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

RESERVATIONS: (202) 741–6008

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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Doc. No. AMS–FV–08–0106; FV09–925–1 FIR]

Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Relaxation of Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim final rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that relaxed the handling requirements prescribed under the California table grape marketing order (order) and the table grape import regulation. The interim final rule relaxed the minimum bunch size requirement for the 2009 season for grapes packed in containers holding 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of such containers may consist of single clusters weighing less than one quarter pound, but with at least five berries each. The interim final rule was necessary to provide California desert grape handlers and importers the flexibility to respond to a marketing opportunity on a test basis for one season to meet consumer needs.

DATES: *Effective Dates:* Effective August 4, 2009.

FOR FURTHER INFORMATION CONTACT: Jennifer Robinson, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Jen.Robinson@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*; or by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925, as amended (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including table grapes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

The shipping of table grapes produced in a designated area of southeastern California is regulated by 7 CFR part 925. The regulations specify that bunches of grapes must weigh a minimum of one quarter pound to meet the requirements of U.S. No. 1 Table grade. In response to a marketing opportunity, the industry is experimenting with a new container during the 2009 season. The experimental container's small capacity makes it difficult to completely fill with grape bunches of one quarter pound or larger. Therefore, for the 2009 season, the minimum bunch size requirement was relaxed for U.S. No. 1 table grapes packed in these containers.

Imported table grapes are subject to regulations specified in 7 CFR part 944. Under those regulations, imported grapes must meet the same minimum size requirements as specified for domestic grapes under the order. Therefore, the minimum bunch size requirement was also relaxed for imported grapes packed in the experimental containers during in the 2009 season.

In an interim final rule published in the **Federal Register** on March 17, 2009, and effective on March 20, 2009 (74 FR 11275, Doc. No AMS–FV–08–0106, FV09–925–1 IFR), §§ 925.304 and 944.503 were amended by relaxing the one-quarter pound minimum bunch size requirement for the 2009 season for U.S. No. 1 Table grade grapes packed in small consumer packages containing 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of each clamshell container (individual consumer packages) may consist of single clusters weighing less than one-quarter pound, but with at least five berries each.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 14 handlers of southeastern California grapes who are subject to regulation under the order and about 50 grape producers in the production area. In addition, there are approximately 123 importers of grapes. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. Nine of the 14 handlers subject to

regulation have annual grape sales of less than $7,000,000. Based on data from the National Agricultural Statistics Service and the committee, the average crop value for 2008 is about $53,040,000. Dividing this figure by the number of producers (50) yields an average annual producer revenue estimate of about $1,060,800, which is above the SBA threshold of $750,000. Based on the foregoing, it may be concluded that a majority of grape handlers and none of the producers may be classified as small entities. The average importer receives $2.8 million in revenue from the sale of grapes. Therefore, it may be concluded that the majority of importers may be classified as small entities.

This rule continues in effect the action that revised § 925.304(a) of the rules and regulations of the California desert grape order and § 944.503(a)(1) of the table grape import regulation. This rule continues in effect the action that relaxed the one-quarter pound minimum bunch size requirement for the 2009 season for U.S. No. 1 Table grade grapes packed in small consumer packages containing 2 pounds net weight or less. Under the relaxation, up to 20 percent of the weight of each clamshell container may consist of single clusters weighing less than one-quarter pound, but with at least five berries each. Authority for the change to the California desert grape order is provided in §§ 925.52(a)(1) and 925.53. Authority for the change to the table grape import regulation is provided in section 8e the Act.

There is general agreement in the industry for the need to relax the minimum bunch size requirement for grapes packed in clamshells to allow for more packaging options, as noted in the interim final rule. An alternative discussed by the committee was to relax the minimum bunch size requirement for U.S. No. 1 Table grade grapes packed in clamshells containing net weights of 2, 3, and 4 pounds. The committee decided that there is not a problem with clamshells containing net weights of 3 and 4 pounds meeting the minimum requirements at this time. Ultimately, the committee unanimously agreed that the relaxation for grapes packed in clamshells containing 2 pounds net weight or less was appropriate as a test for one season.

Regarding the impact of this rule on affected entities, this rule provides both California desert grape handlers and importers the flexibility to respond to a marketing opportunity on a test basis for one season to meet customer demands and consumer needs. Handlers and importers will be able to provide buyers in the retail sector more packaging choices. The relaxation may result in increased shipments of consumer-sized grape packs, which would have a positive impact on producers, handlers, and importers.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large grape handlers or importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the committee's meeting was widely publicized throughout the grape industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the November 14, 2008, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Also, the World Trade Organization, the Chilean Technical Barriers to Trade inquiry point for notifications under the U.S.-Chile Free Trade Agreement, the embassies of Argentina, Brazil, Canada, Chile, Italy, Mexico, Peru, and South Africa, and known grape importers were notified of this action.

Comments on the interim final rule were required to be received on or before May 18, 2009. No comments were received. Therefore, for the reasons given in the interim final rule, we are adopting the interim final rule as a final rule, without change.

To view the interim final rule, go to: *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=AMS-FV-08-0106*.

This action also affirms information contained in the interim final rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this rule.

After consideration of all relevant material presented, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (74 FR 11275, March 17, 2009) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 925

Grapes, Marketing agreements and orders, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

PARTS 925 AND 944—[AMENDED]

■ Accordingly, the interim final rule that amended 7 CFR parts 925 and 944 and that was published at 74 FR 11275 on March 17, 2009, is adopted as a final rule, without change.

Dated: July 28, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–18414 Filed 7–31–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS–FV–08–0105; FV09–932–1 FIR]

Olives Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim final rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that changed the assessment rate established under the marketing order (order) for olives grown in California for the 2009 and subsequent fiscal years. The interim final rule increased the assessment rate from $15.60 to $28.63 per assessable ton of olives handled. The interim final rule was necessary to provide adequate operating funds for the California Olive Committee (committee), which administers the order locally.

DATES: *Effective Date:* Effective August 4, 2009.

FOR FURTHER INFORMATION CONTACT: Jennifer Robinson, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or e-mail:

Jen. Robinson@ams.usda.gov or *Kurt.Kimmel@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*; or by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

The handling of olives grown in California is regulated under 7 CFR part 932. Under the order, California olive handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable olives for the entire fiscal year, and continue indefinitely until amended, suspended, or terminated. The committee's fiscal year begins on January 1, and ends on December 31.

In an interim final rule published in the **Federal Register** on February 20, 2009, and effective on February 21, 2009 (74 FR 7782, Doc. No. AMS–FV–08–0105; FV09–932–1 IFR), § 932.230 was amended by increasing the assessment rate established for the committee for the 2009 and subsequent fiscal years from $15.60 to $28.63 per ton of assessable olives from the applicable crop years. The increase in the per ton assessment rate was deemed necessary because the 2008–2009 olive crop was significantly smaller than the previous year's crop and would not have generated adequate assessment revenues to meet the committee's budgeted program needs.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,000 producers of olives in the production area and 2 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

Based upon information from the committee, the majority of olive producers may be classified as small entities. Both of the handlers may be classified as large entities.

This rule continues in effect the action that increased the assessment rate established for the committee and collected from handlers for the 2009 and subsequent fiscal years from $15.60 to $28.63 per ton of assessable olives. The committee unanimously recommended 2009 expenditures of $1,482,349 and an assessment rate of $28.63 per ton. The assessment rate of $28.63 is $13.03 higher than the 2008 rate. The higher assessment rate is necessary because assessable olive receipts for the 2008–09 crop year were reported by the CASS to be 49,067 tons, compared to 108,059 tons for the 2007–08 crop year. Actual assessable tonnage for the 2009 fiscal year is expected to be lower because some of the receipts may be diverted by handlers to exempt outlets on which assessments are not paid.

Income generated from the $28.63 per ton assessment rate should be adequate to meet this year's expenses when combined with funds from the authorized reserve and interest income. Funds in the reserve would be kept within the maximum permitted by the order of about one fiscal year's expenses (§ 932.40).

Expenditures recommended by the committee for the 2009 fiscal year include $495,000 for research, $627,800 for marketing activities, and $359,549 for administration. Budgeted expenditures for these items in 2008 were $500,000, $750,000, and $288,552, respectively. The 2009 marketing and research programs will be scaled back.

Prior to arriving at this budget, the committee considered information from various sources, such as the committee's Executive, Market Development, and Research Subcommittees. Alternate spending levels were discussed by these groups, based upon the relative value of various research and marketing projects to the olive industry and the reduced olive production. The assessment rate of $28.63 per ton of assessable olives was derived by considering anticipated expenses, the volume of assessable olives and additional pertinent factors.

A review of historical information indicates that the grower price for the 2008–09 crop year was approximately $1,109.47 per ton for canning fruit and $380.71 per ton for limited-use sizes, leaving the balance as unusable cull fruit. Approximately 84 percent of the total tonnage of olives received is canning fruit sizes and 11 percent is limited use sizes, leaving the balance as unusable cull fruit. Grower revenue on 49,067 total tons of canning and limited-use sizes would be $49,283,177 given the current grower prices for those sizes. Therefore, with an assessment rate increased from $15.60 to $28.63, the estimated assessment revenue is expected to be almost 3 percent of grower revenue.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the December 10, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Comments on the interim final rule were required to be received on or

before April 21, 2009. No comments were received. Therefore, for the reasons given in the interim final rule, we are adopting the interim final rule as a final rule, without change.

To view the interim final rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=AMS-FV-08-0105.*

This action also affirms information contained in the interim final rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (74 FR 7782, February 20, 2009) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

PART 932—OLIVES GROWN IN CALIFORNIA—[AMENDED]

■ Accordingly, the interim final rule that amended 7 CFR part 932 and that was published at 74 FR 7782 on February 20, 2009, is adopted as final rule, without change.

Dated: July 28, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–18415 Filed 7–31–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 145

[Docket No. APHIS–2007–0042]

RIN 0579–AC78

National Poultry Improvement Plan and Auxiliary Provisions; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule that was published in the **Federal Register** on April 1, 2009 (74 FR 14710–14719, Docket No. APHIS–2007–0042), and effective on May 1, 2009, we amended the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. In that final rule, we amended the U.S. Avian Influenza Clean program for multiplier meat-type chicken breeding flocks to require that 15 birds be tested to retain the classification, rather than 30. However, our amendatory instruction accomplishing this change also amended the program to require multiplier spent fowl to be tested within 15 days prior to movement to slaughter, rather than 30 days. We had intended to retain the 30-day requirement. This document corrects that error.

DATES: *Effective Date:* August 3, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1498 Klondike Road, Suite 101, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION:

Background

In a final rule that was published in the **Federal Register** on April 1, 2009 (74 FR 14710–14719, Docket No. APHIS–2007–0042), and effective on May 1, 2009, we amended the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. The regulations in 9 CFR parts 145, 146, and 147 contain the provisions of the Plan.

We amended the U.S. Avian Influenza Clean program for multiplier meat-type chicken breeding flocks in § 145.33(l) by reducing the sample of birds required to be tested from 30 to 15 and reducing the interval at which the sample must be tested from 180 to 90 days. As the 30-bird sample is referred to 4 times in paragraph (l), the amendatory instruction to accomplish this change indicated that the numeral ''30'' should be replaced each time it occurred in paragraph (l) with the numeral ''15.'' However, paragraph (l)(2)(i) of § 145.33 also contained a requirement that multiplier spent fowl be tested within 30 days prior to movement to slaughter. Thus, our amendatory instruction inadvertently changed that requirement to require testing of multiplier spent fowl 15 days prior to slaughter. We had intended to retain the 30-day requirement. This document corrects that error.

List of Subjects in 9 CFR Part 145

Animal diseases, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 145 as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN FOR BREEDING POULTRY

■ 1. The authority citation for part 145 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 145.33 [Amended]

■ 2. In § 145.33, paragraph (l)(2)(i) is amended by removing the words ''15 days'' and adding the words ''30 days'' in their place.

Done in Washington, DC, this 27th day of July 2009.

William H. Clay,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–18485 Filed 7–31–09; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

[NRC–2002–0002]

RIN 3150–AF12

Fitness for Duty Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on March 31, 2008 (73 FR 16965), that amended the Nuclear Regulatory Commission's (NRC's) regulations that govern fitness for duty programs. This document is necessary to correct erroneous language in the preamble and codified language of the final rule. These corrections include fixing typographical errors and cross-references, revising language in the preamble to clarify unintended discrepancies with the codified rule text, and making non-substantive changes to the rule text that do not modify any requirements in the final rule.

DATES: The correction is effective August 3, 2009, and is retroactively applicable to March 31, 2008.

FOR FURTHER INFORMATION CONTACT: Lynn Hall, Office of Nuclear Reactor

Regulation, U.S. Nuclear Regulatory Commission, telephone 301–415–3759, e-mail: *Lynn.Hall@nrc.gov*.

ADDRESSES: Documents related to this correction can be publicly accessed using the following methods:

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2002–0002]. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov*.

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–899–397–4209, 301–415–4737, or by e-mail: *pdr.resource@nrc.gov*.

SUPPLEMENTARY INFORMATION: This document corrects erroneous language to the preamble and codified language of the Part 26 final rule published on March 31, 2008 (73 FR 16965). Also, as published, the final regulations contain errors which may prove to be misleading and need to be clarified. The following corrects the preamble to the March 31, 2008 document.

1. On page 16972, third column, in the second paragraph, the second sentence is corrected to read as follows:

The final rule introduces the concept of ''authorization'' to Part 26 to refer to the status of an individual who the licensee or other entity has determined can be trusted to avoid substance abuse, and, therefore, may be permitted to have the types of access or perform the duties described in § 26.4 [FFD program applicability to categories of individuals], as a result of the process described in this subpart.

2. On page 16983, first column, in the third complete paragraph, the second sentence is corrected to read as follows:

Surveys and expert panels have suggested that tolerance for overtime is generally limited to 300–400 hours of overtime per year (ADAMS Accession No. ML090850025); (NUREG/CR–4248).

3. On page 17002, third column, in the second complete paragraph, the first sentence is corrected to read as follows:

Section 26.4(g) of the final rule amends the proposed rule to clarify the requirements that the FFD program personnel specified in this paragraph must meet.

4. On page 17007, first column, the complete sentence beginning on line 15 is corrected to read as follows:

The definition explicitly states the criterion that the term ''directing'' refers to an individual who is ''directly involved in the execution of the work activity'' and either ''is ultimately responsible for the correct performance of that work activity'' as opposed to, for example, the planning, development or scheduling of the activity, or whose technical input does not receive ''subsequent technical review.''

5. On page 17030, third column, in the first complete paragraph, the first sentence is corrected to read as follows:

The NRC has added § 26.41(d)(2) to ensure that licensees' and other entities' contracts with C/Vs and HHS-certified laboratories permit the licensee or other entity to obtain copies of and take away any documents that auditors may need to assure that the C/V, its subcontractors, or the HHS-certified laboratory are performing their functions properly and that staff and procedures meet applicable requirements.

6. On page 17086, third column, in the second complete paragraph, the first sentence is corrected to read as follows:

Section 26.137(d)(5) requires that one of the quality control samples included in each analytical run must appear to be a donor specimen to licensee testing facility technicians.

7. On page 17088, second column, in the second complete paragraph, the fourth sentence is corrected to read as follows:

Section 26.137(e)(6)(v) requires that one sample must appear to be a donor sample to the licensee testing facility technicians.

8. On page 17092, first column, in the second complete paragraph, the third sentence is corrected to read as follows:

The cross-reference to former § 26.29 has been updated to reference § 26.37 in the final rule.

9. On page 17117, first column, in the second complete paragraph, the third sentence is corrected to read as follows:

Therefore, § 26.189(a)(1) through (a)(5) provides examples of the healthcare professionals who are qualified to address various fitness issues that may arise in an FFD program.

10. On page 17138, first column, the third complete sentence beginning on line 15 is corrected to read as follows:

If at any time during a unit outage an individual performs duties specified in § 26.4(a)(1) through (a)(4) on or for a unit that is not disconnected from the electrical grid, the individual is subject to the minimum day off requirements of § 26.205(d)(3) while the individual is performing those duties.

List of Subjects in 10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 26.

PART 26—FITNESS FOR DUTY PROGRAMS

■ 1. The authority citation for part 26 continues to read as follows:

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201, 2297f); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

■ 2. In § 26.31, paragraphs (c)(4), (c)(5), and (d)(1) introductory text are revised to read as follows:

§ 26.31 Drug and alcohol testing.

* * * * *

(c) * * *

(4) *Follow-up.* As part of a follow-up plan to verify an individual's continued abstinence from substance abuse; and

(5) *Random.* On a statistically random and unannounced basis, so that all individuals in the population subject to testing have an equal probability of being selected and tested.

(d) *General requirements for drug and alcohol testing*—(1) *Substances tested.* At a minimum, licensees and other entities shall test for marijuana metabolite, cocaine metabolite, opiates (codeine, morphine, 6-acetylmorphine), amphetamines (amphetamine, methamphetamine), phencyclidine, adulterants, and alcohol.

* * * * *

■ 3. In § 26.41, paragraph (d)(1) is revised to read as follows:

§ 26.41 Audits and corrective action.

* * * * *

(d) * * *

(1) The contracts of licensees and other entities with C/Vs and HHS-certified laboratories must reserve the right to audit the C/V, the C/V's subcontractors providing FFD program services, and the HHS-certified laboratories at any time, including at unannounced times, as well as to review all information and documentation that is reasonably relevant to the audits.

* * * * *

■ 4. In § 26.69, paragraphs (c)(3) and (d)(2) are revised to read as follows:

§ 26.69 Authorization with potentially disqualifying fitness-for-duty information.

* * * * *

(c) * * *

(3) If the designated reviewing official determines that a determination of fitness is required, verify that a professional with the appropriate qualifications, as specified in § 26.189(a), has indicated that the individual is fit to safely and competently perform his or her duties;

* * * * *

(d) * * *

(2) If the designated reviewing official concludes that a determination of fitness is required, verify that a professional with the appropriate qualifications, as specified in § 26.189(a), has indicated that the individual is fit to safely and competently perform his or her duties; and

* * * * *

■ 5. In § 26.137, paragraphs (d)(2)(i), (d)(5), and (e)(6)(v) are revised to read as follows:

§ 26.137 Quality assurance and quality control.

* * * * *

(d) * * *

(2) * * *

(i) Colorimetric pH tests must have a dynamic range of 2 to 12 and pH meters must be capable of measuring pH to one decimal place.

* * * * *

(5) Each analytical run performed to conduct initial validity testing shall include at least one quality control sample that appears to be a donor specimen to the licensee testing facility technicians.

* * * * *

(e) * * *

(6) * * *

(v) At least one positive control, certified to be positive by an HHS-certified laboratory, which appears to be a donor specimen to the licensee testing facility technicians.

* * * * *

■ 6. In § 26.153, paragraph (f)(3) is revised to read as follows:

§ 26.153 Using certified laboratories for testing urine specimens.

* * * * *

(f) * * *

(3) The laboratory shall maintain test records in confidence, consistent with the requirements of § 26.37, and use them with the highest regard for individual privacy.

* * * * *

Dated at Rockville, Maryland, this 27th day of July 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E9–18364 Filed 7–31–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No.: FAA–2007–27654; Amendment No. 25–129]

RIN 2120–AI90

Activation of Ice Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration amends the airworthiness standards applicable to transport category airplanes certificated for flight in icing conditions. The rule requires a means to ensure timely activation of the airframe ice protection system. This rule is the result of information gathered from a review of icing accidents and incidents, and will improve the level of safety for new airplane designs for operations in icing conditions.

DATES: This amendment becomes effective September 2, 2009.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule contact Kathi Ishimaru, FAA, Propulsion and Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave., SW., Renton, Washington 98057–3356; telephone (425) 227–2674; fax: (425) 227–1320, e-mail: *kathi.ishimaru@faa.gov.* For legal questions concerning this final rule contact Douglas Anderson, FAA, Office of Regional Counsel, Federal Aviation Administration, 1601 Lind Ave., SW., Renton, Washington 98057–3356; telephone (425) 227–2166; fax: (425) 227–1007, e-mail: *Douglas.Anderson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft. This regulation is within the scope of that authority because it prescribes new safety standards for the design of transport category airplanes.

I. Background

On October 31, 1994, an accident involving an Avions de Transport Regional ATR 72 series airplane occurred in icing conditions.[1] This prompted the FAA to initiate a review of aircraft inflight icing safety and determine changes that could be made to increase the level of safety. In May 1996, the FAA sponsored the International Conference on Aircraft Inflight Icing where icing specialists recommended improvements to increase the level of safety of aircraft operating in icing conditions. The FAA reviewed the conference recommendations and developed a comprehensive multi-year icing plan. The FAA Inflight Aircraft Icing Plan (Icing Plan), dated April 1997,[2] described various activities the FAA was contemplating to improve safety when operating in icing conditions. In accordance with the Icing Plan, the FAA tasked the Aviation Rulemaking Advisory Committee (ARAC),[3] through its Ice Protection Harmonization Working Group, to consider the need for ice detectors or other acceptable means to warn flightcrews of ice accretion on critical surfaces requiring crew action. This rule

[1] This accident and an Empressa Brasilia accident resulted in NTSB recommendations nos. A–96–56 and A–98–91. This final rule partially addresses these safety recommendations.

[2] FAA Inflight Aircraft Icing Plan, dated April 1997, available in the Docket.

[3] Published in the **Federal Register**, December 8, 1997 (62 FR 64621).

is based on ARAC's recommendations to the FAA.

A. Summary of the NPRM

The notice of proposed rulemaking (NPRM), Notice No. 07–07, published in the **Federal Register** on April 26, 2007 (72 FR 20924), is the basis for this amendment. The comment period closed July 25, 2007. In the NPRM, we proposed to revise the airworthiness standards for type certification of transport category airplanes to add requirements to ensure the timely activation of an airframe ice protection system (IPS). We also proposed to add requirements to reduce the flightcrew workload associated with operation of an airframe IPS that is manually cycled, and to ensure the Airplane Flight Manual includes IPS procedures for operation.

B. Summary of the Final Rule

The FAA is adopting this final rule because accidents and incidents occurred where the flightcrew did not operate the airframe IPS in a timely manner and because of concerns over the flightcrew workload required to operate an airframe IPS that the flightcrew must manually cycle when they observe ice accretions. The final rule addresses these concerns by ensuring that flightcrews are provided with a clear means to know when to activate the airframe IPS. The final rule reduces the workload associated with monitoring ice accretions by requiring a system that operates continuously, a system that automatically cycles the IPS, or an alert to the flighcrew each time the IPS must be cycled.

This final rule adopts the proposed rule with minor changes and adds minor conforming changes to rules that were added by the final rule entitled ''Airplane Performance and Handling Qualities in Icing Conditions (72 FR 44656, August 8, 2007) (Amendment 25–121).[4] Amendment 25–121 added specific requirements for airplane performance and handling qualities for flight in icing conditions. Sections 25.143(j) and 25.207(h), at Amendment 25–121, define requirements that apply if activating the IPS depends on the pilot seeing a specified ice accretion on a reference surface (not just the first sign of ice accretion).

Section 25.1419(e) of this final rule requires one of three methods of detecting icing and activating the airframe IPS.[5] Activation based on the pilot seeing a specified ice accretion on a reference surface (not just the first sign of ice accretion) is not one of the three methods allowed under this rulemaking, so any requirements associated with this method are no longer relevant. Therefore, minor conforming changes have been made to §§ 25.143(j) and 25.207(h) to remove the references to, and requirements associated with, activating the IPS in response to the pilot seeing a specified ice accretion on a reference surface. Additional minor changes have been made to § 25.207(h) to improve readability, including moving a portion of existing § 25.207(h)(2)(ii) to a new § 25.207(i). The text of part 25, appendix C, part II(e) has been revised to include a reference to the new § 25.207(i).

In addition, minor changes have been made to § 25.207(b) to improve clarity and to correct an error introduced by Amendment 25–121. Section 25.207(b), as amended by Amendment 25–121, states, ''Except for the stall warning prescribed in paragraph (h)(2)(ii) of this section, the stall warning for flight in icing conditions prescribed in paragraph (e) of this section must be provided by the same means as the stall warning for flight in non-icing conditions.'' However, the stall warning prescribed by § 25.207(h)(2)(ii) is an exception only to the § 25.207(b) requirement that stall warning in icing conditions be provided by the same means as for non-icing conditions. It is not an exception to, nor is it associated with, the stall warning margin prescribed by § 25.207(e). The reference to § 25.207(e) is incorrect and potentially confusing. Therefore, it is removed by this final rule.

Because of the reformatting of § 25.207(h), as discussed above, the previous § 25.207(h)(2)(ii) is now § 25.207(h)(3)(ii). The reference to this paragraph in § 25.207(b) is changed accordingly. Other minor wording changes have been made to improve clarity. We consider all of these changes to § 25.207(b) to be technical clarifications that do not change the intent of this paragraph or impose an additional burden on applicants.

Below is a more detailed discussion of the rule as it relates to the comments we received on the NPRM. Appendix 1 defines terms used in this preamble.

II. Summary of Comments

The FAA received 14 comments concerning the following general areas of the proposal:

- Acceptable methods to determine if the airframe IPS must be activated.
- Automatic cycling of the airframe IPS.

Four of the commenters, the Airline Pilots Association (ALPA), National Transportation Safety Board (NTSB), BAE Systems Regional Aircraft, and The Boeing Company (Boeing), expressed support for the rule. ALPA supported the rule without recommendations to revise the rule. Twelve commenters suggested specific improvements or clarifications. They were the NTSB, BAE Systems Regional Aircraft, Boeing, the Air Crash Victims Families Group, Bombardier Aerospace, Marinvent Corporation, the Regional Airline Association, Swan International Sensors, Transport Canada, and three individuals. Ameriflight LLC (Ameriflight) opposed certain provisions of the rule. Summaries of the comments and our responses (including explanations of any changes to the final rule in response to the comments) are provided below.[6]

A. Ice Detection, Activation of Airframe IPS, and Automatic Cycling of Airframe IPS

In the NPRM, we proposed one of the following three methods for ice detection and activation of the airframe IPS to ensure timely activation of the airframe IPS (proposed § 25.1419(e)):

- A primary ice detection system that automatically activates or alerts the flightcrew to activate the airframe IPS;
- Visual cues for recognition of the first sign of ice accretion combined with an advisory ice detection system that alerts the flightcrew to activate the airframe IPS; or
- Identification of conditions conducive to airframe icing for use by the flightcrew to activate the airframe IPS when those conditions exist.

In addition, proposed § 25.1419(g) would require an airframe IPS that operates cyclically (for example, deicing boots) to automatically cycle after the initial activation, or installation of an ice detection system to alert the flightcrew each time the deicing boots must be activated.

The following comments were received on these proposals.

1. Oppose Installation of an Ice Detection System

Ameriflight opposed the installation of an ice detection system because properly trained flightcrews can easily detect ice accretion by means such as ice forming in the corners of the

[4] *See* Docket No. FAA–2005–22840 for complete details.

[5] The three methods are: (1) Primary ice detection system, (2) visual cues of the first sign of ice accretion combined with an advisory ice detector, and (3) specifying conditions conducive to airframe icing.

[6] The full text of each commenter's submission is available in the Docket.

windshield or on windshield wiper arms. An individual commenter believed nothing, including an ice detector, can replace pilots looking out the window to gather information on icing.

Ameriflight also suggested that it would be difficult or impossible to design a sufficiently reliable ice detection system that would be economically feasible and a practicable substitute for flightcrew training and vigilance. The individual commenter opposed installation of an ice detection system because of his experience on a military airplane that was equipped with an unreliable icing warning light.

The FAA agrees that flightcrew training and vigilance are extremely important to ensure the safe operation of aircraft in icing conditions. However, visual observation of ice accretion alone, as suggested by Ameriflight and the individual commenter, is not sufficient to ensure timely operation of the airframe IPS. The flightcrew's observation of ice accretions can be difficult during times of high workload, nighttime operations, or when clear ice has accumulated. In addition, there have been icing accidents and incidents where the flightcrew was either completely unaware of ice accretion on the airframe, or was aware of ice accretion but judged that it was not significant enough to warrant operation of the airframe IPS. Therefore, reliance on only flightcrew visual observation of ice accretion alone is not adequate and must be supplemented with an advisory ice detection system to provide an acceptable level of safety.

The FAA acknowledges that it is not a simple task to design and certificate an ice detection system. However, ice detection systems exist today that meet the reliability requirements of part 25. Section 25.1309 ensures the degree of reliability of an airframe IPS is commensurate with the hazard level associated with the failure of the airframe IPS.

In response to the contention that an ice detector would not be economically feasible, the FAA notes that on recent part 25 airplane certifications manufacturers sought and received approval for installation of ice detectors without an FAA requirement for such a system. Therefore, the FAA infers that these manufacturers consider the installation of ice detectors economically feasible.

2. Reliability of Advisory Ice Detection System

Transport Canada suggested that the reliability level of the advisory ice detection system should be on the order of 1×10^{5} failure per flight hour. Transport Canada indicated the classification assigned to the unannunciated loss of an advisory ice detection system would appear to depend upon the advisory ice detection system design, the IPS design, and the airplane on which it is installed. Therefore, it is Transport Canada's position that specific cases may need to consider the unannunciated loss of the advisory ice detection system as a major failure. The natural tendency of flightcrews to become accustomed to using the advisory ice detection system may increase the need to make flightcrews aware of failure of the advisory ice detection system. The flightcrews may need to take extra precautions when they have detected a possible failure of the advisory ice detection system.

The FAA infers that Transport Canada would like the proposed rule changed to include a minimum reliability requirement for the advisory ice detection system. The FAA finds it is unnecessary to revise this rule to include a minimum reliability requirement for the advisory ice detection system because § 25.1309 requires the determination of the hazard level associated with failure of any airplane system which then drives the required degree of reliability of that system. Additionally it would not be appropriate to pick a specific minimum reliability requirement for the advisory ice detection system because, as pointed out by the commenter, the hazard level associated with the unannunciated loss of the advisory ice detection system may depend upon the advisory ice detection system design, the airframe IPS design, and the airplane on which it is installed. However, the FAA may consider including guidance on advisory ice detection system reliability in the associated advisory circular.

3. Do Not Activate Pneumatic Deicing Boots at First Sign of Ice Accretion

Ameriflight did not support activation of pneumatic deicing boots at the first sign of ice accretion, noting that these boots work better and continue to shed ice more effectively for a longer period if airfoil leading-edge ice is allowed to build to a sufficient thickness before cycling the boots. The commenter stated that when the boots are operated at the first indication of ice, the ice is only partially shed. The ice remaining on the boot provides a rough surface on which additional ice accumulates more readily than on a smooth boot surface, shortening the duration of the boots' ability to clean the wing effectively.[7] Thus, the commenter believed that activating the boots at the first sign of ice was actually contrary to safety and Ameriflight's long experience with this system.

The FAA has issued airworthiness directives requiring activation of pneumatic deicing boots early and often. The airworthiness directives and this rule address icing accidents and incidents where the flightcrew was either completely unaware of ice accretion on the airframe, or was aware of ice accretion but judged that it was not significant enough to warrant operation of the airframe IPS.

The commenter raised concerns over residual ice, which is ice remaining (not shed) after a complete boot cycle. The FAA participated in high and low speed icing wind tunnel tests that contradict the commenter's position that boots work better, and continue to shed ice effectively, for a longer period if airfoil leading ice is allowed to build before cycling the boots.

The higher speed icing wind tunnel tests (≥180 KCAS) showed that ice was shed after each boot activation and that after 2 or 3 cycles there was no discernible difference between ice accretions from early versus delayed activation of the boots. The residual ice that remained on the boot after cycling at the first sign of ice accretion was always smaller than the amount of ice that was present on the boot during the time that it took for ¼-inch of ice to form.

The lower speed icing wind tunnel tests (≤144 KCAS) showed large amounts of residual ice which the boots had difficulty shedding, regardless of the activation method employed. Immediate activation of an automatic system did not degrade ice shedding performance. Cycling early and often resulted in shedding sooner than waiting for a specified ice accretion thickness. For example, simulating an automatic one minute system activated at first sign of icing at 14 °F, 108 KCAS, resulted in a ''good shed'' at the 15th cycle at 15 minutes. Waiting for a ¼ inch accretion before cycling resulted in a ''good shed'' at the 12th cycle at 20 minutes. The residual ice after ''good sheds'' was similar regardless of the boot activation method. Based on the results of these tests, we do not agree with Ameriflight's position about the

[7] The commenter noted that this is particularly true of older boots that have been on the wing for several seasons and which—although completely airworthy—have leading edges which have become somewhat roughened by the impacts of ice crystals, snow, hail, *etc.*, and provide a better ''tooth'' to which structural ice can adhere.

effectiveness of pneumatic deicing boots.

4. Oppose Automatic Activation and Cycling of Airframe IPS

Ameriflight also opposed any system that would automatically activate ice protection equipment or automatically cycle pneumatic deicing boots. Ameriflight suggested automatic activation of deicing boots during low speed operation, takeoff, or in the landing flare could cause handling quality problems on some aircraft. The commenter stated that although such automatic operation could be inhibited by airspeed, landing gear position, or other sensors, these in turn add increments of complexity and potential unreliability that tend to offset the automatic systems' safety value.

