The Exchange proposes to delete its By-Law Article X, Section 10–20, Options Committee, and its By-Law Article X, Section 10–17, Foreign Currency Options Committee, setting forth the duties and functions of the committees.[21] The Exchange then proposes to fold these two committees into the Quality of Markets Committee (the ''QMC'') by amending the language of By-Law Article X, Section 10–21, Quality of Markets Committee, so that the duties and functions of the Exchange's QMC would be analogous to those of the NASDAQ Stock Market QMC.[22] Specifically, the new QMC would have the following functions respecting index, foreign currency, and equity options as well as equities:[23] to provide advice and guidance to the Board on issues relating to the fairness, integrity, efficiency, and competitiveness of the information, order handling, and execution mechanisms of the Exchange from the perspective of investors (both individual and institutional), retail firms, specialist and registered options trader firms, and other participants of the Exchange; and to advise the Board with respect to national market system plans and linkages between the facilities of the Exchange and other markets.

The new QMC would include broad representation of various participant groups in the Exchange, including investors, specialist and registered options trader (''ROT'') firms, retail firms, and order entry firms. Specifically, the QMC would include a number of Member Representative members[24] that is equal to at least 20 percent of the total number of members of the committee. Furthermore, the number of Non-Industry members (*i.e.,* committee members not associated with broker-dealers)[25] on the QMC would equal the sum of the number of Industry members[26] and Member Representative members. The Exchange believes that the proposed composition of the QMC would reflect a ''fair representation'' of Exchange members.[27]

By-Law Article VIII, Section 8–1 currently states that the Chairs of the Options Committee and the FCO Committee preside over the Exchange's options and FCO trading floors. The Exchange proposes to amend its By-Law Article VIII, Section 8–1 to eliminate reference to the Chairs of the Options Committee and FCO Committee and to indicate that the President of the Exchange and his designee would be vested with supervision over the options trading floor.[28] In particular, updated Article VIII, Section 8–1 would indicate that the President of the Exchange and his designated staff shall have: general supervision over the options trading floor as well as general supervision of the dealings of members on the trading floor and on Exchange trading systems, and of the premises of the Exchange immediately adjacent thereto; supervision of all connections or means of communications with the options trading floor; and supervision over the location of equipment and the assignment and use of space on the options trading floor. Section 8–1 would also indicate that the President shall have supervision over relations with other options exchanges; and that the Exchange shall make and enforce rules and regulations relating to order, decorum, health, safety and welfare on the options trading floor and the immediately adjacent premises of the Exchange and shall be empowered to impose penalties for violations thereof. The Exchange believes that vesting this authority with the President of the

[20] The NASDAQ Stock Market does not currently have a Board committee similar to the Allocation Committee. *See* NASDAQ Stock Market By-Law Article III, Sections 5 and 6.

[21] Pursuant to By-Law Article X, Section 10–20, the Options Committee currently has jurisdiction to, among other things: supervise the dealings of members and market makers on the options trading floor; recommend adoption of such rules as it deems necessary for the convenient and orderly transaction of business upon the equity and index options trading floor; enforce rules and regulations relating to order, decorum, health, safety and welfare on the equity and index options trading floor; and resolve trading disputes on the equity and index options trading floor. Pursuant to Article X, Section 10–17, the FCO Committee has analogous powers and duties in respect of the FCO trading floor. The Exchange notes that pursuant to Rule 124, trading disputes are now settled by Options Exchange Officials (''OEOs''). *See* Securities Exchange Act Release No. 55877 (June 7, 2007), 72 FR 32937 (June 14, 2007) (SR–Phlx–2006–87). OEOs are defined in Rule 1(pp).

[22] *See* NASDAQ Stock Market By-Law Article III, Section 6(c).

[23] Equities do not currently trade on the Exchange.

[24] ''Member Representative member'' is defined as a member of any committee appointed by the Board of Governors who has been elected or appointed after having been nominated pursuant to these By-Laws. The definition of ''Member Representative member'' is also proposed to be modified in SR–Phlx–2009–17. *See* proposed By-Law Article I, Section 1–1(qq), which is based on NASDAQ Stock Market By-Law Article I(r).

[25] ''Non-Industry member'' is defined as a member of any committee appointed by the Board of Governors who is (i) a Public member; (ii) an officer, director, or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry member. *See* proposed By-Law Article I, Section 1–1(oo), which is based on NASDAQ Stock Market By-Law Article I(w). ''Public Member'' is defined as a member of any committee appointed by the Board of Governors who has no material business relationship with a broker or dealer, the Exchange, or its affiliates. *See* proposed By-Law Article I, Section 1–1(pp) [*sic*], which is based on NASDAQ Stock Market By-Law Article I(z). The definitions of ''Non-Industry member'' and ''Public Member'' are also proposed to be modified in SR–Phlx–2009–17.

[26] ''Industry member'' is defined as a member of any committee appointed by the Board who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years. The definition of ''Industry member'' is also proposed to be modified in SR–Phlx–2009–17. *See* proposed By-Law Article I, Section 1–1(nn), which is based on NASDAQ Stock Market By-Law Article I(m).

[27] *See* Section 6(b)(3) of the Act setting forth, among other things, the objective of ''fair representation'' of an exchange's members in the administration of its affairs. 15 U.S.C. 78f(b)(3).

[28] By-Law Article VIII, Section 8–1 also refers to XLE, which was the Exchange's electronic system for the entry, display, execution, and reporting of orders in NMS stocks. XLE was discontinued on October 24, 2008, and is no longer operating. *See* Securities Exchange Act Release No. 58613 (September 22, 2008), 73 FR 57181 (October 1, 2008) (SR–Phlx–2008–65). References to XLE will be removed from By-Law Article VIII, Section 8–1; Article I, Section 1–1; and Article X, Sections 10–11 and 10–15.

Exchange is appropriate, should streamline Exchange processes, and is similar to the NASDAQ Stock Market.[29]

As with other eliminated committees, the Exchange proposes to delete all references to the Options Committee and the FCO Committee, clarify references to the Exchange or its staff, and generally make changes in a variety of by-laws, rules, and OFPAs that correspond to the proposed by-law amendments.[30]

Business Conduct Committee

The Business Conduct Committee (''BCC'') is the Exchange's disciplinary committee. It has exclusive jurisdiction to, among other things: monitor compliance with the Act and rules and regulations thereunder, with the Exchange's By-Laws and Rules and any interpretations thereof, and with the rules, regulations and policies of the Board or any Exchange committees; and authorize the initiation of any disciplinary actions or proceedings brought by the Exchange.[31] The BCC currently consists of nine members that include: three Independent Governors; one member or person associated with a member organization who conducts business on XLE; one member who conducts options business at the Exchange; and four persons who are members or persons associated with a member organization. The Exchange proposes to change the required number of members on BCC and the qualifications for committee membership.

The Exchange proposes to change By-Law Article X, Section 10–11 to give the Board discretion to establish not less than five or more than nine members of BCC.[32] The Exchange also proposes that the BCC would be populated from three distinct groups. The majority of the committee members would be Non-Industry members and the remaining committee members would be Industry members. Significantly, to further ensure fair representation of Exchange members on this important committee,[33] at least one committee member would have to be a member of the Exchange that conducts an options business at Phlx.[34]

The Exchange also proposes to update certain provisions in its disciplinary procedures in furtherance of conforming its hearings processes with those of the NASDAQ Stock Market.[35] Specifically, the Exchange is changing the composition of its disciplinary Hearing Panel by deleting the requirement to have a Hearing Officer. Currently, Exchange disciplinary hearings on a Statement of Charges [36] are held before a three person Hearing Panel appointed by the Chair of the BCC and the presiding person of each Hearing Panel is a Hearing Officer. The Exchange is eliminating the Hearing Officer position. The Exchange proposes to change its By-Law Article X, Section 10–11 to delete references to a Hearing Officer.

The Exchange proposes to change various rules in the 960 series to delete references to the Hearing Officer, and to clarify references to the Hearing Panel.[37] The Exchange also proposes to add the definition of a Hearing Attorney in Rule 960.5 to indicate that, among other things, the Hearing Attorney will take over the administrative duties that the Hearing Officer previously handled, will advise the Hearing Panel on applicable rules and procedure, but will not be a voting member of the Hearing Panel.[38] The process of appealing from Hearing panel decisions will remain the same.[39]

The Exchange additionally proposes rule changes to update and conform certain disciplinary rules. To that end, the Exchange proposes amendments that would: update references to the Exchange's Regulatory Department in Rule 960.2; add the ability to serve documents by electronic delivery upon mutual consent of the parties in Rule 960.11; and clarify that Hearing Panelists may be paid additional compensation in extraordinary cases in Rule 960.5.

The Exchange believes that allowing the Board to reduce the number of members on BCC by as much as 44% should make the committee more efficient. The Exchange also believes that requiring that the BCC be composed of Non-Industry members and Industry members that are defined similarly by the Exchange and the NASDAQ Stock Market, and introducing a Hearing Attorney position in lieu of a Hearing Officer, should make the Exchange and NASDAQ Stock Market hearing processes more similar while maximizing the fairness and independence of the Exchange's BCC and disciplinary proceedings.

Finance Committee

Currently, the Finance Committee is a permanent standing committee of the Board.[40] The Exchange proposes to amend its By-Law Article X, Section 10–1 to indicate that the Finance Committee would be an optional committee, to be appointed only if deemed necessary by the Board, and that the Finance Committee would have such powers and duties with respect to the financial operation of the Exchange as may be delegated by the Board. The Exchange proposes to amend its By-Law Article X, Section 10–15 to make corresponding changes indicating the optional nature of the Finance Committee. Should a Finance Committee not be appointed by the Board, however, pursuant to By-Law

[29] *See* NASDAQ Stock Market By-Law Article IV, Section 5 (vesting general supervision of the operations of the NASDAQ Stock Market in the President).

[30] *See* By-Law Article XXVII, Section 27–3; Rules 60, 101, 124, 508, 606, 1012, 1014, 1017, 1061, 1064, 1066, 1079, and 1080; and OFPAs A–12, A–13, A–14, B–6, F–27, F–28, and F–31.

[31] *See* By-Law Article X, Section 10–11. Because the functions and duties of BCC are clearly set forth in Section 10–11, the Exchange proposes to delete Rule 700, Powers and Duties, which the Exchange believes superfluously lists the rules administered by BCC.

[32] In By-Law-Article X, Section 10–11, the Exchange also adds a cross-reference to By-Law Article VIII, Section 8–1.

[33] *See* Section 6(b)(3) of the Act setting forth, among other things, the objective of ''fair representation'' of an Exchange's members in the administration of its affairs. 15 U.S.C. 78f(b)(3).

[34] The Exchange is deleting the requirement to have one BCC member that is an Exchange member or is associated with a member organization that conducts equity business on XLE, as XLE is no longer operating. *See* supra note 17.

The Commission notes that Phlx has committed to submit a separate proposed rule change further modifying Phlx By-Law Article X, Section 10–11 to clarify that the BCC shall include a number of committee members equal to at least 20% of the total number of members on the BCC that are representative of Phlx members./FTNT≤

[35] *See* Rules 960.1 to 960.12 (Exchange disciplinary hearing rules) and NASDAQ Stock Market Rules 4800 to 4816 (NASDAQ Stock Market delisting hearing rules).

[36] *See* Rules 960.2 and 960.3.

[37] *See* Rules 960.4, 960.5, 960.6, 960.8, 960.9, 960.10, 960.11, and 970.

[38] Proposed subsection (a)(4) of Rule 960.5 states: A Hearing Attorney shall assist the Hearing Panel in the discharge of its duties. The Hearing Attorney shall not have a vote in the Panel's disposition of the matter, but will advise the Panel on the application of the Disciplinary Rules, Guidelines for Sanctions, and relevant precedent. The Hearing Attorney will not be permitted to be involved in any manner in the investigation of possible misconduct, to participate in the consideration by the Business Conduct Committee of whether to institute a disciplinary action, to render a decision following a hearing without the concurrence of a majority of the Hearing Panel, rule upon requests to disqualify the Hearing Attorney or any member of the Hearing Panel, or issue citations for violations of Exchange rules or floor procedure advices.

[39] Appeals may be initiated by filing with the Exchange a written notice of appeal within 10 days after a decision is rendered, and will be conducted by the Board or an Advisory Committee appointed by the Board. *See* By-Law Article XI, Sections 11–1, 11–2, and 11–3. The Exchange proposes to delete reference to ''Hearing Officer'' in the title of By-Law Article XI, Section 11–3.

[40] The Finance Committee has the jurisdiction to, among other things, report to the Board regarding: examination of the accounts and vouchers of the Exchange; prepare estimates of the income and recommendations as to appropriations for expenses, and assist in the preparation of the annual budget and make recommendations thereon. *See* By-Law Article X, Section 10–15.

Article IV, the Board continues to retain the power to review the Exchange's finances.[41]

The Exchange's proposal to make the Finance Committee optional is similar to the NASDAQ Stock Market, where the Finance Committee is optional, at the discretion of the Board.[42]

Emergency or Extraordinary Market Conditions

The Exchange proposes adoption of new By-Law Article IV, Section 4–23, which is similar to NASDAQ Stock Market By-Law Article IX, Section 5 authorizing the Board or its designee to take certain actions in the event of an emergency or extraordinary market conditions. Specifically, new By-Law IV, Section 4–23 states that in the event of an emergency or extraordinary market conditions, the Board or such person as may be designated by the Board, shall have the authority to take any action regarding: the trading in or operation of the Exchange or any other organized securities markets that may be operated by the Exchange, the operation of any automated system owned or operated by the Exchange, and the participation in any such system or any or all persons or the trading therein of any or all securities; and the operation of any or all offices or systems of members and member organizations, if, in the opinion of the Board or its designee, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system. Although the Exchange has other ''extraordinary market conditions'' provisions in its rules,[43] the Exchange seeks adoptions of a provision that is similar to the NASDAQ Stock Market.

Finally, the Exchange is proposing technical, housekeeping rule changes in respect of references that are obsolete, no longer in use, or in need of updating so that Phlx Rules and Advices may be conformed. These include references to departments, positions, and committees that are renamed or no longer exist (*e.g.* Market Surveillance Department, Market Surveillance, Arbitration Department, Financial Automation, Office of Chief Examiner, and Stock List Committee); and to circulars that are no longer in use (*e.g.* exchange and information circulars).[44]

2. Statutory Basis

The Exchange proposes to streamline the governance structure of the Exchange by updating, eliminating and consolidating its committees, codifying certain emergency functions, updating its disciplinary process, and harmonizing Exchange By-Laws, Rules and OFPAs. The Exchange believes that its proposal is consistent with Section 6(b) of the Act[45] in general, and furthers the objectives of Section 6(b)(5) of the Act[46] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that its proposal also furthers the objectives of Section 6(b)(3) of the Act,[47] in that it is designed to promote fair representation of the members of the Exchange in the administration of its affairs, as discussed herein.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2009–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2009–23 and should be submitted on or before April 30, 2009.

[41] *See* By-Law Article IV, Section 4–4.

[42] *See* NASDAQ Stock Market By-Law Article III, Section 5(b) (Board may appoint a Finance Committee to advise regarding financial operations and conditions of NASDAQ Stock Market).

[43] *See e.g.* Rules 1080(e) and 98.

[44] *See* Rules 100, 108, 124, 507, 761, 800, 803, 960.2, 1001, 1003, 1014, 1017, 1039, 1042, 1047, 1061, 1080, 1092, and 1001A; and OFPAs A–12, A–13, A–14, F–7, F–13, F–15, F–22, and F–27. As an example, the terms ''Market Surveillance Department'' in Rule 761 and ''Market Surveillance'' in Rule 1047 are changed to ''regulatory staff.''

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(5).

[47] 15 U.S.C. 78f(b)(3).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–8001 Filed 4–8–09; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 6573]

Fine Arts Committee Notice of Meeting

The Fine Arts Committee of the Department of State will meet on April 30, 2009 at 1:30 p.m. in the Henry Clay Room of the Harry S. Truman Building, 2201 C Street, NW., Washington, DC. The meeting will last until approximately 3 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting on November 13, 2008 and the announcement of gifts and loans of furnishings as well as financial contributions from January 1, 2008 through December 31, 2008.

Public access to the Department of State is strictly controlled and space is limited. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office at (202) 647–1990 or send an e-mail to *BurdenVK@State.gov* by April 23 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: March 2, 2009.

Marcee Craighill,

Secretary, Fine Arts Committee, Department of State.

[FR Doc. E9–8121 Filed 4–8–09; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Impact Statement for the George Bush Intercontinental Airport, Houston, TX and To Conduct Public Scoping Meetings

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

ACTION: Notice of Intent to prepare an environmental impact statement (EIS) and to conduct public scoping meetings.

SUMMARY: The FAA is issuing this Notice of Intent to advise the public that the FAA will prepare an EIS under the provisions of the National Environmental Policy Act (NEPA) of 1969, as amended. The EIS will address proposed improvements to George Bush Intercontinental Airport (IAN). The Houston Airport System (HAS), the sponsor of the project, completed an Airport Master Plan (AMP) for IAN in 2006. The AMP showed that additional airfield capacity was needed. Airfield improvements including additional runway(s) were recommended to meet future capacity and reduce projected delays at IAH.

Based on analysis presented in the AMP, FAA concurred that additional capacity was needed to meet forecast demand and began the EIS process. One of the first tasks in the process was to update the aviation forecast because of the decline in aviation operations since the AMP was completed. An updated forecast of aircraft operations was completed and reconfirmed the need to provide for additional capacity at IAH.

The EIS will document the purpose and need for the proposed improvements as well as analyze a range of alternatives such as use of other modes of transportation or airports, construction of airfield improvements and as required by NEPA, the no action alternative. It is anticipated that the focus of the analysis will be on airfield improvement alternatives including: altering runway use and/or constructing taxiways; constructing a new runway between Runways 8L/26R and 8R/26L; and constructing a new runway south of Runway 9/27. To comply with NEPA, the FAA must also evaluate the potential environmental impacts of each of the reasonable alternatives such as and not limited to: noise impacts, impacts on air and water quality, wetlands, fish, wildlife, plants, floodplains, historic resources, hazardous wastes, socioeconomics, and economic factors.

FOR FURTHER INFORMATION CONTACT: Federal Aviation Administration, Airports Division, *Attn:* Paul Blackford, ASW–652B, 2601 Meacham Boulevard, Fort Worth, TX 76137, E-mail: *pblackford.faa@iah-eis.org*, *Phone:* 817–222–5607.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform federal, state, and local government agencies and the public, of FAA's intent to prepare an EIS and to conduct a public and agency scoping process. Information, data, opinions, and comments obtained throughout the scoping process will be considered in the preparation of the draft EIS. The scoping process for this EIS will include a comment period for interested agencies and parties to submit oral and/or written comments representing the concerns and issues they believe the EIS should address.

Scoping Meetings: The purpose of the scoping meetings is to receive input from the public and agencies regarding the scope and process related to the EIS. Comments and suggestions are invited from all interested parties to ensure that issues and concerns related to the proposed action and its alternatives are addressed. Public and agency scoping meetings will be conducted to encourage submittal of comments to the FAA.

Public scoping meetings will be held from 6 to 9 p.m. on May 12, 2009, at the Humble Civic Center and May 14, 2009, at the Nimitz High School. Each meeting will include an introductory presentation, exhibits for team members to further explain the project and process, and opportunities to submit oral or written comments. To notify the general public of the scoping process, a legal notice will be placed in newspapers having general circulation in the study area. The newspaper notice will notify the public that scoping meetings will be held to gain public input concerning the proposed action, alternatives to be considered, and environmental impacts to be evaluated. The notice will also identify where the scoping package will be available for review.

An agency scoping meeting for all federal, state, and local regulatory agencies which have jurisdiction by law or have special expertise with respect to any potential environmental impacts associated with the proposed action will be held from 1:30 to 3:30 p.m. on May 12, 2009 at the Humble Civic Center. A notification letter along with a scoping package will be sent in advance of those meetings.

The Scoping Meetings provide the first major opportunity for gathering comments from agency representatives and the general public. Comments received at the meetings, or by mail, e-mail and via the Web site (*http://www.iah-eis.org*) by June 15, 2009, will be included in the Scoping Report and considered for inclusion in the EIS. The Final Scoping Report will be made available to the public on the Web site.

In addition to preparing the EIS to fulfill the requirements of NEPA, the FAA will prepare the EIS in order to comply with other applicable laws having public involvement requirements. Comments addressing other applicable laws should be

[48] 17 CFR 200.30–3(a)(12).

submitted to the listed contact person. Further information about the EIS and the proposed action will be posted when available at *http://www.iah-eis.org*.

Issued in Fort Worth, Texas, on March 30, 2009.

Mike Nicely,

Acting Manager, Airports Division.

[FR Doc. E9–7693 Filed 4–8–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327 and the United States Fish and Wildlife Service (USFWS).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans and USFWS that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project (US 101) and local road extension (Union Valley Parkway), in the community of Orcutt and City of Santa Maria in the County of Santa Barbara, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before October 6, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Matt Fowler, Chief, Environmental Branch, Caltrans, 50 Higuera Street, San Luis Obispo, CA 93401 Monday through Friday 8 a.m. to 5 p.m. (805) 542–4603 or *matt_c_fowler@dot.ca.gov*. For USFWS: Steve Kirkland, USFWS, 2493 Portola Road, Suite B, Ventura, CA 93003 Monday through Friday 7:30 a.m. to 4 p.m. (805) 644–1766 or *steve_kirkland@fws.gov*.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans and USFWS have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The project is located in the County of Santa Barbara in the community of Orcutt. The project includes the extension of Union Valley Parkway west over a 1.6-mile segment between Hummel Drive on the east and Blosser Road on the west, and the extension of Union Valley Parkway east to intersect with Highway 101 by constructing an overcrossing with north- and southbound freeway ramps. Construction of the interchange portion of the project will occur between Post Mile 83.1 and 83.9 on Highway 101. The project purpose is to provide a major arterial and improved access to Highway 101 for the movement of people and goods through the Santa Maria-Orcutt area. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment/Finding of No Significant Impact (EA/FONSI) for the project, approved on March 5, 2009 and in other documents in the FHWA project records. The EA/FONSI and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans EA/FONSI can be viewed and downloaded from the project web site at *http://www.dot.ca.gov/dist05/projects/sb_uvp/index.html*, or viewed at public libraries in the project area. The USFWS decision and Section 7 Consultation are available by contacting USFWS at the address provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act 42 U.S.C. 7401–7671(q).
3. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]. Migratory Bird Treaty Act [16 U.S.C. 703–712].
4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013]; U.S. Department of Transportation Act of 1966 [49 U.S.C. 303 Section 4(f)].
5. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
6. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k).
7. *Physical Environment:* Clean Water Act [33 U.S.C. 1344]
8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1)

Issued on: April 3, 2009.

Cindy Vigue,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E9–8073 Filed 4–8–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 268X)]

Union Pacific Railroad Company—Abandonment Exemption—in Milwaukee County, WI

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 3.08-mile line of railroad known as the Capitol

Drive Industrial Lead, extending from milepost 92.21, the Shoreline connection, to the end of the line at milepost 89.13, south of Hampton Avenue in the northeast Milwaukee area, in Milwaukee County, WI. The line traverses United States Postal Service Zip Codes 53209, 53211, 53212 and 53217.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 9, 2009, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 20, 2009. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 29, 2009, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed a combined environmental and historic report addressing the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 14, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by April 9, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 3, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–8061 Filed 4–8–09; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35235]

Gabriel D. Hall—Corporate Family Transaction Exemption—U S Rail Holdings, LLC and U S Rail Corporation

Gabriel D. Hall (Hall), an individual, has filed a verified notice of exemption under 49 CFR 1180.2(d)(3) to exempt from the provisions of 49 U.S.C. 11323 a transaction within the family of business entities in which he owns controlling interests. Hall owns a majority of the issued and outstanding shares of stock of U S Rail Corporation (U S Rail), a Class III carrier with operating authority in Ohio and Indiana. To facilitate financing, Hall has formed a new limited liability company, U S Rail Holdings, LLC (Holdings), in which he owns a majority of the issued and outstanding equity interests, to hold the Indiana leasehold interests. Holdings has entered into a new ten year lease with the owners of the Indiana rail lines. Once the new lease becomes effective, the existing lease between the owners and U S Rail will be terminated, and Holdings will immediately designate U S Rail as the operator of the rail lines, effectively transferring the operating authority back to U S Rail. Holdings will be the non-operating lessee (with residual common carrier obligations) and U S Rail will continue to be the operator of the rail lines. Hall will remain in control of both entities.

This transaction is related to the concurrently filed notice of exemption in STB Finance Docket No. 35234, *U S Rail Holdings, LLC—Lease and Operation Exemption—Winamac Southern Railway Company and Kokomo Grain Co., Inc.* In that proceeding, Holdings seeks an exemption under 49 CFR 1150.31 to lease from Winamac Southern Railway Company and Kokomo Grain Co., Inc. and to operate approximately 58.89 miles of rail lines in Indiana.

The purpose of the transaction is to establish a structure conducive for future financing, while keeping all interests within the corporate family of entities controlled by Hall.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). Hall states that the transaction will not result in adverse changes in service levels, significant operational changes, or any change in the competitive balance with carriers outside the corporate family.

The transaction is scheduled to be consummated on or after April 23, 2009, the effective date of the exemption (30 days after the exemption was filed).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not

impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than April 16, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35235, must be filed with the Surface Transportation Board, 395 E Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Eric M. Hocky, One Commerce Square, 2005 Market Street, Suite 1910, Philadelphia, PA 19103.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: April 3, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–8060 Filed 4–8–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35234]

U S Rail Holdings, LLC—Lease and Operation Exemption—Winamac Southern Railway Company and Kokomo Grain Co., Inc.

U S Rail Holdings, LLC (Holdings), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Winamac Southern Railway Company (WSRY) and Kokomo Grain Co., Inc., and to operate approximately 58.89 miles of rail lines, located in Indiana: (1) The Bringhurst Line, between milepost 50.1 at Bringhurst and milepost 71.5 at Van Jct. (Logansport); (2) the Kokomo Line, between milepost 74.5 at Eighteenth St. Yard (Logansport) and milepost 97.9 at Kokomo; (3) the Kokomo Belt Line, between milepost 0.0 at E. Markland Ave (Kokomo) and milepost 1.5 at Union St. (Kokomo); and (4) the Amboy Line, between milepost 147.07 at Amboy, and milepost 134.48± at Marion.[1]

This transaction is related to the concurrently filed notice of exemption in STB Finance Docket No. 35235, *Gabriel D. Hall—Corporate Family Transaction Exemption—U.S. Rail Holdings, LLC and U S Rail Corporation*. In that proceeding, Gabriel D. Hall has filed a notice of exemption under 49 CFR 1180.2(d)(3) to exempt, from the provisions of 49 U.S.C. 11323, a transaction within the family of business entities in which he owns controlling interests.

Holdings certifies that its projected annual revenues as a result of the transaction will not result in Holdings becoming a Class II or Class I rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

The transaction is expected to be consummated on or after April 23, 2009, the effective date of the exemption (30 days after the exemption was filed).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than April 16, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35234, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M, Hocky, One Commerce Square, 2005 Market Street, Suite 1910, Philadelphia, PA 19103.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: April 3, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–8074 Filed 4–8–09; 8:45 am]

BILLING CODE 4915–01–P

[1] According to Holdings, it has entered into a new ten year lease agreement with WSRY and Kokomo Grain to cover operation of the rail lines, which are currently being operated by U S Rail Corporation (U S Rail), an affiliate. Pursuant to the transaction, the current lease with U S Rail will be terminated and pursuant to the new lease, Holdings has authority to appoint and intends to appoint U S Rail as the operator. Holdings states that it has been established primarily for financing purposes and currently does not intend to operate as a railroad. Holdings acknowledges, however, that in leasing the rail lines it will have a residual common carrier obligation.

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue, NW., Washington, DC, on April 28, 2009 at 10:30 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103–202, § 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, § 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial

community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions, financing estimates and technical charts. This briefing will give the press an opportunity to ask questions about financing projections and technical charts. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 52(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Karthik Ramanathan, Acting Assistant Secretary for Financial Markets (202) 622–2042.

Dated: April 2, 2009.

Karthik Ramanathan,

Acting Assistant Secretary for Financial Markets.

[FR Doc. E9–8020 Filed 4–8–09; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Narcotics Trafficker Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of four individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers*.

DATES: The unblocking and removal from the list of Specially Designated Narcotics Traffickers of the four individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on March 25, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: (202) 622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) via facsimile through a 24-hour fax-on-demand service, *tel.*: (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State: (a) to play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On March 25, 2009, the Director of OFAC removed from the list of Specially Designated Narcotics Traffickers the four individuals listed below, whose property and interests in property were blocked pursuant to the Order.

The listing of the unblocked individuals follows:

MOR GAVIRIA, Maria Liliana (a.k.a. SVIEDRYS, Maria Liliana), Washington, DC; c/o DURATEX S.A., Bogota, Colombia; c/o MOR ALFOMBRAS ALFOFIQUE S.A., Bogota, Colombia; c/o MOR GAVIRIA Y CIA. S.C.S., Bogota, Colombia; c/o SUPER BOYS GAMES LTDA., Bogota, Colombia; c/o GAVIRIA MOR Y CIA LTDA., Girardot, Colombia; DOB 21 Feb 1979; POB Bogota, Colombia; Cedula No. 35195932 (Colombia); Passport AG801641 (Colombia); SSN 579–33–4498 (United States) (individual) [SDNT]

MOR GAVIRIA, Carolina, c/o DURATEX S.A., Bogota, Colombia; c/o MOR GAVIRIA Y CIA. S.C.S., Bogota, Colombia; c/o SUPER BOYS GAMES LTDA., Bogota, Colombia; DOB 17 Aug 1985; POB Colombia; Cedula No. 8715520 (Colombia) (individual) [SDNT]

SANTACOLOMA HOYOS, Adriana, c/o CREDIREBAJA S.A., Cali, Colombia; c/o CREDIVIDA, Cali, Colombia; c/o ASH TRADING, INC., Pembroke Pines, FL; c/o ALERO S.A., Cali, Colombia; DOB 24 Oct 1964; Cedula No. 31919241 (Colombia); Passport 31919241 (Colombia) (individual)[SDNT]

SUAREZ ANAYA, Miguel Ange, c/o SISTEMAS INTEGRALES DEL VALLE LTDA., Cali, Colombia; Cedula No. 17062485 (Colombia); Passport 17062485 (Colombia) (individual) [SDNT]

Dated: March 25, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–8098 Filed 4–8–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8933

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8933, Carbon Dioxide Sequestration Credit.

DATES: Written comments should be received on or before June 8, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, (202) 622–6688, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Carbon Dioxide Sequestration Credit.

OMB Number: 1545–2132.

Form Number: Form 8933.

Abstract: Generally, the credit is allowed to the person that captures and physically or contractually ensures the disposal of or the use as a tertiary injectant of the qualified carbon dioxide. The credit can be claimed on Form 8933 for qualified carbon dioxide captured after October 3, 2008, and before the end of the calendar year in which the Secretary, in consultation with the Administrator of the EPA, certifies that 75,000,000 metric tons of qualified dioxide have been captured and disposed of or used as a tertiary injectant. Authorized under I.R.C. section 45Q.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Individuals or households, and Farms.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 2 hours, 9 minutes.

Estimated Total Annual Burden Hours: 215.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–8025 Filed 4–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2008–36 (Previously 2006–28)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2008–36, Amplification of Notice 2006–28 Energy Efficient Homes Credit; Manufactured Homes.

DATES: Written comments should be received on or before June 8, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Amplification of Notice 2006–28 Energy Efficient Homes Credit; Manufactured Homes.

OMB Number: 1545–1994.

Notice Number: Notice 2008–36 (previously 2006–28).

Abstract: This notice supersedes Notice 2006–28 by substantially republishing the guidance contained in that publication. This notice clarifies the meaning of the terms equivalent rating network and eligible contractor, and permits calculation procedures other than those identified in Notice 2006–28 to be used to calculate energy consumption. Finally, this notice clarifies the process for removing software from the list of approved software and reflects the extension of the tax credit through December 31, 2008. Notice 2006–28, as updated, provided guidance regarding the calculation of heating and cooling energy consumption for purposes of determining the eligibility of a manufactured home for the New Energy Efficient Home Credit under Internal Revenue Code § 45L. Notice 2006–28 also provided guidance relating to the public list of software programs that may be used to calculate energy consumption. Guidance relating to dwelling units other than manufactured homes is provided in Notice 2008–35.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 15.

Estimated Average Time per Respondent: 4 hrs.

Estimated Total Annual Burden Hours: 60.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–8027 Filed 4–8–09; 8:45 am]

BILLING CODE

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–9

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006–9, Credit for New Qualified Alternative Motor Vehicles (Advanced Lean Burn Technology Motor Vehicles and Qualified Hybrid Motor Vehicles).

DATES: Written comments should be received on or before June 8, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, (202) 622–6688, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Credit for New Qualified Alternative Motor Vehicles (Advanced Lean Burn Technology Motor Vehicles and Qualified Hybrid Motor Vehicles).

OMB Number: 1545–1988.

Form Number: Notice 2006–9.

Abstract: This notice sets forth a process that allows taxpayers who purchase passenger automobiles or light trucks to rely on the domestic manufacturer's (or, in the case of a foreign manufacturer, its domestic distributor's) certification that both a particular make, model and year of vehicle qualifies as an advanced lean burn technology motor vehicle under Section 30B(a)(2) and (c) of the Internal Revenue Code or a qualified hybrid motor vehicle under Section 30B(a)(3) and (d), and the amount of the credit allowable with respect to the vehicle.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 7.

Estimated Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 280.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–8028 Filed 4–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–8CE

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–8CE, Notice of Expatriation and Waiver of Treaty Benefits.

DATES: Written comments should be received on or before June 8, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, (202) 622–6688, at Internal Revenue Service, room 6129, 1111 Constitution

Avenue, NW., Washington, DC 20224, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Notice of Expatriation and Waiver of Treaty Benefits.

OMB Number: 1545–2138.

Form Number: Form W–8CE.

Abstract: Information used by taxpayers to notify payer of expatriation so that proper tax treatments is applied by payer. The taxpayer is required to file this form to obtain any benefit accorded by the status.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 5 hours, 41 minutes.

Estimated Total Annual Burden Hours: 2,840.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–8030 Filed 4–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Credit for Renewable Electricity Production, Refined Coal Production, and Indian Coal Production, and Publication of Inflation Adjustment Factors and Reference Prices for Calendar Year 2009

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factors and reference prices for calendar year 2009 as required by section 45(e)(2)(A) of the Internal Revenue Code (26 U.S.C. 45(e)(2)(A)), section 45(e)(8)(C) (26 U.S.C. 45(e)(8)(C)), and section 45(e)(10)(C) (26 U.S.C. 45(e)(10)(C)).

SUMMARY: The 2009 inflation adjustment factors and reference prices are used in determining the availability of the credit for renewable electricity production, refined coal production, and Indian coal production under section 45.

DATES: The 2009 inflation adjustment factors and reference prices apply to calendar year 2009 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources, and to 2009 sales of refined coal and Indian coal produced in the United States or a possession thereof.

Inflation Adjustment Factors: The inflation adjustment factor for calendar year 2009 for qualified energy resources and refined coal is 1.4171. The inflation adjustment factor for Indian coal is 1.0830.

Reference Prices: The reference price for calendar year 2009 for facilities producing electricity from wind is 4.32 cents per kilowatt hour. The reference prices for fuel used as feedstock within the meaning of section 45(c)(7)(A) (relating to refined coal production) are $31.90 per ton for calendar year 2002 and $39.72 per ton for calendar year 2009. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy have not been determined for calendar year 2009.

Because the 2009 reference price for electricity produced from wind does not exceed 8 cents multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2009. Because the 2009 reference price of fuel used as feedstock for refined coal does not exceed the $31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor and 1.7, the phaseout of credit provided in section 45(e)(8)(B) does not apply to refined coal sold during calendar year 2009. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy, the phaseout of credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2009.

Credit Amount by Qualified Energy Resource and Facility, Refined Coal, and Indian Coal: As required by section 45(b)(2), the 1.5-cent amount in section 45(a)(1), the 8-cent amount in section 45(b)(1), and the $4.375 amount in section 45(e)(8)(A) and the $2.00 amount in section 45(e)(8)(D), are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, and qualified hydropower facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half. Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2008 under section 45(a) is 2.1 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, geothermal energy, and solar energy, and 1.1 cent per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, qualified hydropower facilities, marine and hydrokinetic renewable energy facilities. Under the calculation required by section 45(b)(2), the credit for refined coal production for calendar year 2009 under section 45(e)(8)(A) is $6.20 per ton on the sale of qualified refined coal.

The credit for steel industry fuel is $2.00 per barrel-of-oil equivalent of steel industry fuel sold. The credit for Indian coal production for calendar year 2009 under section 45(e)(10)(B) is $1.625 per ton on the sale of Indian coal.

FOR FURTHER INFORMATION CONTACT: Philip Tiegerman, IRS, CC:PSI:6, 1111 Constitution Ave., NW., Washington, DC 20224, (202) 622–3110 (not a toll-free call).

Curtis Wilson,

Associate Chief Counsel, (Passthroughs & Special Industries).

[FR Doc. E9–8029 Filed 4–8–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice to delete system of records.

SUMMARY: The Department of Veterans Affairs (VA) is deleting a system of records entitled ''Chief Financial Officer and Fiscal Officer Designation and Certification Records System—VA'' (85VA047), which was established at 58 FR 50628, dated September 28, 1993. The system contained information on applicants for Fiscal Officer and Chief Financial Officer positions in the Veterans Health Administration (VHA) medical facilities, as well as a register of certified station Fiscal Officers and Chief Financial Officers. This system of records is being deleted because this program was never active in the Office of Finance and the records were never collected. All selections of station Fiscal Officers and Chief Financial Officers have been decentralized.

A ''Report of Intention to Publish a Federal Notice of Deletion of a System of Records'' and a copy of the deletion of system notice have been provided to the appropriate Congressional committees and to the Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(r) and guidelines issued by OMB, 65 FR 77677 (Dec. 12, 2000).

DATES: *Effective Date:* April 9, 2009.

FOR FURTHER INFORMATION CONTACT: Peter Mulhern, Office of Financial Policy (047G), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, *Telephone:* (202) 461–6487 (this is not a toll-free number).

Approved: March 4, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. E9–8064 Filed 4–8–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice to delete system of records.

SUMMARY: The Department of Veterans Affairs (VA) is deleting a system of records entitled ''National Veterans Museum Donation Records—VA'' (120VA047), which was established at 67 Fed. Reg. 58445, dated September 16, 2002. The system contained information on individuals making gifts and donations to VA for the National Veterans Museum. This system of records is being deleted because plans for the creation of the museum were postponed indefinitely.

A ''Report of Intention to Publish a Federal Notice of Deletion of a System of Records'' and a copy of the deletion of system notice have been provided to the appropriate Congressional committees and to the Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(r) and guidelines issued by OMB, 65 FR 77677 (Dec. 12, 2000).

DATES: *Effective Date:* April 9, 2009

FOR FURTHER INFORMATION CONTACT: Peter Mulhern, Office of Financial Policy (047G), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–6487 (this is not a toll-free number).

Approved: March 4, 2008.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. E9–8065 Filed 4–8–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
April 9, 2009

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1208

Proposed Processed Raspberry Promotion, Research, and Information Order; Referendum Procedures; Proposed Rules

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1208

[Doc. No. AMS–FV–07–0077; FV–07–705–PR–1A]

RIN 0581–AC37

Proposed Processed Raspberry Promotion, Research, and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This rule proposes the establishment of an industry-funded promotion, research, and information program for processed raspberries. The proposed program, Processed Raspberry Promotion, Research, and Information Order (Proposed Order), was submitted to the Department of Agriculture (Department) by the Washington Red Raspberry Commission (WRRC). Under the Proposed Order, producers of raspberries for processing and importers of processed raspberries would pay an assessment of up to one cent per pound, with the initial assessment rate being one cent per pound, which would be paid to the proposed National Processed Raspberry Council (Council). Producers and importers of less than 20,000 pounds annually of raspberries for processing and processed raspberries respectively would be exempt from the assessment. The proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). An initial referendum would be conducted among eligible producers of raspberries for processing and importers of processed raspberries to determine whether they favor the implementation of the program prior to it going into effect. This rule also announces the Agricultural Marketing Service's (AMS) intention to request approval of new processed raspberries information collection requirements by the Office of Management and Budget (OMB) for the Proposed Order.

DATES: Comments must be received by June 8, 2009. Pursuant to the Paperwork Reduction Act (PRA), comments on the information collection burden that would result from this proposal must be received by June 8, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at *http://www.regulations.gov* or to the Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Room 0632–S, Washington, DC 20250–0244; fax: (202) 205–2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or can be viewed at *http://www.regulations.gov.*

Pursuant to PRA, comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, should be sent to the above address. In addition, comments concerning the information collection should also be sent to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kimberly Coy, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 0632, Stop 0244, Washington, DC 20250–0244; telephone: (202) 720–9915 or (888) 720–9917 (toll free); or facsimile: (202) 205–2800; or e-mail: *Kimberly.Coy@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Order 12866

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they represent an irreconcilable conflict with this rule. Section 524 of the 1996 Act provides that it shall not affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act, a person subject to an order may file a written petition with the Department stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Department's final ruling.

Executive Order 13132

This proposed rule has been reviewed under Executive Order 13132, Federalism. This Executive Order directs agencies to construe, in regulations and otherwise, a Federal Statute to preempt State law only when the statute contains an express preemption provision. Section 524 of the 1996 Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

The WRRC and the Oregon Raspberry and Blackberry Commission (ORBC), the principal producers of processed raspberries, both administer State marketing orders, which require all producers of raspberries to pay assessments to support the health of their respective industries. Both the WRRC and ORBC invest funds into research programs at their land-grant universities and other research institutions to study disease, pest control, and varietal development. In addition to developing and funding production research, they also fund marketing and promotion programs and seek to foster education and communication between producers. However, according to the WRRC, WRRC, ORBC and international raspberry organizations have not been able to generate the funds necessary to support the marketing efforts needed to help expand processed raspberry consumption and increase the demand for processed raspberries. In order to manage increased production, increased competition, and changing consumer habits, the WRRC believes that a more extensive marketing program is needed. The WRRC and ORBC believe that a

national research and promotion program would fund the promotional aspect necessary to stay competitive and would place all domestic producers and importers on an equal playing field with each investing a fair share in promoting processed raspberries. If a national processed raspberry program is established, the WRRC and ORBC will continue to fund processed raspberry research in areas not likely to be the focus of the national program.

In accordance with the 1996 Act, this proposed rule would not preempt any of these State-legislated programs. Further, section 1208.52(h) of the Proposed Order provides for credit of assessments for those individuals who contribute to local, regional, or State organizations that engage in similar generic research, promotion, and information programs as partial fulfillment of assessments due to the Council subject to approval of the Secretary, for expenditure on generic research, promotion and information programs conducted within the United States.

The proposed program is not intended to duplicate any State program. Considerable attention is being made to involve producers in discussions regarding future program development and administration and what the State commissions would look like prior to the initial referendum. It is expected that farm related activities, such as production research, would continue to be funded by the State organizations and market development functions, such as nutritional research and marketing programs, would shift to the Proposed Order.

Not only were the States informed throughout the development of the national program, they were instrumental in the processed raspberry industry's decision to institute a national program.

In 2007, representatives from the WRRC were among other raspberry industry representatives who met with AMS representatives to discuss the possibility of implementing a national processed raspberry promotion, research, and information program. WRRC representatives participated in the development of the provisions of the Proposed Order during these meetings and with direct communication with the Oregon Raspberry and Blackberry Commission (ORBC).

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], AMS is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than $7.0 million. Under these criteria, the majority of the producers and handlers that would be affected by this Proposed Order would be considered small entities, while most importers would not. Future, qualified organizations certified by the Secretary for nomination purposes, would be expected to generally consist of entities reflecting such sizes also. Producers and importers of less than 20,000 pounds per year of raspberries for processing and processed raspberries respectively would be exempt under this Proposed Order. Five organic producers and importers are also expected to be exempt from assessments. The number of entities assessed under the program would be around 245. Estimated revenue is expected at $1.2 million of which 43 percent is expected from imported product and 57 percent from domestic product.

According to the WRRC, in 2006, there were approximately 195 producers of raspberries for processing and 34 processors (first handlers) of processed raspberries in Oregon and Washington States, which are the principal growing areas in the United States for raspberries destined for processing. Approximately 95 percent of the producers and 100 percent of the raspberry processors qualified under the definition for small business owners. Although California is a significant producer of raspberries, virtually all harvested product is destined for the fresh market. In 2006, there were approximately 50 importers. Based on the U.S. Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics, in 2006 two countries accounted for 96 percent of the processed raspberries imported into the United States. These countries and their share of the imports are: Chile (78 percent) and Canada (18 percent).

The 1996 Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

The WRRC submitted this Proposed Order to: (1) Develop and finance an effective and coordinated program of research, promotion, industry information, and consumer education regarding processed raspberries; (2) strengthen the position of the processed raspberry industry; and (3) maintain, develop, and expand existing markets for processed raspberries.

While the Proposed Order would impose certain recordkeeping requirements on first handlers, this information could be compiled from records currently maintained. First handlers would collect and remit the assessments on domestic processed raspberries to the Council. First handler responsibilities would include accurate recordkeeping and accounting on all raspberries purchased or contracted for processing including the number of pounds handled, the names of their producers, and the dates raspberries were purchased. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the 1996 Act. Such records must be retained for at least two years. This information is already maintained as a normal business practice. In addition, as these entities currently remit assessments under either the Washington or Oregon State programs, the additional recordkeeping and submission impact would be minimal.

There is also a minimal paperwork burden on producers. The Proposed Order would require producers to keep records and to provide information to the Council or the Department when requested. However, it is not anticipated that producers would be required to submit forms to the Council other than for nomination to the Council. If, for example, the Council needs information from a producer as part of the Council's compliance program, the information would need to be obtained through an audit of the producer's records instead of having the producer complete and submit paperwork.

In addition, there is a minimal burden on importers. The import assessments would be collected by U.S. Customs and Border Protection (Customs) at time of entry into the United States. Importers would be required to keep records and to provide information to the Council or the Secretary of Agriculture (Secretary) when requested. However, it is not anticipated that importers would be required to submit forms to the Council for assessment collection because Customs conducts recordkeeping and

assessment remittance at the time of product entry into the United States. Importers who seek nomination to serve on the Council would be required to complete a background form which would be submitted to the Secretary.

Foreign producers from countries exporting a minimum of three million pounds of raspberries for processing based on a three-year average to the U.S. and at-large members seeking nomination to serve on the Council would be required to complete a background form which would be submitted to the Secretary.

The estimated annual cost of providing the information to the Council by an estimated 297 respondents (195 producers, 50 importers, 34 first handlers/processors, 2 foreign producers, 5 organic producers and importers, 10 certified organizations (for nomination purposes), and 1 at-large member) would be $9,141.

Section 518 of the 1996 Act provides for referenda to ascertain approval of the Proposed Order to be conducted either prior to its going into effect or within three years after assessments first begin under the Proposed Order. An initial referendum would be conducted prior to putting this Proposed Order in effect. The Proposed Order also provides for approval in a referendum to be based upon approval by a majority of those persons voting in the referendum. Every seven years, the Department shall conduct a referendum to determine whether producers and importers of processed raspberries favor the continuation, suspension, or termination of the Proposed Order. In addition, the Department could conduct a referendum at any time; at the request of 10 percent or more of all eligible producers of raspberries for processing and processed raspberries importers required to pay assessments; or if the Council requests that the Secretary hold a referendum.

The United States is among the leading producers of raspberries. Raspberries are grown in 46 states and are harvested late June to mid August. The 2002 Census of Agriculture indicates that about 80 percent of the U.S. raspberry acreage was in California, Oregon, and Washington.

According to the United States Department of Agriculture's National Agricultural Statistics Service (NASS) and the Foreign Agricultural Service, in 2005, 178,300 million pounds of raspberries (fresh) with a combined value approaching $246 million (value at point of first sale) were produced in California, Oregon, and Washington, the three most productive States for growing raspberries in the United States. In 2006, 179,850 million pounds were produced and utilized, at a value of almost $275 million. California's crop is predominately delivered to the fresh market, while Oregon and Washington are the principal producers of processed raspberries.

Domestic production varies from year to year due to climatic conditions and field health. Over the last fifteen years, total domestic production of raspberries delivered to processors in the United States (i.e., production utilized for processing) has increased from 47.5 million pounds in 1991 to almost 75 million pounds in 2005 with most recent years averaging approximately 65 million pounds. Washington continues to be the major supplier of processed raspberries to the domestic market, although its market share declined from 72 percent to 51 percent between 2001 and 2006. In comparison, imported raspberries have surged from 7.5 to 53.8 million pounds from 1991 to 2005 and decreased to 48.9 million pounds in 2006. Chile, which is the predominate importer of processed raspberries to the United States, supplied just over 30 percent of the market in 2005 and 2006.

Domestic uses of processed raspberries include further processing into juices, jellies, baked goods, and consumer retailer packs. After averaging approximately 100 million pounds for the period 1999 to 2004, approximately 128 million pounds of processed raspberries were produced and/or imported into the United States in 2005 and 111 million pounds in 2006. These totals were calculated by using imports of frozen raspberries (from USDA's Foreign Agricultural Service) and NASS reports of production utilized for processing in Oregon and Washington. Because of the way imports are currently reported, and because of the way NASS reports raspberry data, the totals represent the best information currently available.

The following countries are major exporters of raspberries to the United States: Canada, Chile, China, France, and Poland. Canada and Chile represented 91.5 percent share of total import tonnage in the domestic United States market from 2002 to 2006, with 26 and 65.5 percent respectively.