The FAA agrees that automatic activation of the deicing boots during some phases of flight (for example, landing flare) could result in handling quality problems on some airplanes. As Ameriflight pointed out, inhibiting automatic activation during these phases of flight to prevent any handling quality problems adds complexity to the system and could potentially increase the chances for the system not to activate when it is needed. However, the FAA finds that the increase in safety afforded by automatic activation of the airframe IPS outweighs the concerns expressed by Ameriflight and that compliance with other regulations would mitigate those concerns.

Section 25.143(a) requires airplanes to be safely controllable and maneuverable during takeoff, climb, level flight, descent, and landing. Section 25.143(b) states that it must be possible to make a smooth transition from one flight condition to another without exceptional piloting skill, alertness, or strength under any probable operating condition. If the airplane cannot operate safely with the airframe IPS activated during a particular phase of flight, automatic activation of the airframe IPS would need to be inhibited during that phase of flight.

Any potential effect on the reliability of the system to activate would be assessed in accordance with § 25.1309, which requires that systems must be designed to perform their intended function under any foreseeable operating condition. Section 25.1309 also establishes the minimum allowable system reliability, which is based on the hazard that would result from failure of the system. Therefore, the increase in safety afforded by automatic activation of the airframe IPS would not be offset by the increase in complexity and potential effect on reliability if automatic activation must be inhibited in certain flight phases.

Ameriflight commented that IPS other than deicing boots should be controlled by active involvement of the flightcrew, rather than automatically. IPS operation at inopportune times could actually decrease safety, for example by causing (i) preexisting ice accumulations to be shed into engine inlets, (ii) undesired drawdown of engine bleed air, or (iii) an excess electrical load. Systems could be designed with sensors to protect against such inopportune operation, but only at the price of additional complexity and unreliability. Ameriflight opposed any system that would automatically activate ice protection equipment or automatically recycle pneumatic deicing boots because automatic systems may fail, and the flightcrew might be unaware the IPS is not operating. ''Automatic'' systems add complexity, testing requirements, and systems interfaces, and often result in decreased overall reliability and tend to remove the flightcrew from the operational loop.

The final rule does not require automatic activation of airframe IPS, but does allow it if a primary ice detection system is installed. If an applicant chooses to certificate a system to activate the airframe IPS automatically, compliance with part 25 regulations ensure the airplane can operate safely any time the airframe IPS is operated. Issues raised by the commenter such as ice shedding, bleed air, and electrical power are considered during airplane certification. As previously mentioned, any system that would be necessary to inhibit automatic activation would be required to comply with § 25.1309, which ensures system reliability commensurate with the hazard associated with the failure of that system. As indicated by the commenter, an automatic system may fail. However, § 25.1309 requires assessing the hazard associated with the failure and providing appropriate warnings commensurate with the hazard. Compliance with part 25 ensures the safe operation of the airplane if the airframe IPS is automatically activated regardless of whether the airframe IPS is a thermal anti-ice system or a deicing boot system.

5. Necessity for Visual Cues in Combination With an Advisory Ice Detector

Bombardier noted the requirement for an advisory system, in combination with visual cues for recognition of ice accretion, implies that visual cues are necessary because of ice detector failure and not ice detector performance. The fact that no visual cues are necessary for a primary ice detection system (dual ice detectors) seems to indicate an intent to focus on ice detection failure. Therefore, the commenter believed that it would be appropriate to address how primary ice detectors should be certified knowing these potential limitations.

The FAA reviewed our airworthiness directives that require operating deicing boots at the first sign of ice accretion. We determined that this means of IPS operation should be improved because such observations can be difficult during times of high workload, nighttime operations, or when clear ice has accumulated. Therefore, to mitigate the effects of human sensory limitations and inadequate attention due to workload, the final rule requires visual cues of ice accretions in combination with an advisory ice detector. The combination of visual cues and advisory ice detectors is intended to address the potential limitations of human beings, not of the ice detectors, as suggested by the commenter. Limitations of primary ice detectors, as well as advisory ice detectors, are addressed during certification through the requirements of §§ 25.1301 and 25.1309. These regulations require that equipment function properly when installed, perform its intended functions under any foreseeable operation condition, and ensure system reliability commensurate with the hazard associated with a failure of that system.

6. Require Automatic Activation of Airframe IPS

An individual commenter requested that § 25.1419(e) be revised to allow only automatic activation of airframe IPS in appendix C icing conditions, and to require IPS status displays. The commenter suggested that all other proposed options to ensure timely activation of the airframe IPS be deleted. The commenter believed that visual cues are not adequate, there is no correlation between the ice formed on the airframe and the thickness of the ice formed on the ice detector, and automatic activation would minimize hazards by making flightcrews aware of icing conditions early.

The FAA disagrees and maintains that the proposed standard that allows several means to ensure timely activation of the airframe ice protection equipment is acceptable. Icing accidents and incidents do not support the suggested revision. The FAA acknowledges that automatic activation of airframe IPS based on icing conditions will likely result in earlier activation and minimize the effects of icing compared to waiting until ice accretions have formed on the airframe.

However, later activation is acceptable, provided an applicant substantiates the airplane can operate safely with the ice accretion present at the time the airframe IPS is activated and becomes effective. Consequently, if the airframe IPS is activated based on an ice detector, it is the ice accretion present on the airframe that is important, not the correlation between the ice shape on the ice detector and the airframe. The commenter pointed out icing accidents and incidents where the flightcrew was unaware of ice accretions and concluded that visual cues are inadequate. The FAA concurs that visual cues alone are not adequate, but visual cues in addition to an advisory ice detection system would provide an acceptable level of safety and mitigate the effects of human sensory limitations and inadequate attention due to workload.

7. Remove Option To Activate Airframe IPS Based on Temperature and Visible Moisture

Proposed § 25.1419(e)(3) would allow activation of the airframe IPS based on conditions conducive to airframe icing as defined by appropriate static or total air temperature and visible moisture. Three commenters, Transport Canada, Swan International Sensors, and an individual commenter did not consider proposed § 25.1419(e)(3) an acceptable alternative to requiring an ice detection system. Transport Canada noted that it is common to base temperature indication on a single sensor, which may not have the required reliability and failure monitoring. Moreover, the display of temperature may not be conspicuous particularly on electronic flight instrument systems. In addition, it may not be easy to see visible moisture at night. The commenter requested that if paragraph (e)(3) is retained, it should be limited to airplanes that are at a lower risk of icing related incidents and accidents. The individual commenter stated that training flightcrews to recognize conditions conducive to icing is not an adequate solution because such training and documentation have existed for some time, yet icing related accidents still occurred.

The FAA concludes that § 25.1419(e)(3) should be retained as proposed because activation of the airframe IPS using visible moisture and temperature is based on the methodology currently being used safely for activating engine IPS. Flightcrews are trained to recognize conditions conducive to icing (that is, visible moisture and temperature) and have used this method safely for the operation of engine IPS. While there may be some challenges to observing visible moisture at night, the challenge is no different than for engine IPS activation. The FAA expects that activation of the airframe IPS using the same type of cues will result in timely activation just as it has for engines.

Furthermore, the accident and incident history does not support the commenter's position that training flightcrews to recognize conditions conducive to icing has not been successful. For airplanes with an airframe IPS that is activated based on visible moisture and temperature, the FAA is unaware of accidents or incidents attributed to the flightcrew not activating the airframe IPS.

Regarding the concern over the reliability of the current equipment used to detect temperature, the equipment must meet the requirements of § 25.1309. This could result in the need to install different temperature sensing equipment than what is used on aircraft today.

8. Allow Temperature and Visible Moisture in Combination With an Advisory Ice Detection System

Transport Canada recommended the FAA include temperature and visible moisture in combination with an advisory ice detection system as an acceptable configuration under the proposed rule.

The FAA determines there is no need to revise the rule to explicitly provide the suggested option. The regulations provide minimum requirements and an applicant has the option of exceeding these requirements. Therefore, even though the suggested option is not identified in the proposed rule, it would be acceptable for an applicant to comply with proposed § 25.1419(e)(3) and voluntarily go beyond that requirement and install an advisory ice detection system.

9. Need Definition of Environmental Conditions Conducive to Icing

The National Transportation Safety Board (NTSB) commented that industry could not realistically be expected to implement § 25.1419(e)(3) until the FAA provides a more specific definition of ''environmental conditions conducive to icing.'' Swan International Sensors stated that the flightcrew would be required to interpret icing conditions because they are not defined adequately by paragraph (e)(3).

The FAA concludes that the proposed rule adequately defined environmental conditions conducive to icing and does not require interpretation by the flightcrew. The rule requires the manufacturer to identify conditions conducive to airframe icing as defined by an appropriate static or total air temperature and visible moisture for use by the flightcrew to activate the airframe IPS. The proposed rule defined the environmental conditions as a static or total air temperature and visible moisture. Advisory circular (AC) 25–1419–2, Compliance with the Ice Protection Requirements of §§ 25.1419(e), (f), (g), will provide guidance on determining the temperature cue. Therefore, we made no changes to proposed § 25.1419(e)(3) in this final rule.

10. Require Aircraft Be Equipped With All Three Proposed Methods of Airframe Ice Detection

The proposed § 25.1419(e) would require one of three ice detection and activation methods. The Air Crash Victims Families Group and an individual commenter requested that the final rule require all three ice detection and activation methods identified in proposed § 25.1419(e). The commenters also requested that the FAA require automatic ice detection systems to warn pilots of icing and to activate IPS automatically. The commenters referenced the Circuit City airplane accident in Pueblo, Colorado, on February 16, 2005, where the NTSB found the probable cause to be the flightcrew's failure to monitor and maintain airspeed and comply with procedures for ice boot activation on approach.[8] In addition, the NTSB found that distractions impeded the flightcrew's ability to monitor and maintain airspeed and manage the deicing system.

The FAA finds that icing accidents and incidents do not support the commenters' suggestion to require all three proposed methods to ensure timely activation of the airframe IPS or require a system to activate the airframe IPS automatically. The three proposed methods would independently ensure timely activation of the airframe IPS. The FAA is unaware of any icing accidents or incidents attributed to untimely activation of the airframe IPS on an airplane that had equipment compliant with this rule. The flightcrew of the Circuit City airplane relied on visual observation of ice accretions for determining if the airframe IPS should be activated and cycled manually. There was not a detector to tell the flightcrew to cycle the airframe IPS. This rule requires an advisory ice detection

[8] The commenter noted that the Cessna Citation 560 was equipped with deice boots that do not cycle automatically, which require pilots to continually monitor accumulation and reactivate the deice boots each time.

system in addition to visual observation of the first sign of ice accretion as a means to determine the airframe IPS must be activated. In addition, the rule addresses flightcrew workload by requiring deice boots to automatically cycle or by equipping the airplane with an ice detection system to alert the flightcrew each time the airframe IPS must be cycled. For these reasons, the suggested revisions are not being adopted.

11. Require Manual Back-Up to Automatic Activation of Airframe IPS

Proposed § 25.1419(g) addressed the flightcrew workload associated with an airframe IPS that operates cyclically and that requires continuous monitoring of ice accretions to determine when to activate the IPS. Proposed paragraph (g)(2) requires that these systems automatically cycle the airframe IPS to eliminate the need to continuously monitor ice accretions. An individual commenter requested that proposed paragraph (g) be revised to require manual system activation as a back-up to automatic activation. Compliance with § 25.1309, which requires an assessment of the hazard associated with the failure of a system, will determine whether a manual system is required as a back-up to an automatic activation system. Therefore, the FAA finds it is unnecessary to require a back-up manual system as suggested by the commenter.

12. Allow an Aerodynamic Performance Monitoring System

Marinvent and the Regional Airline Association requested revising the proposed rule to include an aerodynamic performance monitoring (APM) system as an alternative to ice detection systems.[9] The commenters believed APMs have several advantages over ice detectors, but that they do not inherently detect ice. Therefore, the proposed rule text did not directly address APMs because they are not strictly ''ice detection systems.'' The commenters understood that applicants may propose the APM as an alternative means of compliance by demonstrating an equivalent level of safety. However, the commenters thought the process of obtaining an equivalent level of safety finding would discourage the use of this alternative and believed there was a fundamental conceptual difference between the ice detection and aerodynamic monitoring, making it difficult for the applicant and the regulator to establish common ground to demonstrate an equivalent level of safety. The commenters contended the existing proposed rule text would effectively exclude the APM systems as a viable alternative means of compliance with the regulation.

The Regional Airline Association added that at least one of their associate members currently provides an APM system as an option in their aircraft (Aerospatiale model ATR 72) for their airline members.

The FAA concludes that, at this time, APMs are not sufficiently mature to use as a method to ensure timely activation of the airframe IPS. Further, contrary to the commenters' beliefs, the equivalent level of safety process is commonly used in certification programs and would not discourage the use of alternatives such as an APM.

In response to the Regional Airline Association's comment that an APM is currently offered as an option on the Aerospatiale ATR 72 aircraft, the FAA is aware that Aerospatiale has certificated an aircraft performance monitor, not an aerodynamic performance monitor. The aircraft performance monitor system used on the ATR 72 is intended to provide the flightcrew with information that could help them manage a severe icing encounter. The ATR 72's aircraft performance monitor system is not intended, nor certificated, to provide the flightcrew with information to ensure the airframe IPS is activated in a timely manner.

B. Airframe Ice Protection System Operation

Proposed § 25.1419(f) would allow an applicant to substantiate that the airframe IPS need not be operated during specific phases of flight. An individual commenter requested that § 25.1419(f) be revised to allow airplane operations with the IPS inactive if the airplane can be operated safely with the ice accretions associated with probable failures. The commenter also requested that § 25.1419(f) be revised to require that safe operation be demonstrated by flight test, icing tunnel tests, or other means.

The FAA finds the suggestion to consider only the ice accretions associated with probable failures unacceptable. Compliance with § 25.1309 determines the failures that must be considered, and this rule should not predetermine that only probable failures need be considered. Regarding the suggestion to specify the acceptable means of showing compliance, the FAA finds it is not necessary because § 25.1419(a) and (b) already specify the means that can be used to substantiate that an airplane can operate safely in icing conditions. For these reasons, the FAA did not adopt the suggested changes to § 25.1419(f).

C. Airplane Flight Manual Requirements

Proposed section § 25.1419(h) would require that procedures for operation of the IPS be established and documented in the Airplane Flight Manual (AFM).

BAE Systems Regional Aircraft requested the word ''airframe'' be added to § 25.1419(h). The FAA finds that adding the word ''airframe'' to § 25.1419(h) is not necessary because the procedures for operation of both engine and airframe IPS must be in the AFM. Traditionally, manufacturers provide adequate information in the AFM regarding the operation of the engine IPS, but information for an airframe IPS is sometimes lacking or is not consistent with the methods of operation used during certification. Proposed paragraph (h) is included to ensure future AFMs also include information for the operation of airframe IPS.

Another commenter requested that § 25.1419(h) be deleted because the requirement is already covered by the existing regulation in the section titled ''Airplane Flight Manual.''

The FAA finds that the sections relating to the AFM in part 25, Subpart G (§§ 25.1581–25.1587) do not explicitly address IPS operations. Therefore, the Subpart G regulations must be supplemented with the proposed § 25.1419(h) to ensure that procedures for operating the IPS are included in the AFM and are consistent with the requirements of § 25.1419. For these reasons, the suggested revision is not being adopted in this final rule.

Boeing requested that proposed § 25.1419(g)(1) be changed to require that the IPS must operate continuously only while the aircraft remains in icing conditions. The proposed rule would require operating the anti-icing system continuously throughout a potentially long flight after exiting icing conditions. Such continued operation while not in icing conditions is not necessary and wastes fuel. Boeing suggested that the proposed rule be revised to specify when an IPS that operated continuously can be deactivated.

Based on Boeing's comment, it appears the intent of § 25.1419(g) may be unclear. Proposed § 25.1419(g) provided three options to minimize the flightcrew workload associated with airframe IPS operation. One option (§ 25.1419(g)(1)) is an airframe IPS that operates continuously. Section 25.1419(g)(1) has been revised to clarify

[9] Aerodynamic performance monitoring systems directly measure the degradation of airfoil performance caused by the roughness and profile changes induced by the contamination of the airfoil.

that the airframe IPS must be designed to operate continuously, not to require continuous operation of an airframe IPS. We also clarified that procedures for operation of the IPS as specified in § 25.1419(h) include both activation and deactivation procedures. In addition, we revised § 25.1419(g)(1) to say that the IPS must be designed to operate continuously.

For future certification programs (as with past certification programs), it is incumbent upon the manufacturer to propose and substantiate when it is acceptable to deactivate the IPS. The only difference from past certifications will be that the activation requirements of § 25.1419(e) must be considered.

D. Other Comments

1. Clarify the Rule Is Applicable to Airframe IPS

BAE Systems Regional Aircraft requested that § 25.1419(f) and (g) be modified to indicate the ''airframe'' IPS are being referenced.

The FAA agrees that §§ 25.1419(f) and (g) should be clarified by adding the word ''airframe.'' Therefore, in § 25.1419(f), we revised the introductory language to reference the airframe IPS (''Unless the applicant shows that the airframe ice protection system * * *). In § 25.1419(g), we made a similar revision to the introductory language (''After the initial activation of the airframe ice protection system * * *).

2. Expand Rule To Include Certain Existing Airplanes and Prohibitions With IPS Inoperable

The NTSB requested a revision to address its perceived ongoing disconnect between the industry's guidance on deicing boot activation and what the FAA has learned and research has shown regarding ice bridging and deice boot effectiveness. The NTSB noted the Cessna 208 Caravan AFM instructs crews to wait for ¼ to ¾ inch of ice to accrete before activating the pneumatic deicing boots.

The FAA finds that for the new part 25 airplane and for existing part 25 airplanes that are modified in the future with significant airframe IPS design changes, this rule precludes the potential for perpetuating the belief that flightcrews should wait for a specific amount of ice to accumulate before activating the deicing boots. The final rule requires activation of the airframe IPS based on ice detectors or icing conditions and requires procedures for operating the IPS in the AFM. Therefore, for new part 25 airplanes, the industry guidance in the AFM will reflect the FAA regulatory requirements for activation of the IPS which does not allow activation of deicing boots based on the flightcrew determining that a specified thickness of ice has accumulated.

The NTSB, Air Crash Victims Families Group, and one other commenter requested the proposed rule be expanded to include existing airplanes equipped with pneumatic deicing boots and reference the NTSB safety recommendations A–98–91, A–98–100, A–07–14, and A–07–16 (which recommend icing related actions the FAA should take for existing airplanes).

We disagree. The NPRM did not address this issue, and revising this final rule to include retrofit requirements for existing airplanes would delay its issuance, which is not in the interest of safety. However, the FAA may consider additional rulemaking to address activation of the IPS on part 121 airplanes at a later date.

The NTSB also believed the proposed rule should prohibit crews from operating the airplane when certain functions of the IPS are inoperable, and should prohibit flight into known icing conditions if certain functions of the IPS are inoperable.

The FAA maintains that if certain equipment is inoperable, transport category airplanes should be prohibited from flight in forecasted icing conditions in addition to prohibiting flight in known icing conditions (as suggested by the NTSB). However, we do not concur with incorporating such a requirement into a certification rule. The FAA utilizes the Master Minimum Equipment List (MMEL) to evaluate whether an airplane may be operated with a particular piece of equipment inoperative. Each airplane is unique and the MMEL is the best way to determine the impact of an inoperable piece of equipment.

3. Revise Rule To Encourage Specific Airfoil Designs

The Regional Airline Association noted that several aircraft types over many years have been operated safely without any incidents or accidents attributed to icing. The commenter requested the proposed rule be rewritten to encourage airfoil design as the best means to address safety concerns due to operations in icing conditions.

Although the FAA does not write regulations to ''encourage'' specific airfoil designs, we do establish the performance and handling requirements an airplane must meet to substantiate that the airplane can operate safely in icing conditions. These safety requirements (to a certain extent) drive the design of the airfoil. However, it is the responsibility of the airframe manufacturer to design an airplane that meets the Federal Aviation Regulations icing regulations.

E. Economic Analysis

An individual commenter stated that the Goodrich Corporation cost estimates identified in the NPRM appear to be realistic, but the non-recurring costs could be reduced by a system that uses a detector that is different than the assumed ice detector. The commenter suggested using a ''universal'' sensor or detector that is independent of the airplane type and installation location; like a pressure sensor, a temperature sensor, a humidity sensor, or a system that consists of sensors that are universal.[10]

The commenter provided cost estimates that are less than the ice detector certification estimates used in our economic assessment. However, even with the more costly estimates, the FAA concluded the economic impact of the rulemaking is minimal. Since decreasing the cost estimates would not affect this conclusion, the FAA has determined it is not necessary to revise the costs in our economic assessment.

The FAA requested comments from U.S. manufacturers on their plans to produce a new part 25 certificated aircraft with deicing systems that operate cyclically and the associated certification costs. Bombardier and Transport Canada referenced this FAA request, but did not provide any data. Bombardier believes the FAA's economic analysis, which noted the trend of part 25 manufacturers to install thermal anti-ice protection systems in newly certificated part 25 airplanes, implied that the FAA considered ''cyclical'' deicing systems to be anachronistic. Bombardier indicated that technology in development may reintroduce cyclical deicing systems. Transport Canada indicated that if cyclical deicing systems are being considered for the future, then the FAA trend noted in the NPRM would not be correct.

While technology development may result in the reintroduction of cyclical deicing systems in the future, the FAA is unaware of any actual plans to produce a new part 25 certificated aircraft with deicing systems that operate cyclically and the associated certification costs. Without such information, we believe the economic assessment stating that the trend for

[10] The commenter estimated the non-recurring costs could be: Architecture/integration $7,500, qualification testing $10,000, system certification $50,000, and installation design $5,000.

new part 25 aircraft certifications is toward thermal anti-ice ice protection systems is accurate.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no current or new requirement for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

III. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

An assessment has been conducted of the economic cost impact of the final rule amending § 25.1419 of Title 14 of the Code of Federal Regulations (14 CFR) part 25, and we have determined the final rule has minimal costs. This final rule is the result of information gathered from a review of historical icing accidents and incidents. It is intended to improve the level of safety when part 25 airplanes are operated in icing conditions.

Amendment 25–121 revised § 25.207 to add requirements for considering the effects of icing on stall warning. At the time we issued Amendment 25–121, it was permissible for type certificate applicants to instruct pilots to wait for a specified amount of ice accretion to accumulate before activating the ice protection system (IPS). Section 25.207(h)(1), as adopted in Amendment 25–121, addressed this scenario by requiring flight testing with the specified amount of ice accretion to show the airplane could be operated safely until the IPS is functioning. This rule will prohibit use of this method for activating the IPS. Therefore, there is no longer any need to have the existing provision § 25.207(h)(1) that provides stall warning margin requirements for this method, and we are removing those provisions from § 25.207. This is a conforming change, and does not add any new requirements or costs. In addition, § 25.207 has been revised to improve its readability and to correct an error introduced by Amendment 25–121, but none of these revisions affect the substantive requirements.

This final rule requires newly certificated part 25 transport category airplanes certificated for flight in icing conditions to have one of the following methods to detect ice and activate the airframe IPS:

- A primary ice detection system, automatic or manual;
- The definition of visual cues for recognition of ice accretion on a specified surface combined with an advisory ice detection system that alerts the flightcrew; or
- The identification of icing conditions by an appropriate static or total air temperature and visible moisture cues.

The FAA did not receive comments causing us to change our NPRM determination that the expected costs are minimal. Bombardier indicated future technology may reintroduce cyclical deicing systems. Since 1971, no U.S. manufacturer has certificated cyclical deicing systems. Also, recent part 23 Very Light Jet (VLJ) certification programs have automatic cyclical deicing systems. We do not anticipate manufacturers to certificate manually-cycled deicing systems.

A. Cost Discussion

1. Major Assumptions

This evaluation makes the following assumptions:

- We used a $50 hourly rate for a mechanic/technician and a $75 hourly rate for an engineer working for an airplane manufacturer or modifier.
- Whenever various compliance options are available to the manufacturers, we chose the least costly option in our analysis.

Other data and derived assumptions are discussed in the following sections on costs and benefits.

2. Estimate of Costs

This section discusses the costs of a new requirement for transport category airplane manufacturers to include a method of ice detection on newly certificated airplanes. The cost estimate included below is not an estimate per manufacturer, rather an estimate per new part 25 airplane certification.

This final rule will require manufacturers of part 25 airplanes to provide the flightcrew with an effective method of ice detection. Such a method can provide a means, using an ice detection system (IDS), to alert the flightcrew of icing conditions and enable timely activation of the airframe IPS for the initial and any subsequent cycles.

The requirements for ice detection and activation of the airframe IPS are applicable to all phases of flight, unless it can be shown that the airframe IPS need not be operated during specific phases of flight. If the airframe IPS operates in a cyclical manner, it must either include a system that automatically cycles the airframe IPS, or there must be a method that alerts the flightcrew each time the airframe ice protection system must be cycled. This final rule requires:

- (e)(1) A primary IDS that automatically activates or alerts the flightcrew to activate the airframe IPS;
- (e)(2) A definition of visual cues for recognition of the first sign of ice accretion on a specified surface combined with an advisory IDS that alerts the flightcrew to activate the airframe IPS; or
- (e)(3) Identification of conditions conducive to airframe icing as defined by an appropriate static or total air temperature and visible moisture for use by the flightcrew to activate the airframe IPS.

Any of the three ice detection methods will enable timely activation of the airframe IPS and satisfy the requirements of this final rule.

The first method of ice detection is the use of a primary IDS. A primary IDS usually has two ice detectors. The cost of an ice detector used in this analysis is based on the Goodrich Corporation's average price of $6,000 per ice detector for a production airplane. The Aviation Rulemaking Advisory Committee (ARAC) Ice Protection Harmonization Working Group provided us with manufacturer cost estimates for System Design, System Qualification, Hardware, Installation, and Maintenance. Assuming the primary IDS has two ice detectors, we estimate the average cost for a primary IDS to be about $485,000 per certification, $12,000 ($6,000 × 2) for the hardware and $2,500 for the installation, or $14,500 ($12,000 + $2,500) per airplane. Table 1 shows a detailed breakout of these cost estimates.

One commenter to the NPRM, regarding Goodrich costs, stated there was a cheaper alternative system than the Goodrich system. The FAA notes a lower cost alternative is feasible.

TABLE 1—COSTS FOR § 25.1419(E)(1)—PRIMARY ICE DETECTION SYSTEM

Manufacturer non-recurring costs (per aircraft group/type) 2006$	Hours	Hourly rate	Additional cost	Cost
System Design:				
System architecture/Integration	3,000	$75		$225,000
Ice detector positioning	300	75		22,500
Procedures for AFM, AOM/FCOM & MMEL	200	75		15,000
System Qualification/certification:				
Ice detector qualification	300	75		22,500
Ice detection system certification	600	75		45,000
Flight tests	400	75	100,000	130,000
Installation Design:				
Installation drawings	500	50		25,000
Total	5,300			485,000
Costs (per airplane):				
Hardware (Primary Ice Detection System)			12,000	12,000
Installation	50	50		2,500
Additional weight is 5–10 kg				0
Total				14,500

The second method of ice detection is the use of an advisory IDS along with visual cues. The major difference between a primary and an advisory IDS is that the primary is the principal means to determine when the airframe IPS should be activated and has two ice detectors. In contrast, an advisory IDS is a backup to the flightcrew and has only one ice detector. The average cost for an advisory IDS is estimated to be $447,500 per certification, $6,000 for the hardware and $1,250 for the installation, or $7,250 ($6,000 + $1,250) per airplane. Table 2 shows a detailed breakout of these costs estimates.

TABLE 2—COSTS FOR § 25.1419(E)(2)—ADVISORY ICE DETECTION SYSTEM AND VISUAL CUES

Manufacturer non-recurring costs (per aircraft group/type) 2006$	Hours	Hourly rate	Additional cost	Cost
System Design:				
System architecture/Integration	2,500	$75		$187,500
Ice detector positioning	200	75		15,000
Visual cue determination/design	200	75		15,000
Procedures for AFM, AOM/FCOM & MMEL	200	75		15,000
System Qualification/certification:				
Ice detection qualification	300	75		22,500
Visual cue substantiation	200	75		15,000
Ice detection system certification	300	75		22,500
Flight tests	400	75	$100,000	130,000
Installation Design:				
Installation drawings	500	50		25,000
Total	4,800			447,500
Costs (per airplane):				
Hardware (Advisory Ice Detection System)			6,000	6,000
Installation	25	50		1,250
Additional weight is 5–10 kg				0
Total				7,250

The third method of ice detection is a definition of conditions conducive to airframe icing that will be used by the flightcrew to activate the airframe IPS. This definition will be included in the Airplane Flight Manual. There are no

costs imposed on the airplane manufacturers with this option. Table 3 shows a summary of the costs for each alternative.

TABLE 3—COST SUMMARY—§ 25.1419(E)

	Costs	
	Per certification	Per airplane
§ 25.1419 Alternatives:		
(e)(1) Primary IDS	$485,000	$14,500
(e)(2) Advisory IDS and Visual Cues	447,500	7,250
(e)(3) Temperature and Moisture	0	0

The least cost alternative is to activate the airframe IPS whenever the airplane is operating in conditions conducive to airframe icing based on a specific air temperature threshold and the presence of visible moisture. Since there are no additional certification or production costs to manufacturers by complying with § 25.1419(e)(3) through this alternative, we have determined there are no costs associated with compliance with § 25.1419(e).

We are aware some manufacturers may choose to install more complex systems ((e)(1) or (e)(2)), and want to note these more complex systems are acceptable alternatives to (e)(3).

§ 25.1419(f)

Section 25.1419(f) describes the applicability of the final rule to all phases of flight, so there are no additional costs associated with this section.

§ 25.1419(g)

After the initial operation of the airframe IPS, § 25.1419(g) provides alternatives the manufacturer must provide to the operator for safe flight. These alternatives are:

- The IPS must be designed to operate continuously (§ 25.1419(g)(1)), or
- The airplane must be equipped with a system that automatically cycles the IPS (§ 25.1419(g)(2)), or
- An IDS must be provided to alert the flightcrew each time the IPS must be cycled (§ 25.1419(g)(3)).

Section 25.1419(g) applies to airplanes with either a thermal anti-icing IPS or an IPS that operates in a cyclical manner. Thermal anti-icing systems typically operate continuously while deicing systems usually operate cyclically.

Section 25.1419(g)(1) applies primarily to a thermal anti-icing IPS, which typically uses heat to keep protected surfaces of the airplane free of ice accretions.

No additional manufacturing costs are associated with § 25.1419(g)(1) because, once a thermal anti-IPS is activated, it is capable of operating continuously.

The cost estimates for each option do not include primary and advisory ice detection system maintenance, which would make the costs for these alternatives higher. The FAA has determined that the trend for new part 25 aircraft certification is toward anti-ice protection systems so the maintenance costs associated with deicing ice protection systems are not considered. The cost estimates for § 25.1419(g)(1) do not include the associated maintenance costs for anti-ice protection systems as operators are already incurring these costs.

Sections 25.1419(g)(2) and (3) apply to an airframe IPS that operates in a cyclical manner. Past delivery history has shown that about 97% of U.S. manufactured part 25 airplanes delivered have thermal anti-icing IPS and 3% have deicing IPSs that operate in a cyclical manner. Cessna is the only U.S. manufacturer that currently delivers part 25 certificated airplanes with an IPS that operates in a cyclical manner. Those airplanes were certificated in September 1971.[11] Newer variants of airplanes from that September 1971 type certificate and all newer part 25 new Cessna certifications have thermal anti-icing IPS that operate continuously. We believe the trend for new part 25 aircraft certifications is toward a thermal anti-icing IPS that operates continuously. Because of the trend of part 25 manufacturers to install thermal anti-icing IPS in their newly certificated part 25 airplanes, we believe there are no costs imposed on the airplane manufacturers by § 25.1419(g).

Bombardier indicated future technology may reintroduce cyclical deicing systems. No U.S. manufacturer has certificated cyclical deicing systems since 1971. Since recent part 23 Very Light Jet (VLJ) certification programs have automatic cyclical deicing systems, we do not anticipate airplane manufacturers to certificate manually-cycled deicing systems.

[11] Type Certification Data Sheet No. A22CE.

We received no comments from U.S. manufacturers on their plans to produce a newly part 25 certificated aircraft with deicing systems that operate cyclically and the associated certification costs; therefore, we believe § 25.1419(g) will add no additional costs.

§ 25.1419(h)

Future Airplane Flight Manuals can be readily prepared to include appropriate icing procedures for future certificated air transport category airplanes. Thus, minimal costs are associated with § 25.1419(h).

B. Benefits

The FAA is adopting this final rule because accidents and incidents occurred where the flightcrew did not operate the airframe IPS in a timely manner and because of concerns over the flightcrew workload required to operate an airframe IPS that the flightcrew must manually cycle. The final rule addresses these concerns by ensuring that flightcrews are provided with a clear means to know when to activate the airframe IPS and by reducing the workload associated with an airframe IPS that operates cyclically. The safety benefit of this final rule is that it will improve the level of safety of new airplane designs for operations in icing conditions.