The same growing conditions and harvesting period apply to the Pacific Northwest and British Columbia, the major raspberry growing region in Canada. Exports of processed frozen raspberries from British Colombia to the United States ranged from 2.9 million metric tons to 5.7 million metric tons over the past five years.

Contra-season raspberry production in the southern hemisphere is primarily located in Chile, with a harvest season beginning in December and continuing into February. However, processed raspberries are imported into the United States throughout the year.

The Proposed Order would authorize a fixed assessment paid by producers of raspberries for processing and importers of processed raspberries at a rate of up to one cent per pound, with the initial assessment rate being one cent per pound. The assessment rate will be reviewed, and increased or decreased as recommended by the Council and approved by the Secretary after the first referendum is conducted as stated in § 1208.71 (a). Such an increase or decrease may occur not more than once annually. Any change in the assessment rate shall be subject to rulemaking by the Department, and will be reviewed, and increased or decreased by the Secretary through rulemaking as recommended by the Council. Any change in the assessment rate shall be announced by the Council at least 30 days prior to going into effect. The maximum assessment rate authorized is one cent per pound.

At the proposed rate of assessment of up to one cent per pound, with the initial assessment rate being one cent per pound, the Council would collect approximately $1.2 million annually based on an estimated 120 million pound supply from domestic raspberries for processing and imports of processed raspberries. The domestic supply represents approximately 57 percent of the total and imports represent 43 percent.

The Proposed Order would exempt producers and importers of less than 20,000 pounds annually of raspberries for processing and processed raspberries respectively. A review of producer delivery statistics from Oregon and Washington States indicate that around 15 percent of all producers would have been exempted from assessment in 2006 from the proposed research and promotion program based on a 20,000 pounds exemption threshold. Also, organic producers and importers would be exempt from assessment. Section 515 of the 1996 Act provides for the establishment of a board or council consisting of producers, importers, and others in the marketing chain as appropriate. The Proposed Order would provide for the establishment of the National Processed Raspberry Council to administer the Proposed Order under AMS oversight. The Secretary would appoint members to the Council from nominees submitted in accordance with the Proposed Order. The WRRC proposed that the Council be composed of 13 members and their alternates. The

proposed Council membership is as follows: six producer members of raspberries for processing from States producing a minimum of three million pounds of raspberries delivered for processing; one producer member of raspberries for processing representing all other States that produce less than the minimum of three million pounds of raspberries delivered for processing; three processed raspberry importer members; two foreign producers from countries exporting a minimum of three million pounds of raspberries for processing to the U.S. based on a three-year average; and one at-large member recommended by the Council. The distribution of producer member of raspberries for processing positions among the States producing a minimum of three million pounds of raspberries would be proportional to the average of the total pounds delivered to the processor for processing over the previous three years. The States that provide less than three million pounds will be combined into one region and will have one producer representative.

Under the Proposed Order, the Council members and alternates will serve for a term of three years and be able to serve a maximum of two consecutive terms. When the Council is first established, four producer members, two importers, one of the two foreign producers, and the at-large member and their respective alternates will be assigned initial terms of three years; and, three producer members, one importer member, and the second foreign producer and their respective alternates will serve an initial term of two years. Thereafter, each of these positions will carry a full three-year term. Members serving an initial term of two years will be eligible to serve a second three-year term to complete their eligibility. Council nominations and appointments will take place in two out of every three years. Each term of office will end on December 31, and a new term will begin on January 1.

Producers and importers would represent those entities in the United States. The United States would be defined to include collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

The nominations for the six producer and alternate members from States producing a minimum three-year average of three million pounds of raspberries delivered for processing will be submitted to the Council in the following manner: (1) For those States that have a State raspberry commission or State marketing order, the State commission or committee will nominate producers and their alternates to serve; or (2) for those States that do not have a State commission or State marketing order, the Council will seek nominations from the State Departments of Agriculture for members and alternates from the specific States.

For those States producing a minimum three-year average of three million pounds of raspberries delivered for processing that have a State raspberry commission or State marketing order, the State commission or committee nominations will be returned to the Council and placed on a ballot which will then be sent to producers in the State for a vote. The nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the nominee for alternate. The persons with the third and fourth place highest number of votes cast will be designated as additional nominees for consideration by the Secretary. Once the Council has received all of the nominations from commissions or committees, the information will be submitted to the Secretary for appointment. Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council staff and shall be submitted to the Secretary not less than 90 days prior to the expiration of the term of office.

If the Department determines that there are no State raspberry commissions or State marketing orders from States producing a minimum three-year average of three million pounds of raspberries delivered for processing, the Council will seek nominations from the State Departments of Agriculture for members and alternates from the specific States who may directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

The distribution of the six producer and alternate seats will be proportional to the percentage determined by the average of the total pounds produced and delivered to processors for processing over the previous three years divided by the average total pounds produced over the previous three years. For example, if Washington State and Oregon are the only two States producing a minimum of 3 million pounds each, and Washington's previous three-year average is 62.4 million pounds and Oregon's previous three-year average is 6.7 million pounds with the average total pounds for the previous three years being 69.1 million pounds, Washington would have 90 percent of the production and Oregon would have 10 percent of the production. Therefore, Washington would obtain five out of the six seats and Oregon would receive one seat.

The nomination for the one raspberry producer of raspberries for processing and alternate member, who represents all other States producing less than a minimum three-year average of three million pounds of raspberries delivered for processing, will constitute a region and the nominations will be submitted to the Council in the following manner: (1) For those States that have a State raspberry commission or State marketing order, the State commission or committee will nominate producers and their alternates to serve; or (2) for those States that do not have a State commission or State marketing order, the Council will seek nominations from the State Departments of Agriculture for the member and alternate from the specific States.

For those States producing less than a minimum three-year average of three million pounds of raspberries delivered for processing that have a State raspberry commission or State marketing order, the State commission or committee nominations will be returned to the Council and placed on a ballot which will then be sent to producers in the Region for a vote. The nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the nominee for alternate. The persons with the third and fourth place highest number of votes cast will be designated as additional nominees for consideration by the Secretary. Once the Council has received all of the nominations from commissions or committees, the information will be submitted to the Secretary for appointment. Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council staff and shall be submitted to the Secretary not less than 90 days prior to the expiration of the term of office.

If the Department determines that there are no State raspberry commissions or State marketing orders from States producing less than a minimum three-year average of three million pounds of raspberries delivered for processing, the Council will seek nominations from the State Departments of Agriculture for members and alternates from the specific States. The State Departments of Agriculture would

have the opportunity to participate in nomination caucuses and will directly submit as a group a single slate of nominations to the Department for the producer position and the producer alternate position on the Council for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

Only producers from States that deliver raspberries for processing and pay assessments under the program are eligible for nomination and election to the Council. Average production will be based upon Department production data for the initial nomination and production figures generated by either the Council or the Department thereafter.

Nominations for the three processed raspberry importer member positions and their alternates will be made by qualified national organizations representing importers. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration.

All qualified national organizations representing importers would have the opportunity to participate in nomination caucuses and will submit as a group a single slate of nominations to the Secretary for the importer positions and the importer alternate positions on the Council.

Eligible organizations must submit nominations to the Department not less than 90 days prior to the expiration of the term of office. To become a qualified national organization representing importers under the Proposed Order, each such organization would be required to meet the following criteria: (1) Any organization representing importers must represent a substantial number of importers who market a substantial volume of raspberries for processing; (2) it must have a history of stability and permanency and have been in existence for more than one year; (3) it must promote processed raspberry importers' welfare; and (4) it must derive a portion of its operating funds from importers.

If the Department determines that there are no qualified national organizations representing importers, individuals who have paid their assessments to the Council in the most recent fiscal year or for the initial Council, those that imported processed raspberries into the U.S. in the most recent fiscal year, could directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

Nominations for the two foreign producer member positions and their alternates will be made by qualified organizations representing foreign producers. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration.

All qualified organizations representing foreign producers would have the opportunity to participate in nomination caucuses and will submit as a group a single slate of nominations per country to the Secretary for foreign producer positions and the foreign producer alternate positions on the Council.

Eligible organizations must submit nominations to the Department not less than 90 days prior to the expiration of the term of office. To become a qualified organization representing foreign producers under the Proposed Order, each such organization would be required to meet the following criteria: (1) Any organization representing foreign producers must represent a substantial number of foreign producers who market or produce a substantial volume of raspberries for processing; (2) it must have a history of stability and permanency and have been in existence for more than one year; (3) it must promote processed raspberry foreign producers' welfare; (4) it must derive a portion of its operating funds from foreign producers; and (5) must be from a country exporting a minimum of three million pounds of raspberries for processing to the U.S. based on a three-year average.

If the Department determines that there are no qualified organizations representing foreign producer interest, individual foreign producers may directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

In recommending the at-large member and alternate, the Council can give consideration to nutrition health professionals and others interested in the raspberry industry. Nominations for the at-large member and alternate will be conducted at a Council meeting by the Council staff and shall be submitted by the Council to the Secretary for approval not less than 90 days prior to the expiration of the term of office. Nominations for the initial Council will be handled by the Department.

The 1996 Act provides that to ensure fair and equitable representation, the composition of a board or council shall reflect the geographic distribution of the production of the agriculture commodity in the United States and the quantity or value of the agriculture commodity imported into the United States. The Proposed Order states that at least once every five years, but not more frequently than once every three years, the Council will review the geographic distribution of United States production of processed raspberries and the quantity and source of processed raspberry imports. If warranted, the Council will recommend to the Secretary that membership on the Council be altered to reflect any changes in geographic distribution of domestic raspberry production and the quantity of imports. Also, if the level of imports increases or decreases, importer members and alternates may be added or reduced on the Council. However, the foreign producer seats will remain the same regardless of the volume of imports from importing countries.

The Proposed Order provides that all officers, employees, and agents of the Department and of the Council are required to keep confidential all information obtained from persons subject to the Proposed Order. This information would be disclosed only if the Department considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Department or to which the Department or any officer of the Department is a party. However, the issuance of general statements based on reports or on information relating to a number of persons subject to the Proposed Order would be permitted, if the statements do not identify the information furnished by any person. Finally, the publication, by direction of the Department, of the name of any person violating the Proposed Order and a statement of the particular provisions of the Proposed Order violated by the person would be allowed.

Proposed recordkeeping and reporting requirements for the raspberry promotion, research, and information program would be designed to minimize the burden on the raspberry industry.

The estimated total cost of providing information to the Council by all respondents would be $9,141. This total has been estimated by multiplying 277 total hours required for reporting and recordkeeping by $33, the average mean

hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

With regard to alternatives to this proposed rule, the 1996 Act itself does provide for authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an order in section 516 of the 1996 Act, and other sections provide for alternatives. Section 514 of the 1996 Act provides for orders applicable to (1) producers, (2) first handlers and other persons in the marketing chain as appropriate, and (3) importers (if imports are subject to assessment). Section 516 states that an order may include an exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic activities for those individuals who contribute to other similar generic research, promotion, and information programs at State, regional or local level; and assessment of imports. In addition, section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. An order also may provide for its approval in a referendum to be based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. Section 515 of the 1996 Act provides for establishment of a council from among producers, first handlers, and others in the marketing chain as appropriate and importers, if importers are subject to assessment.

This proposal includes provisions for both domestic and foreign market expansion and improvement; reserve funds; credits for generic activities; assessments on imports; and an initial referendum to be conducted prior to the Proposed Order going into effect. Approval would be determined by a majority of producers and importers voting for approval.

Similar to WRRC, Oregon also has a state raspberry commission, the Oregon Raspberry and Blackberry Commission (ORBC). The WRRC and ORBC both administer State marketing orders, which require all producers of raspberries to pay assessments to support the health of their respective industries. According to WRRC, the two commissions have developed a good working relationship with each other over the years. Both the WRRC and ORBC invest funds into research programs at their land-grant universities and other research institutions to study disease, pest control, and varietal development. In addition to developing and funding production research, they also fund marketing and promotion programs and seek to foster education and communication between producers. However, according to the WRRC, WRRC, ORBC and international raspberry organizations have not been able to generate the funds necessary to support the marketing efforts needed to help expand processed raspberry consumption and increase the demand for processed raspberries. In order to manage increased production, increased competition, and changing consumer habits, the WRRC believes that a more extensive marketing program is needed. The WRRC and ORBC believe that a national research and promotion program would fund the promotional aspect necessary to stay competitive and would place all domestic producers and importers on an equal playing field with each investing a fair share in promoting processed raspberries. The Council may provide credits of assessments for those individuals who contribute to local, regional, or State organizations engaged in similar generic research, promotion, and information programs as applied to assessment due to the Council subject to approval of the Secretary, for expenditure on generic research, promotion and information programs conducted within the United States. If a national processed raspberry program is established, the WRRC and ORBC will continue to fund processed raspberry research in areas not likely to be the focus of the national program.

The WRRC and ORBC programs are not able to engage raspberry production in other States or countries in a meaningful way. The proposed program is not intended to duplicate any State program. Considerable attention is being made to involve producers in discussions regarding future program development and administration and what the State commissions would look like prior to the initial referendum. It is expected that farm related activities, such as production research, would continue to be funded by the State organizations and market development functions, such as nutritional research and marketing programs, would shift to the Proposed Order.

The WRRC proposed that producers and importers of less than 20,000 pounds annually of raspberries for processing and processed raspberries respectively, be exempt from assessments. In addition, WRRC proposed that a producer who operates under an approved National Organic Program (NOP) system plan, produces only products eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, be exempt from paying assessments under the Proposed Order. An importer who imports only products eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, would also be exempt from paying assessments.

While the Department has performed this Initial Regulatory Flexibility Analysis regarding the impact of the proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis of the effects of this rule on small entities, we are inviting comments concerning potential effects. The Department is also requesting comments regarding the number and size of entities covered under the Proposed Order.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], AMS announces its intention to request an approval of a new information collection and recordkeeping requirements for the proposed Processed Raspberry Program.

Title: Advisory Committee or Research and Promotion Background Information.

OMB Number for background form AD–755: (Approved under OMB No. 0505–0001).

Expiration Date of Approval: March 31, 2009.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–NEW.

Expiration Date of Approval: 3 years from approval date.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the 1996 Act.

There will also be the additional burden on producers and importers voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures which is published separately in this issue of the **Federal Register.**

Under the proposed program, first handlers would be required to collect assessments from producers and file reports with and submit assessments to the Council. While the Proposed Order would impose certain recordkeeping requirements on first handlers, information required under the Proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the marketing year of their applicability.

Under the Proposed Order, importers are responsible to pay assessments. Importers must report the total quantity of produce imported during the reporting period and a record of each importation of such product during such period, giving quantity, date, and port of entry. Under the Proposed Order, Customs would collect assessments on imported processed raspberries and remit the funds to the Council.

An estimated 297 respondents would provide information to the Council. They would be 195 producers, 50 importers, 34 first handlers/processors, 5 organic producers and importers (for exemption purposes), 2 foreign producers, 10 certified organizations (for nomination purposes), and 1 at-large member. The estimated cost of providing the information to the Council by respondents would be $9,141. This total has been estimated by multiplying 277 total hours required for reporting and recordkeeping by $33, the average mean hourly earnings of various occupations involved in keeping this information. Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

The Proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other raspberry programs administered by the Department and other state programs.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the 1996 Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Council. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information yearly would coincide with normal industry business practices. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. The requirement to keep records for two years is consistent with normal industry practices. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual producers, first handlers, processors, foreign producers, and importers who are subject to the provisions of the 1996 Act.

Therefore, there is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this proposal include:

(1) *A Background Information Form AD–755 (OMB Form No. 0505–0001).*

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each Council nominee.

Respondents: Producers, importers, foreign producers, and at-large nominee.

Estimated Number of Respondents: 26 (52 for initial nominations to the Council, 26 in subsequent years).

Estimated Number of Responses per Respondent: 1 every 3 years. (0.3)

Estimated Total Annual Burden on Respondents: 26 hours for the initial nominations to the Council and 3.9 hours annually thereafter.

(2) *An Annual Report by Each First Handler of Processed Raspberries.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per first handler reporting on processed raspberries handled.

Respondents: First handlers.

Estimated Number of Respondents: 34.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 17 hours.

(3) *An Exemption Application for Producers and Importers Who Would Be Exempt from Assessments.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per producers, or importer reporting on processed raspberries produced or imported. Upon approval of an application, producers and importers will receive exemption certification.

Respondents: Exempt producers and importers.

Estimated Number of Respondents: 40.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10 hours.

(4) *Application for Reimbursement of Assessment.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per request for reimbursement.

Respondents: Importers.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2.5 hours.

(5) *A Requirement To Maintain Records Sufficient To Verify Reports Submitted Under the Order.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per record keeper maintaining such records.

Recordkeepers: Producers, first handlers, and importers.

Estimated Number of Recordkeepers: 297.

Estimated Total Recordkeeping Hours: 148.5 hours.

(6) *Application for Certification of Organizations.*

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per application.

Respondents: Importers and foreign producer organizations.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5 hours.

(7) *Nomination Appointment Form.*

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hours per application.

Respondents: Producers, importers, and foreign producers.

Estimated Number of Respondents: 150.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 37.5 hours.

(8) *Nomination Appointment Ballot.*

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hours per application.

Respondents: Producers and importers.

Estimated Number of Respondents: 150.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 37.5 hours.

(9) *Application for Assessments Credit.*

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hours per application.

Respondents: Producers.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12.5 hours.

(10) *Organic Exemption Form.*

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per exemption form.

Respondents: Producers and importers.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2.5 hours.

Request for Public Comment Under the Paperwork Reduction Act

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Proposed Order and the Department's oversight of the Proposed Order, including whether the information would have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) the accuracy of the Department's estimate of the principal growing areas in the United States for raspberries destined for processing; (d) the accuracy of the Department's estimate of the number of producers and first handlers of processed raspberries that would be covered under the program; (e) ways to enhance the quality, utility, and clarity of the information to be collected; and (f) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–NEW. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the USDA Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Room 0632–S, Washington, DC 20250–0244. Comments may also be sent by facsimile to (202) 205–2800 or electronically to *http://www.regulations.gov*. All comments received will be available for public inspection during regular business hours at the same address. Comments regarding information collection should also be sent to the Office of Management and Budget at: Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

This rule proposes the implementation of a Processed Raspberry Promotion, Research, and Information Order (Proposed Order). The Department received the proposal for a new Order from the Washington Red Raspberry Commission (WRRC).

The Proposed Order is authorized under the 1996 Act which authorizes the Department to establish agricultural commodity research and promotion orders which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand market and uses for agricultural commodities. The Proposed Order would provide for the continued development and financing of a coordinated program of research, promotion, and information for processed raspberries.

The 1996 Act provides for a number of optional provisions that allow the tailoring of orders for different commodities. Section 516 of the 1996 Act provides permissive terms for orders, and other sections provide for alternatives. For example, section 514 of the 1996 Act provides for orders applicable to (1) producers (if producers are subject to assessment), (2) first handlers and others in the marketing chain as appropriate, and (3) importers. Section 516 states that an order may include an exemption of *de minimis* quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports.

In addition, section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. An order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board or council from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

This Proposed Order includes provisions for both domestic and foreign market expansion and improvement, reserve funds, credit for generic activities, and an initial referendum to be conducted prior to the Proposed Order going into effect. Approval would be determined by a majority of producers and importers voting for approval. Specific procedures to be followed in the referendum will be published in a separate **Federal Register** publication.

In accordance with the 1996 Act, the Department would oversee the program's operations. In addition, the 1996 Act requires the Secretary to conduct subsequent referenda: (1) Not later than seven years after assessments first begin under the Proposed Order; or (2) at the request of the Council established under the Proposed Order; or (3) at the request of 10 percent or more of the number of persons eligible to vote. In addition to these criteria, the 1996 Act provides that the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of an order or a provision of that order is favored by persons eligible to vote.

The WRRC has requested that a referendum be conducted every five years to determine if producers and importers want the program to continue. However, the Department has increased the time period to seven years to make the Proposed Order consistent with other programs. In addition, the Proposed Order allows for the Secretary to conduct a subsequent referendum if 10 percent or more of all eligible producers of raspberries for processing and importers of processed raspberries request it; or if the Council requests a referendum to be held; or the Secretary may hold one at any time.

A national research and promotion program for processed raspberries would help the industry to address the

many market problems it currently faces. According to the WRRC, three main factors currently affecting processed raspberry sales, both here in the domestic market and abroad, are increasing production, increased competition, and changing consumer habits.

U.S. per capita consumption of processed raspberries has inched upward during the period 1991 to 2004, reaching a high of 0.3 pounds per person in 2003 and 2005. Over this period, consumption has ranged from 0.1 to 0.3 pounds per capita. This fluctuation is due to the effects of population growth, demographics of consumers, and the availability of substitute or competitive products. Profitability for producers of raspberries for processing depends on maintaining and increasing processed raspberry consumption. With crop value flat over this period, an organized market development program that grew market demand and increased per capita consumption could improve the farm gate value for all suppliers of processed raspberries. The WRRC believes a generic research and promotion program would provide an equitable manner for producers to share in the costs of product development, nutrition and marketing research, and processed raspberry promotion.

According to the Department's Foreign Agricultural Service statistics, from 2002–2006, imports of processed raspberries have increased market share in the U.S. The statistics also suggests that the total market demand in the U.S. is continuing to grow, albeit at a rate slower than supply. The industry believes that the proposed processed raspberry program would increase demand, grow the market in the aggregate for all suppliers, and increase the value of processed raspberries at the grower level.

The processed raspberry industry is facing strong competition in the marketplace from both indirect and direct competitors. Like all food products, processed raspberries must compete for a share of the consumer dollar. As competition in the supermarket increases, the processed raspberry industry must work harder to gain its share of consumer attention at a time when the industry's competitors expand their promotional activities.

The WRRC was established in 1976 as a State-government entity authorized by a State marketing order which requires producers of all varieties of raspberries pay assessments to promote raspberry awareness, consumption, and to conduct research programs to study pest control and varietals development. There are over 40 different suppliers of raspberry products who make up the WRRC. These members pay the mandatory one-half cent per pound to fund promotion efforts directed to both consumer and industrial users.

Similar to WRRC, Oregon also has a state raspberry commission, the Oregon Raspberry and Blackberry Commission (ORBC). The WRRC and ORBC both administer State marketing orders, which require all producers of raspberries to pay assessments to support the health of their respective industries. According to WRRC, the two commissions have developed a good working relationship with each other over the years. Both the WRRC and ORBC invest funds into research programs at their land grant universities and other research institutions to study disease, pest control, and varietal development. In addition to developing and funding production research, they also fund marketing and promotion programs and seek to foster education and communication between producers. However, according to the WRRC, WRRC, ORBC and international raspberry organizations have not been able to generate the funds necessary to support the marketing efforts needed to help expand processed raspberry consumption and increase the demand for processed raspberries. In order to manage increased production, increased competition, and changing consumer habits, the WRRC believes that a more extensive marketing program is needed. The WRRC and ORBC believe that a national research and promotion program would fund the promotional aspect necessary to stay competitive and would place all domestic producers and importers on an equal playing field with each investing a fair share in promoting processed raspberries. The Council may provide credits of assessments for those individuals who contribute to local, regional, or State organizations engaged in similar generic research, promotion, and information programs as applied to assessment due to the Council subject to approval of the Secretary, for expenditure on generic research, promotion and information programs conducted within the United States. If a national processed raspberry program is established, the WRRC and ORBC will continue to fund processed raspberry research in areas not likely to be the focus of the national program.

In 2006, an informal strategic review was conducted by the WRRC and the Raspberry Industry Development Council, who represents raspberry growers in British Columbia, Canada. During the strategic review, public and private sector industry representatives and food processors were interviewed seeking answers to the challenging dynamics facing the raspberry industry. The participants in the raspberry industry concluded that demand and market growth could best be accomplished by: (1) Analyzing existing nutritional research and conducting new research on the positive nutritional qualities of raspberries; (2) communicating raspberries nutritional advantages to consumers, food processors, and food industry in simple terms; and (3) increasing the number of new raspberry products and the use of raspberries in existing products.

The raspberry industry recognizes that there currently exists a strong scientific basis to support the health benefits of raspberries, including processed raspberries, but the current data has not been effectively communicated to food processors or consumers.

According to the WRRC, market growth for processed raspberries has been impeded by disorganized and fractured marketing with no clear and consistent message, and by a dearth of merchandising and new product development. Additionally, scientifically validated health-based research could have important marketing ramifications, but unless the findings are accompanied by a clear consistent marketing message to communicate significant results, there will be little or no impact on increasing processed raspberry consumption.

In addition, the raspberry industry understands that consumers need to know about foods that are good for their health. According to the WRRC, it is widely accepted that North Americans are increasingly concerned with improving their quality of life, and raspberries are positioned to respond to this trend. Consumers will not sacrifice flavor or enjoyment, and they are increasingly making food choices based on how they affect their future health. Aging demographics are creating demand for nutraceutical, health maintenance, and disease prevention attributes in food products. Consumers want to maintain health and vitality as they age. Foods such as raspberries can be positively linked to achieving this desire.

WRRC stated that given processed raspberries low profile and stagnant market, the raspberry industry must increase awareness of the possible health attributes of raspberries, explore new product applications, become established in new domestic market niches, and develop new products if it is to realize its potential for market development. WRRC believes that these

challenges facing the processed raspberry industry to grow the market are not insurmountable. Through a generic research and promotion program, the raspberry industry would be able to: Capitalize more effectively on the possible health benefits of raspberries; improve demand and strengthen their position in the marketplace; maintain and expand existing domestic and foreign markets; and develop new markets and uses for processed raspberries.

Additional funds generated through a national program would allow the processed raspberry industry to take advantage of a wide range of promotional opportunities. At a minimum, increased funding would allow the industry to expand its current consumer, food service, and food manufacturer promotion efforts.

Section 516(f) of the 1996 Act allows an order to authorize the levying of assessments on imports of the commodity covered by the program or on products containing that commodity, at a rate comparable to the rate determined for the domestic agricultural commodity covered by the order. WRRC has proposed to assess imports as well as domestic product.

The assessment levied on domestically-produced and imported processed raspberries would be used to pay for promotion, research, and consumer and industry information as well as administration, maintenance, and functioning of the Council. Expenses incurred by the Secretary in implementing and administering the Proposed Order, including referenda costs, also would be paid from assessments. Assessments would be paid by producers and importers of 20,000 or more pounds of raspberries for processing or processed raspberries respectively. The number of entities assessed under the program would be around 245. Estimated revenue is expected at $1.2 million of which 43 percent is expected from imported product and 57 percent from domestic product.

Section 516(e)(1) and (2) of the 1996 Act allows the Secretary to provide credits of assessments for generic and branded activities. The WRRC has elected to propose credits for generic activities. The Proposed Order gives the Council authority to provide credits of assessments for those individuals who contribute to other similar generic research, promotion, and information programs at the State, regional, or local level subject to the approval of the Secretary. The activities must be generic in nature and may not promote a particular State or region's product. No credit will be given for funds expended for administrative purposes.

Under the Proposed Order ''first handler'' would be defined as any person (excluding a common or contract carrier) receiving raspberries for processing from producers in a calendar year and who, as owner or agent, ships or causes processed raspberries to be shipped as specified in the Proposed Order. This definition includes those engaged in the business of buying, selling and/or offering for sale, receiving, packing, grading, marketing, or distributing raspberries in commercial quantities. This definition excludes a retailer, except a retailer who purchases or acquires from, or handles on behalf of, any producer of raspberries for processing. The term first handler includes a producer who handles or markets raspberries of the producer's own production. In addition, ''handle'' would be defined to mean to process, package, sell, transport, purchase or in any other way place processed raspberries, or cause them to be placed, in the current of commerce. This term includes selling processed raspberries imported into the United States. This term does not include the transportation of fresh raspberries by the producer to a handler or transportation by a commercial carrier of fresh raspberries and organic raspberries, whether processed or unprocessed for the account of the first handler or producer.

First handlers would be responsible for the collection of assessments from producers of raspberries for processing. In the case of the producer acting as its own first handler, the producer would be required to collect and remit its individual assessments. Such assessments would be levied at a rate of up to one cent per pound, with the initial assessment rate being one cent per pound, from the producer and payment would be remitted by the collecting first handler to the Council. First handlers would be required to maintain records for each producer for whom raspberries for processing are handled, including raspberries produced by the first handler. In addition, first handlers would be required to file reports regarding the collection, payment, or remittance of the assessments to the Council.

The Proposed Order would define importer as any person importing 20,000 or more pounds of processed raspberries into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or handles processed raspberries outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such processed raspberries.

Assessments on imported processed raspberries would be collected by Customs at the time of entry into the United States and remitted to the Council. If Customs does not collect an assessment from an importer, the importer would be responsible for paying the assessment directly to the Council. Section 516 (f) of the 1996 Act allows assessments on imported product comparable to the assessment on domestic product. Accordingly, the assessment rate for imported processed raspberries would be up to one cent per pound, with the initial rate being one cent per pound.

Persons failing to remit assessments due in a timely manner may also be subject to actions under the Federal debt collection procedures as set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by the Department [60 FR 12533]. Interest and late payment are also provided for in this Proposed Order.

The Proposed Order allows the Council to recommend to the Secretary an increase or decrease to the assessment rate, if it deems appropriate and if approved by at least one vote more than 50 percent of the total votes of members present at a meeting of the Council. The initial assessment will be levied at a rate of one cent per pound on all processed raspberries. Thereafter, the assessment rate will be levied at a rate of up to one cent per pound on all processed raspberries. The assessment rate will be reviewed, and increased or decreased as recommended by the Council and approved by the Secretary after the first referendum is conducted as stated in § 1208.71 (b). Such an increase or decrease may occur not more than once annually. Any change in the assessment rate shall be subject to rulemaking by the Department, and will be reviewed, and increased or decreased by the Secretary through rulemaking as recommended by the Council. Any change in the assessment rate shall be announced by the Council at least 30 days prior to going into effect. The maximum assessment rate authorized is one cent per pound.

All information obtained from persons subject to this Proposed Order as a result of recordkeeping and reporting requirements would be kept confidential by all officers, employees, and agents of the Department and of the Council. This information may be disclosed only if the Secretary considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the

request of the Secretary or to which the Secretary or any officer of the Department is a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports or on information relating to a number of persons subject to an order, if the statements do not identify the information furnished by any person or the publication; and by direction of the Secretary of the name of any person violating the Proposed Order and a statement of the particular provisions of the Proposed Order violated by the person.

Under the Proposed Order producers and importers of less than 20,000 pounds a year of raspberries for processing and processed raspberries respectively, are exempt from paying assessments. In addition, a producer who operates under an approved National Organic Program (NOP) system plan, produces only products eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, is exempt from the paying assessments under the Proposed Order. An importer who imports only products eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, also is exempt from paying assessments.

As the Proposed Order provides, producers and importers will be responsible for paying assessments, however, the collection of assessments will be the responsibility of the first handler receiving the raspberries for processing or Customs for imported product. The Proposed Order states that producers, handlers, and importers will also be responsible for filing reports and maintaining records regarding the amount of raspberries that were delivered for processing and the assessments collected.

First handlers would be required to file reports and maintain records on the total raspberries that were delivered for processing from producers or the handling for their own product, on the total number of pounds handled; number of pounds on which an assessment was collected; name and address of the persons from whom the first handler collected assessments on each pound handled; and the date the collection of assessments was made on each pound handled. In addition, producers would be required to provide the Council periodically such information as may be required by the Council. The Council would recommend to the Department specific reporting periods and dates when such reports are due to the Council.

Unless otherwise provided by Customs, importers would be required to report the total amount of processed raspberries imported during such period, including the quantity, date, country of origin, and port of entry. Under the Proposed Order, Customs would collect assessments on imported processed raspberries and remit the funds to the Council.

Each first handler, producer, and importer of processed raspberries, including those who would be exempt from paying assessments under the Proposed Order, would be required to maintain any books and records necessary to carry out the provisions of the Proposed Order for two years beyond the fiscal period to which they apply. This would include the books and records necessary to verify any required reports. These books and records would be made available to the Council's or Department's employees or agents during normal business hours for inspection if necessary.

Section 515 of the 1996 Act provides for the establishment of a board or council consisting of producers, first handlers, and others in the marketing chain, as appropriate. The Department would appoint members to the Council from nominees submitted in accordance with a Proposed Order. The Proposed Order would provide for the establishment of the Processed Raspberry Promotion, Research, and Information Order, under AMS oversight. The WRRC proposed that the Council be composed of thirteen members and their alternates. The Department made a slight revision to the distribution of members originally proposed by the WRRC to comply with geographical distribution of the production as required under the 1996 Act. The proposed Council membership is as follows: Six processed raspberry producer members from States producing a minimum of three million pounds of raspberries delivered for processing; one processed raspberry producer member representing all other States that produce less than the minimum of three million pounds of raspberries delivered for processing; three processed raspberry importer members; two foreign producers from countries exporting a minimum of three million pounds of raspberries for processing to the U.S. based on a three-year average; and one at-large member recommended by the Council.

Under the Proposed Order, the Council members and alternates will serve for a term of three years and be able to serve a maximum of two consecutive terms. When the Council is first established, four producer members, two importers, one at-large member, and one foreign producer and their respective alternates will be assigned initial terms of three years; and, three producer members, one importer members, and one foreign producer member and their respective alternates will serve an initial term of two years. Thereafter, each of these positions will carry a full three-year term. Members serving an initial term of two years will be eligible to serve a second three year term to complete their eligibility. Council nominations and appointments will take place in two out of every three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

Producers and importers would represent those entities in the United States. The United States would be defined to include collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

The nominations for the six producer and alternate members from States producing a minimum three-year average of three million pounds of raspberries delivered for processing will be submitted to the Council in the following manner: (1) For those States that have a State raspberry commission or State marketing order, the State commission or committee will nominate producers and their alternates to serve; or (2) for those States that do not have a State commission or State marketing order, the Council will seek nominations from the State Departments of Agriculture for members and alternates from the specific States.

For those States producing a minimum three-year average of three million pounds of raspberries delivered for processing that have a State raspberry commission or State marketing order, the State commission or committee nominations will be returned to the Council and placed on a ballot which will then be sent to producers in the State for a vote. The nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the nominee for alternate. The persons with the third and fourth place highest number of votes cast will be designated as additional nominees for consideration by the Secretary. Once the Council has received all of the nominations from commissions or committees, the information will be submitted to the Secretary for appointment. Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council staff and shall be submitted to

the Secretary not less than 90 days prior to the expiration of the term of office.

If the Department determines that there are no State raspberry commissions or State marketing orders from States producing a minimum three-year average of three million pounds of raspberries delivered for processing, the Council will seek nominations from the State Departments of Agriculture for members and alternates from the specific States who may directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

The distribution of the six producer and alternate seats will be proportional to the percentage determined by the average of the total pounds produced and delivered to processors for processing over the previous three years divided by the average total pounds produced over the previous three years. For example, if Washington State and Oregon are the only two States producing a minimum of 3 million pounds each, and Washington's previous three year average is 62.4 million pounds and Oregon's previous three year average is 6.7 million pounds with the average total pounds for the previous three years being 69.1 million pounds, Washington would have 90 percent of the production and Oregon would have 10 percent of the production. Therefore, Washington would obtain five out of the six seats and Oregon would receive one seat.

The nomination for the one raspberry producer of raspberries for processing and alternate member, who represents all other States producing less than a minimum three year average of three million pounds of raspberries delivered for processing, will constitute a region and the nominations will be submitted to the Council in the following manner: (1) For those States that have a State raspberry commission or State marketing order, the State commission or committee will nominate producers and their alternates to serve; or (2) for those States that do not have a State commission or State marketing order, the Council will seek nominations from the State Departments of Agriculture for the member and alternate from the specific States.

For those States producing less than a minimum three year average of three million pounds of raspberries delivered for processing that have a State raspberry commission or State marketing order, the State commission or committee nominations will be returned to the Council and placed on a ballot which will then be sent to producers in the Region for a vote. The nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the nominee for alternate. The persons with the third and fourth place highest number of votes cast will be designated as additional nominees for consideration by the Secretary. Once the Council has received all of the nominations from commissions or committees, the information will be submitted to the Secretary for appointment. Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council staff and shall be submitted to the Secretary not less than 90 days prior to the expiration of the term of office.

If the Department determines that there are no State raspberry commissions or State marketing orders from States producing less than a minimum three year average of three million pounds of raspberries delivered for processing, the Council will seek nominations from the State Departments of Agriculture for members and alternates from the specific States. The State Departments of Agriculture would have the opportunity to participate in nomination caucuses and will directly submit as a group a single slate of nominations to the Department for the producer position and the producer alternate position on the Council for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

Only producers from States that deliver raspberries for processing and pay assessments under the program are eligible for nomination and election to the Council. Average production will be based upon Department production data for the initial nomination and production figures generated by either the Council or the Department thereafter.

Nominations for the three processed raspberry importer member positions and their alternates will be made by qualified national organizations representing importers. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration.

All qualified national organizations representing importers would have the opportunity to participate in nomination caucuses and will submit as a group a single slate of nominations to the Secretary for the importer positions and the importer alternate positions on the Council.

Eligible organizations must submit nominations to the Department not less than 90 days prior to the expiration of the term of office. To become a qualified national organization representing importers under the Proposed Order, each such organization would be required to meet the following criteria: (1) Any organization representing importers must represent a substantial number of importers who market a substantial volume of raspberries for processing; (2) it must have a history of stability and permanency and have been in existence for more than one year; (3) it must promote processed raspberry importers' welfare; and (4) it must derive a portion of its operating funds from importers.

If the Department determines that there are no qualified national organizations representing importers, individuals who have paid their assessments to the Council in the most recent fiscal year or for the initial Council those that importers processed raspberries into the U.S. could directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

Nominations for the two foreign producer member positions and their alternates will be made by qualified organizations representing foreign producers. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration.

All qualified organizations representing foreign producers would have the opportunity to participate in nomination caucuses and will submit as a group a single slate of nominations per country to the Secretary for foreign producer positions and the foreign producer alternate positions on the Council.

Eligible organizations must submit nominations to the Department not less than 90 days prior to the expiration of the term of office. To become a qualified organization representing foreign producers under the Proposed Order, each such organization would be required to meet the following criteria: (1) Any organization representing foreign producers must represent a substantial number of foreign producers who market or produce a substantial volume of raspberries for processing; (2)

it must have a history of stability and permanency and have been in existence for more than one year; (3) it must promote processed raspberry foreign producers' welfare; (4) it must derive a portion of its operating funds from foreign producers; and (5) it must be from a country exporting a minimum of three million pounds of raspberries for processing to the U.S. based on a three-year average.

If the Department determines that they are no qualified organizations representing foreign producer interest, individual foreign producers may directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

In recommending the at-large member and alternate, the Council can give consideration to nutrition health professionals and others interested in the raspberry industry. Nominations for the at-large member and alternate will be conducted at a Council meeting by the Council staff and shall be submitted by the Council to the Secretary for approval. Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council staff and shall be submitted to the Secretary not less than 90 days prior to the expiration of the term of office.

The 1996 Act provides that to ensure fair and equitable representation, the composition of a board or council shall reflect the geographic distribution of the production of the agriculture commodity in the United States and the quantity or value of the agriculture commodity imported into the United States. The Order states that at least once every five years, but not more frequently than once every three years, the Council will review the geographic distribution of United States production of raspberries for processing and the quantity and source of processed raspberry imports. If warranted, the Council will recommend to the Secretary that membership on the Council be altered to reflect any changes in geographic distribution of domestic raspberry production and the quantity of imports. Also, if the level of imports increases, importer members and alternates may be added to the Council. However, the foreign producer seats will remain the same regardless of the volume of imports from importing countries.

Upon implementation of the Proposed Order and pursuant to the 1996 Act, the Council would at least once in each five-year period, but not more frequently than once in each three-year period review the geographical distribution of processed raspberries in the United States and the quantity of processed raspberries imported into the United States and make a recommendation to the Secretary after considering the results of its review and other information it deems relevant regarding the reapportionment of the Council.

The Proposed Order indicates the Council may recommend to the Department that a member be removed from office if the member consistently refuses to perform his or her duties or engages in dishonest acts or willful misconduct. The Department may remove the member if the Department finds that the Council's recommendation demonstrates cause.

In the event any member or alternate of the Council ceases to be a member of the category from which the member was appointed to the Council, such position will automatically become vacant. Should any member position become vacant the alternate of that member shall automatically assume the position of member.

Under the Proposed Order, a quorum is met when a majority (one more than half) of the Council members is present. An alternate will be counted for the purpose of determining a quorum only if the members for whom the person is the alternate is absent or disqualified from participating. Also, under the Proposed Order, a change for any matter put to the Council will carry if supported by one vote more than 50 percent of the total votes represented by the Council members present.

Under the Proposed Order, the chairperson of the Council must reside in the United States and the Council will be located in the United States.

The Proposed Order states that the Council may not expend for administration, maintenance, and functioning of the Council in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Council for that fiscal year.

The Department modified the WRRC's proposal to make it consistent with the 1996 Act and to provide clarity, consistency, and correctness with respect to word usage and terminology. The Department also changed the proposal to make it consistent with other similar national research and promotion programs. Changes made by the Department to the WRRC's proposal include: (1) To add the term processor which is presented in WRRC's proposal; (2) to specify the initial terms of office for the Council and to stagger the terms for future years; (3) to modify the criteria under nominations if a member or alternate is no longer affiliated with the organization he or she was nominated to represent; (4) to modify the four harmonized tariff codes that were presented and reduce it to one harmonized tariff code; (5) to clarify the nomination process for obtaining nominees for both States with State commissions or committees and those that do not have State commissions; (6) to clarify the nomination process for obtaining nominees from the minor States and/or region in which the Council will handle instead of the WRRC; (7) to add reports that may be required by producers and importers; (8) to add the provision under subsequent referenda that the Council may request a referendum be held as stated in the 1996 Act; (9) to clarify the staggered terms of office and that members serving a two year term will only be eligible to serve a second term; (10) to clarify under the procedures that a quorum at a Council meeting will be a majority of the Council members and alternates participating in the meeting; (11) to clarify that any funds borrowed by the Council shall be expended for startup costs and capital outlays and they are limited to the first year of operation of the Council as stated in the 1996 Act; (12) to add language concerning the exemption procedures for organic processed raspberries; (13) to add language concerning the reports that the Council may require of producers and importers; (14) to eliminate the word red from raspberries to conform with the harmonized tariff code; (15) to eliminate voting by proxy; (16) to add language under the procedures requiring that the chairperson and the treasurer reside in the United States; (17) to add language under the procedures requiring all Council meetings to be held in the United States; (18) to add language under the procedures requiring the Council office to be located in the United States; (19) to change the Council's name from United States Raspberry Council to the National Processed Raspberry Council; (20) to add language under the subsequent referendum that complies with the 1996 Act concerning the Council requesting the Secretary to conduct a referendum; (21) to add that importer nominations will be handled by qualified national organizations; (22) to add that foreign producer nominations will be handled by qualified organizations; (23) to add nomination procedures for States producing a minimum of three million

pounds of raspberries delivered for processing, and whose State does not have a State commission or State marketing order; (24) to add nomination procedures for States producing less than a minimum three year average of three million pounds of raspberries delivered for processing, and whose State does not have a State commission or State marketing order; (25) to add the qualification process to become a qualified organization representing importer or foreign producer interests; and (26) to make a slight revision to the distribution of members originally proposed by the WRRC to comply with geographical distribution of the production as required under the 1996 Act.

The Proposed Order is summarized as follows: 1208.1 through 1208.29 of the Proposed Order define certain terms, such as processed raspberries, first handler, and importer, which are used in the Proposed Order.

Sections 1208.40 through 1208.48 include provisions relating to the Council. These provisions cover establishment and membership, nominations and appointments, term of office, vacancies, alternate members, and procedures for conducting Council business, compensation and reimbursement, and powers and duties of the Council, and prohibited activities. The Council is the governing body authorized to administer the Proposed Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about processed raspberries, subject to oversight of the Secretary.

Sections 1208.50 through 1208.56 cover budget review and approval; financial statements; authorize the collection of assessments; specify how assessments would be used, including reimbursement of necessary expenses incurred by the Council for the performance of its duties and expenses incurred for the Department's oversight responsibilities; specify who pays the assessment and how; authorize the imposition of a late-payment charge on past-due assessments; outline exemption procedures; address programs, plans, and projects; require the Council to periodically conduct an independent review of its overall program; and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

The proposed assessment rate is up to one cent per pound for domestic processed raspberries and imported processed raspberries, with the initial assessment rate being one cent per pound. The assessment rate will be reviewed, and increased or decreased as recommended by the Council and approved by the Secretary after the first referendum is conducted as stated in § 1208.71 (a). Such an increase or decrease may occur not more than once annually and may not exceed the initial assessment rate of one cent per pound. Any change in the assessment rate shall be subject to rulemaking by the Department, and will be reviewed, and increased or decreased by the Secretary through rulemaking as recommended by the Council. Any change in the assessment rate shall be announced by the Council at least 30 days prior to going into effect. The maximum assessment rate authorized is one cent per pound.

The assessment rate may be raised or lowered at a rate greater than one cent after the initial continuance referendum which would be conducted after the program has been in operation five years. A referendum to approve the new assessment rate or for any other change is not required.

Sections 1208.60 through 1208.62 concerns reporting and recordkeeping requirements for persons subject to the Proposed Order and protect the confidentiality of information from such books, records, or reports.

Sections 1208.70 through 1208.78 describe the rights of the Secretary; address referenda; authorize the Secretary to suspend or terminate the Proposed Order when deemed appropriate; prescribe proceedings after termination; address personal liability, separability, and amendments; and provide OMB control numbers.

While the proposal set forth below has not received the approval of the Department, it is determined that this Proposed Order is consistent with and will effectuate the purposes of the 1996 Act.

For the Proposed Order to become effective, it must be approved by a majority of producers and importers voting for approval in the referendum. Referendum procedures will be published separately in this issue of the **Federal Register**.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this rule by the date specified would be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Raspberry promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended by adding part 1208 to read as follows:

PART 1208—PROCESSED RASPBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Processed Raspberry Promotion, Research, and Information Order

Definitions

Sec.
1208.1 Act.
1208.2 Conflict of interest.
1208.3 Crop year.
1208.4 Customs.
1208.5 Department.
1208.6 First handler.
1208.7 Fiscal period.
1208.8 Foreign producer.
1208.9 Handle.
1208.10 Importer.
1208.11 Information.
1208.12 Market or marketing.
1208.13 National Processed Raspberry Council.
1208.14 Order.
1208.15 Part and subpart.
1208.16 Person.
1208.17 Processed raspberries.
1208.18 Processor.
1208.19 Producer.
1208.20 Promotion.
1208.21 Qualified national organization representing importer interests.
1208.22 Qualified organization representing foreign producer interests.
1208.23 Raspberries.
1208.24 Research.
1208.25 Secretary.
1208.26 State.
1208.27 Suspend.
1208.28 Terminate.
1208.29 United States.

National Processed Raspberry Council

1208.40 Establishment and membership.
1208.41 Nominations and appointments.
1208.42 Term of office.
1208.43 Vacancies.
1208.44 Alternate members.
1208.45 Procedure.
1208.46 Compensation and reimbursement.
1208.47 Powers and duties.
1208.48 Prohibited activities.

Expenses and Assessments

1208.50 Budget and expenses.
1208.51 Financial statements.
1208.52 Assessments.
1208.53 Exemption and reimbursement procedures.
1208.54 Programs, plans, and projects.
1208.55 Independent evaluation.
1208.56 Patents, copyrights, trademarks, information, publications, and product formulations.

Reports, Books, and Records

1208.60 Reports.
1208.61 Books and records.
1208.62 Confidential treatment.

Miscellaneous

1208.70 Right of the Secretary.
1208.71 Referenda.
1208.72 Suspension and termination.
1208.73 Proceedings after termination.
1208.74 Effect of termination or amendment.
1208.75 Personal liability.
1208.76 Separability.
1208.77 Amendments.
1208.78 OMB control numbers.

Subpart B—[Reserved]

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

Subpart A—Processed Raspberry Promotion, Research, and Information Order

Definitions

§ 1208.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

§ 1208.2 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Council has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Council for anything of economic value.

§ 1208.3 Crop year.

Crop year means the 12-month period from April 1 to March 31 of the following year or such other period approved by the Secretary.

§ 1208.4 Customs.

Customs means the United States Customs and Border Protection or U.S. Customs Service, an agency of the United States Department of Homeland Security.

§ 1208.5 Department.

Department means the United States Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1208.6 First handler.

First handler means any person (excluding a common or contract carrier) receiving raspberries for processing from producers in a calendar year and who as owner or agent, ships or causes processed raspberries to be shipped as specified in the Order. This definition includes those engaged in the business of buying, selling and/or offering for sale, receiving, packing, grading, marketing, or distributing processed raspberries in commercial quantities. This definition excludes a retailer, except a retailer who purchases or acquires from, or handles on behalf of, any producer of raspberries for processing. The term first handler includes a producer who handles or markets raspberries for processing of the producer's own production.

§ 1208.7 Fiscal period.

Fiscal period means a calendar year from April 1 through March 31 both dates inclusive, or such other period as approved by the Secretary.

§ 1208.8 Foreign producer.

Foreign producer means any person:

(a) Who is engaged in the production and sale of raspberries for processing outside of the United States and who owns, or shares the ownership and risk of loss of raspberries for processing for sale in the U.S. market; or

(b) Who is engaged, outside of the United States, in the business of producing, or causing to be produced, processed raspberries beyond the person's own family use and having value at first point of sale.

§ 1208.9 Handle.

Handle means to pack, process, sell, transport, purchase, or in any other way to place or cause processed raspberries to which one has title or possession to be placed in the current of commerce. Such term shall not include the transportation or delivery of raspberries for processing by the producer thereof to a handler.

§ 1208.10 Importer.