C. Conclusions

The FAA has determined that this final rule has benefits that justify its minimal costs. However, the Office of Management and Budget has determined that this final rule is a ''significant regulatory action,'' because it harmonizes U.S. aviation standards with those of other civil aviation authorities.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale

of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As we stated in the NPRM, all United States transport category aircraft manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees. We received no public comments disputing this determination. Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and has no basis for believing the rule will impose substantially different costs on domestic and international entities. Thus the FAA believes the rule has a neutral trade impact.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We did not receive any comments, and we have determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 4(j) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because while it is a ''significant regulatory action,'' it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or
3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

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://DocketsInfo.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

Appendix 1—Definition of Terms Used in This Preamble

For the preamble of this rulemaking, the following definitions are applicable. These definitions of terms are for use *only* with this rulemaking's preamble:

a. *Advisory ice detection system:* An advisory ice detection system annunciates

the presence of icing conditions or ice accretion. The advisory ice detection system provides information advising the flightcrew of the presence of ice accretion or icing conditions. An advisory ice detection system differs from a primary ice detection system in that it usually consists of a single ice detector without redundancies that provide sufficient reliability to comply with § 25.1309. Therefore, it can only be used in conjunction with other means (most commonly, visual observation by the flightcrew) to determine the need for, or timing of, activating the anti-icing or deicing system. The flightcrew is responsible for monitoring the icing conditions or ice accretion as defined in the AFM (typically using total air temperature and visible moisture criteria or visible ice accretion) and activating the anti-icing or deicing system(s).

b. *Airframe icing:* Airframe icing is ice accretions on the airplane, except for the propulsion system.

c. *Anti-icing:* Anti-icing is the prevention of ice accretions on a protected surface, either:

- By evaporating the impinging water; or
- By allowing it to run back and off the protected surface or freeze on non-critical areas.

d. *Automatic cycling mode:* An automatic cycling mode is a mode of operation of the airframe deicing system that provides repetitive cycles of the system without the need for the pilot to select each cycle. This is generally done with a timer, and there may be more than one timing mode.

e. *Deicing:* Deicing is the removal or the process of removal of an ice accretion after it has formed on a surface.

f. *Ice Protection System:* An ice protection system (IPS) is a system that protects certain critical aircraft parts from ice accretion. To be an approved system, it must satisfy the requirements of § 25.1419.

g. *Primary ice detection system:* A primary ice detection system is used to determine when the IPS must be activated. A primary ice detection system is a system with redundancies that provide sufficient reliability to comply with § 25.1309 so the flight crew does not need to visually monitor the icing accretions that may be building on the airplane. The system annunciates the presence of ice accretion or icing conditions, and may also provide information to other aircraft systems. A primary automatic system automatically activates the anti-icing or deicing IPS. With a primary manual system, the flightcrew activates the anti-icing or deicing IPS upon indication from the primary ice detection system.

h. *Static air temperature:* The air temperature as would be measured by a temperature sensor not in motion with respect to that air. This temperature is also referred to in other documents as ''outside air temperature,'' ''true outside temperature,'' or ''ambient temperature.''

i. *Total air temperature:* The temperature of a parcel of air brought to rest relative to the aircraft resulting from adiabatic compression of the parcel. This temperature is also referred to in other documents as ''stagnation temperature.''

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Part 25 of Title 14, Code of Federal Regulations as follows:

PART 25—AIRWORTHINESS STANDARDS, TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 25 continues to read as follows:

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

■ 2. Amend § 25.143 by revising paragraph (j) to read as follows:

§ 25.143 General.

* * * * *

(j) For flight in icing conditions before the ice protection system has been activated and is performing its intended function, it must be demonstrated in flight with the ice accretion defined in appendix C, part II(e) of this part that:

(1) The airplane is controllable in a pull-up maneuver up to 1.5 g load factor; and

(2) There is no pitch control force reversal during a pushover maneuver down to 0.5 g load factor.

■ 3. Amend § 25.207 by revising paragraphs (b) and (h), and adding a new paragraph (i) to read as follows:

§ 25.207 Stall warning.

* * * * *

(b) The warning must be furnished either through the inherent aerodynamic qualities of the airplane or by a device that will give clearly distinguishable indications under expected conditions of flight. However, a visual stall warning device that requires the attention of the crew within the cockpit is not acceptable by itself. If a warning device is used, it must provide a warning in each of the airplane configurations prescribed in paragraph (a) of this section at the speed prescribed in paragraphs (c) and (d) of this section. Except for showing compliance with the stall warning margin prescribed in paragraph (h)(3)(ii) of this section, stall warning for flight in icing conditions must be provided by the same means as stall warning for flight in non-icing conditions.

* * * * *

(h) For flight in icing conditions before the ice protection system has been activated and is performing its intended function, with the ice accretion defined in appendix C, part II(e) of this part, the stall warning margin in straight and turning flight must be sufficient to allow the pilot to prevent stalling without encountering any adverse flight characteristics when:

(1) The speed is reduced at rates not exceeding one knot per second;

(2) The pilot performs the recovery maneuver in the same way as for flight in non-icing conditions; and

(3) The recovery maneuver is started no earlier than:

(i) One second after the onset of stall warning if stall warning is provided by the same means as for flight in non-icing conditions; or

(ii) Three seconds after the onset of stall warning if stall warning is provided by a different means than for flight in non-icing conditions.

(i) In showing compliance with paragraph (h) of this section, if stall warning is provided by a different means in icing conditions than for non-icing conditions, compliance with § 25.203 must be shown using the accretion defined in appendix C, part II(e) of this part. Compliance with this requirement must be shown using the demonstration prescribed by § 25.201, except that the deceleration rates of § 25.201(c)(2) need not be demonstrated.

■ 4. Amend § 25.1419 by adding new paragraphs (e), (f), (g), and (h) to read as follows:

§ 25.1419 Ice protection.

* * * * *

(e) One of the following methods of icing detection and activation of the airframe ice protection system must be provided:

(1) A primary ice detection system that automatically activates or alerts the flightcrew to activate the airframe ice protection system;

(2) A definition of visual cues for recognition of the first sign of ice accretion on a specified surface combined with an advisory ice detection system that alerts the flightcrew to activate the airframe ice protection system; or

(3) Identification of conditions conducive to airframe icing as defined by an appropriate static or total air temperature and visible moisture for use by the flightcrew to activate the airframe ice protection system.

(f) Unless the applicant shows that the airframe ice protection system need not be operated during specific phases of flight, the requirements of paragraph (e) of this section are applicable to all phases of flight.

(g) After the initial activation of the airframe ice protection system—

(1) The ice protection system must be designed to operate continuously;

(2) The airplane must be equipped with a system that automatically cycles the ice protection system; or

(3) An ice detection system must be provided to alert the flightcrew each time the ice protection system must be cycled.

(h) Procedures for operation of the ice protection system, including activation and deactivation, must be established and documented in the Airplane Flight Manual.

■ 5. Amend appendix C to part 25 by revising part II (e) to read as follows:

Appendix C to Part 25

* * * * *

Part II—Airframe Ice Accretions for Showing Compliance With Subpart B

* * * * *

(e) The ice accretion before the ice protection system has been activated and is performing its intended function is the critical ice accretion formed on the unprotected and normally protected surfaces before activation and effective operation of the ice protection system in continuous maximum atmospheric icing conditions. This ice accretion only applies in showing compliance to §§ 25.143(j) and 25.207(h), and 25.207(i).

Issued in Washington, DC, on July 17, 2009.

Lynne A. Osmus,

Acting Administrator.

[FR Doc. E9–18483 Filed 7–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0227; Directorate Identifier 2007–SW–65–AD; Amendment 39–15978; AD 2009–15–15]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 427 Helicopters

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 427 helicopters. This AD results from mandatory continuing airworthiness information (MCAI) originated by the aviation authority of Canada to identify and correct an unsafe condition on an aviation product. Transport Canada, the aviation authority of Canada, with which we have a bilateral agreement, states that it has been determined that the existing hardware connecting the vertical fin to the tail rotor gearbox needs to be upgraded to prevent the vertical fin from becoming loose.

BHTC has received reports of loose vertical fins discovered during inspections. Investigation revealed that the current vertical fin attachment hardware may not provide adequate clamp-up. If not corrected, the vertical fin could become loose and cause vibration, which could lead to subsequent loss of control of the helicopter. This AD requires actions that are intended to address this unsafe condition.

DATES: This AD becomes effective on September 8, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://regulations.gov* or in person at the Docket Operations office, U.S. Department of Transportation, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 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 Limited, 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 AD Docket: The AD docket contains the Notice of proposed rulemaking (NPRM), the economic evaluation, any comments received, and other information. The street address and operating hours for the Docket Operations office (telephone (800) 647–5527) are in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after they are received.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to BHTC Model 427 helicopters on March 4, 2009. That NPRM was published in the **Federal Register** on March 23, 2009 (74 FR 12098). That NPRM proposed to require actions to prevent the vertical fin from becoming loose and causing vibration, which could lead to subsequent loss of control of the helicopter. You may obtain further information by examining the MCAI and any related service information in the AD docket.

Comments

By publishing the NPRM, we gave the public an opportunity to participate in developing this AD. However, we received no comment on the NPRM or on our determination of the cost to the public. Therefore, based on our review and evaluation of the available data, we have determined that air safety and the public interest require adopting the AD as proposed.

Relevant Service Information

Bell Helicopter Textron has issued Alert Service Bulletin No. 427–06–15, dated December 14, 2006. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

Differences Between This AD and the MCAI AD

We have reviewed the MCAI AD and related service information and, in general, agree with their substance. This AD differs from the MCAI AD as follows:

- We do not require compliance ''no later than November 27, 2007'', because that date has passed.
- We refer to the compliance time as ''hours time-in-service'' rather than ''air time hours.''

These differences are highlighted in the ''Differences Between this AD and the MCAI AD'' section in the AD.

Costs of Compliance

We estimate that this AD will affect about 17 products of U.S. registry. We also estimate that it will take about 2 work-hours per helicopter to remove and visually inspect the vertical fin and the tail rotor gearbox attachment legs and to re-install the vertical fin. The average labor rate is $80 per work-hour. Required parts will cost about $227 per helicopter. Based on these figures, we estimate the cost of this AD on U.S. operators to be $6,579 for the fleet, or $387 per helicopter, to perform the inspections and remove and re-install the vertical fin.

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 product(s) 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, 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:

2009–15–15 Bell Helicopter Textron Canada (BHTC): Amendment 39–15978; Docket No. FAA–2009–0227; Directorate Identifier 2007–SW–65–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on September 8, 2009.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 427 helicopters, serial numbers 56001 through 56057, 58001, and 58002, certificated in any category.

Reason

(d) Transport Canada states in the mandatory continuing airworthiness information (MCAI) that it has been determined that the existing hardware connecting the vertical fin to the tail rotor gearbox needs to be upgraded to prevent the vertical fin from becoming loose. BHTC has received reports of loose vertical fins discovered during inspections. Investigation revealed that the current vertical fin attachment hardware may not provide adequate clamp-up. If not corrected, the vertical fin could become loose and cause vibration, which could lead to subsequent loss of control of the helicopter.

Actions and Compliance

(e) Within the next 150 hours time-in-service, unless already done, do the following:

(1) Remove the vertical fin and visually inspect the inboard and outboard surfaces of the vertical fin where it attaches to the tail rotor gearbox support for a crack, an elongated bolt hole, fretting, distortion and corrosion.

(2) Visually inspect the tail rotor gearbox support attachment legs for a crack, fretting and corrosion.

(f) If a crack, elongated bolt hole, fretting, distortion or corrosion is detected, repair or replace the part with an airworthy part before further flight.

(g) Reinstall the vertical fin.

Differences Between This AD and the MCAI AD

(h) This AD differs from the MCAI AD as follows:

(1) We do not require compliance ''no later than November 27, 2007'', because that date has passed.

(2) We refer to the compliance time as ''hours time-in-service'' rather than ''air time hours.''

Other Information

(i) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, 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: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961.

Related Information

(j) Mandatory Continuing Airworthiness Information (MCAI) Transport Canada Airworthiness Directive CF–2007–22, dated September 14, 2007, and Bell Helicopter Textron Alert Service Bulletin No. 427–06–15, dated December 14, 2006, contain related information.

Subject

(k) Joint Aircraft System/Component (JASC) Code: 5553, Vertical Stabilizer, Attach Fittings.

Issued in Fort Worth, Texas, on July 14, 2009.

Judy I. Carl,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–18431 Filed 7–31–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 524

[Docket No. FDA–2009–N–0665]

New Animal Drugs; Nitrofurazone Ointment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original abbreviated new animal drug application (ANADA) filed by First Priority, Inc. The ANADA provides for use of nitrofurazone ointment on horses for prevention or treatment of superficial bacterial infections.

DATES: This rule is effective August 3, 2009.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, e-mail: *john.harshman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: First Priority, Inc., 1585 Todd Farm Dr., Elgin, IL 60123, filed ANADA 200–425 for use of Nitrofurazone Soluble Dressing in horses for prevention or treatment of superficial bacterial infections of wounds, burns, and cutaneous ulcers. First Priority, Inc.'s Nitrofurazone Soluble Dressing is approved as a generic copy of FURA–ZONE (nitrofurazone) ointment, sponsored by Squire Laboratories, Inc., under NADA 132–427. In addition, First Priority, Inc., has informed FDA of a change of address. The ANADA is approved as of July 13, 2009, and

§§ 510.600 and 524.1580b (21 CFR 510.600 and 524.1580b) are amended to reflect the approval.

In addition, FDA has found that the pioneer sponsor's drug labeler code (DLC) was inadvertently omitted from § 524.1580b during format changes in 2005 (70 FR 50181; August 26, 2005). At this time, § 524.1580b is amended to include Squire Laboratories, Inc.'s DLC. Section 524.1580b is also amended to reflect current food safety warnings.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 524

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. In § 510.600, in the table in paragraph (c)(1), in the entry for ''First Priority, Inc.'' and in the table in paragraph (c)(2), in the entry for ''058829'', remove ''1585 Todd Farm Dr.'' and in its place add ''1590 Todd Farm Dr.''.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 4. In § 524.1580b, add paragraph (b)(3) and revise paragraph (d)(3) to read as follows:

§ 524.1580b Nitrofurazone ointment.

* * * * *

(b) * * *

(3) See Nos. 017153 and 058829 for use on horses.

* * * * *

(d) * * *

(3) *Limitations.* For use only on dogs, cats, and horses. Do not use in horses intended for human consumption. Federal law prohibits the use of this product in food-producing animals. In case of deep or puncture wounds or serious burns, use only as recommended by veterinarian. If redness, irritation, or swelling persists or increases, discontinue use; consult veterinarian.

Dated: July 28, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E9–18337 Filed 7–31–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Parts 123, 124, 126, and 129

[Public Notice: 6716]

Amendment to the International Traffic in Arms Regulations: Congressional Certification Regarding South Korea

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) regarding Congressional certification for the Republic of Korea (also referred to as South Korea). South Korea is now in the same category as the countries in the North Atlantic Treaty Organization (NATO), Japan, Australia, and New Zealand concerning certification to Congress, requiring such certification prior to granting any license for export of major defense equipment sold under a contract in the amount of $25,000,000 or more, or for defense articles or defense services sold under a contract in the amount of $100,000,000 or more, provided the transfer does not include any other countries. The ITAR is being amended at numerous sections to reflect these statutory changes and to update two provisions.

DATES: *Effective Date:* This rule is effective August 3, 2009.

FOR FURTHER INFORMATION CONTACT: Director Charles B. Shotwell, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–2792 or Fax (202) 261–8199; E-mail *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, South Korea.

SUPPLEMENTARY INFORMATION: Section 203 of the Public Law 110–429 amended, *inter alia,* Sections 3(d)(3)(A)(i), 36(c), and 36(d)(2)(A) of the Arms Export Control Act by inserting ''Republic of Korea'' before ''New Zealand.'' This amendment added South Korea to the category of countries for which higher dollar thresholds apply for mandatory certification to Congress in advance of approving the export or transfer of defense articles and defense services. South Korea is now in the same category as the countries in the North Atlantic Treaty Organization (NATO), Japan, Australia, and New Zealand concerning certification to Congress, requiring such certification prior to granting any license for export of major defense equipment sold under a contract in the amount of $25,000,000 or more, or for defense articles or defense services sold under a contract in the amount of $100,000,000 or more, provided the transfer does not include any other countries. The ITAR is being amended at numerous sections, as described below, to reflect these statutory changes and to update two provisions.

Section 123.9(e) of the ITAR is being amended to add ''South Korea.'' This section is also being amended to correct outdated information regarding the dollar limits for sales without prior written approval and to add New Zealand to the list of countries eligible for certain reexports or retransfers without prior written approval.

Section 123.15 of the ITAR entitled ''Congressional certification pursuant to Section 36(c) of the Arms Export Control Act'' is being amended to add ''South Korea'' at sections 123.15(a)(1), 123.15(a)(2), and 123.15(b).

Section 124.11 of the ITAR entitled ''Congressional certification pursuant to Section 36(d) of the Arms Export Control Act'' is being amended to add ''South Korea'' at section 124.11(b).

Section 126.8 of the ITAR entitled ''Proposals to foreign persons relating to significant military equipment'' is being

amended to add ''South Korea'' at section 126.8(a)(ii).

Part 129 of the ITAR regarding brokering activities is being amended at section 129.6(b)(2) to add ''South Korea'' to the category of NATO, Japan, Australia, and New Zealand for purposes of an exemption from prior written approval.

Sections 129.7(a)(1)(vii) and 129.7(a)(2) are being amended to add ''South Korea'' to the category of NATO, Japan, Australia, and New Zealand or purposes of defining brokering activities requiring prior written approval.

Regulatory Analysis and Notices

Administrative Procedure Act

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures contained in 5 U.S.C. 553 and 554.

Regulatory Flexibility Act

Since this amendment is not subject to the notice-and-comment procedures of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This amendment does not involve a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment 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. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Order 12866

This amendment is exempt from review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Parts 123 and 126

Arms and munitions, Exports.

22 CFR Parts 124 and 129

Arms and munitions, Exports, Technical assistance.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 123, 124, 126, and 129 are amended as follows:

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

■ 1. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec. 1205(a), Pub. L. 107–228.

■ 2. Section 123.9 is amended by revising paragraphs (e) introductory text and (e)(2) to read as follows:

§ 123.9 Country of ultimate destination and approval of reexports or retransfers.

* * * * *

(e) Reexports or retransfers of U.S.-origin components incorporated into a foreign defense article to NATO, NATO agencies, a government of a NATO country, or the governments of Australia, Japan, New Zealand, or South Korea, are authorized without the prior written approval of the Directorate of Defense Trade Controls, provided:

* * * * *

(2) The U.S.-origin components are not significant military equipment, the items are not major defense equipment sold under contract in the amount of $25,000,000 ($25 million) or more; the articles are not defense articles or defense services sold under a contract in the amount of $100,000,000 ($100 million) or more; and are not identified in part 121 of this subchapter as Missile Technology Control Regime (MTCR) items; and

* * * * *

■ 3. Section 123.15 is amended by revising paragraphs (a)(1), (a)(2), and (b) to read as follows:

§ 123.15 Congressional certification pursuant to Section 36(c) of the Arms Export Control Act.

(a) * * *

(1) A license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more, or for defense articles and defense services sold under a contract in the amount of $50,000,000 or more to any country that is not a member country of the North Atlantic Treaty Organization (NATO), or Australia, Japan, New Zealand, or South Korea that does not authorize a new sales territory; or

(2) A license for export to a country that is a member country of the North Atlantic Treaty Organization (NATO), or Australia, Japan, New Zealand, or South Korea of major defense equipment sold under a contract in the amount of $25,000,000 or more, or for defense articles and defense services sold under a contract in the amount of $100,000,000 or more and provided the transfer does not include any other countries; or

* * * * *

(b) Unless an emergency exists which requires the proposed export in the national security interests of the United States, approval may not be granted for any transaction until at least 15 calendar days have elapsed after receipt by the Congress of the certification required by 22 U.S.C. 2776(c)(1) involving the North Atlantic Treaty Organization, any member country of the Organization, or Australia, Japan, New Zealand, or South Korea or at least 30 calendar days have elapsed for any other country; in the case of a license for an export of a commercial communications satellite for launch from, and by nationals of, the Russian Federation, Ukraine, or Kazakhstan, until at least 15 calendar days after the Congress receives such certification.

* * * * *

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

■ 4. The authority citation for part 124 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261.

■ 5. Section 124.11 is amended by revising paragraph (b) to read as follows:

§ 124.11 Congressional certification pursuant to Section 36(d) of the Arms Export Control Act.

* * * * *

(b) Unless an emergency exists which requires the immediate approval of the agreement in the national security interests of the United States, approval may not be granted until at least 15 calendar days have elapsed after receipt by the Congress of the certification required by 22 U.S.C. 2776(d)(1) involving the North Atlantic Treaty Organization, any member country of that Organization, or Australia, Japan, New Zealand, or South Korea or at least 30 calendar days have elapsed for any other country. Approvals may not be granted when the Congress has enacted a joint resolution prohibiting the export.

* * * * *

PART 126—GENERAL POLICIES AND PROVISIONS

■ 6. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp. p. 899.

■ 7. Section 126.8 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 126.8 Proposals to foreign persons relating to significant military equipment.

(a) * * *

(1) * * *

(ii) The equipment is intended for use by the armed forces of any foreign country other than a member of the North Atlantic Treaty Organization, Australia, Japan, New Zealand, or South Korea; and

* * * * *

PART 129—REGISTRATION AND LICENSING OF BROKERS

■ 8. The authority citation for part 129 continues to read as follows:

Authority: Sec. 38, Pub. L. 104–164, 110 Stat. 1437, (22 U.S.C. 2778).

■ 9. Section 129.6 is amended by revising paragraph (b)(2) to read as follows:

§ 129.6 Requirements for license/approval.

(b) * * *

(1) * * *

(2) Brokering activities that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, any member country of that Organization, Australia, Japan, New Zealand, or South Korea, except in the case of the defense articles or defense services specified in § 129.7(a) of this subchapter, for which prior approval is always required.

■ 10. Section 129.7 is amended by revising paragraphs (a)(1)(vii) and (a)(2) introductory text to read as follows:

§ 129.7 Prior approval (license).

(a) * * *

(1) * * *

(vii) Foreign defense articles or defense services (other than those that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, Australia, Japan, New Zealand, or South Korea (*see* §§ 129.6(b)(2) and 129.7(a)).

(2) Brokering activities involving defense articles or defense services covered by, or of a nature described by Part 121, of this subchapter, in addition to those specified in § 129.7(a), that are designated as significant military equipment under this subchapter, for or from any country not a member of the North Atlantic Treaty Organization, Australia, Japan, New Zealand, or South Korea whenever any of the following factors are present:

* * * * *

Dated: June 19, 2009.

Rose E. Gottemoeller,

Assistant Secretary, Verification, Compliance and Implementation, Department of State.

[FR Doc. E9–18332 Filed 7–31–09; 8:45 am]

BILLING CODE 4710–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R03–OAR–2009–0482; FRL–8938–6]

Approval and Promulgation of State Air Quality Plans For Designated Facilities and Pollutants, West Virginia; Control of Emissions From Commercial and Industrial Solid Waste Incinerator Units, Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia (WV) commercial and industrial solid waste incinerator (CISWI) 111(d)/129 plan (the ''plan''). The revision contains a modified WV Department of Environmental Protection, Division of Air Quality (DAQ) rule that streamlines and consolidates the state's regulatory structure (WV45CSR6, 18 and 24) for incinerator units and incorporates applicable Clean Air Act (CAA), section 129, requirements into one rule, WV45CSR18. This approval action relates only to CISWI units. The streamlining of the state's regulatory structure of its incinerator rules is not an EPA requirement.

DATES: This rule is effective October 2, 2009 without further notice, unless EPA receives adverse written comment by September 2, 2009. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0482 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail:* E-mail: *http://wilkie.walter@epa.gov.*

C. *Mail:* EPA–R03–OAR–2009–0482, Walter Wilkie, Chief, Air Quality Analysis Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2009–0482 EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in

the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The initial West Virginia CISWI plan, and related state rule, WV45CSR18, were approved by EPA in the April 11, 2003 edition of the **Federal Register**. (68FR17738). The plan approval is codified in 40 CFR part 62, subpart XX. On May 11, 2009, the West Virginia Department of Environmental Protection submitted to EPA a formal 111(d)/129 plan revision for CISWI units. The submitted plan revision is part of an effort to streamline and consolidate DAQ's Clean Air Act, section 129, requirements for CISWI and hospital, medical infectious waste incinerator (HMIWI) units. All applicable section 129 incinerator regulatory requirements are now in one state rule, WV45CSR18. However, this approval action relates only to CISWI units. A related plan revision for HMIWI units will be addressed in a separate **Federal Register** notice and rulemaking action. The consolidation of the DAQ incinerator rules into one is not an EPA requirement.

Section 129 of the CAA regulates a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

II. Review of West Virginia's CISWI Plan Revision

EPA has reviewed the West Virginia CISWI plan revision submittal in the context of the requirements of 40 CFR Part 60, and subparts B and DDDD; and part 62, subpart A. The submitted plan revision meets all the cited requirements and those as described in EPA's original approval of West Virginia's plan approval on April 11, 2003. (68 FR 17738).

III. Final Action

EPA is approving the West Virginia CISWI plan revision that streamlines and consolidates its section 111(d)/129 existing incinerator regulations into one rule, WV45CSR18. Therefore, EPA is amending 40 CFR part 62, subpart XX, to reflect this action. This approval is based on the rationale discussed above and in further detail in the technical support document (TSD) associated with this action. This plan revision approval does not negate or void any of the initial plan approval requirements (68 FR 17738), including compliance dates, for E. I. du Pont de Nemours and Company, Washington Works (''DuPont''), or any other affected facility. Initial CISWI plan requirements have been consolidated into a modified rule WV45CSR18. The scope of the plan revision approval is limited to 40 CFR Part 60 and 62 provisions for existing CISWI units, and the related new source performance standard provisions, subpart CCCC, as referenced in the emission guidelines, subpart DDDD. A related plan revision for HMIWI units will be addressed in a separate **Federal Register** notice and rulemaking action.

The EPA Administrator continues to retain authority for several tasks, as cited in state rule WV45CSR18, section 45–18–9. This retention of federal authority also includes the granting of waivers for initial and annual compliance testing requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirements for state air pollution control agencies and existing CISWI units that are subject to the provisions of 40 CFR part 60, subparts B and DDDD, respectively. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d)/129 plan revision should relevant adverse or critical comments be filed. This rule will be effective October 2, 2009 without further notice unless the Agency receives relevant adverse comments by September 2, 2009. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard. In reviewing section 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS.

It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action, approving the submitted West Virginia CISWI plan revision, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: July 21, 2009.

William C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR Part 62, Subpart XX, is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

■ 2. Section 62.12155 is amended by designating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 62.12155 Identification of plan.

* * * * *

(b) On May 11, 2009, the West Virginia Department of Environmental Protection submitted a State plan revision (#1) that consolidates all existing section 111(d)/129 incinerator regulatory requirements into one modified rule, WV45CSR18.

■ 3. Section 62.12157 is amended by designating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 61.12157 Effective date.

* * * * *

(b) Plan revision #1 is effective October 2, 2009.

[FR Doc. E9–18480 Filed 7–31–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R03–OAR–2009–0463; FRL–8938–8]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, West Virginia; Control of Emissions From Hospital/Medical/Infectious Waste Incinerator Units, Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia (WV) hospital/medical/infectious waste incinerator (HMIWI) 111(d)/129 plan (the ''plan''). The revision contains a modified WV Department of Environmental Protection, Division of Air Quality (DAQ) rule that streamlines the State's regulatory structure (WV45CSR6, 18, and 24) for incinerator units and incorporates applicable Clean Air Act (CAA), section 129, requirements into one rule, WV45CSR18. This approval action relates only to HMIWI units. The streamlining of the State's regulatory structure of its incinerator rules is not an EPA requirement.

DATES: This rule is effective October 2, 2009 without further notice, unless EPA receives adverse written comment by September 2, 2009. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0463 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail:* E-mail: *http://wilkie.walter@epa.gov.*

C. *Mail:* EPA–R03–OAR–2009–0463, Walter Wilkie, Chief, Air Quality Analysis Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and

special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2009–0463. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Division of Air Quality, 601 57th Street, SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The initial West Virginia HMIWI plan was approved by EPA in the June 13, 2000 edition of the **Federal Register**. (65 FR 37046). The plan approval is codified in 40 CFR Part 62, subpart XX. On May 11, 2009, the West Virginia Department of Environmental Protection submitted to EPA a formal 111(d)/129 plan revision for HMIWI units. The submitted plan revision is part of an effort to streamline and consolidate DAQ's Clean Air Act, section 129, requirements for commercial industrial solid waste incinerator (CISWI) and HMIWI units. All applicable section 129 incinerator regulatory requirements are now in one State rule, WV45CSR18. However, this approval action relates only to HMIWI units. A related plan revision for CISWI units will be addressed in a separate **Federal Register** notice and rulemaking action. The consolidation of the DAQ incinerator rules into one is not an EPA requirement.

Section 129 of the CAA regulates a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

II. Review of West Virginia's HMIWI Plan Revision

EPA has reviewed the West Virginia HMIWI plan revision submittal in the context of the requirements of 40 CFR Part 60, subparts B and Ce; and Part 62, subpart A. The submitted plan revision meets all the cited requirements and those as described in EPA's original approval of West Virginia's plan approval on June 13, 2000. (65 FR 37046).

III. Final Action

EPA is approving the West Virginia HMIWI plan revision that streamlines and consolidates its section 111(d)/129 existing incinerator regulations into one rule, WV45CSR18. Therefore, EPA is amending 40 CFR Part 62, subpart XX, to reflect this action. This approval is based on the rationale discussed above and in further detail in the technical support document (TSD) associated with this action. This plan revision approval does not negate or void any of the initial plan approval requirements (65 FR 37046), including compliance dates for any affected facility. The scope of this plan revision approval is limited to the provisions of 40 CFR Parts 60 and 62 for existing HMIWI units, as referenced in the emission guidelines, subpart Ce, and the related new source performance standard, subpart Ec. CISWI and other types of section 129 incinerator rule requirements are not included in the scope of this approval action.

The EPA Administrator continues to retain authority for several tasks, as cited in State rule WV45CSR18, § 45–18–9. This retention of Federal authority also includes the granting of waivers for initial and annual compliance testing requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects already existing Federal requirement for State air pollution control agencies and existing HMIWI units that are subject to the provisions of 40 CFR Part 60, subparts B and Ce, respectively. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d)/129 plan revision should relevant adverse or critical comments be filed. This rule will be effective October 2, 2009 without further notice unless the Agency receives relevant adverse comments by September 2, 2009. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic

impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have Tribal implications because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal standard. In reviewing section 111(d)/129 plan submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action, approving the submitted West Virginia HMIWI plan revision, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: July 21, 2009.

William C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR Part 62, Subpart XX, is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

■ 2. Section 62.12150 is amended by designating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 62.12150 Identification of plan.

* * * * *

(b) On May 11, 2009, the West Virginia Department of Environmental Protection submitted a State plan revision (#1) that consolidates all existing section 111(d)/129 incinerator regulatory requirements into one modified rule, WV45CSR18.

■ 3. Section 62.12152 is amended by designating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 61.12152 Effective date.

* * * * *

(b) Plan revision #1 is effective October 2, 2009.

[FR Doc. E9–18482 Filed 7–31–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA–HQ–OW–2009–0345; FRL–8930–8]

Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act; Analysis and Sampling Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action announces the Environmental Protection Agency's (EPA's) approval of alternative testing methods for use in measuring the levels of contaminants in drinking water and determining compliance with national primary drinking water regulations. The Safe Drinking Water Act (SDWA) authorizes EPA to approve the use of alternative testing methods through publication in the **Federal Register**. EPA is using this streamlined authority to make six additional methods available for analyzing drinking water samples required by regulation. This expedited approach provides public water systems, laboratories, and primacy agencies with more timely access to new

measurement techniques and greater flexibility in the selection of analytical methods, thereby reducing monitoring costs while maintaining public health protection.

DATES: This action is effective August 3, 2009.