Importer means any person importing 20,000 pounds or more of processed raspberries into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or handles processed raspberries outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such processed raspberries.

§ 1208.11 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of raspberries on a national basis. These include:

(a) *Consumer information*, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of processed raspberries.

(b) *Food industry information,* which means any action taken to provide information to, and broaden the understanding of, the food industry regarding the consumption, use, nutritional attributes, and care of processed raspberries.

(c) *Industry information*, which means any action taken to provide information to or collect information from, and broaden the underestimating of, the raspberry industry regarding the production, consumption, use, nutritional attributes, and care of processed raspberries.

§ 1208.12 Market or marketing.

(a) *Marketing* means the sale or other disposition of processed raspberries in interstate, foreign or intrastate commerce.

(b) To *market* means to sell or otherwise dispose of processed raspberries in any channel of commerce.

§ 1208.13 National Processed Raspberry Council.

National Processed Raspberry Council or such other name as recommended by the Council and approved by the Department means the administrative body established pursuant to § 1208.40.

§ 1208.14 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1208.15 Part and subpart.

Part means the Processed Raspberry Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a subpart of such part.

§ 1208.16 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1208.17 Processed raspberries.

Processed raspberries means raspberries which have been frozen, dried, pureed, made into juice, or delivered in any other form altered by mechanical processes other than fresh.

§ 1208.18 Processor.

Processor means a person engaged in the preparation of raspberries for processing for market who owns or who

shares the ownership and risk of loss of such raspberries.

§ 1208.19 Producer.

Producer means any person who grows 20,000 pounds or more of raspberries for processing in the United States for sale in commerce, or a person who is engaged in the business of producing, or causing to be produced for any market, raspberries for processing beyond the person's own family use and having value at first point of sale.

§ 1208.20 Promotion.

Promotion means any action taken to present a favorable image of processed raspberries to the general public and the food industry for the purpose of improving the competitive position of processed raspberries both in the United States and abroad and stimulating the sale of processed raspberries including paid advertising and public relations.

§ 1208.21 Qualified national organization representing importer interests.

Qualified national organization representing importer interests means an organization that the Secretary certifies as being eligible to nominate importer and alternate importer members to the Council.

§ 1208.22 Qualified organization representing foreign producer interests.

Qualified organization representing foreign producer interests means an organization that the Secretary certifies as being eligible to nominate foreign producer and alternate foreign producer members to the Council.

§ 1208.23 Raspberries.

Raspberries mean and include all kinds, varieties, and hybrids of cultivated raspberries of the genus ''Rubus'' grown in or imported into the United States.

§ 1208.24 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of raspberries, including but not limited to research relating to nutritional value, cost of production, new product development, health research, and marketing of processed raspberries.

§ 1208.25 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has been delegated, or to whom authority may be delegated, to act in the Secretary's stead.

§ 1208.26 State.

State means any of the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1208.27 Suspend.

Suspend means to issue a rule under section 553 of title 5 U.S.C., to temporarily prevent the operation of an order or part thereof during a particular period of time specified in the rule.

§ 1208.28 Terminate.

Terminate means to issue a rule under section 553 of title 5 U.S.C., to cancel permanently the operation of an order or part thereof beginning on a certain date specified in the rule.

§ 1208.29 United States.

United States means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

National Processed Raspberry Council

§ 1208.40 Establishment and membership.

(a) *Establishment of the National Processed Raspberry Council.* There is hereby established a National Processed Raspberry Council, or such other name as recommended by the Council and approved by the Department, hereinafter called Council, composed of thirteen (13) members and thirteen (13) alternate members, appointed by the Secretary from nominations as follows:

(1) Six (6) processed raspberry producer members and alternate members from States producing a minimum of three (3) million pounds of raspberries delivered for processing. Distribution of the seats among the eligible States shall be proportional to the percent determined by the average of the total pounds produced and delivered to processors for processing over the previous three years divided by the average total pounds by all of the eligible States for the previous three years. Only States whose producers deliver raspberries for processing and pay assessments are eligible for nomination and election to the Council. Average production will be based upon either State production figures or the Department data for the initial election, and production figures generated by either the Council or the Department thereafter;

(2) One (1) processed raspberry producer member and alternate member representing all other States producing less than a three (3) million pounds of raspberries delivered for processing. All States producing less than three million pounds of raspberries delivered for processing will constitute a region from which one producer member and alternate will be nominated to the Council. Only States whose producers deliver raspberries for processing and pay assessments are eligible for nomination and election to the Council. Average production will be based upon either State production figures or the Department data for the initial election, and production figures generated by either the Council or the Department thereafter;

(3) Three (3) processed raspberry importer members and alternate members;

(4) Two (2) foreign producers and their alternate members from countries exporting a minimum of three million pounds of raspberries for processing to the U.S., based on a three-year average; and

(5) One (1) at-large member and an alternate recommended by the Council and shall be submitted by the Council to the Secretary for approval. In recommending the at-large member and alternate, the Council shall give consideration to nutrition health professionals and others interested in raspberry industry. Nominations for the initial Council will be handled by the Department.

(b) *Adjustment of membership.* At least once every five years, but not more frequently than once every three years, the Council will review the geographic distribution of United States production of processed raspberries and the quantity and source of processed raspberry imports. The review will be conducted through an audit of State crop production figures and Council assessment receipts. If warranted, the Council will recommend to the Secretary that membership on the Council be altered to reflect any changes in geographic distribution of domestic raspberry production for processing and the quantity of imports. If the level of imports increases or decreases, importer members and alternates may be added or reduced on the Council, subject to recommendation by the Council and approval of the Secretary. However, the foreign producer seats will remain the same regardless of the volume of imports from importing countries.

§ 1208.41 Nominations and appointments.

(a) Voting for regional and State producer representatives will be made by mail ballot.

(b) Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council.

(c) The nominations for the six producer and alternate members from States producing a minimum three year average of three million pounds of raspberries delivered for processing will be submitted to the Council in the following manner:

(1) For those States that have a State raspberry commission or State marketing order, the State commission or committee will nominate producers and their alternates to serve. Nominations will be returned to the Council and placed on a ballot which will then be sent to producers in the State for a vote. The nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the nominee for alternate. The persons with the third and fourth place highest number of votes cast will be designated as additional nominees for consideration by the Secretary. Once the Council has received all of the nominations from commissions or committees, the information will be submitted to the Secretary for appointment. Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council staff and shall be submitted to the Secretary not less than 90 days prior to the expiration of the term of office; or

(2) For those States that do not have a State commission or State marketing order, the Council will seek nominations from the State Departments of Agriculture for members and alternates from the specific States who may directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

(3) The distribution of the six producer and alternate seats will be proportional to the percentage determined by the average of the total pounds produced and delivered to processors for processing over the previous three years divided by the average total pounds produced over the previous three years.

(d) The nomination for the one raspberry producer of raspberries for processing and alternate member, who represents all other States producing less than a minimum three year average of three million pounds of raspberries delivered for processing, will constitute a region and the nominations will be submitted to the Council in the following manner:

(1) For those States that have a State raspberry commission or State marketing order, the State commission or committee will nominate producers and their alternates to serve. The State commission or committee nominations will be returned to the Council and placed on a ballot which will then be sent to producers in the Region for a vote. The nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the nominee for alternate. The persons with the third and fourth place highest number of votes cast will be designated as additional nominees for consideration by the Secretary. Once the Council has received all of the nominations from commissions or committees, the information will be submitted to the Secretary for appointment. Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council staff and shall be submitted to the Secretary not less than 90 days prior to the expiration of the term of office; or

(2) For those States that do not have a State commission or State marketing order, the Council will seek nominations from the State Departments of Agriculture for the member and alternate from the specific States. The State Departments of Agriculture would have the opportunity to participate in nomination caucuses and will directly submit as a group a single slate of nominations to the Department for the producer position and the producer alternate position on the Council for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

(e) Only producers from States that deliver raspberries for processing and are covered under the program are eligible for nomination and election to the Council. Average production will be based upon Department production data for the initial nomination and production figures generated by either the Council or the Department thereafter.

(f) Nominations for the importer positions and their alternates will be made by qualified national organizations representing importers as follows:

(1) All qualified national organizations representing importers would have the opportunity to participate in nomination caucuses and will submit as a group a single slate of nominations to the Secretary for the importer positions and the importer alternate positions on the Council. Eligible organizations must submit nominations to the Department not less than 90 days prior to the expiration of the term of office. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration.

(2) If the Department determines that there are no qualified national organizations representing importers, individuals who have paid their assessments to the Council in the most recent fiscal year or for the initial Council, those that imported processed raspberries into the U.S., could directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

(g) Nominations for the foreign producer positions and their alternates will be made by qualified organizations representing foreign producers as follows:

(1) All qualified organizations representing foreign producer interests will have the opportunity to participate in nomination caucuses and will submit as a group a single slate of nominations to the Secretary for the foreign producer positions and the foreign producer alternate positions on the Council.

(2) If the Department determines that there are no qualified organizations representing foreign producer interests, individual foreign producers may directly submit nominations to the Department for the initial Council. Subsequent nominations shall be submitted to the Council and will be handled by the Council staff who in turn shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office. For the initial Council, persons that meet the definition of foreign producer as defined in this subpart will certify such qualification and upon certification, if qualified, may submit nominations. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration.

(h) Nominations for the at-large member and alternate will be conducted at a Council meeting by the Council and shall be submitted by the Council to the Secretary for approval. Nominations for the initial Council will be handled by the Department. Subsequent nominations will be handled by the Council and shall be submitted to the

Secretary not less than 90 days prior to the expiration of the term of office.

(i) From the nominations, the Secretary shall select the members of the Council and alternates for each position on the Council. Members will serve until their replacements have been appointed by the Secretary.

(j) If there is an insufficient number of nominees from whom to appoint members to the Council, the Secretary may appoint members in such a manner as the Secretary determines appropriate.

(k) Qualified national organization representing importer interests. To be certified as a qualified national organization representing importer interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(1) The organization must represent a substantial number of importers who market or produce a substantial volume of raspberries for processing;

(2) The organization has a history of stability and permanency and has been in existence for more than one year;

(3) The organization must promote processed raspberries importers' welfare; and

(4) The organization must derive a portion of its operating funds from importers.

(l) Qualified organization representing foreign producer interests. To be certified by the Secretary as a qualified organization representing foreign producer interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(1) The organization must represent a substantial number of foreign producers who produce a substantial volume of raspberries for processing;

(2) The organization has a history of stability and permanency and has been in existence for more than one year;

(3) The organization must promote processed raspberry foreign producers' welfare;

(4) The organization must derive a portion of its operating funds from foreign producers; and

(5) The organization must be from a country exporting a minimum of three million pounds of raspberries for processing to the U.S. based on a three-year average.

(m) Eligible organizations, foreign producers, or importers must submit nominations to the Secretary not less than 90 days prior to the expiration of the term of office. At least two nominees for each position to be filled must be submitted.

§ 1208.42 Term of office.

Council members and alternates will serve for a term of three years and be able to serve a maximum of two consecutive terms. A Council member may serve as an alternate during the years the member is ineligible for a member position. When the Council is first established, four producer members, two importers, one of the two foreign producers, and the at-large member and their respective alternates will be assigned initial terms of three years. The remaining three producer members, one importer member, and the second foreign producer and their alternates will serve an initial term of two years. Members serving an initial term of two years will be eligible to serve a second term of three years. Thereafter, each of these positions will carry a full three-year term. Council nominations and appointments will take place in two out of every three years. Council members shall serve during the term of office for which they are appointed and have qualified, and until their successors are appointed and have qualified. Each term of office will end on December 31, with new terms of office beginning on January 1.

§ 1208.43 Vacancies.

(a) In the event that any member of the Council ceases to be a member of the category of membership from which the member was appointed to the Council, such position shall automatically become vacant.

(b) If a member of the Council consistently refuses to perform the duties of a member of the Council, or if a member of the Council engages in acts of dishonesty or willful misconduct, the Council may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Council shows adequate cause, the Secretary may remove such member from office.

(c) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be appointed in the manner specified in § 1208.40 and § 1208.41, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

§ 1208.44 Alternate members.

An alternate member of the Council, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any member, the alternate for that member shall automatically assume the position of said member. In the event that a producer, importer, foreign producer, or at-large member of the Council and their alternate are unable to attend a meeting, the Council may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

§ 1208.45 Procedure.

(a) At a Council meeting, it will be considered a quorum when a majority (one more than half) of the Council members is present. An alternate will be counted for the purpose of determining a quorum only if the member for whom the person is the alternate is absent or disqualified from participating.

(b) At the start of each fiscal period, the Council will select a chairperson, vice chairperson, and other officers as appropriate, who will conduct meetings throughout that period.

(c) The chairperson and the treasurer shall reside in the United States, and the Council office shall also be located in the United States.

(d) All Council meetings shall be held in the United States.

(e) All Council members and alternates will receive a minimum of 20 days advance notice of all Council and committee meetings.

(f) Each member of the Council will be entitled to one vote on any matter put to the Council, and the motion will carry if supported by one (1) vote more than 50 percent of the total votes represented by the Council members present.

(g) It will be considered a quorum at a Council committee meeting when at least one more than half of those assigned to the Council committee are present. Alternates may also be assigned to Council committees as necessary. Council committees may consist of persons other than Council members and such persons may vote in Council committee meetings.

(h) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Council such action is considered necessary, the Council may take action if supported by one vote more than 50 percent of the members present, by mail, telephone, electronic mail, facsimile, or any other means of communication, and all telephone votes shall be confirmed promptly in writing. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have

the same force and effect as though such action had been taken at a properly convened meeting of the Council. All votes shall be recorded in Council minutes.

(i) There shall be no voting by proxy.

(j) The chairperson shall be a voting member.

(k) The organization of the Council and the procedures for the conducting of meetings of the Council shall be in accordance with its bylaws, which shall be established by the Council and approved by the Secretary.

§ 1208.46 Compensation and reimbursement.

The members of the Council, and alternates when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Council, incurred by them in the performance of their duties as Council members.

§ 1208.47 Powers and duties.

The Council shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Council, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Council a chairperson, other officers, committees, and subcommittees, as the Council determines to be appropriate;

(d) To employ persons, other than members, as the Council considers necessary to assist the Council in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop and carry our generic promotion, research, and information activities relating to processed raspberries;

(f) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Council shall develop and submit to the Council a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Council of activities conducted under the contract or agreement; and make such other reports available as the Council or the Secretary considers necessary. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Council a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Council of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Council may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically;

(4) Any subcontractor who enters into a contract with a Council contractor and who receives or otherwise uses funds allocated by the Council shall be subject to the same provisions as the contractor;

(g) To prepare and submit for approval of the Secretary, before the beginning of each fiscal year, rates of assessment and a fiscal year budget of the anticipated expenses to be incurred in the administration of the Order, including the probably cost of each promotion, research, and information activity proposed to be developed or carried out by the Council in accordance with § 1208.50;

(h) To borrow funds necessary for the startup expenses of the order;

(i) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may require and to make the records available to the Secretary for inspection and audit; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Council;

(j) To cause its books to be audited by a independent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(k) To give the Secretary the same notice of meetings of the Council as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Council to the Secretary;

(l) To act as intermediary between the Secretary and any producer, first handler, processor, importer, or foreign producer;

(m) To furnish to the Secretary any information or records that the Secretary may request;

(n) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(o) To recommend to the Secretary such amendments to the Order as the Council considers appropriate;

(p) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the processed raspberry industry's position in the marketplace; maintain and expand existing markets and uses for processed raspberries; and to carry out programs, plans, and projects designed to provide maximum benefits to the processed raspberry industry; and

(q) To pay the cost of the activities with assessments collected under § 1208.52.

§ 1208.48 Prohibited activities.

The Council may not engage in, and shall prohibit the employees and agents of the Council from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Council under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the Order that may be false or misleading or disparaging to another agricultural commodity.

Expenses and Assessments

§ 1208.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Council shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. The budget for research, promotion, or information may not be implemented prior to approval of the budget by the Secretary. No later than forty-five (45) days after the receipt of such budget, the Secretary shall notify the Council whether the Secretary approves or disapproves the budget. Each budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data or at least one preceding year (except for the initial budget); and

(3) A summary of proposed expenditures for each program, plan, or project;

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts in funds which do not cause an increase in the Council's approved budget, and which are consistent with by laws, need not have prior approval by the Department.

(d) The Council is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Council for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Council.

(e) With approval of the Secretary, the Council may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council. Any funds borrowed by the Council shall be expended for startup costs and capital outlays and are limited to the first year of operation of the Council.

(f) The Council is authorized to repay startup costs associated with establishing a program and an initial referendum. If approved, these costs would be amortized and repaid over a maximum three (3) year period.

(g) The Council may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects approved by the Secretary. Such contributions shall be free from any encumbrance by the donor and the Council shall retain complete control of their use.

(h) The Council may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, with the approval of the Secretary, for authorized activities.

(i) The Council shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, enforcement, and supervision of the Order, including all referendum costs in connection with the Order.

(j) The Council may not expend for administration, maintenance, and functioning of the Council in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Council for that fiscal year. Reimbursements to the Secretary required under paragraph (i) of this section are excluded from this limitation on spending.

(k) The Council may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: Provided that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

(l) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Council may invest assessments and all other revenues collected under this section in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System; or

(4) Obligations fully guaranteed as to principal interest by the United States.

§ 1208.51 Financial statements.

(a) As requested by the Secretary, the Council shall prepare and submit financial statements to the Secretary on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Council shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

§ 1208.52 Assessments.

(a) The funds to cover the Council's expenses shall be paid from assessments on producers and importers at a rate not to exceed one cent per pound; the initial rate is one cent per pound, donations from any person not subject to assessments under this Order, and other funds available to the Council including those collected pursuant to § 1208.56 and subject to the limitations contained therein.

(b) The collection of assessments on domestic processed raspberries will be the responsibility of the first handler receiving the raspberries for processing. In the case of the producer acting as its own first handler, the producer will be required to collect and remit its individual assessments. The rate of assessments shall be prescribed in regulations issued by the Secretary.

(c) The Council may recommend to the Secretary an increase or decrease to the assessment rate. Such an increase or decrease may occur not more than once annually. Any change in the assessment rate shall be subject to rulemaking by the Department.

(d) Each importer of processed raspberries shall pay an assessment to the Council on processed raspberries imported for marketing in the United States, through Customs. If Customs does not collect an assessment from an importer, the importer would be responsible for paying the assessment directly to the Council. The assessment rate for imported processed raspberries would be up to one cent per pound, with the initial rate being one cent per pound.

(1) The assessment rate for imported processed raspberries shall be the same or equivalent to the rate for processed raspberries produced in the United States.

(2) The import assessment shall be uniformly applied to imported processed raspberries that are identified by the numbers 0811.20.20.20, in the Harmonized Tariff Schedule of the United States or any other numbers used to identify processed raspberries.

(3) The assessments due on imported processed raspberries shall be paid when they enter into the United States or are withdrawn for consumption in the United States.

(e) All assessment payments will be submitted to the office of the Council. All final payments for a crop year are to be received no later than October 30 of that year for producers of processed raspberries within the United States. A late payment charge shall be imposed on any handler or importer who fails to remit to the Council, the total amount for which any such first handler or importer is liable on or before the due date established by the Council. In addition to the late payment charge, an

interest charge shall be imposed on the outstanding amount for which the first handler or importer is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(f) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(g) The Council may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

(h) Council may provide credits of assessments for those individuals who contribute to local, regional, or State organizations engaged in similar generic research, promotion, and information programs as partial fulfillment of assessment due to the Council subject to approval of the Secretary, for expenditure on generic research, promotion and information programs conducted within the United States.

(1) No credit will be given for funds expended for administrative purposes.

(2) No credit shall be given for research, promotion, and information program activity conducted outside of the United States.

(3) Credit shall only be given for generic research, promotion, and information program activities.

(4) Credit of assessment may be obtained only by following the procedures prescribed in this section and any regulations recommended by the Council and prescribed by the Secretary. An individual owing assessments shall make a written request to the Council and the request shall contain the assessment paying individual's signature and shall show:

(i) The name and address of the assessment paying individual;

(ii) The name and address of the person who collected the assessment;

(iii) The quantity of processed raspberries on which a credit is requested;

(iv) The total amount of credit requested;

(v) The date or dates on which the assessments were paid;

(vi) A certification that the assessment was not collected from another producer or documentation of assessments collected from local, State, or regional organizations; and

(vii) The individual's signature or properly witnessed mark.

(5) The evidence of payment as required under § 1208.61, or a copy thereof, or such other evidence deemed necessary to the Council shall accompany the individual's credit of assessment request.

§ 1208.53 Exemption procedures.

(a) Any producer who produces less than 20,000 pounds of raspberries for processing annually who desires to claim an exemption from assessments during a fiscal year as provided in § 1208.52 shall apply to the Council, on a form provided by the Council, for a certificate of exemption. Such producer shall certify that the producer's production of raspberries for processing shall be less than 20,000 pounds for the fiscal year for which the exemption is claimed. Any importer who imports less than 20,000 pounds of processed raspberries annually who desires to claim an exemption from assessments during a fiscal year as provided in § 1208.52 shall apply to the Council, on a form provided by the Council, for a certificate of exemption. Such importer shall certify that the importer's importation of processed raspberries shall not exceed 20,000 pounds, for the fiscal year for which the exemption is claimed. If a producer or importer determines at the end of the year that they did not meet the 20,000 pounds minimum, the producer or importers can request a reimbursement on the assessments paid to the Council by 60 days of the end of the fiscal year. If, after a person has been exempt from paying assessments for any year pursuant to this section, and the person no longer meets the requirements of paragraph of this section for an exemption, the person shall file a report with the Council in the form and manner prescribed by the Council and pay an assessment on or before March 15 of the subsequent year on all raspberries for processing produced or processed raspberries importers by such persons during the year for which the person claimed the exemption.

(b) On receipt of an application, the Council shall determine whether an exemption may be granted. The Council will then issue, if deemed appropriate, a certificate of exemption to the producer or importer which is eligible to receive one. Each producer who is exempt from assessment must provide an exemption number as supplied by the Council to the first handler in order to be exempt from the collection of an assessment on processed raspberries. First handlers shall maintain records showing the exemptee's name and address along with the exemption number assigned by the Council.

(c) Importers who are exempt from assessment shall be eligible for reimbursement of assessments collected by Customs and shall apply to the Council for reimbursement of such assessments paid. No interest will be paid on assessments collected by Customs. Requests for reimbursement shall be submitted within 90 days of the last day of the year the processed raspberries were actually imported. Any claim for reimbursement submitted after ninety (90) days will be considered null and void.

(d) Any person who desires an exemption from assessments for a subsequent fiscal year shall reapply to the Council, on a form provided by the Council, for a certificate of exemption.

(e) The Council, with the Secretary's approval, may request that persons claiming an exemption from assessments under § 1208.53 must provide it with any information it deems necessary about the exemption, including, without limitation, the disposition of the exempted commodity.

(f) A first handler who purchases raspberries for processing from a producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, produces only products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation shall be exempt from the payment of assessments.

(g) To obtain this exemption, an eligible first handler shall submit a request for exemption to the Council—on a form provided by the Council—at any time initially and annually thereafter on or before the beginning of the fiscal period as long as the first handler continues to be eligible for the exemption.

(h) The request shall include the following: The first handler's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in the Organic Act, a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Council and with the approval of the Secretary.

(i) If the first handler complies with the requirements of paragraph (f) of this section, the Council will grant an assessment exemption and shall issue a Certificate of Exemption to the first handler. For exemption requests received on or before August 15 of the fiscal year, the Council will have 60 days to approve the exemption request; after August 15 of the fiscal year, the Council will have 30 days to approve the exemption request. If the application is disapproved, the Council will notify the applicant of the reason(s) for disapproval within the same timeframe.

(j) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Council and request an exemption from assessment on 100 percent organic processed raspberries—on a form provided by the Council—at any time initially and annually thereafter on or before the beginning of the fiscal period as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of first handlers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Council will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. The Council will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic processed raspberries bearing this HTS classification assigned by the Council will not be subject to assessments.

(k) The exemption will apply immediately following the issuance of the certificate of exemption.

§ 1208.54 Programs, plans, and projects.

(a) The Council shall receive and evaluate, or on its own initiative, develop and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer industry information, with respect to processed raspberries; and

(2) The establishment and conduct of research with respect to the use, nutritional value, production, health, sale, distribution, and marketing of processed raspberries, and the creation of new products or product development, thereof, to the end that the marketing and use of processed raspberries may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of processed raspberries.

(b) A program, plan, or project may not be implemented prior to approval of the program, plan, or project by the Secretary. No later than forty-five (45) days after the receipt of such program, plan, or project, the Secretary shall notify the Council whether the Secretary approves or disapproves the program, plan, or project. Once a program, plan, or project is so approved, the Council shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Council to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Council that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Council shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading, or disparage another agricultural commodity. Processed raspberries of all origins shall be treated equally.

§ 1208.55 Independent evaluation.

The Council shall, not less often than once every five years, authorize and fund, from funds otherwise available to the Council, an independent evaluation of the effectiveness of the Order and programs conducted by the Council pursuant to the Act. The Council shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1208.56 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Council under this subpart shall be the property of the U.S. Government as represented by the Council and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Council, shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Council, and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1208.73 shall apply to determine disposition of all such property.

Reports, Books, and Records

§ 1208.60 Reports.

(a) Each first handler subject to this subpart may be required to provide to the Council periodically such information as may be required by the Council, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of pounds handled;

(2) Number of pounds on which an assessment was collected;

(3) Name and address of person from whom the first handler has collected the assessments on each pound handled; and

(4) Date collection was made on each pound handled. All reports are due to the Council 30 days after the end of the crop year.

(b) Each importer subject to this subpart may be required to provide to the Council periodically such information as may be required by the Council, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of pounds of processed raspberries imported;

(2) Number of pounds which an assessment was paid;

(3) Name and address of the importer;

(4) Date collection was made on each pound of processed raspberries imported. All reports are due to the Council 30 days after the end of the crop year.

§ 1208.61 Books and records.

Each first handler, producer, and importer subject to this subpart shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two (2) years beyond the fiscal period of their applicability.

§ 1208.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Council, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Council members, producers, importers, exporters, foreign producers, or first handlers. Only those persons having a specific need for such

information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Miscellaneous

§ 1208.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed or prepared by the Council shall be submitted to the Secretary for approval.

§ 1208.71 Referenda.

(a) *Initial referendum.* The Order shall not become effective unless the Order is approved by a majority of producers and importers voting for approval in the initial referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of processed raspberries.

(b) *Subsequent referenda.* Every seven years, the Secretary shall hold a referendum to determine whether producers of raspberry delivered for processing and importers of processed raspberries favor the continuation of the Order. The Order shall continue if it is favored by a majority of producers and importers voting for approval in the referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of processed raspberries. The Secretary will also conduct a subsequent referendum if 10 percent or more of all eligible producers of raspberries for processing and importers of processed raspberries request the Secretary to hold a referendum or if the Council established under § 1208.40 requests that the Secretary hold a referendum. In addition, the Secretary may hold a referendum at any time.

§ 1208.72 Suspension and termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of producers and importers voting for approval who, during a representative period determined by the Secretary, have been engaged in the production or importation of processed raspberries.

(c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than one hundred and eighty (180) days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart.

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1208.73 Proceedings after termination.

(a) Upon the termination of this subpart, the Council shall recommend not more than three of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Council. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Council, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary.

(2) Carry out the obligations of the Council under any contracts or agreements entered into pursuant to the Order.

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Council and the trustees, to such person or persons as the Secretary may direct.

(4) Upon request of the Secretary execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested in the Council or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Council and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to one or more domestic raspberry industry organizations in the interest of continuing processed raspberry promotion, research, and information programs.

§ 1208.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder.

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder.

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1208.75 Personal liability.

No member, alternate member, or employee of the Council shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty or willful misconduct.

§ 1208.76 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1208.77 Amendments.

Amendments to this subpart may be proposed from time to time by the Council or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1208.78 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget

pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is OMB control number 0505–0001, OMB control number 0581–0093, and OMB control number 0581–NEW.

Subpart B—[Reserved]

Dated: April 3, 2009.

Robert C. Keeney,

Acting Associate Administrator.

[FR Doc. E9–7981 Filed 4–8–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1208

[Docket No. AMS–FV–07–0077; FV–07–705–PR]

RIN 0581–AC37

Proposed Processed Raspberry Promotion, Research, and Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, Agriculture, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Processed Raspberry Promotion, Research, and Information Order (Proposed Order) is favored by producers of raspberries for processing and importers of processed raspberries. The Order will be implemented if it is approved by a simple majority of the eligible producers and importers voting in the referendum. These procedures would also be used for any subsequent referendum under the Proposed Order, if it is approved in the initial referendum. The Proposed Order is being published separately in this issue of the **Federal Register**. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act).

DATES: Comments must be received by June 8, 2009. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by June 8, 2009.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments can be made on the Internet at *http://www.regulations.gov* or to the Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, Room 0634–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; Fax (202) 205–2800; Toll Free (888) 720–9917. Comments should reference the docket number, title of action, date, and page number of this issue of the **Federal Register** and will be made available for public inspection at the above address during regular business hours or at *http://www.regulations.gov*.

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address and to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kimberly Coy, Marketing Specialist, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, Room 0634–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244; telephone 202–720–9915 or (888) 720–9917 (toll free) or e-mail *kimberly.coy@usda.gov*.

SUPPLEMENTARY INFORMATION: A referendum will be conducted among eligible producers of raspberries for processing and importers of processed raspberries to determine whether they favor issuance of the proposed Processed Raspberry Promotion, Research, and Information Order (Proposed Order), 7 CFR part 1208. The program will be implemented if it is approved by a simple majority of the producers and importers voting in the referendum. The Proposed Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act), 7 U.S.C. 7411–7425. It would cover domestic producers of raspberries for processing and importers of processed raspberries of 20,000 pounds or more. The Proposed Order is being published separately in this issue of the **Federal Register**.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 524 of the 1996 Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the 1996 Act, a person subject to an order may file a petition with the Department stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law. In the petition, the person may request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of entry of the Department's final ruling.

Initial Regulatory Flexibility Act Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) 5 U.S.C. 601–612, the Department is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The 1996 Act, which authorizes the Department to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The 1996 Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the 1996 Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority

of the volume of the agricultural commodity. In addition, Section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under an order. The Washington Red Raspberry Commission (WRRC) has recommended that the Department conduct a referendum in which approval of the Proposed Order would be based on a simple majority of the producers and importers voting in the referendum. The Department proposes that a referendum be conducted prior to the Proposed Order going into effect.

This proposed rule would establish the procedures under which producers of raspberries for processing and importers of processed raspberries may vote on whether they want a processed raspberry promotion, research, and information program to be implemented. This proposal would add a new subpart which establishes procedures to conduct initial and future referenda. The proposed subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 195 producers of raspberries for processing and 50 importers of processed raspberries who would be subject to the program and eligible to vote in the first referendum. The Small Business Administration, 13 CFR 121.201, defines small agricultural producers as those having annual receipts of $750,000 or less and small agricultural service firms as those having annual receipts of $7.0 million or less. Under these criteria, the majority of producers and importers that would be affected by the referendum procedures would be considered small entities. Producers of raspberries for processing and importers of processed raspberries of less than 20,000 pounds per year would be exempt under this proposed Order.

According to the proponent group, in 2006, there were 195 producers of raspberries for processing and 34 processors of processed raspberries in Oregon and Washington States, which are the principal growing areas in the United States for raspberries destined for processing. Approximately 95 percent of the producers and 100 percent of the raspberry processors qualified under the definition for small business owners. Although California is a significant producer of raspberries, virtually all harvested product is destined for the fresh market. In 2006, there were approximately 50 importers. Based on the Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics, in 2006 two countries accounted for 96 percent of the processed raspberries imported into the United States. These countries and their share of the imports are: Chile (78%) and Canada (18%). It is unknown what percent of importers would qualify as small business. However, the recordkeeping and assessment remittance requirements would be minimal to importers since they are conducted by U.S. Customs and Border Protection Service (Customs) at the time of product entry into the United States.

This proposed rule provides the procedures under which producers of raspberries for processing and importers of processed raspberries may vote on whether they want the Proposed Order to be implemented. In accordance with the provisions of the 1996 Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply. There are approximately 195 producers of raspberries for processing and 50 importers of processed raspberries who would be eligible to vote in the first referendum. Producers of raspberries for processing and importers of processed raspberries of less than 20,000 pounds per year would be exempt from assessments and not eligible to vote in the referendum.

The Department will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producers and importers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this proposed rule are designed to minimize the burden on producers and importers. This rule provides for a ballot to be used by eligible producers and importers to vote in the referendum. The estimated annual cost of providing the information by an estimated 195 producers of raspberries for processing and 50 importers of processed raspberries would be $195.00 for all producers or $1.00 per producer and $50.00 for all importers or $1.00 per importer.

The Department considered requiring eligible voters to vote in person at various USDA offices across the country. The Department also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot would be more cost effective and reliable. USDA will provide easy access to information for potential voters through a toll free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small businesses.

Paperwork Reduction Act

In accordance with the OMB regulation, 5 CFR part 1320, which implements the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

Title: Processed Raspberry Promotion, Research, and Information Order.

OMB Number: 0581–NEW.

Expiration Date of Approval: 3 years from OMB date of approval.

Type of Request: New information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the 1996 Act, to provide the respondents the type of service they request, and to administer the Proposed Order. The ballot is needed for the referendum that will be held to determine whether producers and importers are in favor of the program. The information collected is used by USDA to determine whether a majority of the eligible producers and importers voting in a referendum approve of this program. Producers and importers of 20,000 or more pounds of raspberries for processing or processed raspberries respectively, are eligible to vote in the referendum and shall be entitled to cast only one ballot in the referendum.

Referendum Ballot

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each producer and importer.

Respondents: Producers and importers.

Estimated Number of Respondents: 245.

Estimated Number of Responses per Respondent: 1 every 7 years (0.14).

Estimated Total Annual Burden on Respondents: 8.58 hours.

The ballot will be added to the other information collections approved for use under OMB Number 0581–NEW.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW and the Processed Raspberry Promotion, Research, and Information Order. Comments should be sent in care of Kimberly Coy to the USDA Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Room 0632–S, Washington, DC 20250–0244 and the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503. Comments may also be sent by facsimile to (202) 205–2800 or electronically to *http://www.regulations.gov*.

All comments received will be available for public inspection during regular business hours at the same address and at *http://www.regulations.gov*. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will also become a matter of the public record.

The Agricultural Marketing Service (AMS) 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.

The estimated annual cost of providing the information by an estimated 195 producers of raspberries for processing and 50 importers of processed raspberries would be $195.00 for all producers or $1.00 per producer and $50.00 for all importers or $1.00 per importer.

A 60-day comment period is provided to allow interested persons to comment on this proposed information collection.

Background

The 1996 Act, which authorizes the Department to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Department received the proposal for a new order from the Washington Red Raspberry Commission (WRRC).

The Proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and consumer and industry information for processed raspberries in the United States. The program would be funded by an assessment levied on producers and importers (to be collected by Customs at time of entry into the United States) at an initial rate of one cent per pound. Producers of raspberries for processing and importers of processed raspberries of less than 20,000 pounds per year would be exempt from paying assessments. The assessments would be used to pay for promotion, research, and consumer and industry information; administration, maintenance, and functioning of the proposed National Raspberry Council; and expenses incurred by the Department in implementing and administering the Proposed Order, including referendum costs.

Section 518 of the 1996 Act requires that a referendum be conducted among eligible producers of raspberries for processing and importers of processed raspberries to determine whether they favor implementation of the Order. That section also requires the Proposed Order to be approved by a simple majority of the producers and importers voting in the referendum.

This proposed rule establishes the procedures under which producers of raspberries for processing and importers of processed raspberries may vote on whether they want the processed raspberry promotion, research, and information program to be implemented. There are approximately 245 eligible voters.

This proposed rule would add a new subpart which would establish procedures to be used in this and future referenda. This subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for the raspberry industry.

List of Subjects in 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Processed raspberries, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

1. Subpart B of 7 CFR part 1208 is proposed to be added to Title 7, Chapter XI of the Code of Federal Regulations to read as follows:

PART 1208—PROCESSED RASPBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

* * * * *

Subpart B—Referendum Procedures.

Sec.
1208.100 General.
1208.101 Definitions.
1208.102 Voting.
1208.103 Instructions.
1208.104 Subagents.
1208.105 Ballots.
1208.106 Referendum report.
1208.107 Confidential information.
1208.108 OMB control number.

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

Subpart B—Referendum Procedures

§ 1208.100 General.

Referenda to determine whether eligible producers of raspberries for processing and importers of processed raspberries favor the issuance, amendment, suspension, or termination of the Processed Raspberry Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1208.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Department* means the U.S. Department of Agriculture or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(c) *Eligible producer* means any person who grows 20,000 pounds or

more of raspberries for processing in the United States for sale in commerce, or a person who is engaged in the business of producing, or causing to be produced for any market, raspberries for processing beyond the person's own family use and having value at first point of sale.

(d) *Eligible importer* means any person importing 20,000 or more pounds of processed raspberries into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or handles processed raspberries outside of the United States for sale in the United States, and who is listed as the importer of record for such processed raspberries that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0811.20.20.20, during the representative period. Importation occurs when processed raspberries originating outside of the United States are released from custody by Customs and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced processed raspberries immediately upon release by Customs, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of processed raspberries from Customs when such processed raspberries are entered or withdrawn for consumption in the United States.

(e) *Raspberries* mean and include all kinds, varieties, and hybrids of cultivated raspberries of the genus ''Rubus'' grown in or imported into the United States.

(f) *Processed Raspberries* means raspberries which have been frozen, dried, pureed, made into juice, or delivered in any other form altered by mechanical processes other than fresh.

(g) *Order* means the Processed Raspberry Promotion, Research, and Information Order.

(h) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a raspberry farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(i) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(j) *Representative period* means the period designated by the Department.

(k) *United States* or *U.S.* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1208.102 Voting.

(a) Each eligible producer of raspberries for processing and eligible importer of processed raspberries shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord/tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to process raspberries, in which more than one of the parties is a producer or importer, shall be entitled to cast one ballot in the referendum covering only such producer or importer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail as instructed by the Department.

§ 1208.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1208.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1208.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1208.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§ 1208.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

§ 1208.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0581–NEW.

Dated: April 3, 2009.

Robert C. Keeney,

Acting Associate Administrator.

[FR Doc. E9–8016 Filed 4–8–09; 8:45 am]

BILLING CODE 3410–02–P

Federal Register

Thursday,
April 9, 2009

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005 et al.

Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126 and 1131

[Doc. No. AO–14–A78, et al.; DA–09–02; AMS–09–0007]

Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: A national public hearing is being held to consider and take evidence on proposals seeking to amend or remove the producer-handler provisions and revise the exempt plant provisions applicable to all Federal milk marketing orders. Additionally, a proposal seeking to amend the orders to include provisions related to individual handler pools will be considered as an alternative to the producer-handler provisions.

DATES: The hearing will convene at 1 p.m., on Monday, May 4, 2009.

ADDRESSES: The hearing will be held at The Westin, Cincinnati, 21 East Fifth Street, Cincinnati, Ohio 45202, phone (513) 621–7700.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Senior Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, Stop 0231–Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address: *gino.tosi@ams.usda.gov.*

Persons requiring a sign language interpreter or other special accommodations should contact Paul Huber, Assistant Market Administrator, at (330) 225–4758; e-mail: *phuber@fmmaclev.com* before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at The Westin, Cincinnati, Cincinnati, Ohio, beginning at 1 p.m. on Monday, May 4, 2009, with respect to proposed amendments to the marketing agreements and to the orders regulating the handling of milk in all Federal milk marketing orders.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA). The RFA seeks to ensure that, within the statutory authority of a program, the regulatory and information collection requirements are tailored to the size and nature of small businesses. For the purpose of the RFA, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees (13 CFR 121.201). Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may offer modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the United States Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, has its principle place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Administrative Law Judge at the hearing with (4) copies of such exhibits for the official record. Additional copies should be made available for the use by other hearing participants. Any party that has submitted a proposal noticed herein, when participating as a witness, is required to make their testimony—if prepared as an exhibit—and any other exhibits, available to USDA officials prior to the start of the hearing on the day of their appearance. Individual dairy farmers are not subject to this requirement.

The hearing will continue until such time as determined to have ended by the presiding Administrative Law Judge. The schedule for the next session will be announced at the time of adjournment. Such reconvening date and time will also be posted on the AMS-Dairy Programs Web site at *http://www.ams.usda.gov/dairy*.

The proposed amendments, as set forth below, have not received the approval of USDA.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126 and 1131

Milk marketing orders.

The authority citation for 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126 and 1131 read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

Proposed by National Milk Producers Federation and International Dairy Foods Association.

Proposal No. 1

This proposal seeks to eliminate the producer-handler provisions from all orders.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

§ 1000.8 [Amended]

1. Amend § 1000.8 by:

(1) Removing paragraph (b); and

(2) Redesignating paragraphs (c), (d) and (e) as (b), (c) and (d).

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

§ 1001.10 [Removed]

2. Remove and reserve § 1001.10.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

§ 1005.10 [Removed]

3. Remove and reserve § 1005.10.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

§ 1006.10 [Removed]

4. Remove and reserve § 1006.10.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

§ 1007.10 [Removed]

5. Remove and reserve § 1007.10.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

§ 1030.10 [Removed]

6. Remove and reserve § 1030.10.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

§ 1032.10 [Removed]

7. Remove and reserve § 1032.10.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

§ 1033.10 [Removed]

8. Remove and reserve § 1033.10.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

§ 1124.10 [Removed]

9. Remove and reserve § 1124.10.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

§ 1126.10 [Removed]

10. Remove and reserve § 1126.10.

PART 1131—MILK IN THE ARIZONA MARKETING AREA

§ 1131.10 [Removed]

11. Remove and reserve § 1131.10.

Proposal No. 2

This proposal seeks to modify the exempt plant provision by: (1) Increasing the current limit on monthly route disposition and packaged sales of fluid milk products to other plants from 150,000 pounds or less during the month to 450,000 pounds or less during the month; (2) applying the 450,000 pound per month threshold to a plant's total monthly disposition; and (3) limiting exemption status to plants that produce uniquely labeled products.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

12. Amend § 1000.8 by revising paragraph (e)(4) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(e) * * *

(4) A plant that in all markets has route disposition and packaged sales of fluid milk products to other plants of 450,000 pounds or less during the month, all of which are uniquely branded.

Proposed by Hatchland Farm, LLC.

Proposal No. 3

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of the Northeast order if their Class I route disposition exceeds 3,000,000 pounds of milk per month.

PART 1001—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

13. Amend § 1001.10 by revising paragraph (a) to read as follows:

§ 1001.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month;

* * * * *

Proposed by Lochmead Dairy.

Proposal No. 4

This proposal seeks to revise the producer-handler provisions in all orders except the Pacific Northwest and Arizona orders. Specifically, this proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of their respective orders if their Class I route disposition exceeds 3,000,000 pounds of milk per month.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

14. Amend § 1001.10 by revising paragraph (a) to read as follows:

§ 1001.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month;

* * * * *

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

15. Amend § 1005.10 by revising paragraph (a) to read as follows:

§ 1005.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month;

* * * * *

PART 1006—MILK IN THE FLORIDA MARKETING AREA

16. Amend § 1006.10 by revising paragraph (a) to read as follows:

§ 1006.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month;

* * * * *

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

17. Amend § 1007.10 paragraph (a) to read as follows:

§ 1007.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month;

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

18. Amend § 1030.10 by revising paragraph (a) to read as follows:

§ 1030.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month;

* * * * *

PART 1032—MILK IN THE CENTRAL MARKETING AREA

19. Amend § 1032.10 by revising paragraph (a) to read as follows:

§ 1032.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing

area during the month not to exceed 3,000,000 pounds per month;

* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

20. Amend § 1033.10 by revising paragraph (a) to read as follows:

§ 1033.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month;

* * * * *

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

21. Amend § 1126.10 by revising paragraph (a) to read as follows:

§ 1126.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month;

* * * * *

Proposed by Homeland Creamery and Maple View Farm Milk Co., LLC.

Proposal No. 5

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of the Appalachian, Florida and Southeast milk marketing orders if their Class I route disposition and packaged sales of fluid milk products to other plants exceeds 750,000 pounds of milk per month.

PART 1005—MILK IN THE APPALACHIAN MILK MARKETING ORDER

22. Amend § 1005.10 by revising paragraph (a) to read as follows:

§ 1005.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition and packaged sales of fluid milk products within the marketing area during the month not to exceed 750,000 pounds per month, all of which are uniquely branded;

* * * * *

PART 1006—MILK IN THE FLORIDA MILK MARKETING ORDER

23. Amend § 1006.10 by revising paragraph (a) to read as follows:

§ 1006.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition and packaged sales of fluid milk products within the marketing area during the month not to exceed 750,000 pounds per month, all of which are uniquely branded;

* * * * *

PART 1007—MILK IN THE SOUTHEAST MILK MARKETING ORDER

24. Amend § 1007.10 by revising paragraph (a) to read as follows:

§ 1007.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition and packaged sales of fluid milk products within the marketing area during the month not to exceed 750,000 pounds per month, all of which are uniquely branded;

* * * * *

Proposal No. 6

This proposal seeks to amend the exempt plant provision for the Appalachian, Florida and Southeast milk marketing orders by increasing the current limit on monthly route disposition and packaged sales of fluid milk products to other plants from 150,000 pounds or less during the month to 750,000 pounds or less during the month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

25. Amend § 1000.8 by revising paragraph (e)(4) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(e) * * *

(4) A plant that has route disposition and packaged sales of fluid milk products to other plants of 150,000 pounds or less during the month, except in the Appalachian, Florida and Southeast milk marketing orders.

PART 1005—MILK IN THE APPALACHIAN MILK MARKETING ORDER

26. Revise § 1005.8 to read as follows:

Nonpool plant means any milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *A fully regulated plant regulated under another Federal order* means a plant that is fully subject to the pricing and pooling provisions of another Federal order.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined under any Federal order.

(c) *Partially regulated distributing plant* means a nonpool plant that is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant, from which there is route disposition in the marketing area during the month.

(d) *Unregulated supply plant* means a supply plant that does not qualify as a pool supply plant and is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant.

(e) *An exempt plant* means a plant described in this paragraph that is exempt from the pricing and pooling provisions of any order provided that the operator of the plant files reports as prescribed by the market administrator of any marketing area in which the plant distributes packaged fluid milk products to enable determination of the handler's exempt status:

(1) A plant that is operated by a governmental agency that has no route disposition incommercial channels;

(2) A plant that is operated by a duly accredited college or university disposing of fluid milk products only through operation of its own facilities with no route disposition in commercial channels;

(3) A plant from which the total route disposition is for individuals or institutions for charitable purposes without remuneration; or

(4) A plant that route disposition and packaged sales of fluid milk products to other plants of 750,000 pound or less during the month.

PART 1006—MILK IN THE FLORIDA MILK MARKETING ORDER

27. Revise § 1006.8 to read as follows:

Nonpool plant means any milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) A fully regulated plant regulated under another Federal order means a plant that is fully subject to the pricing and pooling provisions of another Federal order.

(b) Producer-handler plant means a plant operated by a producer-handler as defined under any Federal order.

(c) Partially regulated distributing plant means a nonpool plant that is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant, from which there is route disposition in the marketing area during the month.

(d) Unregulated supply plant means a supply plant that does not qualify as a pool supply plant and is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant.

(e) An exempt plant means a plant described in this paragraph that is exempt from the pricing and pooling provisions of any order provided that the operator of the plant files reports as prescribed by the market administrator of any marketing area in which the plant distributes packaged fluid milk products to enable determination of the handler's exempt status:

(1) A plant that is operated by a governmental agency that has no route disposition in commercial channels;

(2) A plant that is operated by a duly accredited college or university disposing of fluid milk products only through operation of its own facilities with no route disposition in commercial channels;

(3) A plant from which the total route disposition is for individuals or institutions for charitable purposes without remuneration; or

(4) A plant that route disposition and packaged sales of fluid milk products to other plants of 750,000 pound or less during the month.

PART 1007—MILK IN THE SOUTHEAST MILK MARKETING ORDER

28. Revise § 1007.8 to read as follows:

Nonpool plant means any milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) A fully regulated plant regulated under another Federal order means a plant that is fully subject to the pricing and pooling provisions of another Federal order.

(b) Producer-handler plant means a plant operated by a producer-handler as defined under any Federal order.

(c) Partially regulated distributing plant means a nonpool plant that is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant, from which there is route disposition in the marketing area during the month.

(d) Unregulated supply plant means a supply plant that does not qualify as a pool supply plant and is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant.

(e) An exempt plant means a plant described in this paragraph that is exempt from the pricing and pooling provisions of any order provided that the operator of the plant files reports as prescribed by the market administrator of any marketing area in which the plant distributes packaged fluid milk products to enable determination of the handler's exempt status:

(1) A plant that is operated by a governmental agency that has no route disposition in commercial channels;

(2) A plant that is operated by a duly accredited college or university disposing of fluid milk products only through operation of its own facilities with no route disposition in commercial channels;

(3) A plant from which the total route disposition is for individuals or institutions for charitable purposes without remuneration; or

(4) A plant that route disposition and packaged sales of fluid milk products to other plants of 750,000 pound or less during the month.

Proposed by Dunajski Dairy.

Proposal No. 7

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of the Northeast order if their Class I route disposition exceeds 3,000,000 pounds of milk per month.

PART 1001—MILK IN THE NORTHEAST MILK MARKETING ORDER

29. Amend § 1001.10 by revising paragraph (a) to read as follows:

§ 1001.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month.

* * * * *

Proposed by Administrator, Division of Agricultural Development, Wisconsin Department of Agriculture, Trade and Consumer Protection.