FOR FURTHER INFORMATION CONTACT: Safe Drinking Water Hotline (800) 426–4791 or Patricia Snyder Fair, Technical Support Center, Office of Ground Water and Drinking Water (MS 140), Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268; telephone number: (513) 569–7937; e-mail address: *fair.pat@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Public water systems are the regulated entities required to measure contaminants in drinking water samples. In addition, EPA Regions as well as States and Tribal governments with authority to administer the regulatory program for public water systems under SDWA may also measure contaminants in water samples. When EPA sets a monitoring requirement in its national primary drinking water regulations for a given contaminant, the Agency also establishes in the regulations standardized test procedures for analysis of the contaminant. This action makes alternative testing methods available for particular drinking water contaminants beyond the testing methods currently established in the regulations. EPA is providing public water systems required to test water samples with a choice of using either a test procedure already established in the existing regulations or an alternative test procedure that has been approved in this action. Categories and entities that may ultimately be affected by this action include:

Category	Examples of potentially regulated entities	NAICS [1]
State, Local, & Tribal Governments	States, local and tribal governments that analyze water samples on behalf of public water systems required to conduct such analysis; States, local and tribal governments that themselves operate community and non-transient non-community water systems required to monitor.	924110
Industry	Private operators of community and non-transient non-community water systems required to monitor.	221310
Municipalities	Municipal operators of community and non-transient non-community water systems required to monitor.	924110

[1] North American Industry Classification System.

This table is not exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be impacted. To determine whether your facility is affected by this action, you should carefully examine the applicability language at 40 CFR 141.2 (definition of public water system). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA established a docket for this action under Docket ID No. EPA–HQ–OW–2009–0345. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Copyrighted materials are available only in hard copy. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/*.

Abbreviations and Acronyms Used in This Action

CFR: *Code of Federal Regulations*
DBCP: Dibromochloropropane
EDB: Ethylene Dibromide
EPA: Environmental Protection Agency
GC: Gas Chromatography
LED: Light-Emitting Diode
MS: Mass Spectrometry
NEMI: National Environmental Methods Index
nm: Nanometers
SDWA: Safe Drinking Water Act

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II. Background

A. What Is the Purpose of This Action?

In this action, EPA is approving six analytical methods for determining contaminant concentrations in samples collected under SDWA. Regulated parties required to sample and monitor may use either the testing methods already established in existing regulations or the alternative testing methods being approved in this action. The new methods are listed in Appendix A to Subpart C in 40 CFR 141 and on EPA's drinking water methods Web site at *http://www.epa.gov/safewater/methods/analyticalmethods_expedited.html.*

B. What Is the Basis for This Action?

When EPA determines an alternative analytical method is ''equally effective'' (i.e., as effective as a method that has already been promulgated in the regulations), SDWA allows EPA to approve the use of the alternative method through publication in the **Federal Register**. See Section 1401(1) of SDWA. EPA is using this streamlined approval authority to make six additional methods available for determining contaminant concentrations in samples collected under SDWA. EPA has determined that, for each contaminant or group of contaminants listed in Section III, the additional testing methods being approved in this action are equally as effective as one or more of the testing methods already established in the regulations for those contaminants. Section 1401(1) states that the newly approved methods ''shall be treated as

an alternative for public water systems to the quality control and testing procedures listed in the regulation.'' Accordingly, this action makes these additional (and optional) six analytical methods legally available for meeting EPA's monitoring requirements.

This action does not add regulatory language, but does, for informational purposes, update an appendix to the regulations at 40 CFR part 141 that lists all methods approved under Section 1401(1) of SDWA. Accordingly, while this action is not a rule, it is updating CFR text and therefore is being published in the ''Final Rules'' section of this **Federal Register**.

EPA described this expedited methods approval process in an April 10, 2007, **Federal Register** notice (72 FR 17902) (USEPA 2007) and announced its intent to begin using the process. EPA published the first set of approvals in a June 3, 2008, **Federal Register** notice (73 FR 31616) (USEPA 2008) and added Appendix A to 40 CFR Part 141, Subpart C. This action adds six additional methods to Appendix A to Subpart C.

III. Summary of Approvals

EPA is approving six methods that are equally effective relative to methods previously promulgated in the regulations. By means of this notice, these six methods are added to Appendix A of 40 CFR Part 141, Subpart C. For convenience of the reader, the revised Appendix A in its entirety is shown below. However, the only change made to Appendix A through this action is the inclusion of these six additional methods as described in this preamble.

A. Methods Developed by EPA

EPA Method 524.3, Version 1.0. This is a gas chromatography/mass spectrometry (GC/MS) method for the determination of purgeable organic compounds in finished drinking waters. The method analytes are purged from the water sample using helium and trapped on a sorbent material. After purging, the trap is heated and back flushed with helium to transfer the analytes to a capillary GC column. Compounds eluting from the GC are directed into a mass spectrometer for mass analysis and detection. The analytes are identified by comparing the acquired mass spectra and retention times to reference spectra and retention times for calibration standards acquired under identical GC/MS conditions. The concentration of each target analyte is calculated using the internal standard technique and response curves obtained via procedural calibration. The expansion of the method to include the option of selective ion monitoring makes this method sufficiently sensitive to measure dibromochloropropane (DBCP) and ethylene dibromide (EDB) at the concentrations required for drinking water compliance monitoring.

EPA Method 524.3 is an updated version of EPA Method 524.2, Revision 4.1 (USEPA 1995a), which is currently approved for analyses of compliance samples for 21 volatile organic contaminants and total trihalomethanes. The method development work is described in the method research summary (Zaffiro et al. 2009). The advantages of the new method include:

- Use of maleic acid, a common food preservative, to preserve samples, eliminating the requirement to ship a hazardous reagent (hydrochloric acid) to the field;
- Incorporation of features that allow users to take advantage of modern instrumentation to improve speed and data quality;
- Increased flexibility in selection of method operating parameters; and
- Addition of Method 524.3 as an approved method for DBCP and EDB.

Approved methods for volatile organic contaminants and total trihalomethanes are listed at 40 CFR 141.24(e). EPA Methods 502.2; Revision 2.1 (USEPA 1995b) and 524.2; Revision 4.1 (USEPA 1995a) are approved for benzene; carbon tetrachloride; chlorobenzene; 1,2-dichlorobenzene; 1,4-dichlorobenzene; 1,2-dichloroethane; cis-dichloroethylene; trans-dichloroethylene; dichloromethane; 1,2-dichloropropane; ethylbenzene; styrene; tetrachloroethylene; 1,1,1-trichloroethane; trichloroethylene; toluene; 1,2,4-trichlorobenzene; 1,1-dichloroethylene; 1,1,2-trichlorethane; vinyl chloride; xylenes (total—measured as sum of o-xylene; m-xylene and p-xylene); and total trihalomethanes (sum of chloroform; bromodichloromethane; dibromochloromethane; and bromoform). EPA Method 551.1 (USEPA 1995c) is approved for carbon tetrachloride; tetrachloroethylene; 1,1,1-trichloroethane; trichloroethylene; EDB; DBCP; and total trihalomethanes. EPA Method 504.1, Revision 1.1 (USEPA 1995d) is approved for EDB and DBCP. Approved methods for total trihalomethanes are also listed at 40 CFR 141.131(b)(1). For each of the 24 contaminants, the performance characteristics of EPA Method 524.3 were compared to the characteristics of each of the methods currently listed in the regulations as approved for that contaminant (Munch 2009). EPA has determined that, for each of the 24 contaminants, EPA Method 524.3 is equally as effective for measuring the contaminant as the methods currently listed in the regulations as approved for that contaminant. The basis for this determination is discussed in Munch 2009. EPA is therefore approving use of Method 524.3 for the above named 24 contaminants when analyzing drinking water compliance samples.

EPA Method 524.3 Version 1.0 (USEPA 2009) can be accessed and downloaded directly on-line at *http://epa.gov/safewater/methods/analyticalmethods_ogwdw.html.*

B. Methods Developed by Vendors

1. Mitchell Method M5271. Mitchell Method M5271 (Mitchell 2009a) uses laser nephelometry to measure turbidity in drinking water. The method is based on a comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension. Readings are made using an on-line laser nephelometer with the following design criteria:

- Laser light source is monochromatic operated at a nominal wavelength of 650 ± 30nm;
- Incident radiation and any convergence does not exceed ± 1.5 degrees in the measurement area;
- Distance traversed by incident light and scattered light does not exceed 10cm;
- Detector/light receiver is centered at 90 ± 1.5 degrees to the incident light path and the light cone does not exceed ± 30 degrees from 90 degrees; and
- Instrument incorporates a bubble trap and anti-fog windows. Sensor is horizontal and the windows are vertical. Windows are immersed in the sample stream.

Four approved methods for turbidity are listed at 40 CFR 141.74(a)(1). The performance characteristics of Mitchell Method M5271 were compared to the performance characteristics of approved EPA Method 180.1 (USEPA 1993a). The validation study report (Mitchell 2008a) summarizes the results obtained from the turbidimeters placed in series at three different public water systems. One water system used ground water and the other two plants used surface water sources. Measurements included at least one filter backwash at each of the surface water plants.

EPA has determined that the Mitchell Method M5271 is equally effective relative to EPA Method 180.1 that is already promulgated in the regulations at 40 CFR 141.74(a)(1). The basis for this determination is discussed in Wendelken 2009a. Therefore, EPA is approving the Mitchell Method M5271 for determining turbidity in drinking

water. A copy of the method can be downloaded from the National Environmental Methods Index (NEMI) at *http://www.nemi.gov* or obtained by contacting Leck Mitchell, PhD, PE, 656 Independence Valley Dr., Grand Junction, CO 81507.

2. Mitchell Method M5331. Mitchell Method M5331 (Mitchell 2009b) uses light-emitting diode (LED) nephelometry to measure turbidity in drinking water. The method is based on a comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension. Readings are made using an on-line LED nephelometer with the following design criteria:

• LED light source is monochromatic operated at a nominal wavelength of 525 ± 15nm;

• Incident radiation and any convergence does not exceed ± 1.5 degrees in the measurement area;

• Distance traversed by incident light and scattered light does not exceed 10cm;

• Detector/light receiver is centered at 90 ± 1.5 degrees to the incident light path and the light cone does not exceed ± 30 degrees from 90 degrees; and

• Instrument incorporates a bubble trap and anti-fog windows. Sensor is horizontal and the windows are vertical. Windows are immersed in the sample stream.

Four approved methods for turbidity are listed at 40 CFR 141.74(a)(1). The performance characteristics of Mitchell Method M5331 were compared to the performance characteristics of approved EPA Method 180.1 (USEPA 1993a). The validation study report (Mitchell 2008b) summarizes the results obtained from the turbidimeters placed in series at three different public water systems. One water system used ground water and the other two plants used surface water sources. Measurements included at least one filter backwash at each of the surface water plants.

EPA has determined that the Mitchell Method M5331 is equally effective relative to EPA Method 180.1 that is already promulgated in the regulations at 40 CFR 141.74(a)(1). The basis for this determination is discussed in Wendelken 2009b. Therefore, EPA is approving it for determining turbidity in drinking water. A copy of the method can be downloaded from NEMI at *http://www.nemi.gov* or obtained from Leck Mitchell, PhD, PE, 656 Independence Valley Dr., Grand Junction, CO 81507.

3. Orion Method AQ4500. Thermo Scientific's Orion Method AQ4500 (Thermo Scientific 2009) uses LED nephelometry to measure turbidity in drinking water. The method is based on a comparison of the intensity of light scattered by the sample at 90 degrees to the beam path with the intensity of light scattered by a standard reference suspension. Readings are made using a portable LED nephelometer with the following design criteria:

• White LED light source emits broadband light having peak intensities in the 400nm to 600nm range;

• Distance traversed by incident light and scattered light does not exceed 10cm;

• Detector/light receiver is centered at 90 degrees to the incident light path and the light cone does not exceed ± 30 degrees from 90 degrees. The detector has spectral peak response between 400nm and 600nm;

• Pulsed light allows for synchronous detection, a technique by which ambient stray light leakage, as well as other electronic induced errors, are effectively cancelled out; and

• Color compensation is achieved using a dual-beam system with two photo detectors.

Four approved methods for turbidity are listed at 40 CFR 141.74(a)(1). The performance characteristics of Thermo Scientific's Orion Method AQ4500 were compared to the performance characteristics of EPA Method 180.1 (USEPA 1993a) listed at 40 CFR 141.74(a)(1) for measurement of turbidity. Two rounds of testing were conducted (Wendelken 2009c). The first was an ASTM round robin study comparing results from analyses of 28 samples of various types using turbidimeters with tungsten filament light sources as specified in EPA Method 180.1 and white LEDs as specified in Thermo Scientific Orion Method AQ4500. A second study involved demonstration of performance at turbidities below 2 nephelometric turbidity units.

EPA has determined that Thermo Scientific's Orion Method AQ4500 is equally effective relative to EPA Method 180.1, which is already promulgated in the regulations at 40 CFR 141.74(a)(1). The basis for this determination is discussed in Wendelken 2009c. Therefore, EPA is approving Method AQ4500 for the measurement of turbidity in drinking water. A copy of the method can be downloaded from NEMI at *http://www.nemi.gov* or obtained from Thermo Scientific, 166 Cummings Center, Beverly, MA 01915, Phone: (800) 225–1480, *www.thermo.com.*

4. Systea Easy (1-Reagent). Systea Scientific, LLC's Systea Easy (1-Reagent) Nitrate Method uses automated discreet analysis by spectrophotometry to determine concentrations of nitrate and nitrite combined or individually in drinking water. The method involves the following steps:

• Reduction of nitrate in a sample to nitrite using a non-hazardous proprietary reagent;

• Diazotizing the nitrite originally in the sample plus the reduced nitrate with sulfanilamide followed by coupling with N-(1-napthyl)ethylenediamine dihydrochloride under acidic conditions to form a highly colored azo dye;

• Colorimetric determination in which the absorbance of color at 546nm is directly proportional to the concentration of the nitrite plus the reduced nitrate in the sample;

• Measurement of nitrite individually by analysis of the sample while eliminating the reduction step; and

• Subtraction of the nitrite value from that of the combined nitrate plus nitrite value to determine nitrate individually.

Approved methods for nitrate and nitrite are listed at 40 CFR 141.23(k)(1). An inter-laboratory study (Systea Scientific, LLC. 2008) was conducted to compare the performance characteristics of the Systea Easy (1-Reagent) Nitrate Method to the characteristics of the EPA Method 353.2 (USEPA 1993b) and Standard Method 4500–NO_3^- F–00 (APHA 1997), which are listed at 40 CFR 141.23(k)(1) for nitrate and nitrite. Ten laboratories analyzed a variety of sample matrices using approved methods. The samples were also analyzed using the Systea Easy (1-Reagent) Nitrate Method.

EPA has determined that the Systea Easy (1-Reagent) Nitrate Method is equally effective relative to EPA Method 353.2 and Standard Method 4500–NO_3^- F–00, which are already promulgated in the regulations. The basis for this determination is discussed in Wendelken 2009d. The method is a ''green'' alternative to other approved methods, which use cadmium, a known carcinogen, for the reduction of nitrate to nitrite. EPA is approving this method for determining nitrate and nitrite concentrations in drinking water to comply with 40 CFR 141.23.

Systea Easy (1-Reagent) Nitrate Method (Systea Scientific, LLC. 2009) can be downloaded from NEMI at *http://www.nemi.gov* or obtained from Systea Scientific, LLC, 900 Jorie Blvd., Suite 35, Oak Brook, IL 60523, Phone: (630) 645–0600.

5. Method ME355.01. ''Determination of Cyanide in Drinking Water by GC/MS Headspace'' (Eaton 2009) uses direct headspace injection after acidification followed by Gas Chromatography/Mass

Spectrometry (GC/MS) to determine the concentration of cyanide, as free cyanide, in drinking water. The method involves the following steps:

- Acidification of the sample;
- Heating the sample to 60 degrees Celsius with agitation;
- Direct injection of 1 milliliter of headspace onto the nitrogen cooled cryotrap; and
- Analysis using temperature programmed GC/MS.

The performance characteristics of Method ME355.01 were determined in three laboratories by replicate analyses of fortified samples (Wendelken 2009e). The results were compared to the characteristics of EPA Method 335.4 (USEPA 1993c) and Standard Method 4500–CN^- F–99 (APHA 1999) listed at 40 CFR 141.23(k)(1) for cyanide. EPA has determined that Method ME355.01 is equally effective relative to each of these two methods. The basis for this determination is discussed in Wendelken 2009e. Therefore, EPA is approving this method for determining cyanide concentrations in drinking water to comply with 40 CFR 141.23.

Method ME335.01 can be downloaded from NEMI at *http://www.nemi.gov* or obtained from James Eaton, PhD, H & E Testing Laboratory, 221 State Street, Augusta, ME 04333, Phone: (207) 187–2727.

IV. Statutory and Executive Order Reviews

As noted above, under the terms of SDWA Section 1401(1), this streamlined method approval action is not a rule. Accordingly, the Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3). Similarly, this action is not subject to the Regulatory Flexibility Act because it is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute. In addition, because this approval action is not a rule but simply makes alternative (optional) testing methods available for monitoring under SDWA, EPA has concluded that other statutes and executive orders generally applicable to rulemaking do not apply to this approval action.

V. References

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Thermo Scientific, 2009. Orion Method AQ4500, Revision 1.0. Determination of Turbidity by LED Nephelometry, May 8, 2009. 166 Cummings Center, Beverly, MA 01915. (Available at *http://www.nemi.gov.*)

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USEPA. 1995b. EPA Method 502.2, Revision 2.1, ''Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series'' in Methods for the Determination of Organic Compounds in Drinking Water—Supplement III, EPA/600/R–95–131. (Available at *http://www.nemi.gov.*)

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List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Indians—lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: July 9, 2009.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Water.

■ For the reasons stated in the preamble, 40 CFR part 141 is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

■ 1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300j–4, and 300j–9.

■ 2. Subpart C is amended by revising Appendix A to read as follows:

Appendix A to Subpart C of Part 141—Alternative Testing Methods Approved for Analyses Under the Safe Drinking Water Act

Only the editions stated in the following table are approved.

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.21(f)(3)

Organism	Methodology	SM 21st edition [1]
Total Coliforms	Total Coliform Fermentation Technique	9221 A, B
	Total Coliform Membrane Filter Technique	9222 A, B, C
	Presence-Absence (P–A) Coliform Test	9221 D
	ONPG–MUG Test	9223

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.23(k)(1)

Contaminant	Methodology	EPA method	SM 21st edition [1]	SM online [3]	ASTM [4]	Other
Alkalinity	Titrimetric		2320 B			
Antimony	Atomic Absorption; Furnace		3113 B			
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2 [2].				
Arsenic	Atomic Absorption; Furnace		3113 B			
	Hydride Atomic Absorption		3114 B			
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
Barium	Inductively Coupled Plasma		3120 B			
	Atomic Absorption; Direct		3111 D			
	Atomic Absorption; Furnace		3113 B			
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
Beryllium	Inductively Coupled Plasma		3120 B			
	Atomic Absorption; Furnace		3113 B			
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
Cadmium	Atomic Absorption; Furnace		3113 B			
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
Calcium	EDTA titrimetric		3500–Ca B			
	Atomic Absorption; Direct Aspiration.		3111 B			
	Inductively Coupled Plasma		3120 B			
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
Chromium	Inductively Coupled Plasma		3120 B			
	Atomic Absorption; Furnace		3113 B			

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.23(k)(1)—Continued

Contaminant	Methodology	EPA method	SM 21st edition [1]	SM online [3]	ASTM [4]	Other
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
Copper	Atomic Absorption; Furnace		3113 B			
	Atomic Absorption; Direct Aspiration.		3111 B			
	Inductively Coupled Plasma		3120 B			
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
Conductivity	Conductance		2510 B			
Cyanide	Manual Distillation followed by Spectrophotometric, Amenable.		4500–CN^- G		D2036–06 A D2036–06 B	
	Spectrophotometric Manual		4500–CN^- E		D2036–06 A	
	Selective Electrode		4500–CN^- F			
	Gas Chromatography/Mass Spectrometry Headspace.					ME355.01 [7]
Fluoride	Ion Chromatography		4110 B			
	Manual Distillation; Colorimetric SPADNS.		4500–F^- B, D			
	Manual Electrode		4500–F^- C		D1179–04 B	
	Automated Alizarin		4500–F^- E			
Lead	Atomic Absorption; Furnace		3113 B			
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
Magnesium	Atomic Absorption		3111 B			
	Inductively Coupled Plasma		3120 B			
	Complexation Titrimetric Methods.		3500–Mg B			
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
Mercury	Manual, Cold Vapor		3112 B			
Nickel	Inductively Coupled Plasma		3120 B			
	Atomic Absorption; Direct		3111 B			
	Atomic Absorption; Furnace		3113 B			
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
Nitrate	Ion Chromatography		4110 B			
	Automated Cadmium Reduction		4500–NO_3^- F			
	Manual Cadmium Reduction		4500–NO_3^- E			
	Ion Selective Electrode		4500–NO_3^- D			
	Reduction/Colorimetric					Systea Easy (1-Reagent) [8]
Nitrite	Ion Chromatography		4110 B			
	Automated Cadmium Reduction		4500–NO_3^- F			
	Manual Cadmium Reduction		4500–NO_3^- E			
	Spectrophotometric		4500–NO_2^- B			
	Reduction/Colorimetric					Systea Easy (1-Reagent) [8]
Orthophosphate	Ion Chromatography		4110 B			
	Colorimetric, ascorbic acid, single reagent.		4500–P E	4500–P E–99		
	Colorimetric, Automated, Ascorbic Acid.		4500–P F	4500–P F–99		
pH	Electrometric		4500–H^+ B			
Selenium	Hydride-Atomic Absorption		3114 B			
	Atomic Absorption; Furnace		3113 B			
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
Silica	Colorimetric				D859–05	
	Molybdosilicate		4500–SiO_2 C			
	Heteropoly blue		4500–SiO_2 D			
	Automated for Molybdate-reactive Silica.		4500–SiO_2 E			

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.23(k)(1)—Continued

Contaminant	Methodology	EPA method	SM 21st edition [1]	SM online [3]	ASTM [4]	Other
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
	Inductively Coupled Plasma		3120 B			
Sodium	Atomic Absorption; Direct Aspiration.		3111 B			
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
Temperature	Thermometric		2550			

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.24(e)(1)

Contaminant	Methodology	EPA method	SM 21st edition [1]	SM online [3]
Benzene	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3 [9]		
Carbon tetrachloride	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
Chlorobenzene	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
1,2-Dichlorobenzene	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
1,4-Dichlorobenzene	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
1,2-Dichloroethane	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
cis-Dichloroethylene	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
Trans-Dichloroethylene	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
Dichloromethane	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
1,2-Dichloropropane	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
Ethylbenzene	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
Styrene	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
Tetrachloroethylene	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
1,1,1-Trichloroethane	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
Trichloroethylene	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
Toluene	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
1,2,4-Trichlorobenzene	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
1,1-Dichloroethylene	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
1,1,2-Trichlorethane	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
Vinyl chloride	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
Xylenes (total)	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
Carbofuran	High-performance liquid chromatography (HPLC) with post-column derivatization and fluorescence detection.		6610 B	6610 B–04
Dibromochloropropane (DBCP).	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
Ethyl dibromide (EDB)	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		
Oxamyl	High-performance liquid chromatography (HPLC) with post-column derivatization and fluorescence detection.		6610 B	6610 B–04
Total Trihalomethanes	Purge & Trap/Gas Chromatography/Mass Spectrometry	524.3		

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.25(a)

Contaminant	Methodology	SM 21st edition [1]	ASTM [4]
Naturally Occurring:			
Gross alpha and beta	Evaporation	7110 B	
Gross alpha	Coprecipitation	7110 C	
Radium 226	Radon emanation	7500–Ra C	
	Radiochemical	7500–Ra B	
Radium 228	Radiochemical	7500–Ra D	
Uranium	Radiochemical	7500–U B	
	ICP–MS		D5673–05
	Alpha spectrometry	7500–U C	
Man-Made:			
Radioactive Cesium	Radiochemical	7500–Cs B	
	Gamma Ray Spectrometry	7120	
Radioactive Iodine	Radiochemical	7500–I B	
		7500–I C	
		7500–I D	
	Gamma Ray Spectrometry	7120	
Radioactive Strontium 89, 90	Radiochemical	7500–Sr B	
Tritium	Liquid Scintillation	7500–^{3}H B	

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.25(a)—Continued

Contaminant	Methodology	SM 21st edition [1]	ASTM [4]
Gamma Emitters	Gamma Ray Spectrometry	7120 7500–Cs B 7500–I B	

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.74(a)(1)

Organism	Methodology	SM 21st edition [1]	Other
Total Coliform	Total Coliform Fermentation Technique	9221 A, B, C	
	Total Coliform Membrane Filter Technique	9222 A, B, C	
	ONPG–MUG Test	9223	
Fecal Coliforms	Fecal Coliform Procedure	9221 E	
	Fecal Coliform Filter Procedure	9222 D	
Heterotrophic bacteria	Pour Plate Method	9215 B	
Turbidity	Nephelometric Method	2130 B	
	Laser Nephelometry (on-line)		Mitchell M5271 [10]
	LED Nephelometry (on-line)		Mitchell M5331 [11]
	LED Nephelometry (portable)		Orion AQ4500 [12]

ALTERNATIVE TESTING METHODS FOR DISINFECTANT RESIDUALS LISTED AT 40 CFR 141.74(a)(2)

Residual	Methodology	SM 21st edition [1]
Free Chlorine	Amperometric Titration	4500–Cl D
	DPD Ferrous Titrimetric	4500–Cl F
	DPD Colorimetric	4500–Cl G
	Syringaldazine (FACTS)	4500–Cl H
Total Chlorine	Amperometric Titration	4500–Cl D
	Amperometric Titration (Low level measurement)	4500–Cl E
	DPD Ferrous Titrimetric	4500–Cl F
	DPD Colorimetric	4500–Cl G
	Iodometric Electrode	4500–Cl I
Chlorine Dioxide	Amperometric Titration	4500–ClO_2 C
	Amperometric Titration	4500–ClO_2 E
Ozone	Indigo Method	4500–O_3 B

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.131(b)(1)

Contaminant	Methodology	EPA method	SM 21st edition [1]
TTHM	P&T/GC/MS	524.3 [9]	
HAA5	LLE (diazomethane)/GC/ECD		6251 B
Chlorite—daily monitoring as prescribed in 40 CFR 141.132(b)(2)(i)(A).	Amperometric Titration		4500–ClO_2 E

ALTERNATIVE TESTING METHODS FOR DISINFECTANT RESIDUALS LISTED AT 40 CFR 141.131(c)(1)

Residual	Methodology	SM 21st edition [1]
Free Chlorine	Amperometric Titration	4500–Cl D
	DPD Ferrous Titrimetric	4500–Cl F
	DPD Colorimetric	4500–Cl G
	Syringaldazine (FACTS)	4500–Cl H
Combined Chlorine	Amperometric Titration	4500–Cl D
	DPD Ferrous Titrimetric	4500–Cl F
	DPD Colorimetric	4500–Cl G
Total Chlorine	Amperometric Titration	4500–Cl D
	Low level Amperometric Titration	4500–Cl E
	DPD Ferrous Titrimetric	4500–Cl F
	DPD Colorimetric	4500–Cl G
	Iodometric Electrode	4500–Cl I
Chlorine Dioxide	Amperometric Method II	4500–ClO_2 E

ALTERNATIVE TESTING METHODS FOR DISINFECTANT RESIDUALS LISTED AT 40 CFR 141.131(c)(2), IF APPROVED BY THE STATE

Residual	Methodology	Method
Free Chlorine	Test Strips	Method D99–003 [5]

ALTERNATIVE TESTING METHODS FOR PARAMETERS LISTED AT 40 CFR 141.131(d)

Parameter	Methodology	SM 21st edition [1]
Total Organic Carbon (TOC)	High Temperature Combustion	5310 B
	Persulfate-Ultraviolet or Heated Persulfate Oxidation	5310 C
	Wet Oxidation	5310 D
Specific Ultraviolet Absorbance (SUVA)	Calculation using DOC and UV_{254} data	
Dissolved Organic Carbon (DOC)	High Temperature Combustion	5310 B
	Persulfate-Ultraviolet or Heated Persulfate Oxidation	5310 C
	Wet Oxidation	5310 D
Ultraviolet absorption at 254 nm (UV_{254}).	Spectrophotometry	5910 B

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.402(c)(2)

Organism	Methodology	SM 20th edition [6]	SM 21st edition [1]	SM online [3]
E. coli	Colilert		9223 B	9223 B–97
	Colisure		9223 B	9223 B–97
	Colilert-18	9223 B	9223 B	9223 B–97
Enterococci	Multiple-Tube Technique			9230 B–04

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.704(b)

Organism	Methodology	SM 20th edition [6]
E. coli	Membrane Filtration, Two Step	9222 D/9222 G

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 143.4(b)

Contaminant	Methodology	EPA method	ASTM [4]	SM 21st edition [1]	SM online [3]
Aluminum	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2 [2].			
	Atomic Absorption; Direct			3111 D	
	Atomic Absorption; Furnace			3113 B	
	Inductively Coupled Plasma			3120 B	
Chloride	Silver Nitrate Titration		D 512–04 B	4500–Cl^- B	
	Ion Chromatography			4110 B	
	Potentiometric Titration			4500–Cl^- D	
Color	Visual Comparison			2120 B	
Foaming Agents	Methylene Blue Active Substances (MBAS)			5540 C	
Iron	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.			
	Atomic Absorption; Direct			3111 B	
	Atomic Absorption; Furnace			3113 B	
	Inductively Coupled Plasma			3120 B	
Manganese	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.			
	Atomic Absorption; Direct			3111 B	
	Atomic Absorption; Furnace			3113 B	
	Inductively Coupled Plasma			3120 B	
Odor	Threshold Odor Test			2150 B	
Silver	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.			
	Atomic Absorption; Direct			3111 B	
	Atomic Absorption; Furnace			3113 B	
	Inductively Coupled Plasma			3120 B	
Sulfate	Ion Chromatography			4110 B	
	Gravimetric with ignition of residue			4500–SO_4^{-2} C	4500–SO_4^{-2} C–97
	Gravimetric with drying of residue			4500–SO_4^{-2} D	4500–SO_4^{-2} D–97
	Turbidimetric method			4500–SO_4^{-2} E	4500–SO_4^{-2} E–97

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 143.4(b)—Continued

Contaminant	Methodology	EPA method	ASTM [4]	SM 21st edition [1]	SM online [3]
	Automated methylthymol blue method			4500–SO_4^{-2} F	4500–SO_4^{-2} F–97
Total Dissolved Solids.	Total Dissolved Solids Dried at 180 deg C			2540 C	
Zinc	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.			
	Atomic Absorption; Direct Aspiration			3111 B	
	Inductively Coupled Plasma			3120 B	

[1] *Standard Methods for the Examination of Water and Wastewater*, 21st edition (2005). Available from American Public Health Association, 800 I Street, NW., Washington, DC 20001–3710.

[2] EPA Method 200.5, Revision 4.2. ''Determination of Trace Elements in Drinking Water by Axially Viewed Inductively Coupled Plasma-Atomic Emission Spectrometry.'' 2003. EPA/600/R–06/115. (Available at *http://www.epa.gov/nerlcwww/ordmeth.htm.*)

[3] Standard Methods Online are available at *http://www.standardmethods.org.* The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

[4] Available from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959 or *http://astm.org.* The methods listed are the only alternative versions that may be used.

[5] Method D99–003, Revision 3.0. ''Free Chlorine Species ($HOCl^-$ and OCl^-) by Test Strip,'' November 21, 2003. Available from Industrial Test Systems, Inc., 1875 Langston St., Rock Hill, SC 29730.

[6] *Standard Methods for the Examination of Water and Wastewater*, 20th edition (1998). Available from American Public Health Association, 800 I Street, NW., Washington, DC 20001–3710.

[7] Method ME355.01, Revision 1.0. ''Determination of Cyanide in Drinking Water by GC/MS Headspace,'' May 26, 2009. Available at *http://www.nemi.gov* or from James Eaton, H & E Testing Laboratory, 221 State Street, Augusta, ME 04333. (207) 287–2727.

[8] Systea Easy (1-Reagent). ''Systea Easy (1-Reagent) Nitrate Method,'' February 4, 2009. Available at *http://www.nemi.gov* or from Systea Scientific, LLC., 900 Jorie Blvd., Suite 35, Oak Brook, IL 60523.

[9] EPA Method 524.3, Version 1.0. ''Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry,'' June 2009. EPA 815–B–09–009. Available at *http://epa.gov/safewater/methods/analyticalmethods_ogwdw.html.*

[10] Mitchell Method M5271, Revision 1.1. ''Determination of Turbidity by Laser Nephelometry,'' March 5, 2009. Available at *http://www.nemi.gov* or from Leck Mitchell, PhD, PE, 656 Independence Valley Dr., Grand Junction, CO 81507.

[11] Mitchell Method M5331, Revision 1.1. ''Determination of Turbidity by LED Nephelometry,'' March 5, 2009. Available at *http://www.nemi.gov* or from Leck Mitchell, PhD, PE, 656 Independence Valley Dr., Grand Junction, CO 81507.