Proposal No. 8

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of all orders if their Class I route disposition exceeds 2,000,000 pounds of milk per month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

30. Amend § 1000.8 by revising paragraph (b) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined under any Federal order provided the producer-handler in all markets has route disposition and packaged fluid sales of fluid milk products of 2,000,000 million pounds or less during the month.

* * * * *

Proposal No. 9

This proposal seeks to amend the exempt plant provision for all milk orders by increasing the current limit on monthly route disposition and packaged sales of fluid milk products to other plants from 150,000 pounds or less during the month to 2,000,000 pounds or less during the month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

31. Amend § 1000.8 by revising paragraph (e)(4) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(e) * * *

(4) A plant that in all markets has route disposition and packaged sales of fluid milk products to other plants of 2,000,000 pounds or less during the month.

Proposed by Way-Har Farms.

Proposal No. 10

This proposal seeks to amend the exempt plant provision for all milk orders by increasing the current limit on monthly route disposition and packaged sales of fluid milk products to other plants from 150,000 pounds or less during the month to 450,000 pounds or less during the month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

32. Amend § 1000.8 by revising paragraph (e)(4) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(e) * * *

(4) A plant that has route disposition and packaged sales of fluid milk products to other plants of 450,000 pounds or less during the month.

Proposed by Shatto Farms, Inc.

Proposal No. 11

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of all orders if their Class I route disposition exceeds 1,000,000 pounds of milk per month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

33. Amend § 1000.8 by revising paragraph (b) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined under any Federal order provided the producer-handler has route disposition and packaged fluid sales of fluid milk products of 1,000,000 million pounds or less during the month.

* * * * *

Proposal No. 12

This proposal seeks, assuming elimination of producer-handler's exemption from pricing and pooling provisions of the orders, to amend the exempt plant provision for all milk orders by increasing the current limit on monthly route disposition and packaged sales of fluid milk products to other plants from 150,000 pounds or less during the month to 1,000,000 pounds or less during the month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

34. Amend § 1000.8 by revising paragraph (e)(4) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(e) * * *

(4) A plant that has route disposition and packaged sales of fluid milk products to other plants of 1,000,000 pounds or less during the month.

Proposal No. 13

Proposed by New England Producer-Handlers Association, Inc. et al.

This proposal seeks to expand the producer-handler exemption from pricing and pooling provisions, in all orders, to apply to the Class I route disposition and packaged sales of fluid milk products of handlers who operate, in common, a milk production facility and the processing and packaging facility used to process and package the raw milk from the aforementioned milk production facility, up to 3,000,000 pounds per month. Should this proposal not be adopted in all orders, then it shall apply exclusively to the Northeast and Appalachian milk marketing orders.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

35. Amend § 1000.8 by revising paragraph (b) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined under any Federal order provided that the producer-handler:

(1) Owns or operates, in common, the processing and packaging operations and the dairy animals and other necessary resources to produce all Class I milk handled, up to 3,000,000 pounds of route disposition and packaged fluid sales of fluid milk products during the month. All Class I route disposition and packaged sales of fluid milk products above 3,000,000 pounds per month will be subject to the pricing and pooling provisions of the order.

(b) [Reserved]

* * * * *

Proposal No. 14

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

36. Amend § 1000.8 by revising paragraph (e)(4) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(e) * * *

(4) A plant that has route disposition and packaged sales of fluid milk products to other plants of up to 3,000,000 pounds or less during the month. All Class I route disposition and packaged sales of fluid milk products above 3,000,000 pounds per month will be subject to the pricing and pooling provisions of the order.

Proposed by Coopers' Hilltop Farm.

Proposal No. 15

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of the Northeast order if their Class I route disposition exceeds 3,000,000 pounds of milk per month.

PART 1001—MILK IN THE NORTHEAST MILK MARKETING ORDER

37. Amend § 1001.10 by revising paragraph (a) to read as follows:

§ 1001.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month.

* * * * *

Proposal No. 16

This proposal seeks to amend the exempt plant provision for all milk orders by increasing the current limit on monthly route disposition and packaged sales of fluid milk products to other plants from 150,000 pounds or less during the month to 450,000 pounds or less during the month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

38. Amend § 1000.8 by revising paragraph (e)(4) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(e) * * *

(4) A plant that has route disposition and packaged sales of fluid milk products to other plants of 450,000 pounds or less during the month.

Proposed by Mallorie's Dairy, Inc, Country Morning Farms and Nature's Dairy.

Proposal No. 17

This proposal seeks to exempt, from pricing and pooling provisions, the own-farm milk of handlers—who are either producer-handlers, exempt plants, or non-pool plants—with own-farm production during at least 3 consecutive months during the 24-month period immediately prior to the effective date of this proposal, should it be adopted. The exemption would apply to the lesser of: (1) A monthly volume based on the daily average milk production marketed from the handler's own-farm during any 3 consecutive months of production from January 2007 through February 2009; or (2) 3,000,000 pounds per month, with an additional allowance of up to 10 percent additional own-farm production for non-Class I balancing. Under this proposal any milk in excess of the defined exemption would be subject to the pricing and pooling provisions of the respective order.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

39. Add new § 1000.10 to read as follows:

§ 1000.10 Pool-exempt own-farm production of distributing plants.

Any handler operating a plant subject to regulation as a pool distributing plant, as defined in §____.7 of any milk

marketing order, or as a partially regulated distributing plant under any milk marketing order, may make a one-time election to exempt the handler's own-farm milk production from the volume of producer milk receipts eligible to participate in the marketwide pool as ''producer milk,'' and otherwise subject to producer-settlement fund payment obligations under §§____.71 and ____.72 of the milk marketing order, or § 1000.76(b) of the General Provisions. Such election and exemption shall be subject to the following conditions and limitations:

(a) Volume limitation for pool-exempt own-farm milk production. The volume of own-farm milk production that a distributing plant handler may elect to exempt under this section shall, for any month, be the lesser of:

(1) A monthly volume based on the daily average milk production marketed from the handler's own-farm(s) during any three consecutive months of production, as designated by the handler and subject to verification by the market administrator, from January 2007 through February 2009, or

(2) A daily average production of 110,000 pounds times the number of days in the month to which the exemption may apply provided that the volume of packaged fluid milk products distributed on routes from such pool-exempt production shall in no event exceed a daily average of 100,000 pounds. Own-farm production of the handler in excess of the exempt volume shall be subject to producer-settlement fund payment obligations in the same manner as milk produced by any dairy farmer.

(b) Limitations based upon prior operations of handlers eligible elect exemption for own-farm milk production. Handlers with own-farm production are not eligible to elect pool exemption for such production under this section unless the handler operated a distributing plant supplied with milk from its own-farm(s) during at least three consecutive months during the 24-month period immediately preceding the effective date of this section, and the distributing plant was either: a producer-handler plant, an exempt plant, or a non-pool plant during those months.

(c) Limitations based upon common ownership in the handler's plant and farm facilities. As used in this section, ''own-farm'' means any dairy farm(s) of the handler that is owned by the same person or persons who own and operate the handler plant facility, and their ownership in the farm(s) is at least 95 percent identical with their ownership in the handler. Additionally,

(1) Owners of the handler and associated producer shall not exceed 10 individual persons or owners of equitable interest in the handler or producer business entity,

(2) For purposes of this section, ownership held by members of a family shall be considered single ownership by one person. Members of a family for purposes of such single ownership include only: A spouse, a former spouse, and persons of lineal consanguinity of the first or second degree or collateral consanguinity to the fourth degree, and their spouses (or former spouses), and includes an adopted child the same as a natural child and kindred of the half blood equally with those of the whole blood of the owner(s).

(3) Property pledged or hypothecated in any manner to others shall nevertheless be considered ''owned'' if equitable ownership with management and control remain with the persons operating the plant and associated dairy farm(s).

(d) Date upon which, and manner in which, the one-time election must be exercised. The market administrator shall provide timely notice in writing to handlers with own-farm production who are or may be eligible to elect a pool exemption for such production under this section. The election for pool-exempt own-farm production shall be exercised by an eligible handler by giving notice of election in writing to the market administrator, which notice shall contain facts upon which the handler claims to qualify under this section, on or before:

(1) Thirty days after the effective date of this provision; or

(2) For a handler with own-farm production on the effective date of this provision, but without route disposition in any Federal milk marketing area for twelve months preceding the effective date, thirty days following first route disposition in the marketing area, or fifteen days after notice by the market administrator, whichever is later.

(e) Applicability of minimum classified prices to handlers with pool-exempt own-farm milk. Exemption from payment obligations in §§ ____.71 and ____.72 for own-farm milk under this section shall not constitute an exemption for own-farm milk from compliance with minimum classified price obligations. For payment purposes, the handler will be deemed to have paid to its own-farm a price for pool-exempt own-farm milk equal to its butterfat and skim milk (or skim components) value, as provided by calculations for ''handler's value of milk'' in §____.60 of the marketing order.

(f) Waiver or loss of eligibility for pool-exempt own-farm production. The own-farm production of any handler

(1) Who has failed to make the election provided by this section;

(2) Who, after making the election, fails to conform with any limitation or requirement for such exemption; or

(3) Who has given notice in writing to the market administrator that it no longer wishes to exempt its own-farm production from the pool, shall be regulated, pooled, and priced in the same manner as milk produced by any dairy farm not eligible for pool exemption, and the handler shall not thereafter be eligible to exercise the exemption provided herein.

40. Amend § 1000.14 by adding new paragraph (d) to read as follows:

* * * * *

(d) Receipts of fluid milk products and bulk fluid cream products from any dairy farm eligible to market pool-exempt own-farm milk pursuant to § ____.10, except with respect to such receipts by the distributing plant owned in common with the farm as described in § ____.10.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

41. Amend § 1001.60 by adding new paragraph (j) to read as follows:

§ 1001.60 Handler's value of milk.

* * * * *

(j) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to §____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§____.61 and ____.71 through ____.76.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

42. Amend § 1005.60 by adding new paragraph (h) to read as follows:

§ 1005.60 Handler's value of milk.

* * * * *

(h) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk

of the handler qualified for exemption pursuant to §____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§____.61 and ____.71 through ____.76.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

43. Amend § 1006.60 by adding new paragraph (h) to read as follows:

§ 1006.60 Handler's value of milk.

* * * * *

(h) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to §____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§____.61 and ____.71 through ____.76.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

44. Amend § 1007.60. by adding new paragraph (h) to read as follows:

§ 1007.60 Handler's value of milk.

* * * * *

(h) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to §____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§____.61 and ____.71 through ____.76.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

45. Amend § 1030.60 by adding new paragraph (l) to read as follows:

§ 1030.60 Handler's value of milk.

* * * * *

(l) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to §____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§____.61 and ____.71 through ____.76.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

46. Amend § 1032.60 by adding new paragraph (k) to read as follows:

§ 1032.60 Handler's value of milk.

* * * * *

(k) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to §____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§____.61 and ____.71 through ____.76.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

47. Amend § 1033.60 by adding new paragraph (k) to read as follows:

§ 1033.60 Handler's value of milk.

* * * * *

(k) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to §____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§____.61 and ____.71 through ____.76.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

48. Amend § 1124.60 by adding new paragraph (j) to read as follows:

§ 1124.60 Handler's value of milk.

* * * * *

(j) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to §____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§____.61 and ____.71 through ____.76.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

49. Amend § 1126.60 by adding new paragraph (k) to read as follows:

§ 1126.60 Handler's value of milk.

* * * * *

(k) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to §____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§____.61 and ____.71 through ____.76.

PART 1131—MILK IN THE ARIZONA MARKETING AREA

50. Amend § 1131.60 by adding new paragraph (g) to read as follows:

§ 1131.60 Handler's value of milk.

* * * * *

(g) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to §____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§____.61 and ____.71 through ____.76.

Proposed by Hornstra Farms.

Proposal No. 18

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of all orders if their production exceeds 1,500,000 pounds of milk per month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

51. Amend § 1000.8 by revising paragraph (b) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined under any Federal order provided the producer-handler in all markets has milk production of 1,500,000 million pounds or less during the month.

* * * * *

Proposed Pennsylvania Association of Milk Dealers.

Proposal No. 19

This proposal seeks to amend the exempt plant provision for all milk orders by increasing the current limit on monthly route disposition and packaged sales of fluid milk products to other plants from 150,000 pounds or less during the month to 450,000 pounds or less during the month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

52. Amend § 1000.8 by revising paragraph (e)(4) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(e) * * *

(4) A plant that in all markets has route disposition and packaged sales of fluid milk products to other plants of 450,000 pounds or less during the month.

Proposed by Select Milk Producers, Inc. and Continental Dairy Products, Inc.

Proposal No. 20

This proposal would establish a one-time exemption from pricing and pooling provisions for certain types of handlers.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

53. Add new section § 1000.10 to read as follows:

1000.10 Pool-exempt own-farm production of distributing plants.

Any handler operating a plant subject to regulation as a pool distributing plant, as defined in § ____.7 of any milk marketing order, or as a partially regulated distributing plant under any milk marketing order, may make a one-time election to exempt the handler's own-farm milk production from the volume of producer milk receipts otherwise subject to producer-settlement fund payment obligations under §§ ____.71 and ____.72 of the milk marketing order, or § 1000.76 of the General Provisions. Such election and exemption shall be subject to the following conditions and limitations:

(a) *Volume limitation for pool-exempt own-farm milk production.* The volume of own-farm milk production that a distributing plant handler may elect to exempt under this section shall, for any month, be the *lesser* of:

(1) A monthly volume based on the daily average milk production marketed from the handler's own-farm(s) during any three consecutive months of production, as designated by the handler and subject to verification by the market administrator, from January 2007 through February 2008, or,

(2) A daily average production of 100,000 pounds times the number of days in the month to which the exemption may apply. Own-farm production of the handler in excess of the exempt volume shall be subject to producer-settlement fund payment obligations in the same manner as milk produced by any dairy farmer.

(b) *Limitations based upon prior operations of handlers eligible elect exemption for own-farm milk production.* Handlers with own-farm production are not eligible to elect pool exemption for such production under this section unless:

(1) The handler operated a distributing plant supplied with milk from its own-farm(s) during at least three consecutive months from January 2007 through February 2008, and

(2) Milk produced by the own-farm(s) that supplied the handler's distributing plant was not received as producer milk at the pool plant of any other handler under any Federal milk marketing order at any time after February 2008.

(c) *Limitations based upon ownership in the handler's plant and farm facilities.* Handlers with own-farm production are not eligible to elect own-farm pool exemption under this section unless all of the ownership of the handler as plant operator and all of the ownership of the dairy farm(s) is owned by the same person or persons, and their ownership in the producer is at least 95 percent identical with their ownership in the handler. Additionally,

(1) Owners of the plant and associated producer shall not exceed 10 individual persons or owners of equitable interest in the handler or producer business entity,

(2) For purposes of this section, a ''person'' or ''persons'' includes the spouse, or other persons of lineal consanguinity of the first or second degree or collateral consanguinity to the fourth degree, and their spouses, and includes an adopted child the same as a natural child and kindred of the half blood equally with those of the whole blood of the owner and ownerships by persons so related shall be considered single ownership by one person.

(3) For purposes of this section, property pledged or hypothecated in any manner to others shall nevertheless be considered ''owned'' if equitable ownership with management and control remain with the persons operating the plant and associated dairy farm(s).

(d) *Date upon which, and manner in which, the one-time election must be exercised.* The market administrator shall provide timely notice in writing to handlers with own-farm production who are or may be eligible to elect a pool exemption for such production under this section. The election for pool-exempt own-farm production shall be exercised by an eligible handler by giving notice of election in writing to the market administrator, which notice shall contain facts upon which the handler claims to qualify under this section, on or before:

(1) Thirty days after the effective date of this provision; or

(2) For a handler with own-farm production on the effective date of this provision, but without route disposition in any Federal milk marketing area for 12 months preceding the effective date, 30 days following first route disposition in the marketing area, or 15 days after notice by the market administrator, whichever is later.

(e) *Applicability of minimum classified prices to handlers with pool-exempt own-farm milk.* Exemption from payment obligations in §§ ____.71 and ____.72 for own-farm milk under this section shall not constitute an exemption for own-farm milk from compliance with minimum classified price obligations. For payment purposes, the handler will be deemed to have paid to its own-farm a price for pool-exempt own-farm milk equal to its butterfat and skim milk (or skim components) value, as provided by calculations for a handler's value of milk in § ____.60 of the marketing order.

(f) *Waiver or loss of eligibility for pool-exempt own-farm production.* The own-farm production of any handler

(1) Who has failed to make the election provided by this section;

(2) Who, after making the election, fails to conform with any limitation or requirement for such exemption for any

period in which it fails to so conform; or

(3) Who has given notice in writing to the market administrator that it no longer wishes to exempt its own-farm production from the pool shall be regulated and priced in the same manner as milk produced by any dairy farm not eligible for pool exemption, and the handler shall not thereafter be eligible to exercise the exemption provided herein.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

54. Amend § 1000.14 by adding paragraph (d) to read as follows:

* * * * *

(d) Receipts of fluid milk products and bulk fluid cream products from any dairy farm eligible to market pool-exempt own-farm milk pursuant to § ____.10, except with respect to such receipts by the distributing plant owned in common with the farm as described in § ____.10.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

55. Revise § 1001.10 to read as follows:

§ 1001.10 Producer-handler.

See § 1000.10.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

56. Revise § 1005.10 to read as follows:

§ 1005.10 Producer-handler.

See § 1000.10.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

57. Revise § 1006.10 to read as follows:

§ 1006.10 Producer-handler.

See § 1000.10.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

58. Revise § 1007.10 to read as follows:

§ 1007.10 Producer-handler.

See § 1000.10.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

59. Revise § 1030.10 to read as follows:

§ 1030.10 Producer-handler.

See § 1000.10.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

60. Revise § 1032.10 to read as follows:

§ 1032.10 Producer-handler.

See § 1000.10.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

61. Revise § 1033.10 to read as follows:

§ 1033.10 Producer-handler.

See § 1000.10.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

62. Revise § 1124.10 to read as follows:

§ 1124.10 Producer-handler.

See § 1000.10.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

63. Revise § 1126.10 to read as follows:

§ 1126.10 Producer-handler.

See § 1000.10.

PART 1131—MILK IN THE ARIZONA MARKETING AREA

64. Revise § 1131.10 to read as follows:

§ 1131.10 Producer-handler.

See § 1000.10.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

65. Amend § 1001.60 by adding paragraph (j) to read as follows:

§ 1001.60 Handler's value of milk.

* * * * *

(j) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§ ____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § ____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ ____.61 and ____.71 through ____.76.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

66. Amend § 1005.60 by adding paragraph (h) to read as follows:

§ 1005.60 Handler's value of milk.

* * * * *

(h) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§ ____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § ____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ ____.61 and ____.71 through ____.76.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

67. Amend § 1006.60 by adding paragraph (h) to read as follows:

§ 1006.60 Handler's value of milk.

* * * * *

(h) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§ ____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § ____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ ____.61 and ____.71 through ____.76.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

68. Amend § 1007.60 by adding paragraph (h) to read as follows:

§ 1007.60 Handler's value of milk.

* * * * *

(h) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§ ____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § ____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ ____.61 and ____.71 through ____.76.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

69. Amend § 1030.60 by adding paragraph (l) to read as follows:

§ 1030.60 Handler's value of milk.

* * * * *

(l) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§ ____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § ____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ ____.61 and ____.71 through ____.76.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

70. Amend § 1032.60 by adding paragraph (k) to read as follows:

§ 1032.60 Handler's value of milk.

* * * * *

(k) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§ ____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § ____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ ____.61 and ____.71 through ____.76.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

71. Amend § 1033.60 by adding paragraph (k) to read as follows:

§ 1033.60 Handler's value of milk.

* * * * *

(k) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§ ____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § ____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ ____.61 and ____.71 through ____.76.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

72. Amend § 1124.60 by adding paragraph (j) to read as follows:

§ 1124.60 Handler's value of milk.

* * * * *

(j) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§ ____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § ____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ ____.61 and ____.71 through ____.76.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

73. Amend § 1126.60 by adding paragraph (k) to read as follows:

§ 1126.60 Handler's value of milk.

* * * * *

(k) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§ ____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § ____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ ____.61 and ____.71 through ____.76.

PART 1131—MILK IN THE ARIZONA MARKETING AREA

74. Amend § 1131.60 by adding paragraph (g) to read as follows:

§ 1131.60 Handler's value of milk.

* * * * *

(g) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§ ____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § ____.10 shall not be included as part of the ''total value'' of milk, ''total hundredweight'' of producer milk, or ''total pounds'' of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ ____.61 and ____.71 through ____.76.

Proposal No. 21

This proposal seeks to end the regulatory exemption of producer-handlers from the pricing and pooling provisions of all orders, except the Pacific Northwest and Arizona milk marketing orders, if their route disposition exceeds 3,000,000 pounds of milk per month.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

75. Amend § 1001.10 by revising paragraph (a) to read as follows:

§ 1001.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area, not to exceed 3 million pounds;

* * * * *

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

76. Amend § 1005.10 by revising paragraph (a) to read as follows:

§ 1005.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area, not to exceed 3 million pounds;

* * * * *

PART 1006—MILK IN THE FLORIDA MARKETING AREA

77. Amend § 1006.10 by revising paragraph (a) to read as follows:

§ 1006.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area, not to exceed 3 million pounds;

* * * * *

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

78. Amend § 1007.10 by revising paragraph (a) to read as follows:

§ 1007.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area, not to exceed 3 million pounds;

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

79. Amend § 1030.10 by revising paragraph (a) to read as follows:

§ 1030.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area, not to exceed 3 million pounds;

* * * * *

PART 1032—MILK IN THE CENTRAL MARKETING AREA

80. Amend § 1032.10 by revising paragraph (a) to read as follows:

§ 1032.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area, not to exceed 3 million pounds;

* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

81. Amend § 1033.10 by revising paragraph (a) to read as follows:

§ 1033.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area, not to exceed 3 million pounds;

* * * * *

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

82. Amend § 1126.10 by revising paragraph (a) to read as follows:

§ 1126.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area, not to exceed 3 million pounds;

* * * * *

Proposed by Northeast Dairy Foods Association, Inc.

Proposal No. 22

This proposal seeks to eliminate the producer-handler provision of all orders.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

§ 1000.8 [Amended]

83. Amend § 1000.8 by:

(1) Removing paragraph (b); and

2) Redesignating paragraphs (c), (d) and (e) as (b), (c) and (d).

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

§ 1001.10 [Removed]

84. Remove and reserve § 1001.10.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

§ 1005.10 [Removed]

85. Remove and reserve § 1005.10.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

§ 1006.10 [Removed]

86. Remove and reserve § 1006.10.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

§ 1007.10 [Removed]

87. Remove and reserve § 1007.10.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

§ 1030.10 [Removed]

88. Remove and reserve § 1030.10.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

§ 1032.10 [Removed]

89. Remove and reserve § 1032.10.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

§ 1033.10 [Removed]

90. Remove and reserve § 1033.10.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

§ 1124.10 [Removed]

91. Remove and reserve § 1124.10.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

§ 1126.10 [Removed]

92. Remove and reserve § 1126.10.

PART 1131—MILK IN THE ARIZONA MARKETING AREA

§ 1131.10 [Removed]

93. Remove and reserve § 1131.10.

Proposed by American Independent Dairy Alliance.

Proposal No. 23

This proposal would remove the producer-handler provision from all milk orders and establish a provision to exempt, from regulation, milk procured from a farm owned by a handler. Additionally, this proposal seeks to treat handlers with own-farm production as partially regulated distributing plants.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

§ 1000.8 [Amended]

94. Amend § 1000.8 by:

(1) Removing paragraph (b); and

(2) Redesignating paragraphs (c), (d) and (e) as (b), (c) and (d).

95. Amend § 1000.76 by adding paragraph (e) to read as follows:

§ 1000.76 Payments by a handler operating a partially regulated distributing plant.

* * * * *

(e) Any handler may elect partially regulated distributing plant status for any pool plant with respect to receipts of milk from a dairy farm owned and operated by the handler (hereinafter ''own farm production''), subject to the following conditions:

(1) The handler provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce own farm milk, and the processing and packaging operations, are the plant operator's own enterprise and at its own risk;

(2) Packaged fluid milk products distributed from the plant are not sold or marketed below the handler's costs, provided:

(i) Handler's costs shall be Class I prices plus costs of manufacturing, processing, handling, marketing and delivery,

(ii) The Deputy Administrator, Dairy Programs, may issue rules and procedures for determining handler's costs, or to evaluate any complaint by any person that a handler subject to this paragraph (e) is marketing packaged fluid milk products below cost.

(3) The volume of own farm production of milk (or of milk components in own farm production) shall be deemed to be received and paid for by the handler at a price equal to the distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, and shall not be included in the volume of milk or milk components that are subject to payments to or from the producer settlement fund pursuant to §§ ____.71 or ____.72 of any order.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

96. Revise § 1001.10 to read as follows:

§ 1001.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§ ____.71 and ____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

97. Revise § 1005.10 to read as follows:

§ 1005.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§ ____.71 and ____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

98. Revise § 1006.10 to read as follows:

§ 1006.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§ ____.71 and ____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

99. Revise § 1007.10 to read as follows:

§ 1007.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§ ____.71 and ____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

100. Revise § 1030.10 to read as follows:

§ 1030.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§____.71 and ____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

101. Revise § 1032.10 to read as follows:

§ 1032.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals

and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§ ____.71 and ____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

102. Revise § 1033.10 to read as follows:

§ 1033.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§____.71 and ____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

103. Revise § 1124.10 to read as follows:

§ 1124.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§____.71 and ____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

104. Revise § 1126.10 to read as follows:

§ 1126.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§____.71 and ____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1131—MILK IN THE ARIZONA MARKETING AREA

105. Revise § 1131.10 to read as follows:

§ 1131.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph(b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§____.71 and ____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

Proposal No. 24

This proposal would exempt from regulation milk sold by producer-handlers through ''handler controlled retail channels'' including home-delivery and handler controlled retail outlets, regardless of volume of sales.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

106. Amend § 1001.10 by adding a new paragraph (g) to read as follows:

§ 1001.10 Producer-handler.

* * * * *

(g) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1001.71 and § 1001.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct

to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

* * * * *

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

107. Amend § 1005.10 by adding a new paragraph (f) to read as follows:

§ 1005.10 Producer-handler.

* * * * *

(f) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1005.71 and § 1005.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

108. Amend § 1006.10 by adding a new paragraph (f) to read as follows:

§ 1006.10 Producer-handler.

* * * * *

(f) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1006.71 and § 1006.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

109. Amend § 1007.10 by adding a new paragraph (f) to read as follows:

§ 1007.10 Producer-handler.

* * * * *

(f) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1007.71 and § 1007.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

110. Amend § 1030.10 by adding a new paragraph (g) to read as follows:

§ 1030.10 Producer-handler.

* * * * *

(g) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1030.71 and § 1030.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

111. Amend § 1032.10 by adding a new paragraph (g) to read as follows:

§ 1032.10 Producer-handler.

* * * * *

(g) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1032.71 and § 1032.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

112. Amend § 1033.10 by adding a new paragraph (g) to read as follows:

§ 1033.10 Producer-handler.

* * * * *

(g) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1033.71 and § 1033.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

113. Amend 1124.10 by adding a new paragraph (g) to read as follows:

§ 1124.10 Producer-handler.

* * * * *

(g) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1124.71 and § 1124.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

114. Amend § 1126.10 by adding a new paragraph (g) to read as follows:

§ 1126.10 Producer-handler.

* * * * *

(g) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1126.71 and § 1126.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or

to distribution outlets owned or controlled by the producer-handler.

PART 1131—MILK IN THE ARIZONA MARKETING AREA

115. Amend § 1131.10 by adding a new paragraph (g) to read as follows:

§ 1131.10 Producer-handler.

* * * * *

(g) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1131.71 and § 1131.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

Proposal No. 25

This proposal would establish ''individual handler'' pools for all handlers across all orders.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

116. Amend § 1001.61 by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 1001.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight for each handler required to file a report prescribed by § 1001.30 and for the order in aggregate.

(a) Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential for the order in aggregate in the following manner:

(1) Combine into one total the values computed pursuant to § 1001.60 for all handlers required to file reports prescribed in § 1001.30;

(2) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1001.60 by the protein price, other solids price, and the butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1001.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1001.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the orders' producer price differential for the month and shall be calculated for purposes of statistical comparison.

(b) For each handler required to file a report prescribed by § 1001.30, the market administrator shall calculate the handler's producer price differential in the following manner:

(1) Subtract the total of the values obtained by multiplying the handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1001.60 by the protein price, other solids price, and the butterfat price, respectively;

(2) Add or subtract an amount equal to the location adjustments computed pursuant to § 1001.75;

(3) Divide the resulting amount by the handler's total hundredweight of producer milk; and

(4) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(3) of this section. The result, rounded to the nearest cent, shall be known as the handler's producer price differential for the month and shall be utilized for determining the pay prices for producers and cooperative associations shipping to that handler.

* * * * *

117. Revise § 1001.62 to read as follows:

§ 1001.62 Announcement of producer prices.

On or before the 14th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1001.70, 1001.71 and 1001.72 [Removed]

118. Remove and reserve §§ 1001.70, 1001.71 and 1001.72.

119. Amend § 1001.73 by:

a. Revising paragraph (a)(2)(i);

b. Removing paragraph (c);

c. Redesignating paragraphs (d) and (e) as (c) and (d); and

d. Revising newly redesignated paragraph(c).

The revisions read as follows:

§ 1001.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer milk received by the handler's producer price differential for the month as adjusted pursuant to § 1001.75;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

120. Revise § 1005.61 to read as follows:

§ 1005.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month for each handler required to file a report prescribed by § 1005.30 and for the order in aggregate.

(a) Uniform butterfat price. The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) Uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1005.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) Uniform price. The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

(d) Handler's uniform butterfat price. The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk reported by the handler used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(e) Handler's uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Begin with the handler's values computed pursuant to § 1005.60;

(2) Add or subtract an amount equal to location adjustments computed pursuant to § 1005.75;

(3) Subtract the value of the total pounds of butterfat for the handler. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (d)(1) and (d)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(4) Divide the resulting amount by the sum of the following for the handler:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(5) Subtract not less than 4 cents and not more than 5 cents.

(f) Handler's uniform price. The handler's uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the handler's uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the handler's uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

121. Section 1005.62 is revised to read as follows:

§ 1005.62 Announcement of uniform prices.

On or before the 14th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1005.70, 1005.71 and 1005.72 [Removed]

122. Remove and reserve § 1005.70, § 1005.71 and § 1005.72.

123. Amend § 1005.73 by:

a. Revising paragraphs (a)(2)(i) and (ii);

b. Removing paragraph (c);

c. Redesignating paragraphs (d) and (e) as (c) and (d); and

d. Revising newly redesignated paragraph (c).

The revisions read as follows:

§ 1005.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer skim milk received times the handler's uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the handler's uniform butterfat price for the month;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1006—MILK IN THE FLORIDA MARKETING AREA

124. Section 1006.61 is revised to read as follows:

§ 1006.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month for each handler required to file a report prescribed by § 1005.30 and for the order in aggregate.

(a) Uniform butterfat price. The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) Uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1005.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) Uniform price. The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

(d) Handler's uniform butterfat price. The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk reported by the handler used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(e) Handler's uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Begin with the handler's values computed pursuant to § 1005.60;

(2) Add or subtract an amount equal to location adjustments computed pursuant to § 1005.75;

(3) Subtract the value of the total pounds of butterfat for the handler. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (d)(1) and (d)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(4) Divide the resulting amount by the sum of the following for the handler:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(5) Subtract not less than 4 cents and not more than 5 cents.

(f) Handler's uniform price. The handler's uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the handler's uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the handler's uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

125. Section 1006.62 is revised to read as follows:

§ 1006.62 Announcement of uniform prices.

On or before the 14th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1006.70, 1006.71 and 1006.72 [Removed]

126. Remove and reserve §§ 1006.70, 1006.71 and 1006.72.

127. Amend § 1006.73 by:

a. Revising paragraphs (a)(2)(i) and (ii);

b. Removing paragraph (c);

c. Redesignating paragraphs (d) and (e) as (c) and (d); and

d. Revising newly redesignated paragraph (c).

The revisions read as follows:

§ 1006.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer skim milk received times the handler's uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the handler's uniform butterfat price for the month;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator, and in the event that the handler subsequently locates and pays the producer or a

lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

128. Revise § 1007.61 to read as follows:

§ 1007.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month for each handler required to file a report prescribed by § 1005.30 and for the order in aggregate.

(a) Uniform butterfat price. The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) Uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1005.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) Uniform price. The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

(d) Handler's uniform butterfat price. The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk reported by the handler used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(e) Handler's uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Begin with the handler's values computed pursuant to § 1005.60;

(2) Add or subtract an amount equal to location adjustments computed pursuant to § 1005.75;

(3) Subtract the value of the total pounds of butterfat for the handler. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (d)(1) and (d)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(4) Divide the resulting amount by the sum of the following for the handler:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(5) Subtract not less than 4 cents and not more than 5 cents.

(f) Handler's uniform price. The handler's uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the handler's uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the handler's uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

129. Revise § 1007.62 to read as follows:

§ 1007.62 Announcement of uniform prices.

On or before the 14th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1007.70, 1007.71 and 1007.72 [Removed]

130. Remove and reserve § 1007.70, § 1007.71 and § 1007.72.

131. Amend § 1007.73 by:

a. Revising paragraphs (a)(2)(i) and (ii);

b. Removing paragraph (c);

c. Redesignating paragraphs (d) and (e) as (c) and (d); and

d. Revising newly redesignated paragraph (c).

The revisions read as follows:

§ 1007.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer skim milk received times the handler's uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the handler's uniform butterfat price for the month;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

132. Section 1030.61 is revised to read as follows:

§ 1030.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight for each handler required to file a report prescribed by § 1001.30 and for the order in aggregate.

(a) Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential for the order in aggregate in the following manner:

(1) Combine into one total the values computed pursuant to § 1030.60 for all handlers required to file reports prescribed in § 1030.30;

(2) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1030.60 by the protein price, other solids price, and the butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1030.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(a) The total hundredweight of producer milk; and

(b) The total hundredweight for which a value is computed pursuant to § 1030.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the orders' producer price differential for the month and shall be calculated for purposes of statistical comparison.

(b) For each handler required to file a report prescribed by § 1030.30, the market administrator shall calculate the handler's producer price differential in the following manner:

(1) Subtract the total of the values obtained by multiplying the handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1030.60 by the protein price, other solids price, and the butterfat price, respectively;

(2) Add or subtract an amount equal to the location adjustments computed pursuant to § 1030.75;

(3) Divide the resulting amount by the handler's total hundredweight of producer milk; and

(4) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(3) of this section. The result, rounded to the nearest cent, shall be known as the handler's producer price differential for the month and shall be utilized for determining the pay prices for producers and cooperative associations shipping to that handler.

133. Section 1030.62 is revised to read as follows:

§ 1030.62 Announcement of uniform prices.

On or before the 14th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1030.70, 1030.71 and 1030.72 [Removed]

134. Remove and reserve §§ 1030.70, 1030.71 and 1030.72.

135. Amend § 1030.73 by:

a. Revising paragraph (a)(2)(i);

b. Removing paragraph (c);

c. Redesignating paragraphs (d) and (e) as (c) and (d); and

d. Revising newly redesignated paragraph (c).

The revisions read as follows:

§ 1030.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer milk received by the handler's producer price differential for the month as adjusted pursuant to § 1001.75;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1032—MILK IN THE CENTRAL MARKETING AREA

136. Amend § 1032.61 by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 1032.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight for each handler required to file a report prescribed by § 1032.30 and for the order in aggregate.

(a) Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential for the order in aggregate in the following manner:

(1) Combine into one total the values computed pursuant to § 1032.60 for all handlers required to file reports prescribed in § 1032.30;

(2) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1032.60 by the protein price, other solids price, and the butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1032.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1032.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the orders' producer price differential for the month and shall be calculated for purposes of statistical comparison.

(b) For each handler required to file a report prescribed by § 1032.30, the market administrator shall calculate the handler's producer price differential in the following manner:

(1) Subtract the total of the values obtained by multiplying the handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1032.60 by the protein price, other solids price, and the butterfat price, respectively;

(2) Add or subtract an amount equal to the location adjustments computed pursuant to § 1032.75;

(3) Divide the resulting amount by the handler's total hundredweight of producer milk; and

(4) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(3) of this section. The result, rounded to the nearest cent, shall be known as the handler's producer price differential for the month and shall be utilized for determining the pay prices for producers and cooperative associations shipping to that handler.

* * * * *

137. Section 1032.62 is revised to read as follows:

§ 1032.62 Announcement of uniform prices.

On or before the 14th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1032.70, 1032.71 and 1032.72 [Removed]

138. Remove and reserve §§ 1032.70, 1032.71 and 1032.72.

139. Revise § 1032.73 by:

a. Revising paragraph (a)(2)(i);

b. Removing paragraph (c);

c. Redesignating paragraphs (d) and (e) as (c) and (d); and

d. Revising newly redesignated paragraph(c).

The revisions read as follows:

§ 1032.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer milk received by the handler's producer price differential for the month as adjusted pursuant to § 1032.75;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

140. Amend § 1032.61 by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 1033.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight for each handler required to file a report prescribed by § 1033.30 and for the order in aggregate.

(a) Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential for the order in aggregate in the following manner:

(1) Combine into one total the values computed pursuant to § 1033.60 for all handlers required to file reports prescribed in § 1033.30;

(2) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1033.60 by the protein price, other solids price, and the butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1033.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1033.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the orders' producer price differential for the month and shall be calculated for purposes of statistical comparison.

(b) For each handler required to file a report prescribed by § 1033.30, the market administrator shall calculate the handler's producer price differential in the following manner:

(1) Subtract the total of the values obtained by multiplying the handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1033.60 by the protein price, other solids price, and the butterfat price, respectively;

(2) Add or subtract an amount equal to the location adjustments computed pursuant to § 1033.75;

(3) Divide the resulting amount by the handler's total hundredweight of producer milk; and

(4) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(3) of this section. The result, rounded to the nearest cent, shall be known as the

handler's producer price differential for the month and shall be utilized for determining the pay prices for producers and cooperative associations shipping to that handler.

* * * * *

141. § 1033.62 is revised to read as follows:

§ 1033.62 Announcement of uniform prices.

On or before the 14th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1033.70, 1033.71 and 1033.72 [Removed]

142. Remove and reserve §§ 1033.70, 1033.71 and 1033.72.

143. Amend § 1033.73 by:

a. Revising paragraph (a)(2)(i);

b. Removing paragraph (c);

c. Redesignating paragraphs (d) and (e) as (c) and (d); and

d. Revising newly redesignated paragraph (c).

The revisons read as follows:

§ 1033.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer milk received by the handler's producer price differential for the month as adjusted pursuant to § 1001.75;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

144. Amend § 1124.61 by revising introductory text and paragraphs (a) and (b) to read as follows:

§ 1124.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight for each handler required to file a report prescribed by § 1124.30 and for the order in aggregate.

(a) Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential for the order in aggregate in the following manner:

(1) Combine into one total the values computed pursuant to § 1124.60 for all handlers required to file reports prescribed in § 1124.30;

(2) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1124.60 by the protein price, other solids price, and the butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1124.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1124.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the orders' producer price differential for the month and shall be calculated for purposes of statistical comparison.

(b) For each handler required to file a report prescribed by § 1124.30, the market administrator shall calculate the handler's producer price differential in the following manner:

(1) Subtract the total of the values obtained by multiplying the handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1124.60 by the protein price, other solids price, and the butterfat price, respectively;

(2) Add or subtract an amount equal to the location adjustments computed pursuant to § 1124.75;

(3) Divide the resulting amount by the handler's total hundredweight of producer milk; and

(4) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(3) of this section. The result, rounded to the nearest cent, shall be known as the handler's producer price differential for the month and shall be utilized for determining the pay prices for producers and cooperative associations shipping to that handler.

* * * * *

145. Section 1124.62 is revised to read as follows:

§ 1124.62 Announcement of uniform prices.

On or before the 14th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1124.70, 1124.71 and 1124.72 [Removed]

146. Remove and reserve §§ 1124.70, 1124.71 and 1124.72.

147. Amend § 1124.73 by:

a. Revising paragraph (a)(2)(i);

b. Removing paragraph (c);

c. Redesignating paragraphs (d) and (e) as (c) and (d); and

d. Revising newly redesignated paragraph(c).

The revisions read as follows:

§ 1124.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer milk received by the handler's producer price differential for the month as adjusted pursuant to § 1001.75;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

148. Amend § 1126.61 by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 1126.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight for each handler required to file a report prescribed by § 1126.30 and for the order in aggregate.

(a) Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential for the order in aggregate in the following manner:

(1) Combine into one total the values computed pursuant to § 1126.60 for all handlers required to file reports prescribed in § 1126.30;

(2) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1126.60 by the protein price, other solids price, and the butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1126.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1126.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the orders' producer price differential for the month and shall be calculated for purposes of statistical comparison.

(b) For each handler required to file a report prescribed by § 1126.30, the market administrator shall calculate the handler's producer price differential in the following manner:

(1) Subtract the total of the values obtained by multiplying the handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1126.60 by the protein price, other solids price, and the butterfat price, respectively;

(2) Add or subtract an amount equal to the location adjustments computed pursuant to § 1126.75;

(3) Divide the resulting amount by the handler's total hundredweight of producer milk; and

(4) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(3) of this section. The result, rounded to the nearest cent, shall be known as the handler's producer price differential for the month and shall be utilized for determining the pay prices for producers and cooperative associations shipping to that handler.

* * * * *

149. Section 1126.62 is revised to read as follows:

§ 1126.62 Announcement of uniform prices.

On or before the 14th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1126.70, 1126.71 and 1126.72 [Removed]

150. Remove and reserve §§ 1126.70, 1126.71 and 1126.72.

151. Amend § 1126.73 by:

a. Revising paragraph (a)(2)(i);

b. Removing paragraph (c);

c. Redesignating paragraphs (d) and (e) as (c) and (d); and

d. Revising newly redesignated paragraph (c).

The revisions read as follows:

§ 1126.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer milk received by the handler's producer price differential for the month as adjusted pursuant to § 1001.75;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1131—MILK IN THE ARIZONA MARKETING AREA

152. Section 1131.61 is revised to read as follows:

§ 1131.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month for each handler required to file a report prescribed by § 1005.30 and for the order in aggregate.

(a) Uniform butterfat price. The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) Uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1005.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) Uniform price. The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

(d) Handler's uniform butterfat price. The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk reported by the handler used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(e) Handler's uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Begin with the handler's values computed pursuant to § 1005.60;

(2) Add or subtract an amount equal to location adjustments computed pursuant to § 1005.75;

(3) Subtract the value of the total pounds of butterfat for the handler. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (d)(1) and (d)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(4) Divide the resulting amount by the sum of the following for the handler:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(5) Subtract not less than 4 cents and not more than 5 cents.

(f) Handler's uniform price. The handler's uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the handler's uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the handler's uniform skim milk price for the month pursuant to paragraph

(b) of this section times 96.5 pounds of skim milk.

153. Section 1131.62 is revised to read as follows:

§ 1131.62 Announcement of uniform prices.

On or before the 14th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1131.70, 1131.71 and 1131.72 [Removed]

154. Remove and reserve §§ 1131.70, 1131.71 and 1131.72.

155. Amend § 1131.73 by:

a. Revising paragraphs (a)(2)(i) and (ii);

b. Removing paragraph (c);

c. Redesignating paragraphs (d) and (e) as (c) and (d); and

d. Revising newly redesignated paragraph (c).

The revisions read as follows:

§ 1131.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer skim milk received times the handler's uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the handler's uniform butterfat price for the month;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment to the handler or to the lawful claimant as the case may be.

* * * * *

Proposed by National Milk Producers Federation.

Proposal No. 26

This proposal seeks to allow current qualified producer-handlers an exemption from the pricing and pooling provisions of their respective order. Specifically, producer-handlers would be exempt from pricing and pooling provisions on the first 3,000,000 pounds of total route disposition and packaged sales of fluid milk products provided that the products distributed are uniquely branded.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

156. Amend § 1000.8 by adding new paragraph (e)(5) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(e) * * *

(5) A distributing plant that was operated during 2008 by a producer-handler in a Federal order market within the meaning of the Federal milk marketing order at that time, provided that the plant:

(i) Has route disposition in all markets and packaged sales of fluid milk products to other plants in all markets that are uniquely branded and total 3,000,000 pounds or less during the month.

(ii) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own-farm production;

(iii) The plant disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own-farm production; and

(iv) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations, are the plant owner's own enterprise and are operated at the plant owner's own risk, and that the plant owner has no interest in any other distributing plant (except through membership in a Capper-Volstead cooperative association) or in any farms from which the plant does not receive milk. The burden rests upon the handler who is designated as exempt under this paragraph (e)(5) to establish through records required pursuant to § 1000.27 that the requirements of such exemption are met.

Proposed by New Hampshire Department of Agriculture, Markets and Food and Vermont Agency of Agriculture, Food and Markets.

Proposal No. 27

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of their respective orders if their Class I route disposition and sales of packaged fluid milk products exceeds 3,000,000 pounds of milk per month within the marketing area.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

157. Revise § 1000.8(b) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(b) *Producer-handler plant* means a plant with route disposition and packaged sales of fluid milk products of 3,000,000 pounds of milk per month or less in the marketing area that is operated by a producer-handler as defined under any Federal order.

* * * * *

Proposed by Weber's Farm Store, Inc.

Proposal No. 28

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of the Upper Midwest order if their Class I route disposition and sales of packaged fluid milk products exceeds 2,000,000 pounds of milk per month within the marketing area.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

158. Amend § 1030.10 by revising paragraph (a) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition of 2,000,000 pounds of milk per month or less in the marketing area.

* * * * *

Proposed by Dairy Programs, Agricultural Marketing Service.

Proposal No. 29

For all Federal Milk Marketing Orders, make necessary changes to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, Online at *http://www.ams.usda.gov/dairy,* or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue, SW., Washington, DC 20250–9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing. Copies of the transcript are also available Online at *http://www.ams.usda.gov/dairy.*

From the time that a hearing notice is issued and until the issuance of a final decision, USDA employees are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture;
Office of the Administrator, Agricultural Marketing Service;
Office of the General Counsel; and
Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: April 3, 2009.

David R. Shipman,

Acting Administrator.

[FR Doc. E9–7982 Filed 4–6–09; 4:15 pm]

BILLING CODE 3410–02–P

Reader Aids

Federal Register

Vol. 74, No. 67

Thursday, April 9, 2009

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, APRIL

14703–14928 1
14929–15214 2
15215–15358 3
15359–15634 6
15635–15828 7
15829–16096 8
16097–16320 9

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8354 15629
8355 15631
8356 15633
8357 15829

7 CFR

271 14935
272 14935
273 14935
276 14935
301 16097
305 15635
318 15640
319 15635
905 15641
944 15641
1216 15226
1421 15644
1434 15644
1435 15359

Proposed Rules:
305 16146
319 16146
610 15673
1000 16296
1001 16296
1005 16296
1006 16296
1007 16296
1030 16296
1032 16296
1033 16296
1124 16296
1126 16296
1131 16296
1208 ..... 16266, 16289
1209 15677

8 CFR

208 15367

9 CFR

71 14703
145 14710
146 14710
166 15215
247 14710
392 16104

10 CFR

430 16040

12 CFR

24 15657

14 CFR

25 ..... 15831, 15833, 15838
39 ..... 14719, 14929, 15369, 15371, 15665, 15841, 16108, 16112, 16114, 16116, 16117, 16121
71 15842

Proposed Rules:
25 ..... 15888, 15890
39 ..... 14750, 14751, 15399, 15401, 15681, 15683, 15894, 15896, 16152, 16154
71 15403

15 CFR

801 15843
902 15373

17 CFR

232 15666
239 15666
249 15666

18 CFR

38 15374

Proposed Rules:
38 16160

21 CFR

5 14720
1300 15596
1301 15596
1304 15596
1306 15596

Proposed Rules:
589 16160

22 CFR

62 15844
215 14931

24 CFR

30 14725

26 CFR

1 14931

Proposed Rules:
1 16161

33 CFR

117 ..... 14725, 14726, 14932, 15218
165 ..... 14726, 14729, 15845, 15854

Proposed Rules:
101 16161
104 16161
105 16161
106 16161
110 14938
165 ..... 15404, 15407, 15409, 15412, 15414, 15417, 15899

37 CFR

Proposed Rules:
370 15901

39 CFR

20 14932

111 .....15376, 15380, 16124
3020.....15384
Proposed Rules:
111.....15226

40 CFR

52 .....14731, 14734, 15219, 15856, 15864
112.....14736
180 .....14738, 14743, 14744, 15865, 15869, 15876, 15880
300.....16126
Proposed Rules:
300.....16162
51.....14941
52.....14759
59.....14941

42 CFR

440.....15221

44 CFR

Ch. 1 15328
Proposed Rules:
206.....15228

47 CFR

Proposed Rules:
36.....15236

49 CFR

23.....15222
26.....15222
171.....16135
173.....16135
176.....16135
178.....16135
180.....16135
232.....15387
373.....15388
Proposed Rules:
26.....15904, 15910

50 CFR

17.....15070, 15123
21.....15394
635.....15669
648.....14933
679 .....15887, 16144, 16145
Proposed Rules:
17.....16169
218.....15419
622.....15911
648.....14760
665.....15685
679.....14950, 15420

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 146/P.L. 111–11
Omnibus Public Land Management Act of 2009 (Mar. 30, 2009; 123 Stat. 991)

H.R. 1512/P.L. 111–12
Federal Aviation Administration Extension Act of 2009 (Mar. 30, 2009; 123 Stat. 1457)

Last List March 23, 2009

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.