[12] Orion Method AQ4500, Revision 1.0. ''Determination of Turbidity by LED Nephelometry,'' May 8, 2009. Available at *http://www.nemi.gov* or from Thermo Scientific, 166 Cummings Center, Beverly, MA 01915, *http://www.thermo.com.*

[FR Doc. E9–18361 Filed 7–31–09; 8:45 am]

BILLING CODE S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–8085]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings

in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region II				
New York:				
Blooming Grove, Town of, Orange County.	360608	May 8, 1975, Emerg; November 15, 1985, Reg; August 3, 2009, Susp.	Aug. 3, 2009	Aug. 3, 2009.
Chester, Town of, Orange County	360870	March 31, 1975, Emerg; September 18, 1986, Reg; August 3, 2009, Susp.	.....*do	Do.
Chester, Village of, Orange County	361541	July 23, 1975, Emerg; September 18, 1986, Reg; August 3, 2009, Susp.	.....do	Do.
Cornwall, Town of, Orange County	360611	April 15, 1975, Emerg; September 30, 1982, Reg; August 3, 2009, Susp.	.....do	Do.
Cornwall on Hudson, Village of, Orange County.	360610	July 18, 1974, Emerg; August 2, 1982, Reg; August 3, 2009, Susp.	.....do	Do.
Crawford, Town of, Orange County	361250	October 1, 1975, Emerg; September 30, 1982, Reg; August 3, 2009, Susp.	.....do	Do.
Florida, Village of, Orange County	360613	July 28, 1975, Emerg; December 4, 1986, Reg; August 3, 2009, Susp.	.....do	Do.
Goshen, Town of, Orange County	360614	April 4, 1975, Emerg; April 30, 1986, Reg; August 3, 2009, Susp.	.....do	Do.
Goshen, Village of, Orange County	361571	July 7, 1975, Emerg; April 30, 1986, Reg; August 3, 2009, Susp.	.....do	Do.
Greenwood Lake, Village of, Orange County.	360616	January 23, 1974, Emerg; June 15, 1979, Reg; August 3, 2009, Susp.	.....do	Do.
Highland Falls, Village of, Orange County.	361453	July 2, 1974, Emerg; June 25, 1976, Reg; August 3, 2009, Susp.	.....do	Do.
Highlands, Township of, Orange County	361251	June 9, 1975, Emerg; November 30, 1979, Reg; August 3, 2009, Susp.	.....do	Do.
Kiryas Joel, Village of, Orange County	361610	August 31, 1994, Emerg; June 14, 2002, Reg; August 3, 2009, Susp.	.....do	Do.
Middletown, City of, Orange County	360619	May 14, 1975, Emerg; March 2, 1983, Reg; August 3, 2009, Susp.	.....do	Do.
Monroe, Village of, Orange County	360622	March 10, 1975, Emerg; January 6, 1982, Reg; August 3, 2009, Susp.	.....do	Do.
Montgomery, Town of, Orange County	360623	July 22, 1975, Emerg; October 16, 1984, Reg; August 3, 2009, Susp.	.....do	Do.
Montgomery, Village of, Orange County	360624	May 16, 1974, Emerg; October 16, 1984, Reg; August 3, 2009, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
New Windsor, Town of, Orange County	360628	March 1, 1974, Emerg; December 15, 1978, Reg; August 3, 2009, Susp.	.....do	Do.
Newburgh, City of, Orange County	360626	June 9, 1975, Emerg; June 5, 1985, Reg; August 3, 2009, Susp.	.....do	Do.
Newburgh, Town of, Orange County	360627	July 22, 1975, Emerg; June 5, 1985, Reg; August 3, 2009, Susp.	.....do	Do.
Tuxedo, Town of, Orange County	360631	June 2, 1975, Emerg; April 15, 1985, Reg; August 3, 2009, Susp.	.....do	Do.
Unionville, Village of, Orange County ...	360633	July 2, 1975, Emerg; July 6, 1984, Reg; August 3, 2009, Susp.	.....do	Do.
Wallkill, Town of, Orange County	360634	March 28, 1975, Emerg; September 4, 1986, Reg; August 3, 2009, Susp.	.....do	Do.
Warwick, Town of, Orange County	360636	August 5, 1974, Emerg; October 15, 1985, Reg; August 3, 2009, Susp.	.....do	Do.
Washingtonville, Village of, Orange County.	360638	August 11, 1972, Emerg; April 1, 1981, Reg; August 3, 2009, Susp.	.....do	Do.
Woodbury, Village of, Orange County ..	360640	March 13, 1975, Emerg; March 18, 1987, Reg; August 3, 2009, Susp.	.....do	Do.
Region IV				
Alabama:				
Blount County, Unincorporated Areas ...	010230	July 22, 1987, Emerg; June 17, 1991, Reg; August 3, 2009, Susp.	.....do	Do.
Blountsville, Town of, Blount County	010371	December 3, 2008, Emerg; NA, Reg; August 3, 2009, Susp.	.....do	Do.
Oneonta, City of, Blount County	010015	July 15, 1975, Emerg; August 19, 1986, Reg; August 3, 2009, Susp.	.....do	Do.
Snead, Town of, Blount County	010227	May 8, 2008, Emerg; NA, Reg; August 3, 2009, Susp.	.....do	Do.
Kentucky:				
Livingston, City of, Rockcastle County ..	210202	August 20, 1975, Emerg; June 17, 1986, Reg; August 3, 2009, Susp.	.....do	Do.
McKee, City of, Jackson County	210119	March 31, 1975, Emerg; July 17, 1986, Reg; August 3, 2009, Susp.	.....do	Do.
Mount Vernon, City of, Rockcastle County.	210374	September 4, 1996, Emerg; NA, Reg; August 3, 2009, Susp.	.....do	Do.
Spencer County, Unincorporated Areas	210211	August 8, 1975, Emerg; June 3, 1986, Reg; August 3, 2009, Susp.	.....do	Do.
Taylorsville, City of, Spencer County	210247	September 26, 1975, Emerg; June 4, 1987, Reg; August 3, 2009, Susp.	.....do	Do.
North Carolina:				
Ahoskie, Town of, Hertford County	370131	May 13, 1974, Emerg; May 1, 1987, Reg; August 3, 2009, Susp.	.....do	Do.
Cofield, Town of, Hertford County	370409	August 7, 2001, Emerg; NA, Reg; August 3, 2009, Susp.	.....do	Do.
Hertford County, Unincorporated Areas	370130	October 6, 1995, Emerg; November 1, 1999, Reg; August 3, 2009, Susp.	.....do	Do.
Murfreesboro, Town of, Hertford County	370419	March 12, 1980, Emerg; June 1, 1987, Reg; August 3, 2009, Susp.	.....do	Do.
Winton, Town of, Hertford County	370424	August 3, 1979, Emerg; July 1, 1987, Reg; August 3, 2009, Susp.	.....do	Do.
Tennessee:				
Clifton, City of, Wayne County	470200	May 2, 1980, Emerg; March 4, 1988, Reg; August 3, 2009, Susp.	.....do	Do.
Jackson, City of, Madison County	470113	April 18, 1974, Emerg; July 5, 1983, Reg; August 3, 2009, Susp.	.....do	Do.
Madison County, Unincorporated Areas	470112	April 23, 1974, Emerg; July 5, 1983, Reg; August 3, 2009, Susp.	.....do	Do.
Medon, Town of, Madison County	470403	NA, Emerg; November 1, 2007, Reg; August 3, 2009, Susp.	.....do	Do.
Wayne County, Unincorporated Areas ..	470199	August 15, 2003, Emerg; June 1, 2005, Reg; August 3, 2009, Susp.	.....do	Do.
Waynesboro, City of, Wayne County	470201	February 13, 1976, Emerg; January 16, 1987, Reg; August 3, 2009, Susp.	.....do	Do.
Region V				
Illinois: Barrington Hills, Village of, Cook, Kane, Lake, McHenry County.	170058	April 3, 1975, Emerg; August 10, 1979, Reg; August 3, 2009, Susp.	.....do	Do.
Indiana:				
Allen County, Unincorporated Areas	180302	February 14, 1974, Emerg; September 28, 1990, Reg; August 3, 2009, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Fort Wayne, City of, Allen County	180003	May 24, 1974, Emerg; April 3, 1985, Reg; August 3, 2009, Susp.	.....do	Do.
Grabill, Town of, Allen County	180499	NA, Emerg; October 17, 1990, Reg; August 3, 2009, Susp.	.....do	Do.
Huntertown, Town of, Allen County	180005	July 29, 1975, Emerg; November 2, 1983, Reg; August 3, 2009, Susp.	.....do	Do.
Leo-Cedarville, Town of, Allen County	180518	NA, Emerg; February 9, 2000, Reg; August 3, 2009, Susp.	.....do	Do.
Monroeville, Town of, Allen County	180498	NA, Emerg; October 17, 1990, Reg; August 3, 2009, Susp.	.....do	Do.
Newhaven, City of, Allen County	180004	January 30, 1975, Emerg; July 18, 1983, Reg; August 3, 2009, Susp.	.....do	Do.
Woodburn, City of, Allen County	180500	NA, Emerg; October 17, 1990, Reg; August 3, 2009, Susp.	.....do	Do.
Region VI				
Oklahoma:				
Bixby, City of, Tulsa County	400207	March 6, 1974, Emerg; September 28, 1979, Reg; August 3, 2009, Susp.	.....do	Do.
Broken Arrow, City of, Tulsa County	400236	November 27, 1974, Emerg; August 17, 1981, Reg; August 3, 2009, Susp.	.....do	Do.
Collinsville, City of, Tulsa County	400360	November 21, 1975, Emerg; July 2, 1981, Reg; August 3, 2009, Susp.	.....do	Do.
Glenpool, City of, Tulsa County	400208	February 6, 1975, Emerg; March 2, 1981, Reg; August 3, 2009, Susp.	.....do	Do.
Jenks, City of, Tulsa County	400209	November 1, 1974, Emerg; February 17, 1982, Reg; August 3, 2009, Susp.	.....do	Do.
Owasso, City of, Tulsa County	400210	April 26, 1974, Emerg; July 2, 1981, Reg; August 3, 2009, Susp.	.....do	Do.
Sand Springs, City of, Tulsa County	400211	August 5, 1974, Emerg; June 15, 1981, Reg; August 3, 2009, Susp.	.....do	Do.
Skiatook, Town of, Tulsa County	400212	July 2, 1974, Emerg; July 16, 1980, Reg; August 3, 2009, Susp.	.....do	Do.
Sperry, Town of, Tulsa County	400213	June 17, 1975, Emerg; July 16, 1981, Reg; August 3, 2009, Susp.	.....do	Do.
Tulsa, City of, Tulsa County	405381	November 20, 1970, Emerg; August 13, 1971, Reg; August 3, 2009, Susp.	.....do	Do.
Tulsa County, Unincorporated Areas	400462	April 21, 1975, Emerg; September 16, 1982, Reg; August 3, 2009, Susp.	.....do	Do.
Region VII				
Iowa:				
Delhi, City of, Delaware County	190566	December 17, 1999, Emerg; NA, Reg; August 3, 2009, Susp.	.....do	Do.
Dundee, City of, Delaware County	190363	November 30, 1977, Emerg; August 1, 1986, Reg; August 3, 2009, Susp.	.....do	Do.
Hopkinton, City of, Delaware County	190364	February 12, 1982, Emerg; July 2, 1987, Reg; August 3, 2009, Susp.	.....do	Do.
Manchester, City of, Delaware County	190112	April 25, 1975, Emerg; October 15, 1982, Reg; August 3, 2009, Susp.	.....do	Do.
Masonville, City of, Delaware County	190365	October 28, 1993, Emerg; July 1, 1997, Reg; August 3, 2009, Susp.	.....do	Do.
Ryan, City of, Delaware County	190801	April 26, 2005, Emerg; NA, Reg; August 3, 2009, Susp.	.....do	Do.
Kansas:				
DeSoto, City of, Johnson County	200161	May 16, 1975, Emerg; August 1, 1979, Reg; August 3, 2009, Susp.	.....do	Do.
Edgerton, City of, Johnson County	200162	January 12, 1976, Emerg; August 1, 1979, Reg; August 3, 2009, Susp.	.....do	Do.
Gardner, City of, Johnson County	200164	June 25, 1975, Emerg; April 15, 1977, Reg; August 3, 2009, Susp.	.....do	Do.
Johnson County, Unincorporated Areas	200159	September 17, 1979, Emerg; August 15, 1980, Reg; August 3, 2009, Susp.	.....do	Do.
Leawood, City of, Johnson County	200167	September 1, 1972, Emerg; September 30, 1977, Reg; August 3, 2009, Susp.	.....do	Do.
Lenexa, City of, Johnson County	200168	June 12, 1975, Emerg; August 1, 1977, Reg; August 3, 2009, Susp.	.....do	Do.
Merriam, City of, Johnson County	200169	April 14, 1975, Emerg; May 15, 1978, Reg; August 3, 2009, Susp.	.....do	Do.
Olathe, City of, Johnson County	200173	January 19, 1973, Emerg; November 15, 1978, Reg; August 3, 2009, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Overland Park, City of, Johnson County	200174	September 8, 1972, Emerg; September 30, 1977, Reg; August 3, 2009, Susp.	.....do	Do.
Roeland Park, City of, Johnson County	200176	November 7, 1975, Emerg; June 30, 1976, Reg; August 3, 2009, Susp.	.....do	Do.
Shawnee, City of, Johnson County	200177	February 24, 1975, Emerg; November 15, 1978, Reg; August 3, 2009, Susp.	.....do	Do.
Region IX				
California:				
Alameda, City of, Alameda County	060002	June 26, 1975, Emerg; August 1, 1978, Reg; August 3, 2009, Susp.	.....do	Do.
Berkeley, City of, Alameda County	060004	October 22, 1971, Emerg; September 1, 1978, Reg; August 3, 2009, Susp.	.....do	Do.
Newark, City of, Alameda County	060009	April 22, 1974, Emerg; December 1, 1978, Reg; August 3, 2009, Susp.	.....do	Do.
Oakland, City of, Alameda County	065048	December 4, 1970, Emerg; September 30, 1982, Reg; August 3, 2009, Susp.	.....do	Do.

*-do- =Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Deborah Ingram,

Acting Deputy Assistant Administrator for Mitigation, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9–18406 Filed 7–31–09; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 74, No. 147
Monday, August 3, 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.

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

4 CFR Part 200

RIN 0430–AA00

Implementation of Privacy Act of 1974

AGENCY: Recovery Accountability and Transparency Board.

ACTION: Proposed rule.

SUMMARY: The Recovery Accountability and Transparency Board (Board) is proposing to implement a set of procedural regulations under the Privacy Act of 1974 (Privacy Act or the Act), Public Law 93–579, 5 U.S.C. 552a. The proposed regulations have been written to conform to the statutory provisions of the Act. They are intended to expedite the processing of Privacy Act requests received by the Board and to ensure the proper dissemination of information to the public.

DATES: Comments on the proposed rule should be submitted no later than October 2, 2009.

ADDRESSES: Comments on this proposed rule may be submitted:

By Mail or Hand Delivery: Office of General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006;

By Fax: (202) 254–7970; or

By E-mail to the Board: comments@ratb.gov.

All comments on this proposed Privacy Act rule should be clearly identified as such.

FOR FURTHER INFORMATION CONTACT: Jennifer Dure, General Counsel, (202) 254–7900.

SUPPLEMENTARY INFORMATION: This proposed rule is intended to set forth the procedures to be used by members of the public when requesting records from the Board under the Privacy Act. It also establishes a timeframe for responses, a fee schedule for copying records, and charges for obtaining information, when applicable.

All written comments received on this document by October 2, 2009, will be fully considered before publication of the final rule. Any information considered confidential must be so identified and submitted in writing. Comments submitted anonymously will not be considered. However, name and/or address may be withheld on request.

Executive Order 12866

The proposed regulation does not meet the criteria for a significant regulatory action under Executive Order 12866. Therefore, review by the Office of Management and Budget is not required.

Regulatory Flexibility Act

The proposed rule adds Privacy Act regulations to 4 CFR part 200 and will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The rule imposes no additional recording and recordkeeping requirements and is therefore exempt from the requirements of the Paperwork Reduction Act.

List of Subjects in 4 CFR Part 200

Administrative practice and procedure, Privacy, Reporting and recordkeeping requirements.

Under the authority at Public Law 111–5, 123 Stat. 115 (2009), the Board proposes to amend Title 4 of the Code of Federal Regulations by establishing a new Chapter II, consisting of Part 200 to read as follows:

CHAPTER II—RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

PART 200—PRIVACY ACT OF 1974

Sec.

200.1 Purpose and scope.
200.2 Definitions.
200.3 Privacy Act records maintained by the Board.
200.4 Privacy Act inquiries.
200.5 Requests for access to records.
200.6 Processing of requests.
200.7 Fees.
200.8 Appealing denials of access.
200.9 Requests for correction of records.
200.10 Disclosure of records to third parties.
200.11 Maintaining records of disclosures.
200.12 Notification of systems of Privacy Act records.
200.13 Privacy Act training.
200.14 Responsibility for maintaining adequate safeguards.
200.15 Systems of records covered by exemptions.
200.16 Mailing lists.

Authority: 5 U.S.C. 552a(f).

§ 200.1 Purpose and scope.

This part sets forth the policies and procedures of the Board regarding access to systems of records maintained by the Board under the Privacy Act, Public Law 93–579, 5 U.S.C. 552a. The provisions in the Act shall take precedence over any part of the Board's regulations in conflict with the Act. These regulations establish procedures by which an individual may exercise the rights granted by the Privacy Act to determine whether a Board system of records contains a record pertaining to him or her; to gain access to such records; and to request correction or amendment of such records. These regulations also set identification requirements and prescribe fees to be charged for copying records.

§ 200.2 Definitions.

As used in this part:

(a) *Agency* means any executive department, military department, government corporation, or other establishment in the executive branch of the federal government, including the Executive Office of the President or any independent regulatory agency;

(b) *Individual* means any citizen of the United States or an alien lawfully admitted for permanent residence;

(c) *Maintain* means to collect, use, store, or disseminate records as well as any combination of these recordkeeping functions. The term also includes exercise of control over, and therefore responsibility and accountability for, systems of records;

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Board and contains the individual's name or other identifying information, such as a number or symbol assigned to the individual or his or her fingerprint, voice print, or photograph. The term includes, but is not limited to, information regarding an individual's education, financial transactions, medical history, and criminal or employment history;

(e) *System of records* means a group of records under the control of the Board from which information is

retrievable by use of the name of the individual or by some number, symbol, or other identifying particular assigned to the individual;

(f) *Routine use* means, with respect to the disclosure of a record, the use of a record for a purpose that is compatible with the purpose for which it was collected;

(g) *Designated Privacy Act Officer* means the person named by the Board to administer the Board's activities in regard to the regulations in this part;

(h) *Executive Director* means the chief operating officer of the Board;

(i) *Days* means standard working days, excluding weekends and Federal holidays.

§ 200.3 Privacy Act records maintained by the Board.

(a) The Board shall maintain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by Executive Order of the President. In addition, the Board shall maintain all records that are used in making determinations about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to that individual in the making of any determination about him or her. However, the Board shall not be required to update retired records.

(b) The Board shall not maintain any record about any individual with respect to or describing how such individual exercises rights guaranteed by the First Amendment of the Constitution of the United States, unless expressly authorized by statute or by the subject individual, or unless pertinent to and within the scope of an authorized law enforcement activity.

§ 200.4 Privacy Act inquiries.

(a) *Inquiries regarding the contents of record systems.* Any person wanting to know whether the Board's systems of records contain a record pertaining to him or her may file an inquiry in person, by mail or by telephone.

(b) *Inquiries in person* may be submitted at the Board's headquarters located at 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006. Inquiries should be marked ''Privacy Act Inquiry'' on each page of the inquiry and on the front of the envelope and directed to the Privacy Act Officer.

(c) *Inquiries by mail* may be sent to: Privacy Act Officer, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006. ''Privacy Act Inquiry'' should be written on the envelope and each page of the inquiry.

(d) *Telephone inquiries* may be made by calling the Board's Privacy Act Officer at (202) 254–7900.

§ 200.5 Requests for access to records.

(a) All requests for records should include the following information:

(1) Full name, address, and telephone number of requester.

(2) The system of records containing the desired information.

(3) Any other information that the requester believes would help locate the record.

(b) *Requests in writing.* A person may request access to his or her own records in writing by addressing a letter to: Privacy Act Officer, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

(c) *Requests by fax.* A person may request access to his or her records by facsimile at (202) 254–7970.

(d) *Requests by phone.* A person may request access to his or her records by calling the Privacy Act Officer at (202) 254–7900.

(e) *Requests in person.* Any person may examine and request copies of his or her own records on the Board's premises. The requester should contact the Board's office at least one week before the desired appointment date. This request may be made to the Privacy Act Officer in writing or by calling (202) 254–7900. Before viewing the records, proof of identification must be provided. The identification should be a valid copy of one of the following:

- A government ID;
- A driver's license;
- A passport; or
- Other current identification that contains both an address and a picture of the requester.

§ 200.6 Processing of requests.

Upon receipt of a request for information, the Privacy Act Officer will ascertain whether the records identified by the requester exist, and whether they are subject to any exemption under § 200.15 below.

If the records exist and are not subject to exemption, the Privacy Act Officer will provide the information.

(a) *Requests in writing, including those sent by fax.* Within five working days of receiving the request, the Privacy Act Officer will acknowledge its receipt and will advise the requester of any additional information that may be needed. Within 15 working days of receiving the request, the Privacy Act Officer will send the requested information or will explain to the requester why additional time is needed for a response.

(b) *Requests in person or by telephone.* Within 15 days of the initial request, the Privacy Act Officer will contact the requester and arrange an appointment at a mutually agreeable time when the record can be examined. The requester may be accompanied by no more than one person. In such case, the requestor must inform the Privacy Act Officer that a second individual will be present and must sign a statement authorizing disclosure of the records to that person. The statement will be kept with the requester's records. At the appointment, the requester will be asked to present identification as stated in § 200.5(e).

(c) *Excluded information.* If a request is received for information compiled in reasonable anticipation of litigation, the Privacy Act Officer will inform the requester that the information is not subject to release under the Privacy Act (see 5 U.S.C. 552a(d)(5)).

§ 200.7 Fees.

A fee will not be charged for searching, reviewing, or making corrections to records. A fee for copying will be assessed at the same rate established for the Freedom of Information Act requests. Duplication fees for paper copies of a record will be 10 cents per page for black and white and 20 cents per page for color. For all other forms of duplication, the Board will charge the direct costs of producing the copy. However, the first 100 pages of black-and-white copying or its equivalent will be free of charge.

§ 200.8 Appealing denials of access.

If access to records is denied by the Privacy Act Officer, the requester may file an appeal in writing. The appeal should be directed to Executive Director, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

The appeal letter must specify the denied records that are still sought, and state why denial by the Privacy Act Officer is erroneous.

The Executive Director or his or her designee will respond to appeals within 20 working days of the receipt of the appeal letter. The appeal determination will explain the basis of the decision to deny or grant the appeal.

§ 200.9 Requests for correction of records.

(a) *Correction requests.* Any person is entitled to request correction of his or her record(s) covered under the Act. The request must be made in writing and should be addressed to Privacy Act Officer, Recovery Accountability and Transparency Board, 1717 Pennsylvania

Avenue, NW., Suite 700, Washington, DC 20006. The letter should clearly identify the corrections desired. In most circumstances, an edited copy of the record will be acceptable for this purpose.

(b) *Initial response.* Receipt of a correction request will be acknowledged by the Privacy Act Officer in writing within five working days. The Privacy Act Officer will provide a letter to the requester within 20 working days stating whether the request for correction has been granted or denied. If the Privacy Act Officer denies any part of the correction request, the reasons for the denial will be provided to the requester.

§ 200.10 Disclosure of records to third parties.

(a) The Board will not disclose any record that is contained in a system of records to any person or agency, except with a written request by or with the prior written consent of the individual whose record is requested, unless disclosure of the record is:

(1) Required by an employee or agent of the Board in the performance of his/her official duties.

(2) Required under the provisions of the Freedom of Information Act (5 U.S.C. 552). Records required to be made available by the Freedom of Information Act will be released in response to a request in accordance with the Board's regulation published at 4 CFR Part 201.

(3) For a routine use as published in the annual notice in the **Federal Register**.

(4) To the Census Bureau for planning or carrying out a census, survey, or related activities pursuant to the provisions of Title 13 of the United States Code.

(5) To a recipient who has provided the Board with adequate advance written assurance that the record will be used solely as a statistical research or reporting record and that the record is to be transferred in a form that is not individually identifiable.

(6) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the Archivist of the United States, or his or her designee, to determine whether the record has such value.

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Board for such records specifying the particular part desired and the law enforcement activity for which the record is sought. The Board also may disclose such a record to a law enforcement agency on its own initiative in situations in which criminal conduct is suspected, provided that such disclosure has been established as a routine use, or in situations in which the misconduct is directly related to the purpose for which the record is maintained.

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual.

(9) To either House of Congress, or, to the extent of matters within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee.

(10) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of official duties of the Government Accountability Office.

(11) Pursuant to an order of a court of competent jurisdiction. In the event that any record is disclosed under such compulsory legal process, the Board shall make reasonable efforts to notify the subject individual after the process becomes a matter of public record.

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

(b) Before disseminating any record about any individual to any person other than a Board employee, the Board shall make reasonable efforts to ensure that the records are, or at the time they were collected, accurate, complete, timely, and relevant. This paragraph (b) does not apply to disseminations made pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) and paragraph (a)(2) of this section.

§ 200.11 Maintaining records of disclosure.

(a) The Board shall maintain a log containing the date, nature, and purposes of each disclosure of a record to any person or agency. Such accounting also shall contain the name and address of the person or agency to whom or to which each disclosure was made. This log will not include disclosures made to Board employees or agents in the course of their official duties or pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552).

(b) An accounting of each disclosure shall be retained for at least five years after the accounting is made or for the life of the record that was disclosed, whichever is longer.

(c) The Board shall make the accounting of disclosure of a record pertaining to an individual available to that individual at his or her request. Such a request should be made in accordance with the procedures set forth in § 200.5. This paragraph (c) does not apply to disclosure made for law enforcement purposes under 5 U.S.C. 552a(b)(7) and § 200.10(a)(7).

§ 200.12 Notification of systems of Privacy Act records.

(a) *Public Notice.* The Board periodically reviews its systems of records and will publish information about any significant additions or changes to those systems in the **Federal Register**. Information about systems of records maintained by other agencies that are in the temporary custody of the Board will not be published. In addition, the Office of the Federal Register biennially compiles and publishes all systems of records maintained by all federal agencies, including the Board.

(b) At least 30 days before publishing additions or changes to the Board's systems of records, the Board will publish a notice of intent to amend, providing the public with an opportunity to comment on the proposed amendments to its systems of records in the **Federal Register**.

§ 200.13 Privacy Act training.

(a) The Board shall ensure that all persons involved in the design, development, operation, or maintenance of any Board systems of records are informed of all requirements necessary to protect the privacy of individuals. The Board shall ensure that all employees having access to records receive adequate training in their protection and that records have adequate and proper storage with sufficient security to ensure their privacy.

(b) All employees shall be informed of the civil remedies provided under 5 U.S.C. 552a(g)(1) and other implications of the Privacy Act and of the fact that the Board may be subject to civil remedies for failure to comply with the provisions of the Privacy Act and the regulations in this part.

§ 200.14 Responsibility for maintaining adequate safeguards.

The Board has the responsibility for maintaining adequate technical, physical, and security safeguards to

prevent unauthorized disclosure or destruction of manual and automated records systems. These security safeguards shall apply to all systems of records in which identifiable personal data are processed or maintained, including all reports and output from such systems of records that contain identifiable personal information. Such safeguards must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification, or destruction of any personal records or data; must minimize, to the extent practicable, the risk that skilled technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data; and shall further ensure against such casual entry by unskilled persons without official reasons for access to such records or data.

(a) *Manual systems.* (1) Records contained in a system of records as defined in this part may be used, held, or stored only where facilities are adequate to prevent unauthorized access by persons within or outside the Board.

(2) Access to and use of a system of records shall be permitted only to persons whose duties require such access to the information for routine uses or for such other uses as may be provided in this part.

(3) Other than for access by employees or agents of the Board, access to records within a system of records shall be permitted only to the individual to whom the record pertains or upon his or her written request.

(4) The Board shall ensure that all persons whose duties require access to and use of records contained in a system of records are adequately trained to protect the security and privacy of such records.

(5) The disposal and destruction of identifiable personal data records shall be done by shredding and in accordance with rules promulgated by the Archivist of the United States.

(b) *Automated systems.* (1) Identifiable personal information may be processed, stored, or maintained by automated data systems only where facilities or conditions are adequate to prevent unauthorized access to such systems in any form.

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained at all times, including maintenance of accountability records showing disposition of input and output documents.

(3) All persons whose duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy of personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be done by shredding, burning, or, in the case of electronic records, by degaussing or by overwriting with the appropriate security software, in accordance with regulations of the Archivist of the United States or other appropriate authority.

§ 200.15 Systems of records covered by exemptions.

The Board currently has no exempt systems of records.

§ 200.16 Mailing lists.

The Board shall not sell or rent an individual's name and/or address unless such action is specifically authorized by law. This section shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

Ivan J. Flores,

Paralegal Specialist, Recovery Accountability and Transparency Board.

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RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

4 CFR Part 201

RIN 0430–AA01

Rule Implementing the Freedom of Information Act

AGENCY: Recovery Accountability and Transparency Board.

ACTION: Proposed rule.

SUMMARY: The Recovery Accountability and Transparency Board (Board) is proposing to implement a set of procedural regulations under the Freedom of Information Act (FOIA) in accordance with 5 U.S.C. 552, and Public Law 104–231, the Electronic Freedom of Information Act Amendments of 1996. These proposed regulations have been written to conform to the statutory provisions in the Acts, to expedite the processing of FOIA requests received by the Board, and to ensure the proper dissemination of information to the public.

DATES: Comments on the proposed rule should be submitted no later than October 2, 2009.

ADDRESSES: Comments on this proposed rule may be submitted:

By Mail or Hand Delivery: Office of General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006;

By Fax: (202) 254–7970; or

By E-mail to the Board: comments@ratb.gov.

All comments on this proposed FOIA rule should be clearly identified as such.

FOR FURTHER INFORMATION CONTACT: Jennifer Dure, General Counsel, (202) 254–7900.

SUPPLEMENTARY INFORMATION: This proposed rule is intended to set forth the procedures for members of the public to request records from the Board under both the FOIA and the Electronic Freedom of Information Act Amendments of 1996. The rule also sets forth the procedures that the Board will use when responding to such requests. It sets up the time frames for responses and the current fee schedule for any applicable charges for information. The rule also supplies information about Board materials available to the public through the Board's Web site.

Executive Order No. 12866

These proposed regulations do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, review by the Office of Management and Budget is not required.

Regulatory Flexibility Act

These proposed regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided by the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations impose no additional reporting and recordkeeping requirements. Therefore, clearance by the Office of Management and Budget is not required.

List of Subjects in 4 CFR Part 201

Administrative practice and procedure; Freedom of Information; Reporting and recordkeeping requirements.

Therefore, the Board proposes to amend Chapter II of Title 4 of the Code of Federal Regulations, as proposed elsewhere in this issue of the **Federal Register**, by adding part 201 to read as follows:

PART 201—PUBLIC INFORMATION AND REQUESTS

Sec.
201.1 Scope.
201.2 Definitions.
201.3 Electronic reading room.
201.4 Board records exempt from public disclosure.
201.5 Requests for Board records.
201.6 Responsibility, form, and content of responses.
201.7 Time of responses to requests.
201.8 Fees.
201.9 Restrictions on charging fees.
201.10 Notice of anticipated fees.
201.11 Requirements for waiver or reduction of fees.
201.12 Denials.
201.13 Business information.
201.14 Appeals.
201.15 Preservation of records.
201.16 Other rights and services.
201.17 How to track a FOIA request.

Authority: 5 U.S.C. 301, 5 U.S.C. 552 as amended; Executive Order 12600, 3 CFR, 1987 Comp., p. 235.

§ 201.1 Scope.

This part sets forth the policies and procedures of the Recovery Accountability and Transparency Board (Board) regarding public access to documents under the Freedom of Information Act (FOIA or the Act), 5 U.S.C. 552. The provisions in the Act shall take precedence over any part of the Board's regulations in conflict with the Act. This part gives the procedures the public may use to inspect and obtain copies of Board records under the FOIA, including administrative procedures which must be exhausted before a requestor invokes the jurisdiction of an appropriate United States District Court for the Board's failure to respond to a proper request within the statutory time limits, for a denial of Board records or challenges to the adequacy of a search, or for denial of fee waiver.

§ 201.2 Definitions.

For words used in this document, unless the context indicates otherwise, singular includes the plural, plural includes the singular, present tense includes the future tense, and words of one gender include the other gender.

(a)(1) *Agency records*—Include materials that are in the control of the Board and associated with Board business, as follows:

(i) Materials produced by the Board.

(ii) Materials produced by staff for the Board.

(iii) Materials distributed by presenters at a Board meeting or Board Committee meeting.

(2) All references to records include the entire record and/or any part of the record.

(b) *Board*—The Recovery Accountability and Transparency Board.

(c) *Chairman*—The Chairman of the Board is designated or appointed by the President.

(d) *Designated FOIA Officer*—The person designated to administer the Board's activities in regard to the regulations in this part. The FOIA Officer shall be:

(1) The Board officer having custody of, or responsibility for, agency records in the possession of the Board.

(2) The Board officer having responsibility for authorizing or denying production of records from requests filed under the FOIA.

(e) *Executive Director*—The chief operating officer of the Board.

(f) *Member*—An individual appointed to serve on the Board pursuant to Title XV, Subtitle B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

(g) *Days*—Standard working days, excluding weekends and Federal holidays.

§ 201.3 Publicly available documents and electronic reading room.

(a) Many Board records are available electronically at the Board's Web site (*http://www.recovery.gov*).

(b) Records available electronically on the Board's Web site include:

(1) The rules and regulations of the Board.

(2) Statements of policy adopted by the Board.

(3) Board reports to the President and Congress, including the Committees on Appropriations of the Senate and House of Representatives.

(4) Congressional Testimony of the Chairman of the Board.

(5) Biographical information about the Chairman and other Board members.

(6) Copies of records repeatedly released in response to FOIA requests.

(c) The cost of copying information available in the Board office shall be imposed in accordance with the provisions of § 201.8.

§ 201.4 Board records exempt from public disclosure.

5 U.S.C. 552 provides that the requirements of the FOIA do not apply to matters that are:

(a) Specifically authorized under the criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such an executive order.

(b) Related solely to the internal personnel rules and practices of the Board.

(c) Specifically exempted from disclosure by another Federal statute, provided that such statute:

(1) Requires that records are withheld from the public in such a manner that leaves no discretion on the issue; or

(2) Establishes criteria for withholding or refers to particular types of matters to be withheld.

(d) Trade secrets, and commercial or financial information obtained from a person and privileged or confidential.

(e) Interagency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the Board.

(f) Personnel, medical, or similar files that disclosing would constitute a clearly unwarranted invasion of personal privacy.

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records of information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of any confidential source, including a State, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by a criminal law enforcement agency in the course of a criminal investigation or by an agency conducting a lawful security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

(h) Contained in or related to examination, operating, or condition reports, prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(i) Geological and geophysical information and data, including maps, concerning wells.

§ 201.5 Requests for Board records.

(a) To request Board records, you may:

(1) Write: FOIA Officer, Recovery Accountability and Transparency Board,

1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006;

(2) Send a request via e-mail at *FOIA@ratb.gov*; or

(3) Fax: (202) 254–7970.

(b) When requesting records under this section you must state, in writing:

(1) Your full name,

(2) Address,

(3) Telephone number and,

(4) At your option, electronic mail address.

(c) When making a request for records about a person, Privacy Act regulations also may apply. Please check the regulations for additional requirements before submitting a request. When making a request for records about someone other than yourself, you must include either:

(1) Written authorization signed by the person permitting you to see the records; or

(2) Proof that the individual is deceased (*e.g.,* a death certificate or obituary).

(d) A request will be considered received for purposes of § 201.7 on the date that it is received by the Board's FOIA office. For prompt handling, write ''Freedom of Information Act Request'' on the letter and envelope or in the subject line of the e-mail request or fax.

(e) Each request must clearly describe the desired records in sufficient detail to enable Board personnel to locate them with reasonable effort. Response to requests may be delayed if the records are not clearly described.

(f) Whenever possible, requests should include specific information about each record sought, such as date, title or name, author, recipient, and subject.

(g) If the FOIA Officer determines that the request does not clearly describe the records sought, he or she will either advise you of the additional information needed to locate the record or otherwise state why the request is insufficient. You will then be given the opportunity to provide additional information or to modify your request.

(h) Submitting a FOIA request shall be considered a commitment by the requestor to pay applicable fees required under § 201.8 unless the requestor seeks a waiver of fees. When making a request, you may specify a willingness to pay fees up to a specific amount.

(i) The FOIA does not require the Board to:

(1) Compile or create records solely for the purpose of satisfying a request for records.

(2) Provide records not yet in existence, even if such records may be expected to come into existence at some time in the future.

(3) Restore records destroyed or otherwise disposed of, except that the FOIA Officer must notify the requestor that the records have been destroyed or otherwise disposed of.

§ 201.6 Responsibility, form, and content of response.

The Board's Executive Director or his/her designated FOIA Officer is authorized to grant or deny any request for a record and determine appropriate fees. When determining which records are responsive to a request, the Board will include only records in its possession as of the date of the request.

(a) If no records are responsive to the request, the FOIA Officer will notify the requestor in writing.

(b) When the FOIA Officer denies a request in whole or in part, he/she will notify the requestor in writing. The response will be signed by the FOIA Officer and will include:

(1) The name and title or position of the person making the denial;

(2) A brief statement of the reasons for the denial, including the FOIA exemption(s) that the FOIA Officer has relied on in denying the request; and

(3) A statement that the denial may be appealed under § 201.14 and a description of the requirements of that section.

(c) *Referrals.* When a request for a record not created by the Board is received, the Board shall refer the requestor to the issuing agency in writing, providing the address of the agency contact and the section(s) referred.

(d) *Timing of responses to requests sent to other agencies.* The Board shall provide, within the FOIA deadline, responses only to those parts of the request not referred.

(e) *Agreements on referrals.* The Board may make agreements with other agencies to eliminate the need for referrals for particular types of records.

§ 201.7 Timing of responses to requests.

(a) *General.* The Board shall normally respond to requests in the order of their receipt.

(b) *Acknowledgement of requests.* On receipt of a request, the Board shall send an acknowledgement letter or an e-mail confirming the requestor's agreement to pay fees under § 201.8 and providing a request number for future reference.

(c) *Time limits for responding to FOIA requests.* The Board shall make an initial determination to grant or deny a request for records within 20 days (excluding Saturday, Sunday and holidays) after the date of receipt of the request, as described in § 201.5(d), except as stated in paragraph (f) of this section. Once the Board determines whether it can grant a request entirely or in part, it shall notify the requestor in writing. The Board shall advise the requestor of any fees to be charged under § 201.8 and shall disclose records promptly on payment of the fees. Records disclosed in part shall be marked or annotated to show the amount of information deleted unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also shall be indicated on the record when technically feasible.

(d) *Unusual circumstances.* (1) If the statutory time limits for processing a request cannot be met because of ''unusual circumstances'' as defined in the FOIA (5 U.S.C. 552(6)(B)(iii)), the Board shall promptly notify the requestor in writing, explaining the circumstances and giving the date by which the request can be completed or if the Board cannot complete the request. If the extension is for more than 10 working days, the Board shall provide the requestor with an opportunity to:

(i) Modify the request so that it can be processed within the time limit; or

(ii) Arrange an alternative time period for processing the original request.

(2) If the Board believes that multiple requests submitted by a requestor or by requestors acting in concert constitute a single request that would otherwise involve unusual circumstances, and if the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.

(e) *Expedited processing.* (1) Requests and appeals shall be taken out of order and given expedited processing whenever it is determined that they involve:

(i) Circumstances that could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged activity if made by a person primarily engaged in disseminating information.

(2) Requests for expedited processing may be made either at the time of the initial request or at a later time.

(3) Requests for expedited processing must include a statement explaining in detail the basis for requesting expedited processing. For example, a requestor under § 201.8 must establish that his/her professional activity is news reporting, although it need not be his/her sole occupation. The requestor also must establish a particular urgency to inform the public about government activity involved in the request, beyond

the public's right to know about government activity generally.

(4) Within 10 calendar days of receipt of a request for expedited processing, the Board shall decide whether to grant the request and notify the requestor of its decision. If a request for expedited treatment is granted, the request shall be processed as soon as practicable. If a request for expedited processing is denied, an appeal of that decision shall be acted on expeditiously.

(f) *Tolling of time limits.* (1) The Board may toll the 20-day time period to:

(i) Make one request for additional information from the requester; or

(ii) Clarify the applicability or amount of any fees, if necessary, with the requester.

(2) The tolling period ends upon the Board's receipt of information from the requester or resolution of the fee issue.

§ 201.8 Fees.

(a) *General.* The Board shall charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under § 201.9 or where a waiver or reduction of fees is granted under § 201.11. Fees must be paid before the copies of records are sent. Fees may be paid by check or money order payable to the Treasury of the United States.

(b) *Definitions for this section*—(1) *Commercial use request*—A request from, or on behalf of, a person who seeks information for a purpose that furthers his/her commercial, trade, or profit interests including furthering those interests through litigation. The Board shall try to determine the use to which a record will be put. When the Board believes that a request is for commercial use either because of the nature of the request or because the Board has cause to doubt the stated use, the Board shall ask the requestor for clarification.

(2) *Direct costs*—Expenses that the Board incurs in searching for, duplicating, and reviewing records in response to a request. Direct costs include the full salary of the employee performing the work and the cost of duplication of the records. Overhead expenses, such as the cost of space, heating, and lighting, are not included.

(3) *Duplication*—Making a copy of a record or the information in the record, to respond to a request. Copies can be in paper, electronic, or other format. The Board shall honor a requestor's preference for format if the record is readily reproducible in that format at a reasonable cost.

(4) *Educational institution*—A public or private undergraduate, graduate, professional or vocational school that has a program of scholarly research. For a request to be in this category, a requestor must show that the request is authorized by and made under the auspices of the qualifying institution and that the records will be used for scholarly research.

(5) *Noncommercial scientific institution*—An institution that is not operated on a commercial basis, as defined in paragraph (b)(1) of this section and is operated solely for conducting scientific research that does not promote any particular product or industry. For a request to be in this category, the requestor must show that the request is authorized and made under the auspices of the qualifying institution and that the records will be used for further scientific research.

(6) *Representative of the news media*—Any person who, or entity that, gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. A freelance journalist shall be regarded as working for a news media entity if the person can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by that entity. A publication contract is one example of a basis for expecting publication that ordinarily would satisfy this standard. The Board may consider past publication records of the requester in determining whether he or she qualifies as a ''representative of the news media.''

(7) *Review*—Examining a record to determine whether any part of it is exempt from disclosure, and processing a record for disclosure. Review costs are recoverable even if a record is not disclosed. Review time includes time spent considering any formal objection to disclosure made by a business submitter under § 201.13 but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search*—The process of looking for and retrieving records, including page-by-page or line-by-line identification of information within records and reasonable efforts to locate and retrieve information from records maintained in electronic form. The Board shall ensure that searches are done in the most efficient and least expensive way that is reasonably possible.

(c) *Fees.* In responding to FOIA requests, the Board shall charge the following fees unless a waiver or a reduction of fees has been granted under § 201.11.

(1) *Search.* (i) Search fees shall be charged for all requests subject to the limitations of § 201.9. The Board may charge for time spent searching even if no responsive record is located, or if the record(s) located are withheld as exempt from disclosure.

(ii) For each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee will be $5. If a search and retrieval requires the use of professional personnel, the fee will be $8 for each quarter hour. If the time of managerial personnel is required, the fee will be $10 for each quarter hour.

(iii) For computer searches for records, requestors will be charged the direct costs of conducting the search although certain requestors (*see* § 201.9(a)) will be charged no search fee and certain other requestors (*see* § 201.9(b)) will be entitled to two hours of manual search time without charge. Direct costs include the cost of operating a computer for the search time for requested records and the operator salary for the search.

(2) *Duplication.* Duplication fees for paper copies of a record will be 10 cents per page for black and white and 20 cents per page for color. For all other forms of duplication, the Board shall charge the direct costs of producing the copy. All charges are subject to the limitations of §§ 201.9 and 201.11.

(3) *Review.* When a commercial-use request is made, review fees shall be charged as stated in paragraph (c)(1) of this section. These fees apply only to the initial record review, when the Board determines whether an exemption applies to a particular record. Charges shall not be imposed for review at the administrative appeal level if an exemption is applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies. The costs of that review shall be charged. All review fees shall be charged at the same rates as those charged in paragraph (c)(1) of this section.

§ 201.9 Restrictions on charging fees.

(a) When determining search or review fees:

(1) No search fee shall be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) The Board shall provide without charge to all but commercial users:

(i) The first 100 pages of black and white duplication (or the cost equivalent); and

(ii) The first two hours of search by a clerical staff member (or the cost equivalent).

(3) When the total fee for a request will be $14.00 or less for any request, no fee shall be charged.

(b) The Board will not assess search and/or duplication fees, as applicable, if it fails to respond to a requester's FOIA request within the time limits specified under 4 CFR 201.7, and no ''unusual'' circumstances (as defined in 5 U.S.C. 552(a)(6)(B) and 4 CFR 201.7(d)) or ''exceptional'' circumstances (as defined in 5 U.S.C. 552(a)(6)(C)) apply to the processing of the request.

§ 201.10 Notice of anticipated fees.

(a) *General.* The Board shall advise the requestor in writing of any applicable fees. If only a part of the fee can be estimated readily, the Board shall advise the requestor that this may be only a part of the total fee. After the requestor has been sent a fee estimate, the request shall not be considered received until the requestor makes a firm commitment to pay the anticipated total fee. Any such agreement must be made by the requestor in writing and must be received within 60 days of the Board's notice. If the requestor does not provide a firm commitment to pay the anticipated fee within 60 days of the notice, the request shall be closed. The requestor may be given an opportunity to work with the Board to change the request and lower the cost.

(b) *Charges for other services.* When the Board chooses as a matter of administrative discretion to provide a special service, such as certifying that records are true copies or sending them by other than ordinary mail, the Board shall pay the costs of providing the services unless previous arrangements have been made with the requestor.

(c) *Charging interest.* The Board may charge interest on any unpaid bill starting on the 31st day following the date of billing. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and shall accrue from the date of the billing until payment is received by the Board. The Board shall follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended.

(d) *Aggregating requests.* If the Board reasonably believes that a requestor or a group of requestors acting together is trying to divide a request into a series of smaller requests for the purpose of avoiding fees, the Board may aggregate the requests and charge accordingly. The Board shall assume that multiple requests of the same type made within a 30-day period have been made in order to avoid fees. If requests are separated by a longer period, the Board shall aggregate them only if there is a solid basis for determining that aggregation is warranted. Multiple requests involving unrelated matters shall not be aggregated.

(e) *Advance payments.* When a requestor has previously failed to pay promptly a properly charged FOIA fee to the Board or another agency, the Board shall require proof that full payment has been made to that agency before it begins to process that requestor's FOIA request. The Board shall also require advance payment of the full amount of the anticipated fee. When advance payment is required, the request is not considered received until payment has been made.

§ 201.11 Requirements for waiver or reduction of fees.

(a) Fees for processing your request may be waived if you meet the criteria listed in paragraph (b) of this section. The burden is on you to justify entitlement to a fee waiver. Requests for fee waivers are decided on a case-by-case basis. The fact that you have received a fee waiver in the past does not mean you are automatically entitled to a fee waiver for every request you may submit, because the essential element of any fee waiver determination is whether the release of the particular documents sought in the request will likely contribute significantly to public understanding of the operations or activities of the government. The Board will rely on the fee waiver justification you have submitted in your request letter. If you do not submit sufficient justification, your fee waiver request will be denied. The Board may, at its discretion, communicate with you to request additional information if necessary. However, the Board must make a determination on the fee waiver request within the statutory time limit, even if the Board has not received such additional information. In certain circumstances, a partial fee waiver may be appropriate, if some, but not all, of the requested records are likely to contribute significantly to public understanding of the operations and activities of the government.

(b) The Board will waive fees (in whole or part) if disclosure of all or part of the information is in the public interest because of its release:

(1) Is likely to contribute significantly to public understanding of the operations or activities of the government; and

(2) Is not primarily in the commercial interest of the requester.

§ 201.12 Denials.

(a) When denying a request in any respect, the Board shall notify the requestor of that determination in writing. The types of denials include:

(1) Denials of requests, including a determination:

(i) To withhold any requested record in whole or in part;

(ii) That a requested record does not exist or cannot be located;

(iii) That a record is not readily reproducible in the form or format sought;

(iv) That what has been requested is not a record subject to the FOIA; and

(v) That the material requested is not a Board record (*e.g.,* material produced by another agency or organization).

(2) A determination on any disputed fee matter, including a denial of a request for a fee waiver.

(3) A denial of a request for expedited processing.

(b) The denial letter shall be signed by the FOIA Officer or designee and shall include all of the following:

(1) The name and title of the person responsible for the denial.

(2) A brief statement of the reason(s) for the denial, including any FOIA exemptions applied in denying the request.

(3) An estimate of the volume of records withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if it would harm an interest protected by an applicable exemption.

(4) A statement that the denial may be appealed under § 201.14 and a description of the requirements of § 201.14.

§ 201.13 Business information.

(a) *In general.* Business information obtained by the Board from a submitter shall be disclosed under the FOIA only under this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information*—commercial or financial records obtained by the Board that may be protected from disclosure under Exemption 4 of the FOIA.

(2) *Submitter*—any person or entity from which the Board obtains business records, either directly or indirectly. The term includes but is not limited to corporations and State, local, Tribal, and foreign governments.

(c) *Designation of business information.* Submitters of business information shall designate any part of the record considered to be protected from disclosure under Exemption 4 of the FOIA by appropriately marking the

material. This may be done either at the time the record is submitted or at a reasonable time thereafter. This designation lasts for 10 years after submittal unless the submitter requests and provides justification for a longer period.

(d) *Notice to submitters.* The Board shall provide a business submitter with prompt written notice of any FOIA request or appeal that seeks its business information under paragraph (e) of this section, except as provided in paragraph (h) of this section, to give the submitter an opportunity to object to that disclosure under paragraph (f) of this section. The notice shall either describe the records requested or include copies of the records.

(e) *Required notice.* The Board shall give notice of a FOIA request seeking business information when:

(1) The submitter has designated that the information is considered protected from disclosure under Exemption 4 of the FOIA; or

(2) The Board has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA.

(f)(1) *Objecting to disclosure.* A submitter shall have 30 days to respond to the notice described in paragraph (d) of this section. If a submitter has an objection to disclosure, it is required to submit a detailed written statement including:

(i) All grounds for withholding any of the information under any exemption of the FOIA, and

(ii) In the case of Exemption 4, the reason why the information is a trade secret, commercial, or financial information that is privileged or confidential.

(2) If a submitter fails to respond to the notice in paragraph (d) of this section within 30 days, the Board shall assume that the submitter has no objection to disclosure. The Board shall not consider information not received by the Board until after a disclosure decision has been made. Information provided by a submitter under this paragraph might itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* The Board shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the business records. Whenever the Board decides to disclose business records over the objection of a submitter, it shall give the submitter written notice, that will include:

(1) A statement of the reason(s) the submitter's objections were not sustained;

(2) A description of the business records to be disclosed; and

(3) A specified disclosure date at a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements in paragraphs (d) and (g) of this section shall not apply if:

(1) The Board determines that the information should not be disclosed;

(2) The information has been published legally or has been officially made available to the public;

(3) Disclosure of the information is required by another statute or by a regulation issued in accordance with Executive Order 12600 (3 CFR, 1987 Comp., p. 235); or

(4) The objection made by the submitter under paragraph (f) of this section appears frivolous. In such a case, the Board shall promptly notify the submitter of its decision using the guidelines in paragraph (g) of this section.

(i) *Notice of FOIA lawsuit.* When a requestor files a lawsuit seeking to compel the disclosure of business information, the Board shall promptly notify the submitter.

(j) *Corresponding notice to requestors.* When the Board provides a submitter with either notice and an opportunity to object to disclosure under paragraph (d) of this section or with its intent to disclose requested information under paragraph (g) of this section, the Board also shall notify the requestor(s). When a submitter files a lawsuit seeking to prevent the disclosure of business information, the Board shall notify the requestor(s).

§ 201.14 Appeals.

(a)(1) *Appeals of adverse determinations.* If you are dissatisfied with the Board's response to your request, you may appeal to the Board's Executive Director:

(i) *By mail to:* Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006;

(ii) *By e-mail to: FOIA@ratb.gov*; or

(iii) *By fax to:* 202–254–7970.

(2) The appeal must be in writing and must be received within 30 days of the date of the Board's response. The appeal letter, e-mail or fax may include as much or as little related information as you wish, as long as it clearly identifies the Board determination that you are appealing, including the assigned request number, if known. For prompt handling, please mark your appeal ''Freedom of Information Act Appeal.''

(b) *Responses to appeals.* Requestors shall be notified in writing of the decision on the appeal. A decision affirming an adverse determination shall include a statement of the reason(s) for the affirmation, including any FOIA exemption(s) applied, and shall include the FOIA provisions for court review of the decision. If the adverse determination is reversed or modified on appeal, the request shall be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* If a review by a court of any adverse determination is desired, the determination must first be appealed under this section.

(d) *Denial of appeal.* An adverse determination by the Executive Director shall be the final action of the Board.

(e) *Unacceptable appeals.* An appeal will not be acted on if the request becomes a matter of FOIA litigation.

§ 201.15 Preservation of records.

The Board shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code of the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit.

§ 201.16 Other rights and services.

Nothing in this part shall be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is entitled under the FOIA.

§ 201.17 How to track a FOIA request.

(a) *Tracking number.* The Board will issue a tracking number to all FOIA requesters within 5 days of the receipt of the request (as described in § 201.7(b)). The tracking number will be sent via electronic mail if the requester has provided an electronic mail address. Otherwise, the Board will mail the tracking number to the requester's physical address, as provided in the FOIA request.

(b) *Status of request.* FOIA requesters may check the status of their FOIA request(s) by contacting the FOIA Officer at *FOIA@ratb.gov* or (202) 254–7900.

Ivan J. Flores,

Paralegal Specialist, Recovery Accountability and Transparency Board.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 31

RIN 3150–AI33

[NRC–2008–0272]

Limiting the Quantity of Byproduct Material in a Generally Licensed Device

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to limit the quantity of byproduct material contained in a generally licensed device to below one-tenth (1/10) of the International Atomic Energy Agency (IAEA) Category 3 thresholds. As a result of this amendment, individuals possessing devices with byproduct material meeting or exceeding these thresholds would be required to apply for and obtain a specific license. The NRC is also proposing to further clarify the requirements that apply when a device authorized to be used under the general license is instead held under a specific license. The proposed amendments would also modify the Compatibility Categories contained in the current regulations.

DATES: Submit comments on the rule by October 19, 2009. Submit comments specific to the information collection aspects of this rule by September 2, 2009. Comments received after the above date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments on the rule by any one of the following methods. Please include the Docket ID NRC–2008–0272 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *Regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2008–0272. Address questions about NRC dockets to Carol Gallagher at 301–492–3668, e-mail: *Carol.Gallagher@nrc.gov*.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays. (Telephone 301–415–1677)

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101. You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

You can access publicly available documents related to this proposed rule using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agencywide Document Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at: *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.*

Federal Rulemaking Web site: Public comments and supporting materials related to this proposed rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2008–0272.

FOR FURTHER INFORMATION CONTACT: Solomon Sahle, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3781, e-mail: *solomon.sahle@nrc.gov*.

SUPPLEMENTARY INFORMATION:

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II. Discussion
A. Rationale for Limiting the Quantity of Byproduct Material in a Generally Licensed Device
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I. Background

Prior to the terrorist attacks of September 11, 2001 (9/11), several national and international efforts were underway to address the potentially significant health and safety hazards posed by uncontrolled sources. These efforts recognized the need for increased control of high-risk radioactive materials to prevent inadvertent and intentional unauthorized access, primarily due to the potential health and safety hazards posed by the uncontrolled material. Following 9/11, these efforts were expanded to include a heightened awareness and increased focus on the need to prevent intentional unauthorized access due to potential malicious acts. These efforts, such as the IAEA Code of Conduct on the Safety and Security of Radioactive Sources (Code of Conduct) concerning Category 1 and Category 2 sources, seek to increase the control over sources to prevent unintended radiation exposure and to prevent malicious acts. Proper security and control measures reduce the likelihood of intentional unauthorized access that could result in this radioactive material being used in radiological dispersal devices (RDD) or in radiological exposure devices (RED).

In June 2002, the Secretary of Energy and the NRC Chairman met to discuss the adequate protection of nuclear materials that could be used in a RDD. At the June meeting, the Secretary of Energy and the NRC Chairman agreed to convene an Interagency Working Group on Radiological Dispersal Devices to address security concerns. In May 2003, the joint U.S. Department of Energy (DOE)/NRC working group issued its

report ''Radiological Dispersal Devices: An Initial Study To Identify Radioactive Materials of Greatest Concern and Approaches to Their Tracking, Tagging, and Disposition.''

The NRC also supported U.S. Government efforts to establish international guidance for the safety and security of radioactive materials of concern, which resulted in a major revision of the IAEA Code of Conduct. The IAEA Board of Governors approved the revised Code of Conduct in September 2003; it is available on the IAEA Web site at: *http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf*. In particular, the Code of Conduct contains a recommendation that each IAEA Member State develop a national source registry of radioactive sources that includes as a minimum Category 1 and Category 2 radioactive sources as described in Annex 1 of the Code of Conduct. Annex 1 of the Code of Conduct source registry recommendation addressed 16 radionuclides.

The DOE/NRC joint report paralleled the work on the Code of Conduct and the development of IAEA TECDOC–1344, ''Categorization of Radioactive Sources.'' (Section A.4.1 of this document contains a description of the IAEA source categorization system.) The IAEA updated this categorization system for radioactive sources in August 2005, in the IAEA Safety Standards Series No. RS–G–1.9 ''Categorization of Radioactive Sources.'' The Safety Guide is available on the IAEA's Web site at *http://www-pub.iaea.org/MTCD/publications/PDF/Pub1227_web.pdf* and provides the underlying methodology for the development of the Code of Conduct thresholds. The categorization system is based on the potential for sources to cause deterministic effects and uses radionuclide-specific activity levels (D values) as normalizing factors; the D values are used for emergency planning and response. The quantities of concern identified in the May 2003 DOE/NRC report are similar to the IAEA Code of Conduct Category 2 threshold values, and therefore, to allow alignment between domestic and international efforts to increase the safety and security of radioactive sources, the NRC has adopted the Category 2 definitions contained in the IAEA's Code of Conduct. The NRC considers IAEA Category 2 quantities (and higher) to be risk-significant radioactive material that has a potential to result in significant adverse impacts that could reasonably constitute a threat to the public health and safety, the environment, or the common defense and security of the United States (U.S.).

While the various efforts and reviews previously noted in this notice have been ongoing, the NRC also implemented several measures to increase the safety and security of radioactive sources, with particular focus on radioactive sources of concern. These measures included the issuance of increased controls orders to specific licensees who possess IAEA Category 1 and Category 2 radioactive sources (70 FR 72128; December 1, 2005). The orders required these licensees to exercise added control over these sources. In addition, the NRC increased the frequency of inspections to further ensure that there is adequate control of these materials. The NRC also published a final rule in November 2006 that established a National Source Tracking System (NSTS) to provide better accountability and control over Category 1 and Category 2 sources. The NRC proposed, in a separate rulemaking (73 FR 19749; April 11, 2008), to expand the NSTS to include sources equal to, or greater than, 1/10 of the IAEA Category 3 threshold values to address accountability of these sources and concerns over potential malevolent aggregation of these lower activity sources to IAEA Category 2 levels. (**Note:** Sources referred to as ''1/10 of Category 3'' were formerly referred to as ''Category 3.5'' sources in these documents. To be consistent with IAEA terminology, the term ''Category 3.5'' has been changed to ''1/10 of Category 3.''). The NRC staff evaluated the comments received on this proposed rule and, in SECY–09–0086 dated June 10, 2009, requested approval from the Commission to publish the final rule in the **Federal Register**. Staff's recommendation in SECY–09–0086 was to expand the NSTS to Category 3 sources instead of 1/10 of Category 3. In a Staff Requirements Memorandum (SRM) dated June 30, 2009, the Commission stated that it was unable to reach a decision on the staff's recommendation and therefore did not approve publication of the NSTS Expansion final rule.

During this time, there has been increased concern regarding devices that are currently possessed under NRC's general license (GL) regulatory program. The requirements for general licensees are described in 10 CFR Part 31, ''General Domestic Licenses for Byproduct Material.'' The U.S. Congress and the U.S. Government Accountability Office (GAO) raised concerns regarding the safety and security of radioactive material covered by the GL regulatory system and the Organization of Agreement States (OAS) filed a petition for rulemaking on June 27, 2005 (PRM–31–5), requesting that the NRC strengthen its GL regulatory system. The NRC staff has been considering similar issues, including that under the current GL regulatory system, the NRC and the Agreement States do not have an opportunity to review the purpose of use, adequacy of applicant facilities and equipment, training and experience, and the ability to meet any other applicable requirements for those that possess GL devices. Further, a licensee's loss of control of radioactive sources, whether it be inadvertent or through a deliberate act, could result in significant adverse health impacts, which could constitute a threat to the public health and safety. Thus, the NRC has been considering whether it is appropriate to amend 10 CFR Part 31 to require specific licensing for some materials currently regulated under the GL regulatory system. Limiting the source activity allowed under a GL would result in more specifically licensed devices, which would be regulated under 10 CFR Part 30, ''Rules of General Applicability to Domestic Licensing of Radioactive Material.''

II. Discussion

In this rulemaking, the NRC is proposing to amend its regulations to limit the quantity of byproduct material allowed in a generally licensed device. The proposed amendment to the NRC's regulations would limit the quantity of certain byproduct material allowed in a generally licensed device to below 1/10 of the IAEA's Category 3 thresholds; licensees with devices containing byproduct material at or above this limit would be required to obtain a specific license (SL). This rulemaking is directed toward improving the safety and security of devices now held under GL containing radioactive sources falling within IAEA Categories 3 through 5 by causing a portion of them to be specifically licensed allowing the remaining portion to continue to be used under general license.

In determining whether to place a limit on the quantity of byproduct material allowed in a generally licensed device, the NRC has considered the need to balance the secure handling and use of the materials without discouraging the beneficial use of GL devices in academic, medical, and industrial applications. Radioactive materials provide critical capabilities in the oil and gas, electrical power, construction, and food industries; are used to treat millions of patients each year in diagnostic and therapeutic

procedures; and are used in technology research and development involving academic, government, and private institutions. These materials are as diverse in geographical location as they are in functional use.

Placing a limit on the quantity of byproduct material allowed in a generally licensed device is part of a comprehensive control program for radioactive materials of greatest concern, as discussed in SECY–07–0147, ''Response to U.S. Government Accountability Office Recommendations and Other Recommendations to Address Security Issues in the U.S. Nuclear Regulatory Commission Materials Program,'' dated August 25, 2007. Although this proposed amendment cannot by itself ensure the physical protection of sources, converting certain devices from use under a GL to use under an SL can provide greater device accountability and, as part of an overall effort in conjunction with other related activities (*e.g.,* potential applicability of the NSTS, Web-based licensing, pre-licensing site visits, and increased controls orders), can improve the control of radioactive sources and protect public health and safety, as well as common defense and security.

This rulemaking also considers the issues raised by the OAS in its June 27, 2005, petition for rulemaking, in which it requested that the NRC revise 10 CFR 31.5 and change the Compatibility Category of 10 CFR 31.6 from ''B'' to ''C.'' The rulemaking also considers the issues raised by the State of Florida in its June 3, 2005, request to change the Compatibility Category of 10 CFR 31.5(c)(13)(i) from ''B'' to ''C.'' These issues were docketed by the NRC as PRM–31–5.

The following sections of this statement of considerations discuss the rationale for placing a limit on the quantity of byproduct material in a generally licensed device (Section A) and the NRC's decision on the approach in this proposed amendment (Section B).

A. Rationale for Limiting the Quantity of Byproduct Material in a Generally Licensed Device

A.1 Congressional Concerns/GAO Investigations

The U.S. Senate and the GAO have expressed concerns regarding the safety and security of radioactive sources. In a report by the Permanent Subcommittee on Investigations (PSI), July 12, 2007, the subcommittee expressed concerns about certain U.S. Government practices and procedures for issuing licenses to possess radioactive materials and presented recommendations that would remedy their concerns. The GAO completed two investigations of the security aspects of NRC's materials licensing process, including one in 2007 (GAO–07–1038T, July 12, 2007) on the security of the NRC licensing process. In its report, the GAO raised concerns about the relative ease with which lower activity sources can be purchased and potentially aggregated to higher activity levels.

A.2 Agreement State Issues

Agreement States have also raised concerns about the security and accountability of byproduct materials in generally licensed devices. In its June 27, 2005, petition for rulemaking, the OAS requested that NRC ''strengthen the regulation of radioactive materials by requiring a specific license for higher-activity devices that are currently available under the general license in 10 CFR 31.5.'' Specifically, the petition requested that the NRC amend its regulations to require specific licensing for devices exceeding the registration quantity limits in 10 CFR 31.5(c) (13)(i). Additionally, the OAS requested that NRC revise the compatibility designation of 10 CFR 31.6 from ''B'' to ''C'' which would allow States to better track service providers and distributors of generally licensed devices. In addition, the State of Florida also requested a compatibility category change for 10 CFR 31.5(c)(13)(i) from ''B'' to ''C'' to allow the State to continue to require registration of other generally licensed devices in addition to those currently registered by the NRC. These petitions were docketed by NRC as PRM–31–5. The NRC requested public comment on PRM–31–5 on December 20, 2005 (70 FR 75423). Four comment letters were received on the petition; the commenters disagreed with using the registration levels to require general licensees to become specific licensees but had differing views on changing the compatibility categories. In considering the petition and the public comments, the NRC decided to consider the concerns and issues raised by OAS and the State of Florida in this rulemaking. By letter dated August 17, 2007, the petitioners were informed of this decision.

A.3 Recent NRC Actions

On April 24, 2006, the NRC staff submitted SECY–06–0094, ''Tracking or Providing Enhanced Controls for Category 3 Sources,'' to the Commission for review. In that paper, the NRC staff proposed initiating a rulemaking that would set activity limits for general licensees at one-half (½) of the IAEA Category 2 threshold and reserve authorization to possess higher activity sources to specific licensees. The staff noted that a benefit of setting such a limit would be greater oversight of these licensees, allowing regulatory bodies the opportunity to perform an assessment of a licensee's legitimacy or any other regulatory activities the Commission determined to be necessary. The NRC staff, in SECY–06–0094, recommended setting the GL limit at ½ of Category 2 because the activity levels in such devices would be close to the Category 2 levels and such a limit would not affect a significant number of licenses.

In response to SECY–06–0094, the Commission, in a Staff Requirements Memorandum (SRM), dated June 9, 2006, approved the staff's plan to amend the GL requirements in 10 CFR 31.5, but disapproved the staff's recommendation to set the limit at ½ of IAEA Category 2. Instead, the Commission approved moving forward to evaluate requiring specific licensing of general licensees possessing devices greater than or equal to 1/10 of the IAEA's Category 3 threshold.

A.4 Considerations Regarding the Need for Placing a Limit on the Quantity of Byproduct Material Allowed in a Generally Licensed Device, and Determining What the ''Limit'' Should Be

This section briefly describes the IAEA source characterization system (Section A.4.1); the existing GL regulatory system (Section A.4.2); and the specific rationale for revising the existing GL regulatory system to place a limit on the quantity of byproduct material in a generally licensed device (Section A.4.3).

A.4.1 The Five IAEA Categories and the Relative Health and Safety Risk Posed by Sources in Those Categories

The IAEA source categorization scheme includes five categories. These categories are based on the potential for sources to cause health effects to persons exposed to them. Sources in Category 1 are considered to be the most dangerous because they can pose a very high risk to human health if not managed safely and securely. At the lower end of the categorization system, sources in Category 5 are the least dangerous, but even these sources could give rise to doses in excess of the dose limits if not properly controlled. Based on analysis of potential health effects, each of the IAEA Categories contain radioactive material in sealed sources in quantities that can be characterized as follows:

Category 1: Greater than or equal to the Category 1 threshold (*e.g.,* for Cobalt-60 (Co-60): 810 Curies (Ci)); these sources are typically used in irradiators, radiation therapy, and radiothermal generators;

Category 2: Less than the Category 1 threshold but equal to or greater than the Category 2 threshold (which is 1/100 of Category 1; *e.g.,* for Co-60: 8.1 Ci); these sources are typically used in industrial gamma radiography and high and medium dose rate brachytherapy;

Category 3: Less than the Category 2 threshold but equal to or greater than the Category 3 threshold (1/10 of Category 2; *e.g.,* for Co-60: 0.81 Ci); these sources are typically used in fixed industrial gauges involving high activity sources;

Category 4: Less than the Category 3 threshold but equal to or greater than the Category 4 threshold (1/100 of Category 3; *e.g.,* for Co-60: 0.0081 Ci); and

Category 5: Less than the Category 4 threshold down to IAEA exempt quantities.

A.4.2 The Existing GL Regulatory System in 10 CFR Part 31 and Its Rationale

The primary elements of the existing GL regulatory framework are contained in 10 CFR Part 31. A generally licensed device usually consists of byproduct material contained in a sealed source within a shielded housing. The device is designed with inherent radiation safety features so that it can be used by persons with no radiation training or experience. Thus, the GL regulatory program simplifies the licensing process because a case-by-case determination of the adequacy of the radiation training or experience of each user is not necessary. As part of the GL regulatory system, the NRC evaluates the adequacy of generally licensed products by ensuring that manufacturers and distributors of the products (all of whom hold specific licenses) meet the various specific requirements in Subpart B to 10 CFR Part 32. Although there is no limit specified in the existing GL regulatory system regarding the quantity of byproduct material that can be allowed in a device and still continue to be generally licensed, at this time all of the generally licensed devices are in IAEA Categories 3 through 5 (*i.e.,* there are no Category 1 or Category 2 generally licensed devices currently in existence).

As part of the current GL regulatory system, 10 CFR 31.5 contains requirements that certain generally licensed devices containing byproduct material in quantities above ''registration'' levels listed in 10 CFR 31.5(c)(13)(i) must be registered annually with the NRC. There are about 1,200 general licensees possessing such devices who are currently registered with the NRC. The radionuclides listed in 10 CFR 31.5(c)(13)(i) are Co-60, Cesium-137, Strontium-90, Radium-226, Americium-241, and any other transuranics. As an example, the registration level for Co-60 is 0.001 Ci; which falls in the IAEA Category 5 range and is approximately 1/1000 of the IAEA Category 3 threshold for Co-60 (and approximately 1/10 of the Category 4 threshold).

The GL registration program was initiated in rule amendments finalized on August 4, 1999 (64 FR 42269), and December 18, 2000 (65 FR 79162). As noted in the **Federal Register** notice (FRN) for the August 4, 1999, rulemaking, the GL registration program is primarily intended to ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct materials, and that such devices are maintained and transferred properly and not inadvertently discarded. In initiating the GL registration program, the NRC noted that it was most concerned about generally licensed devices that had not been handled or disposed of properly and believed that if general licensees were made aware of their responsibilities, they would be more likely to comply with the requirements for proper handling and disposal of generally licensed devices. Additional compliance with these requirements would help reduce the potential for incidents, including those related to sources not disposed of properly and accidently melted in steel mills, which can cause unnecessary radiation exposure and property contamination.

A.4.3. Rationale for Revising the Existing GL Regulatory System and Placing a Limit on the Quantity of Radioactivity Allowed in a Generally Licensed Device

In preparing this proposed rule, the NRC has determined that there is a need to enhance the security and accountability for devices with certain lower activity sources. The issues the NRC considered in this rulemaking include:

(1) Whether to modify the existing GL regulatory system by placing a limit on the quantity of byproduct material allowed in generally licensed devices; and

(2) The appropriate value for the limit, *i.e.,* should the limit be set at 1/10 of the IAEA Category 3 threshold (as suggested in the June 9, 2006 SRM) or should it be set lower to include devices that are above the current registration levels which are at a level approximately 1/1000 of the IAEA Category 3 threshold (as suggested in the June 27, 2005 OAS petition for rulemaking).

The rationale for modifying the existing GL regulatory system and a discussion of the selection of the 1/10 of Category 3 threshold are provided in Sections A.4.3.1 and A.4.3.2, respectively, of this document.

A.4.3.1 Rationale for Revising the GL Regulatory System To Require Generally Licensed Devices Above a Certain Limit To Become Specific Licenses

As part of its overall process, the NRC evaluated its current GL regulatory system, as described in Section A.4.2 of this document, and found that the relatively few administrative or operational regulatory constraints (mainly as a result of the safety features incorporated into their design), imposed on GL devices raise a number of concerns about security vulnerabilities. Under the current GL regulatory system, a general licensee would not be subject to the same regulatory controls (*i.e.,* pre-licensing reviews, inspection, safety and security requirements) as specific licensees possessing similar quantities of radioactive material. Placing certain generally licensed devices under the SL process would subject them to elements of oversight that are not part of the GL process, including the license application and review process, and more routine inspections and elements of security requirements. The SL regulatory controls would improve not only the ability to prevent any theft or diversion of these materials, but would also help prevent or detect any inadvertent loss of such devices that could potentially impact public health and safety.

Further, requiring a specific license for some generally licensed devices would provide an opportunity for a detailed review of the radioactive materials program proposed by an applicant, an opportunity for oral and written dialogue with the applicant, and a regulatory decision as to whether to grant the license as requested, or if certain modifications are necessary. Specifically, this amendment would allow for a more rigorous screening of applicants through pre-licensing visits to the proposed location of licensed activities (currently under consideration); a more efficient licensing process to facilitate the rapid communication between regulators regarding the legitimacy of a given entity; and other potential

enhancements to the specific licensing process.

The NRC does not routinely perform inspections of general licensees. Inspections of general licensees are only performed in certain circumstances, such as when there are indications of unsafe practices by the general licensees. By converting certain general licensees to specific licensees, the effectiveness of any applicable safety and security measures could be accurately determined in a more timely manner if needed. The SL inspection program is implemented by the NRC and Agreement States in a risk-informed manner (*e.g.,* inspection frequency is commensurate with the scope and complexity of the licensed activity and the quantity and type/form of radioactive material authorized by the license) and by use of performance-based inspections, which focus on the program outcomes achieved by the licensee and then probe (through interview, observation, and reviews of selected records) where needed and appropriate to understand the basis for each outcome.

A.4.3.2 Specific Rationale for Determining the Limit on the Quantity of Radioactivity Allowed in a Generally Licensed Device

As noted in Section A.4.3 of this document, the NRC considered the appropriate value to limit the quantity of byproduct material allowed in a generally licensed device. The Commission's June 9, 2006 SRM directed the staff to evaluate specific licensing at 1/10 of the IAEA Category 3 thresholds, whereas the OAS, in its June 27, 2005 petition, requested that the limit be set at a lower level to include devices that are at or above the current registration levels (approximately 1/1000 of the IAEA Category 3 threshold). Considerations as to what level to set the limit are based on the potential for aggregation to higher activity quantities of concern and also on the additional resource burden placed on licensees and on the regulatory bodies which would result from such an amendment.

A.4.3.2.1 Potential for Aggregation to Higher IAEA Categories of Concern for Devices With Sources at or Above 1/10 of the IAEA Category 3 Thresholds

Converting certain devices with sources that are equal to or greater than 1/10 of Category 3 to specific licenses would involve sources in Category 3 itself, as well as a subset of IAEA Category 4 sources (*i.e.,* sources at the ''high end'' of the Category 4 radioactivity range that are equal to, or greater than, 1/10 of the Category 3 threshold). These two groups are discussed below.

Category 3 sources are defined by IAEA as ''dangerous sources''—*i.e.,* sources that could, if not under control, give rise to exposure sufficient to cause severe deterministic effects, and thus even without any aggregation there is rationale for specifically licensing devices with Category 3 sources. Further, devices with Category 3 sources could be easily aggregated to Category 2 levels because they contain sources with activity levels that range from just below the Category 2 threshold down to 1/10 of the Category 2 threshold. Thus, sources at the high end of the range of activities in Category 3 can be at levels just below the threshold of a Category 2 source, meaning that it would take only a few of these devices with such sources to aggregate to Category 2. The major category of licensees who possess devices with Category 3 sources include those with industrial gauges and, because these devices are relatively widespread in use and relatively broadly used in industry, there is potential for aggregation of sufficient numbers of them to Category 2 levels.

With regard to devices with sources that are 1/10 of IAEA Category 3, these are actually a subset of IAEA Category 4 sources that are in the high end of the Category 4 radioactivity range. A principal rationale for including sources at the high-end of the Category 4 range of activities (at 1/10 of Category 3) is the potential that a sufficient number of devices with these higher-activity Category 4 sources could be obtained and aggregated to create the equivalent of Category 2 sources. These ''high-end'' Category 4 sources can be at levels just below the threshold of a Category 3 source, which is about 1/10 of the threshold of a Category 2 source, meaning that it would require about 10–12 of these devices with such sources to aggregate to Category 2 quantities. Devices with these high-end Category 4 (1/10 Category 3) sources are possessed by similar licensees noted to have Category 3 sources, namely those with industrial gauges, and, as previously noted, are in relatively widespread use and broadly used in industry, thus allowing for the potential for aggregation of sufficient numbers of them to IAEA Category 2 levels.

For Devices With Sources That Are at or Above Registration Levels:

As noted above, the OAS in its June 27, 2005, petition requested that the GL limit be set at a level that would include devices with sources that are at or above the current registration levels, which are approximately 1/1000 of the IAEA Category 3 threshold. The Commission has considered this level, which would include devices with sources in all of the IAEA Category 4 radioactivity range (*i.e.,* including those in the ''low-end'' of the Category 4 radioactivity range) and also all devices with sources in IAEA Category 5. In general, these categories are so low that hundreds or thousands of devices with such sources would need to be aggregated to constitute a radioactive source in a quantity of concern. In view of the lower likelihood that devices with sources in the lower range of Category 4 or in Category 5 would be aggregated to quantities of concern, the staff believes that the relatively low security risk does not justify the significant regulatory resources and impacts on licensees that would result from specifically licensing devices with sources in the lower Category 4 and Category 5 ranges.

A.4.3.2.2 Consideration of the Additional Resource Burden on Licensees and Regulatory Bodies To Comply With These Proposed Amendments

Requiring certain general licensees to obtain specific licenses would result in increased burden on licensees, and on the NRC and Agreement States, for preparation and review of specific license applications and amendments and for conducting inspections. In the Regulatory Analysis for this rulemaking (see Section X of this document), the Commission provides an analysis of the additional costs and benefits of placing a limit on the quantity of radioactivity allowed in a generally licensed device. A summary of the analysis follows.

For Devices With Sources at or Above 1/10 of the IAEA Category 3 Thresholds:

Limiting the quantity of byproduct material allowed in generally licensed devices to below 1/10 of the IAEA's Category 3 thresholds would result in approximately 280 NRC general licensees being converted to specific licensees (approximately 1400 NRC and Agreement State general licensees). These licensees would now have to follow existing NRC requirements including 10 CFR Parts 19, 20, and 30. The added number of specific licensees would also result in an increase in the regulatory resources that would be devoted to reviewing the new SL applications and inspecting the licensees after the license is issued. However, the NRC and Agreement State resources incurred are not considered significant because the number of additional general licensees that would be converted to specific licensees represent only about 6 percent of the NRC and Agreement States existing population of specific licensees and,

hence, would not result in significant additional NRC and/or Agreement States resource commitment.

For Devices With Sources at or Above Registration Levels:

Limiting the quantity of byproduct material allowed in generally licensed devices to registration levels would result in approximately 1,200 NRC general licensees being converted to specific licensees (approximately 6,000 NRC and Agreement State general licensees), these licensees, possessing Category 4 and upper-end Category 5 sources, would now have to follow existing NRC requirements including 10 CFR Parts 19, 20, and 30. The added number of specific licensees would result in an increase in the regulatory resources that would need to be devoted to reviewing the new SL applications and inspecting the licensees after the license is issued. It is estimated that the number of additional general licensees that would be converted into specific licensees represent about 25 percent of the NRC and Agreement States existing population of specific licensees and, hence, would represent a relatively significant additional NRC and/or Agreement States resource commitment. In view of the lower likelihood that devices with sources in the lower range of Category 4 or in Category 5 would be aggregated to quantities of concern, the staff believes that the relatively low security risk does not justify the significant regulatory resources and impacts on licensees that would result from specifically licensing devices with sources in the lower Category 4 and Category 5 ranges.

B. Decision on Proposed Amendment To Place a Limit on the Quantity of Byproduct Material Allowed in Generally Licensed Devices

Based on the considerations of Section II.A of this document, the NRC has decided to propose amending its regulations by limiting the quantity of byproduct material that can be in a generally licensed device to 1/10 of the IAEA Category 3 threshold. The regulatory text is based on the existing text of Appendix E to 10 CFR Part 20, *i.e.,* with the limit ''less than 1/100 of the thresholds listed in Appendix E to 10 CFR Part 20 for Category 2.''

The basis for this limit is discussed in Section A of this document. In sum, the NRC believes that the additional security and safety provided by the specific licensing process is necessary to limit the potential for aggregating Category 3 and high-end Category 4 radioactive sources to IAEA Category 2 quantities of concern. The NRC believes that the additional burden to licensees and regulatory bodies that would result from the proposed amendments is reasonable because of the enhanced public health and safety and security derived from placing these higher activity generally licensed devices under a greater range of regulatory controls.

The need for this proposed amendment to the GL regulatory system was not foreseen in 1999 and 2000 when NRC issued the rule amendments instituting the GL registration system. As noted in Section A.4.2 of this document, and in the Statements of Considerations for those rule amendments, the principal rationale for the GL registration program was to make general licensees more aware of applicable requirements, hence reducing the potential for improper handling or disposal of devices due to lack of knowledge or inadvertent misuse, and the belief that if general licenses are aware of their responsibilities they will comply with requirements for proper handling and disposal of generally licensed devices. The current rulemaking seeks to reflect the changed domestic and international threat environments, and related U.S. Government-supported international initiatives in the nuclear security area, by setting an upper limit for licensing of generally licensed devices at 1/10 of IAEA Category 3 for certain isotopes listed in Appendix E to 10 CFR Part 20.

The NRC has chosen not to extend this new limit on generally licensed devices down to the 10 CFR 31.5(c)(13)(i) registration levels, as requested by the OAS in its rulemaking petition because it is neither necessary nor appropriate from a source aggregation and cost-benefit basis. The NRC believes that the relatively low security risk posed by lower Category 4 and Category 5 sources does not justify the significant regulatory resources and impacts on licensees that would result from specifically licensing devices with lower Category 4 and Category 5 sources. Instead, the NRC has left the GL registration program as it currently exists for general licensees below the new GL limit because the rationale for instituting the GL registration program in the 1999 and 2000 rule amendments continues to remain valid today. The NRC successfully implemented the GL registration program with 80 to 98 percent of general licensees responding annually with completed registration forms. This rate of registration can be attributed in part to general licensees' enhanced awareness of regulatory reporting, transfer, disposal, and recordkeeping requirements.

Nevertheless, the NRC recognizes the desire on the part of the States supporting the OAS petition to exercise greater control over the actions of their licensees. Therefore, the NRC is proposing to revise the Compatibility Category of 10 CFR 31.5(a) from ''B'' to ''C'' and the Compatibility Category of 10 CFR 31.6 from ''B'' to ''C.'' The OAS stated that these actions were needed to establish a higher national standard of regulation for higher risk generally licensed devices, and to allow retention of a tool used by Agreement States to track the location and movement of device manufacturers and service providers within the State limits. Revising these compatibility categories would provide the Agreement States the flexibility to adopt additional requirements, based on their circumstances and needs. The NRC is also revising the Compatibility Category of 10 CFR 31.5(c)(13)(i) from ''B'' to ''C.'' Florida stated that this action was necessary to avoid having to relax its existing health, safety, and security controls to be compatible with less stringent national standards in NRC's regulations. Florida also noted that the registering of additional generally licensed devices in Florida does not have direct and significant effect on the transportation of the devices or on their movement into and out of Florida.

C. Specific Licensees and Generally Licensed Devices

The Commission is considering an additional revision to 10 CFR 31.5. This amendment would clarify the applicable requirements when a device that is authorized to be used under the general license in 10 CFR 31.5 is instead held by a licensee under an SL. Currently, a specific licensee may obtain a device approved for use under 10 CFR 31.5 as a specifically licensed device rather than use the authority of the GL. If a device is initially obtained as a generally licensed device, it can later be transferred for use under the SL in accordance with the procedures outlined in 10 CFR 31.5(c)(8)(iii). Some licensees have found it easier to comply with the regulations if all of their radioactive material is covered by the same requirements. Others have used these devices under their SL in order to minimize their fees. The proposed rule would add a new paragraph, 10 CFR 31.5(b)(3), to further clarify that when a device is held under an SL, all terms and conditions of the SL apply, and the requirements in 10 CFR 31.5 do not apply.

The Commission is also considering and may include in the final rule an additional change concerning generally

licensed devices held by specific licensees. The proposal would prohibit specific licensees from possessing generally licensed devices under 10 CFR 31.5 at the same site. Any specific licensee possessing a device generally licensed under 10 CFR 31.5 at a site for which an SL is in place would be required to transfer the device to the authority of their SL. As noted, the possession and use of the device would then be subject to the terms and conditions of the user's SL. Any such device obtained by specific licensees in the future would be required to be obtained as a specifically licensed device. Under these requirements, all licensed material at a site where specifically licensed material is used would be governed by the same set of regulations.

This option to require all such devices to be held under the SL would make the requirements for these devices uniform with the other material held under the SL. All licensed material at a site (where specifically licensed material is used) would be governed by the same set of regulations and accounted for uniformly. The Commission believes that this proposal would reduce confusion and improve compliance with the regulations because a licensee would have to follow only one set of requirements at each site. This proposal would also reduce the number of generally licensed devices that the NRC would need to track.

If this approach is included in the final rule, it is anticipated that the restriction would be limited to devices used at sites covered by the SL. There may be specifically licensed entities, such as large corporations, that hold generally licensed devices at other sites where specifically licensed material is not used. Such operations may be quite independent of the specifically licensed activities. It would be too burdensome to apply the requirements connected with an SL to generally licensed devices at separate sites owned by the same licensed entity.

D. Specific Questions for Comment

The NRC invites comment on its proposal to place a limit on the quantity of byproduct material allowed in generally licensed devices, specifically:

(1) Whether the 1/10 of IAEA Category 3 limit is the appropriate threshold level of byproduct material below which general licenses would still apply;

(2) Whether there should be additional protection against aggregation of sources by either requiring that if the aggregated amount of byproduct material that a general licensee possesses in devices exceeds 1/10 of IAEA Category 3, then the general licensee must obtain an SL, or more simply, by using the IAEA Category 4 threshold level as the limit for the GL;

(3) Whether an even lower threshold limit for requiring licensees to obtain a SL should be used, such as the registration levels in 10 CFR 31.5(c)(13)(i). In providing support for this approach, the NRC is interested in whether there is specific information (*i.e.,* lack of accountability due to generally licensed devices being lost and/or abandoned) that would indicate that the GL registration program as instituted in the 1999 and 2000 rulemakings (see Section II.A.4.2 of this document) is no longer working satisfactorily from the standpoint of protecting the public health and safety from routine use of these devices by general licensees; or

(4) Whether the approach regarding Compatibility Categories laid out in Section II.B of this document, *i.e.,* in which States have flexibility to adopt more rigorous requirements for general licensees, based on their circumstances and needs, can work satisfactorily. In particular, will there be any significant transboundary issues related to this approach or, will such an approach not have direct and significant effect on the transportation of the devices or on their movement in and out of States?

Concerning the proposal discussed in Section C of this document which would prohibit specific licensees from using GL devices under 10 CFR 31.5 and would require these devices to be possessed and used under an SL, the Commission requests comments to assist in its evaluation of the impacts of such a change on specific licensees and on how best to implement the change. Specific questions for comment:

(A) How should this change be applied in the case of devices used by a specific licensee at different locations? Would there be difficulties in determining which devices used by a given entity must be under the specific license, if the applicability of 10 CFR 31.5 were to be determined by the location of use, as suggested?

(B) How much time should be allowed for the specific licensees to transfer their currently held generally licensed GL devices to their SLs? Should devices currently held under the GL only be added to the SL only at the time of license renewal or amendment?

(C) Should the details of the voluntary transfer process in 10 CFR 31.5(c)(8)(iii) become mandatory and be maintained in the regulation to assist the process?

(D) Would there be a significant impact from the applicability of reciprocity requirements in 10 CFR 150.20 for portable gauges currently licensed under 10 CFR 31.5 and equivalent Agreement State regulations that are used in more than one jurisdiction? How would this proposal affect servicers of devices currently operating under the reciprocity provision of 10 CFR 31.6 and equivalent provisions of Agreement States?

(E) Would it be preferable to maintain the applicability of 10 CFR 31.5, but to apply some or all of the terms and conditions of the SLs, *e.g.,* by removing the exemptions in 10 CFR 31.5(c)(10) for those holding an SL?

(F) How much impact would there be to 10 CFR 32.51 licensees and Agreement State equivalent licensees to ensure that they are transferring these devices to entities without an SL?

(G) Should the sealed source and device registration certificates authorizing devices for use under 10 CFR 31.5 and equivalent Agreement State regulations be required to address transfers to both general and specific licensees?

E. Implementation of the Proposed Rule Amendments

The amended regulations would require a specific license for each devices or source containing byproduct material meeting or exceeding 1/10 of the IAEA Category 3 thresholds as listed in Appendix E to 10 CFR Part 20. Additional information regarding implementation of these requirements will be provided as part of guidance for complying with these amended regulations. Examples of information that may be in included in guidance are the types of information needed in a license application; how general licensees would be notified that they need to obtain an SL (*e.g.,* by the regulator or by the manufacturer); how general licensees and/or NRC would identify the quantity of byproduct material in devices; how decay of the source radioactivity levels within generally licensed devices would be identified and considered; and the relationship of the requirements to the sealed sources and device (SS&D) registry.

The rule would become effective 60 days after the final rule is published in the **Federal Register**. Any general licensee that currently possesses generally licensed devices meeting or exceeding 1/10 of the IAEA's Category 3 thresholds would be given an additional 90 days beyond the effective date of the final rule to submit an application for a specific license (*i.e.,* 150 days after the final rule is published in the **Federal Register**).

III. Discussion of Proposed Amendments by Section

10 CFR 31.5(a) General Domestic Licenses for Byproduct Material

The proposed rule would amend 10 CFR 31.5(a) to limit the quantity of byproduct material in generally licensed devices to below 1/10 of the IAEA's Category 3 threshold, for the isotopes listed in Appendix E to 10 CFR Part 20. Licensees who possess devices containing byproduct material meeting or exceeding these thresholds would be required to become specifically licensed, and would become subject to all applicable regulations. Devices containing byproduct material below these thresholds would continue to be generally licensed.

The values corresponding to Category 3 and 1/10 of Category 3 (or 1/100 of Category 2) in Appendix E to 10 CFR Part 20 for byproduct material radionuclides are provided here as information along with the notes to the table.

Radioactive material	Category 3 (TBq)	Category 3 (Ci)	1/10 Category 3 (TBq)	1/10 Category 3 (Ci)
Actinium-227	0.02	0.54	0.002	0.054
Americium-241	0.06	1.6	0.006	0.16
Americium-241/Be	0.06	1.6	0.006	0.16
Californium-252	0.02	0.54	0.002	0.054
Cobalt-60	0.03	0.81	0.003	0.081
Curium-244	0.05	1.4	0.005	0.14
Cesium-137	0.1	2.7	0.01	0.27
Gadolinium-153	1	27	0.1	2.7
Iridium-192	0.08	2.2	0.008	0.22
Plutonium-238	N/A	N/A	N/A	N/A
Plutonium-239/Be	N/A	N/A	N/A	N/A
Polonium-210	0.06	1.6	0.006	0.16
Promethium-147	40	1100	4	110
Radium-226	0.04	1.1	0.004	0.11
Selenium-75	0.2	5.4	0.02	0.54
Strontium-90	1.0	27	0.1	2.7
Thorium-228	N/A	N/A	N/A	N/A
Thorium-229	N/A	N/A	N/A	N/A
Thulium-170	20	540	2	54
Ytterbium-169	0.3	8.1	0.03	0.81

Note: N/A means "not applicable" because Plutonium-238 and Plutonium-239/Be are not byproduct material but are special nuclear material. Thorium-228 and Thorium-229 are source material.

10 CFR 31.5(b)(3)

A clarification concerning the applicable requirements for devices authorized for use under 10 CFR 31.5 but held under specific license would be added.

IV. Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA) of 1954, as amended, the Commission is proposing to amend 10 CFR Part 31 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

V. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), the proposed rule would be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the Agreement States and the NRC's requirements. The NRC staff analyzed the proposed rule in accordance with the procedure established in Part III, "Categorization Process for NRC Program Elements," of Handbook 5.9 to Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs."

As a result of the amendments to 10 CFR 31.5(a) and new section (b)(3), these sections would now be designated as Compatibility Category C. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a national basis. An Agreement State should adopt these essential objectives. After considering the issues associated with the compatibility requirements for 10 CFR 31.5(c)(13)(i), this section would now be designated as Compatibility Category C. After considering the issues associated with the compatibility requirements for 10 CFR 31.6, this section would now be designated as Compatibility Category C.

For the reasons provided in Section B of this document, the NRC is proposing to designate 10 CFR 31.5(a), (b)(3), (c)(13)(i), and 31.6 as Compatibility Category C and, by so doing, Agreement States would have flexibility to adopt additional requirements, based on their circumstances and needs, if necessary. This would also allow Agreement States the flexibility to adopt additional requirements for tracking the movement of service providers and the location of generally licensed devices. Designating 10 CFR 31.5(a) and 31.6 as Compatibility Category C would address the issues and concerns raised by the OAS in their June 2005, petition for rulemaking. Designating 10 CFR 31.5(c)(13)(i) as Compatibility Category C the NRC would address the issues and concerns raised by the State of Florida in their June 2005 request as part of the petition. Considering these issues in this rulemaking action closes the entire petition.

VI. Plain Language

The Presidential Memorandum "Plain Language in Government Writing" published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** heading.

VII. Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards

that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would require licensees that possess generally licensed devices with any of the radioactive sources and thresholds specified in the proposed rule to submit an application for a specific license. This action does not constitute the establishment of a standard that contains generally applicable requirements.

VIII. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

IX. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget (OMB) for review and approval of the information collection requirements.

Type of submission, new or revision: Revision.

The title of the information collection: 10 CFR Part 31, Limiting the Quantity of Byproduct Material in a Generally Licensed Device.

How often the collection is required: Initially during license applications and at license renewals and amendments and other reporting for specific licenses.

Who would be required or asked to report: Licensees in possession of devices containing quantities of byproduct material meeting or exceeding 1/10 of the IAEA Code of Conduct's Category 3 thresholds.

An estimate of the number of annual responses: 2,975 (1,575 responses; 1,400 recordkeepers).

The estimated number of annual respondents: 1,400 (280 NRC; 1,120 Agreement State).

An estimate of the total number of hours needed annually to complete the requirement or request: 31,114.

Abstract: The NRC is proposing to amend its regulations to limit the amount of certain byproduct material in a generally licensed device to below 1/10 of the IAEA Category 3 thresholds. The proposed amendment would require licensees possessing devices meeting or exceeding these thresholds to submit an application for a specific license. The NRC and/or the Agreement States would review such applications and issue licenses as appropriate.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information would have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. The OMB clearance package and rule are available at the NRC Worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by September 2, 2009 to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS.RESOURCE@NRC.GOV* and to the Desk Officer, Christine Kymn, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0016), Office of Management and Budget, Washington, DC 20503. Comments on the proposed information collections may also be submitted via Federal Rulemaking Web site *http://www.regulations.gov*, Docket ID NRC–2008–0272. 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. You may also e-mail comments to *Christine_J_Kymn@omb.eop.gov* or comment by telephone at (202) 395–4638.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

X. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the draft regulatory analysis. Comments may be submitted to the NRC as indicated under the **ADDRESSES** heading. The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852, or online at *http://www.regulations.gov.* Single copies of the draft regulatory analysis are available from Solomon Sahle, telephone (301) 415–3781, e-mail: *solomon.sahle@nrc.gov*, of the Office of Federal and State Materials and Environmental Management Programs.

XI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule would affect about 280 NRC licensees and approximately an additional 1,120 Agreement State licensees possessing generally licensed devices with certain byproduct materials meeting or exceeding the 1/10 of IAEA's Category 3 thresholds. Affected licensees include licensees using fixed gauges, x-ray fluorescence density/moisture/level interface gauges, fixed thickness gauges, and any other licensees possessing devices with sources meeting or exceeding these thresholds, some of which may qualify as small business entities as defined by 10 CFR 2.810. However, the proposed rule is not expected to have a significant economic impact on these licensees.

Because of the widely differing conditions under which impacted licensees operate, the NRC is specifically requesting public comment from licensees concerning the impact of the proposed regulation. The NRC particularly desires comment from licensees who qualify as small businesses, specifically as to how the proposed regulation would affect them and how the regulation may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. Comments on how the regulation could be modified to take into account the differing needs of

small entities should specifically discuss:

(1) The size of the business and how the proposed regulation would result in a significant economic burden upon it as compared to a larger organization in the same business community;

(2) How the proposed regulation could be further modified to take into account the business's differing needs or capabilities;

(3) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulation was modified as suggested by the commenter;

(4) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations as opposed to providing special advantages to any individuals or groups; and

(5) How the proposed regulation, as modified, would still adequately protect the public health and safety.

Comments should be submitted as indicated under the **ADDRESSES** heading.

XII. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this proposed rule because the amendments in this rule modify conditions of a general license for byproduct material, and do not involve any provisions that would impose backfits as defined in 10 CFR 50.109, 70.76, 72.62, and 76.76. Therefore, a backfit analysis has not been prepared for this proposed rule.

List of Subjects in 10 CFR Part 31

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the notice and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 31.

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

1. The authority citation for part 31 continues to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Public Law 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

2. In § 31.5, paragraph (a) is revised and paragraph (b)(3) is added to read as follows:

§ 31.5 Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere.

(a) A general license is hereby issued to commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and Federal, State or local government agencies to acquire, receive, possess, use or transfer, in accordance with the provisions of paragraphs (b), (c) and (d) of this section, byproduct material contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere, provided that each device contains byproduct material in quantities less than 1/100th of the thresholds listed in Appendix E of 10 CFR Part 20 for Category 2.

(b) * * *

(3) For devices meeting the criteria of this general license, but instead held under the authority of a specific license, all of the terms and conditions of the specific license apply in lieu of the provisions in this general license.

* * * * *

Dated at Rockville, Maryland, this 28th day of July 2009.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary for the Commission.

[FR Doc. E9–18438 Filed 7–31–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0663; Directorate Identifier 2007–SW–25–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 332 C, L, L1, and L2; AS 350 B3; AS 355 F, F1, F2, and N; SA 365 N and N1; AS 365 N2 and N3; SA 366 G1; EC 130 B4; and EC 155B and B1 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the specified model helicopters. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI states that the AD is issued following a manufacturing nonconformity found on one batch of the servo-control caps. With a defective servo-control, rotation of the distributor might not be stopped mechanically since only friction of inner seals holds the distributor sleeve in its position. The proposed AD actions are intended to address the unsafe condition created by a manufacturing nonconformity found on one batch of servo-control caps. If not corrected this condition could cause untimely movements of servo-controls, which are used on main and anti-torque rotors, and lead to the loss of control of the helicopter.

DATES: We must receive comments on this proposed AD by September 2, 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.

You may get the service information identified in this proposed AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (972) 641–3460, fax (972) 641–3527, or at *http://www.eurocopter.com*.

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 proposed AD, the economic 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: Uday Garadi, Aviation Safety Engineer, Regulations and Policy Group, FAA, Rotorcraft Directorate, Fort Worth,

Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

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–2009–0663; Directorate Identifier 2007–SW–25–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The EASA, which is the technical agent for Member States of the European Community, has issued EASA AD No. 2007–0099, dated April 11, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for Eurocopter France Model AS 332 C, L, L1, and L2; AS 350 B3; AS 355 F, F1, F2, and N; SA 365 N and N1; AS 365 N2 and N3; SA 366 G1; EC 130 B4; and EC 155 B and B1 helicopters. The MCAI states that the AD is issued following a manufacturing nonconformity found on one batch of the servo-control cap, part number 800137. With a defective servo-control, rotation of the distributor might not be stopped mechanically since only friction of inner seals holds the distributor sleeve in its position. If not corrected this condition could cause untimely movements of servo-controls, which are used on main and anti-torque rotors, and lead to the loss of control of the helicopter. You may obtain further information by examining the MCAI and service information in the AD docket.

Relevant Service Information

Eurocopter has issued Alert Service Bulletin (ASB) No. 67.00.37 for Model AS 332 helicopters, ASB No. 67.00.40 for Model AS 350 helicopters, ASB No. 67.00.28 for Model AS 355 helicopters, ASB No. 67.00.13 for Model AS 365 and SA 365 helicopters, ASB No. 67.08 for Model SA 366 helicopters, ASB No. 67A010 for Model EC 130 helicopters, and ASB No. 67A010 for Model EC 155 helicopters, all Revision 0 and all dated February 19, 2007. Two of the ASBs have identical numbers and dates. There is a separate ASB No. 67A010 with the same date for the Model EC130 helicopter and the Model EC 155 helicopter. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

FAA's Determination and Proposed Requirements

These helicopters have been approved by the aviation authority of another country, and are 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. 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 designs.

Differences Between This AD and the MCAI

We have reviewed the MCAI and related service information and, in general, agree with their substance. However, our AD differs from the MCAI in that it:

- Is not applicable to the Model AS 332 C1 helicopters because they are not type certificated in the United States;
- Does not require returning the servo-controls to the manufacturer;
- Does not address servo-control ''spares'' (parts not installed on a helicopter);
- Uses the term ''inspect'' rather than ''check''; and
- Includes information explaining that there are 2 ASBs with the same number and date—ASB No. 67A010 for the Model EC130 B4 helicopters and ASB No. 67A010 for the Model EC 155 B and B1 helicopters.

Costs of Compliance

We estimate that this proposed AD would affect about 318 helicopters with 33 non-conforming control cap assemblies of U.S. registry. Also, we estimate that it would take about 1 work-hour to inspect each helicopter in the fleet and 4 work-hours per helicopter to remove and replace an unairworthy servo-control. The average labor rate is $80 per work-hour. A replacement cap assembly would cost $15,605. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $550,965, or $1,733 per helicopter.

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 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 an economic 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:

Eurocopter France: Docket No. FAA–2009–0663; Directorate Identifier 2007–SW–25–AD.

Comments Due Date

(a) We must receive comments by September 2, 2009.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Eurocopter France (Eurocopter) Model AS 332 C, L, L1, and L2; AS 350 B3; AS 355 F, F1, F2, and N; SA 365 N and N1; AS 365 N2 and N3; SA 366 G1; EC 130 B4; and EC 155 B and B1 helicopters, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that the AD is issued following a manufacturing nonconformity found on one batch of the servo-control cap, part number (P/N) 800137. With a defective servo-control, rotation of the distributor might not be stopped mechanically since only friction of inner seals holds the distributor sleeve in its position. If not corrected this condition could cause untimely movements of servo-controls, which are used on main and anti-torque rotors, and lead to the loss of control of the helicopter.

Actions and Compliance

(e) Within 2 months after the effective date of this AD, unless already done, do the following actions.

(1) For each servo-control with a P/N and a serial number (S/N) listed in paragraph 1.A.1. of the applicable Eurocopter Alert Service Bulletin (ASB) stated in Table 1 of this AD, determine whether there is a letter ''R'' marked in the inspection box of the servo-control identification plate.

(2) If there is no letter ''R'' marked in the inspection box of a servo-control identification plate, on the next removal of the servo-control, or not later than 2 years after the effective date of this AD, whichever occurs first, replace the servo-control with an airworthy servo-control that has an ''R'' marked in the inspection box of the servo-control identification plate or one with a serial number not listed in paragraph 1.A.1 of the ASB applicable to your model helicopter.

Note 1: The letter ''R'' marked in the inspection box of the servo-control identification plate indicates that the servo-control cap assembly has been brought into conformity with design data and has been installed properly.

(3) There are 2 identically numbered and dated ASBs. There is an ASB No. 67A010, dated February 19, 2007, that applies to the Model EC130B4 helicopters and an ASB No. 67A010, dated February 19, 2007, that applies to the Model EC 155B and B1 helicopters. You must use the ASB that applies to your model helicopter.

TABLE 1

For helicopter model	Refer to paragraph 1.A.1 of ASB
AS 332 C, L, L1, and L2	No. 67.00.37, dated February 19, 2007.
AS 350 B3	No. 67.00.40, dated February 19, 2007.
AS 355 F, F1, F2, and N	No. 67.00.28, dated February 19, 2007.
AS 365 N and N1	No. 67.00.13, dated February 19, 2007.
SA 366 G1	No. 67.08, dated February 19, 2007.
EC 130 B4	No. 67A010, dated February 19, 2007.
EC 155B and B1	No. 67A010, dated February 19, 2007.

Differences between the FAA AD and the MCAI AD

(f) This AD differs from the MCAI AD in that it:

(1) Is not applicable to the Model AS 332 C1 helicopters because they are not type certificated in the United States;

(2) Does not require returning the servo-controls to the manufacturer;

(3) Does not address servo-control ''spares'' (parts not installed on a helicopter);

(4) Uses the term ''inspect'' rather than ''check''; and

(5) Includes information explaining that there are 2 ASBs with the same number and date.

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, 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: Uday Garadi, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

Related Information

(h) MCAI EASA Airworthiness Directive 2007–0099, dated April 11, 2007, contains related information.

Joint Aircraft System/Component (JASC) Code

(i) JASC Code 6700: Rotorcraft Flight Control.

Issued in Fort Worth, Texas, on July 14, 2009.

Judy I. Carl,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–18429 Filed 7–31–09; 8:45 am]

BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 111

Advertisements for Animals and Sharp Instruments for Use in Animal Fighting Ventures Are Nonmailable

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise our mailing standards pertaining to animal fighting ventures. We intend to harmonize our standards with section 26 (7 U.S.C. 2156) of the Animal Welfare Act as amended by the Food, Conservation, and Energy Act of 2008.

DATES: Submit comments on or before September 2, 2009.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments at USPS Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bert Olsen, 202–268–7276.

SUPPLEMENTARY INFORMATION: On June 18, 2008, Congress enacted the Food, Conservation, and Energy Act of 2008 (the 2008 Act) which amended certain provisions of the Animal Welfare Act pertaining to animal fighting ventures. The 2008 Act's amendments added prohibitions on using the mail service of the United States (1) to advertise an animal for use in an animal fighting venture, or (2) to advertise a knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird for use in an animal fighting venture. The 2008 Act also revised the definition of the term ''animal fighting venture'' to refer to ''any event, in or affecting interstate or foreign commerce'' involving a fight ''conducted or to be conducted'' between at least two animals. To

implement the 2008 Act's amendments and to ensure that our standards comport with the current language in section 26 (7 U.S.C. 2156) of the Animal Welfare Act, we propose the new standards below.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c)], regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revision of the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual, incorporated by reference in the *Code of Federal Regulations.* See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

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:

* * * * *

600 Basic Standards for All Mailing Services

601 Mailability

* * * * *

9.0 Perishable

* * * * *

9.3 Live Animals

* * * * *

[Revise the heading and text of 9.3.1, as follows:]

9.3.1 Prohibition on Animals Intended for Use in an Animal Fighting Venture

An animal is nonmailable if such animal is being mailed for the purpose of having it participate in an animal fighting venture (7 U.S.C. 2156). This standard applies regardless of whether such venture is permitted under the laws of the state in which it is conducted. Violators can be subject to the criminal penalties in 18 U.S.C. 49. See 601.11.20 for the prohibition on mailing sharp instruments intended for use in an animal fighting venture and 601.12.5.7 for restrictions on mailing written, printed, or graphic matter related to animal fighting ventures.

For this standard:

a. The term *animal* means any live bird, or any live mammal (e.g., dog), except human.

b. The term *animal fighting venture* means any event, in or affecting interstate or foreign commerce, that involves a fight conducted or to be conducted between at least two animals for purposes of sport, wagering, or entertainment (excluding any activity whose primary purpose involves using one or more animals in hunting other animals;

c. The term *state* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any U.S. territory or possession.

* * * * *

11.0 Other Restricted and Nonmailable Matter

* * * * *

[Revise the heading and text of 11.20, as follows:]

11.20 Prohibition on Sharp Instruments Intended for Use in an Animal Fighting Venture

The interstate or international mailing of a knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird for use in an animal fighting venture (as defined in section 601.9.3.1b) is prohibited (7 U.S.C. 2156). Violators can be subject to the criminal penalties in 18 U.S.C. 49. See 601.9.3.1 for the prohibition on mailing animals intended for use in an animal fighting venture and 601.12.5.7 for the restrictions on mailing written, printed, or graphic matter related to animal fighting ventures.

* * * * *

12.0 Written, Printed, and Graphic Matter Generally

* * * * *

12.5 Other Nonmailable Matter

* * * * *

[Revise the heading and text of 12.5.7, as follows:]

12.5.7 Restriction on Matter Related to Animal Fighting Ventures

This standard does not pertain to written, printed, or graphic matter related to fighting ventures involving live birds if such fight is permitted under the laws of the state in which the fight is to take place (7 U.S.C. 2156). The terms *animal, animal fighting venture,* and *state* are defined in 601.9.3.1. Written, printed, or graphic matter is nonmailable if it:

a. Advertises an animal for use in an animal fighting venture.

b. Advertises a knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird for use in an animal fighting venture.

c. Promotes or in any other manner furthers an animal fighting venture.

* * * * *

We will publish an appropriate amendment to 39 CFR 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–18420 Filed 7–31–09; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R03–OAR–2009–0482; FRL–8938–7]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; West Virginia; Control of Emissions From Existing Commercial and Industrial Incineration (CISWI) Units, Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the West Virginia (WV) commercial and industrial solid waste incinerator (CISWI) 111(d)/129 plan (the ''plan''). The revision contains a modified WV Department of Environmental Protection, Division of Air Quality (DAQ) rule, WV45CSR18, that streamlines the state's regulatory structure for incinerator units into one rule which incorporates Clean Air Act (CAA), section 129 requirements. This approval action relates only to CISWI units. In the Final Rules section of this **Federal Register**, EPA is approving the State of West Virginia's CISWI plan revision submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period.

Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 2, 2009.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0482 by one of the following methods:

A. *http://www.regulations.gov.* Follow the online instructions for submitting comments.

B. *E-mail:* E-mail: *http://wilkie.walter@epa.gov.*

C. *Mail:* EPA–R03–OAR–2009–0482, Walter Wilkie, Chief, Air Quality Analysis Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2009–0482 EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Division of Air Quality, 601 57th Street, SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.* Please note that while questions may be posed via phone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: July 21, 2009.

William C. Early,

Acting Regional Administrator, EPA Region III.

[FR Doc. E9–18479 Filed 7–31–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R03–OAR–2009–0463; FRL–8938–9]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; West Virginia; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerator Units, Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the West Virginia (WV) hospital/medical/infectious waste incinerator (HMIWI) 111(d)/129 plan (the ''plan''). The revision contains a modified WV Department of Environmental Protection, Division of Air Quality (DAQ) rule, WV45CSR18, that streamlines and consolidates the state's regulatory structure for incinerator units into one rule which incorporates Clean Air Act (CAA), section 129, requirements. This approval action relates only to HMIWI units. In the Final Rules section of this **Federal Register**, EPA is approving the State of West Virginia's HMIWI plan revision submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 2, 2009.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0463 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: http://wilkie.walter@epa.gov.*

C. *Mail:* EPA–R03–OAR–2009–0463, Walter Wilkie, Chief, Air Quality Analysis Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2009–0463. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail.

The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your

identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Division of Air Quality, 601 57th Street, SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov*. Please note that while questions may be posed via phone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: July 21, 2009.

William C. Early,

Acting Regional Administrator, EPA Region III.

[FR Doc. E9–18481 Filed 7–31–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1058]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before November 2, 2009.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1058, to William R. Blanton Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Barnstable County, Massachusetts (All Jurisdictions)				
Atlantic Ocean	Along the shoreline at the south end of Ocean View Drive.	+9	+14	Town of Chatham, Town of Eastham, Town of Orleans, Town of Provincetown, Town of Truro.
	Along the shoreline, approximately 1,200 feet south of the projection of Beach Road.	+12	+14	
Buzzards Bay	Along the shoreline, approximately 130 feet west of the intersection of County Road and Pine Bank Road.	+18	+21	Town of Falmouth.
Cape Cod Bay	Along the shoreline at the intersection of Commercial Street and Conway Street.	None	+9	Town of Provincetown, Town of Barnstable, Town of Brewster, Town of Sandwich, Town of Truro, Town of Wellfleet.
	Along the shoreline at the intersection of Ellis Landing Road and Captain Dunbar Road.	None	+17	
Nantucket Sound	Along the shoreline approximately 550 feet south of the intersection of Chase Avenue and Belmont Road.	+10	+14	Town of Barnstable, Town of Chatham, Town of Dennis, Town of Harwich, Town of Yarmouth.
	Along the shoreline, approximately 750 feet west of the Parker's River western jetty.	None	+15	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Barnstable
Maps are available for inspection at the Town Hall, 367 Main Street, Hyannis, MA 02649.

Town of Brewster
Maps are available for inspection at the Town Hall, 2198 Main Street, Brewster, MA 02631.

Town of Chatham
Maps are available for inspection at the Town Hall, 549 Main Street, Chatham, MA 02633.

Town of Dennis
Maps are available for inspection at the Town Hall, 485 Main Street, South Dennis, MA 02660.

Town of Eastham
Maps are available for inspection at the Town Hall, 2500 State Highway, Eastham, MA 02642.

Town of Falmouth
Maps are available for inspection at the Town Hall, 59 Town Hall Square, Falmouth, MA 02540.

Town of Harwich
Maps are available for inspection at the Town Hall, 732 Main Street, Harwich, MA 02645.

Town of Orleans
Maps are available for inspection at the Town Hall, 19 School Road, Orleans, MA 02653.

Town of Provincetown
Maps are available for inspection at the Town Hall, 260 Commercial Street, Provincetown, MA 02657.

Town of Sandwich
Maps are available for inspection at the Town Hall, 130 Main Street, Sandwich, MA 02563.

Town of Truro
Maps are available for inspection at the Town Hall, 24 Town Hall Road, Truro, MA 02666.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Town of Wellfleet
Maps are available for inspection at the Town Hall, 300 Main Street, Wellfleet, MA 02667.

Town of Yarmouth
Maps are available for inspection at the Town Hall, 1146 Route 28, South Yarmouth, MA 02664.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 23, 2009.

Deborah S. Ingram,

Acting Deputy Assistant Administrator for Mitigation, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9–18407 Filed 7–31–09; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1576; MB Docket No. 09–129; RM–11549]

Television Broadcasting Services; Hutchinson and Wichita, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Sunflower Broadcasting, Inc. (''Sunflower''), the licensee of stations KWCH–DT, Hutchinson, Kansas, DTV channel 12, and KSCW–DT, Wichita, Kansas, DTV channel 19. Sunflower requests the substitution of DTV channel 19 for KWCH–DT's assigned DTV channel 12 at Hutchinson and the substitution of DTV channel 12 for KSCW–DT's assigned DTV channel 19 at Wichita.

DATES: Comments must be filed on or before August 18, 2009, and reply comments on or before August 28, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Wilmer Cutler Pickering, Hale and Dorr LLP, 1875 Pennsylvania Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–129, adopted July 20, 2009, and released July 22, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Kansas is amended by adding DTV channel 19 and removing DTV channel 12 at Hutchinson and by adding DTV channel 12 and removing DTV channel 19 at Wichita.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–18470 Filed 7–31–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1595; MB Docket No. 09–132; RM–11550]

Television Broadcasting Services; Fort Worth, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by CBS Stations Group of Texas, L.P. (''CBS

Stations Group'') and Television Station KTXA, L.P. (''KTXA L.P.'') (collectively, ''Joint Petitioners''), the respective licensees of Fort Worth, Texas stations KTVT(TV), channel 11, and KTXA(TV), channel 19. The Joint Petitioners request the substitution of DTV channel 19 for KTVT(TV)'s assigned DTV channel 11 at Fort Worth and the substitution of DTV channel 29 for KTXA(TV)'s assigned DTV channel 19 at Fort Worth.

DATES: Comments must be filed on or before August 18, 2009, and reply comments on or before August 28, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Howard F. Jaeckel, Esq., 51 W. 52nd Street, New York, New York 10019

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–132, adopted July 21, 2009, and released July 24, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Texas is first amended by adding DTV channel 29 and removing DTV channel 19 at Fort Worth.

3. Section 73.622(i), the Post-Transition Table of DTV Allotments under Texas is next amended by adding DTV channel 19 and removing DTV channel 11 at Fort Worth.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–18471 Filed 7–31–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1579; MB Docket No. 09–96; RM–11537]

Television Broadcasting Services; Boise, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Fisher Broadcasting—Idaho TV, L.L.C. (''Fisher''), the licensee of KBCI–DT, digital channel 28, Boise, Idaho. Fisher requests the substitution of digital channel 9 for digital channel 28 at Boise.

DATES: Comments must be filed on or before August 18, 2009, and reply comments on or before August 28, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Wade H. Hargrove, Esq., Brooks, Pierce, McLendon, Humphrey, and Leonard, LLP, PO Box 1800, Raleigh, NC 27602.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *joyce.bernstein@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–96, adopted July 22, 2009, and released July 23, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are

prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Idaho is amended by adding DTV channel 9 and removing DTV channel 28 at Boise.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–18473 Filed 7–31–09; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 74, No. 147

Monday, August 3, 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

Rural Utilities Service

Tri-State Generation and Transmission Association, Inc., Notice of Intent To Hold Public Scoping Meetings and Prepare an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Intent to Hold Public Scoping Meetings and Prepare an Environmental Assessment.

SUMMARY: The Rural Utilities Service (RUS) intends to hold public scoping meetings and prepare an Environmental Assessment (EA) to meet its responsibilities under the National Environmental Policy Act (NEPA) and 7 CFR part 1794 in connection with potential impacts related to a proposed project in Colorado by Tri-State Generation and Transmission Association, Inc. (Tri-State) and Public Service Company of Colorado (Public Service), an Xcel Energy Operating Company. The proposed San Luis Valley-Calumet-Comanche Transmission Project (proposed action) consists of the following: a proposed 230/345-kilovolt (kV) Calumet Substation to be located approximately 6 miles north of the existing Walsenburg Substation in Huerfano County; a proposed double-circuit 230-kV transmission line between the existing San Luis Valley Substation in Alamosa County and the Calumet Substation; a proposed single-circuit 230-kV transmission line between the Calumet Substation and the Walsenburg Substation; and a proposed double-circuit 345-kV transmission line connecting the Calumet Substation to the existing Comanche Substation in Pueblo County. Tri-State is requesting that RUS provide financial assistance for the proposed action.

DATES: RUS will conduct public scoping meetings in an open house format to provide information and solicit comments for the preparation of the EA. The scoping meetings will be held on the following dates: Monday, August 17, 2009, from 4–7 p.m. at the Blanca/Fort Garland Community Center, 17591 Highway 160, Blanca, Colorado 81123; Tuesday, August 18, 2009, from 4–7 p.m. at the Alamosa Recreation Center, 2222 Old Sanford Road, Alamosa, Colorado 81101; Wednesday, August 19, 2009, from 9 a.m.–11 a.m. at the Gardner Community Center, 28 County Road 632, Gardner, Colorado 81040; Wednesday, August 19, 2009, from 4–7 p.m. at the Walsenburg Community Center, 928 Russell Avenue, Walsenburg, Colorado 81089–2155; Thursday, August 20, 2009, from 9 a.m.–11 a.m. at the Hollydot Golf Course, 55 North Parkway Drive, Colorado City, Colorado 81019; and Thursday, August 20, 2009, from 4–7 p.m. at the Sangre de Cristo Arts and Conference Center, 210 N. Santa Fe Avenue, Pueblo, Colorado 81003. All written questions and comments must be received by RUS by September 21, 2009.

ADDRESSES: To send comments or for further information, contact: Dennis Rankin, Environmental Protection Specialist, USDA Rural Utilities Service, at 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250–1571, or e-mail: *dennis.rankin@wdc.usda.gov.* A combined Alternative Evaluation Study (AES) and Macro Corridor Study (MCS) has been prepared for the San Luis Valley to Walsenburg portion of the proposed project, and an AES and MCS have been prepared for the Calumet to Comanche portion of the proposed project. All documents are available for public review prior to and at the public scoping meetings. The reports are available at the RUS address provided in this notice and on the agency's Web site: *http://www.usda.gov/rus/water/ees/eis.htm.* The documents are also available for review at the offices of Tri-State and its member cooperatives San Luis Valley Rural Electric Cooperative and San Isabel Electric Cooperative. In addition, the following repositories will have the AES and MCS available for public review:

Tri-State Generation & Transmission, 1100 West 116th Avenue, Westminster, CO 80234–2814,
San Isabel Electric Association, 893 East Enterprise Drive, Pueblo West, CO 81007–1476
La Veta Public Library District, 310 Main Street, La Veta, CO 81055–0028
Robert Hoag Rawlings Public Library, 100 East Abriendo Avenue, , Pueblo, CO 81004–4232
Costilla County Public Library, 418 Gasper Street, San Luis, CO 81152–0351
San Luis Valley Rural Electric Cooperative, 3625 U.S. Highway 160 W, Monte Vista, CO 81144–9300
Southern Peaks Public Library, 423 Fourth Street , Alamosa, CO 81101–2601
Carnegie Public Library, 120 Jefferson Street, Monte Vista, CO 81144–1797
Lamb Branch Library, 2525 South Pueblo Boulevard, Pueblo, CO 81005–2700
Spanish Peaks Library District, 323 Main Street, Walsenburg, CO 81089–1842

SUPPLEMENTARY INFORMATION: The primary purpose for the proposed action is to improve the electric service and increase reliability for Tri-State and Public Service customers in the San Luis Valley and Front Range areas. The proposed action would also provide a transmission outlet for renewable energy generation in the San Luis Valley. This proposed action will assist Tri-State and Public Service in meeting their respective transmission needs in the region by using one common transmission corridor instead of two separate corridors. This joint approach will minimize potential impacts to property owners and the environment.

Tri-State is seeking financing from RUS for its percent ownership in the proposed project. Prior to making a financial decision about whether to provide financial assistance for a proposed project, RUS is required to conduct an environmental review under the NEPA in accordance with the RUS policies and procedures codified in 7 CFR Part 1794. Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed action. Representatives from the RUS, Tri-State, and Public Service will be available at the scoping meetings to discuss the environmental review process, describe the proposed action, discuss the scope of environmental issues to be considered, answer questions, and

accept comments. RUS will use comments and input provided by government agencies, private organizations, and the public in the preparation of the Draft EA. If RUS finds, based on the EA, that the proposed action will not have a significant effect on the quality of the human environment, RUS will prepare a Finding of No Significant Impact (FONSI). Public notification of a Finding of No Significant Impact would be published in the **Federal Register** and in newspapers with circulation in the project area. RUS may take its final action on proposed actions requiring an EA (§ 1794.23) any time after publication of applicant notices that a FONSI has been made and any required review period has expired. When substantive comments are received on the EA, RUS may provide an additional period (15 days) for public review following the publication of its FONSI determination. Final action will not be taken until this review period has expired. Where appropriate to carry out the purposes of NEPA, RUS may impose, on a case-by-case basis, additional requirements associated with the preparation of an EA. If at any point in the preparation of an EA, RUS determines that the proposed action will have a significant effect on the quality of the human environment, the preparation of an Environmental Impact Statement will be required.

Any final action by RUS related to the proposed action will be subject to, and contingent upon, compliance with all relevant Federal, State, and local environmental laws and regulations and completion of the environmental review requirements as prescribed in the RUS Environmental Policies and Procedures (7 CFR part 1794).

Dated: July 28, 2009.

Mark S. Plank,

Director, Engineering and Environmental Staff, Rural Utilities Service.

[FR Doc. E9–18413 Filed 7–31–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Funding Availability for the Healthy Urban Food Enterprise Development Center Request for Applications for Fiscal Year (FY) 2009

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of funding availability.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is announcing the release of the FY 2009 Healthy Urban Food Enterprise Development Center (HUFED–Center) Request for Applications (RFA) via Grants.gov.

DATES: The FY 2009 Healthy Urban Food Enterprise Development Center (HUFED–Center) RFA was posted to Grants.gov on Tuesday, July 14, 2009 and applications must be received via Grants.gov by 5 p.m. Eastern Time on Wednesday, August 12, 2009.

FOR FURTHER INFORMATION CONTACT: Elizabeth Tuckermanty 202–205–0241 (phone), 202–401–6488 (fax), or *etuckermanty@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 4402 of the Food, Conservation and Energy Act of 2008 (Pub. L. 110–246) amended section 25 of the Food and Nutrition Act of 2008 which requires that the Secretary of Agriculture provide a grant to a nonprofit organization to establish and support a healthy urban food enterprise development center. The purpose of the HUFED Center is to increase access to healthy, affordable foods, including locally produced agricultural products, to underserved communities. The HUFED Center will provide training and technical assistance for healthy food enterprises and award sub-grants to eligible entities for healthy food enterprise development. The HUFED Center shall provide two main functions: (1) Provide for training and technical assistance (T&TA) for healthy food enterprises; and (2) implement a competitive sub-grant program for healthy food enterprises.

The HUFED Center was created to respond to the need to redevelop a food enterprise structure in the United States in order to make more healthy, affordable food available in low-income areas, to improve access for small and mid-sized agricultural producers, and to promote the positive economic activities generated from attracting food enterprises into underserved communities.

The estimated amount available for support of this program in FY 2009 is $900,000. The eligibility criteria for the project and applicants, and the application forms and associated instructions needed to apply for a HUFED Center award can be accessed through the Grants.gov Web site at *http://www.grants.gov.*

Done at Washington, DC, this 28th day of July 2009.

Ralph A. Otto,

Associate Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. E9–18411 Filed 7–31–09; 8:45 am]

BILLING CODE 3410–22–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act, that the New Hampshire Advisory Committee will convene a briefing meeting and planning meeting at 10 a.m. on Friday, August 14, 2009, at the Legislative Office Building, Room 201, Concord, New Hampshire 03301. The purpose of the briefing meeting is to hear presentations from experts about civil rights issues in the State. The purpose of the planning meeting is for the Committee to discuss possible topics for the Committee's future civil rights project.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by September 14, 2009. The address is the Eastern Regional Office, 624 Ninth Street, NW., Suite 740, Washington, DC 20425. Persons wishing to e-mail their comments, or who desire additional information should contact Alfreda Greene, Secretary, at 202–376–7533 or by e-mail to: *ero@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, July 29, 2009.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E9–18464 Filed 7–31–09; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Socioeconomics of Commercial Fishers and For Hire Diving and Fishing Operations in the Flower Garden Banks National Marine Sanctuary.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 80.

Average Hours per Response: 3.

Burden Hours: 240.

Needs and Uses: The National Marine Sanctuaries Act (16 U.S.C. 1431, *et seq.*) authorizes the use of research and monitoring within National Marine Sanctuaries (NMS). In 1996, the Flower Gardens Bank National Marine Sanctuary (FGBNMS) was added to the system of NMS via 15 CFR part 922, subpart L. In 2001, Stetson Bank was added in a revision of 15 CFR part 922.

The National Marine Sanctuaries Act (NMSA) specifies that each NMS should revise their management plans on a five-year cycle. The FGBNMS has begun the management plan review process. The NMSA also allows for the creation of Sanctuary Advisory Councils (SACs). SACs are comprised of representatives of all NMS stakeholders. Management Plan Review (MPR) is a public process and the SACs, along with a series of public meetings, are used to help scope out issues in revising the management plans and regulations. SAC Working Groups are often used to evaluate management or regulatory alternatives. In the current MPR for the FGBNMS, two major issues have emerged: Boundary expansion and research-only areas. In addition, several new or modified regulations are being considered to meet specific needs for diver safety and resource protection (no anchoring/mooring buoy use requirement and a more stringent pollution discharge regulation).

To address each of these issues, a socioeconomic panel composed of NOAA staff and social scientists from other agencies, or from universities, will develop information and tools to assess the socioeconomic impacts of management strategies and regulatory alternatives. The information and tools developed in this process will also provide the necessary information for meeting agency requirements for socioeconomic impact analyses under the National Environmental Policy Act (NEPA), Executive Order 12086 (Regulatory Impact Review) and an Initial and Final Regulatory Flexibility Analysis (impacts on small businesses). The first step in the assessment process will be to interview three key sanctuary user groups—commercial fishers, for hire recreational dive operations and for hire recreational fishing operations (charter and party/head boat operations)—with questions focusing on: (1) General information, economic information and trip costs; and (2) knowledge, attitudes and perceptions of sanctuary management strategies and regulations.

Affected Public: Business or other for-profit organizations.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: July 28, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–18366 Filed 7–31–09; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: National Marine Fisheries Service (NMFS) Observer Programs' Information That Can Be Gathered Only Through Questions.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 4,323.

Average Hours per Response: One hour and 20 minutes, including pre-deployment information, information gathered directly from captain/crew during trips, reimbursement requests and observer evaluations.

Burden Hours: 17,455.

Needs and Uses: NOAA's National Marine Fisheries Service (NMFS) deploys fishery observers on United States commercial fishing vessels and to fish processing plants in order to collect biological and economic data. NMFS has at least one observer program in each of its six Regions. These observer programs provide the only reliable or most effective method for obtaining information that is critical for the conservation and management of living marine resources. Observer programs primarily obtain information through direct observations by employees or agents of NMFS or through non-standardized oral communication in connection with such direct observations; and such collections are not generally subject to the Paperwork Reduction Act (PRA). However, observer programs also collect the following information that requires clearance under the PRA: (1) Standardized questions of fishing vessel captains/crew or fish processing plant managers/staff, which include gear and performance questions, safety questions, and trip costs, crew size and other economic questions; (2) questions asked by observer program staff/contractors to plan observer deployments; (3) forms that are completed by observers and that fishing vessel captains are asked to review and sign; (4) questionnaires to evaluate observer performance; (5) information used to ensure that the data for a specific trip are not provided to an individual (*e.g.,* fisherman) who does not have authority to obtain that data under the confidentiality requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and/or the Marine Mammal Protection Act (MMPA); and (6) information on reimbursement forms. NMFS has received PRA clearances for the second and fourth types of collections for some observer programs (OMB Control Numbers 0648–0423 and 0648–0202 for deployment questions, and 0648–0550 and 0648–0536 for observer evaluations); those burden hours are now included in this national, comprehensive PRA submission.

The information collected will be used to: (1) Monitor catch and bycatch; (2) understand the population status and trends of fish stocks and protected

species, as well as the interactions between them; (3) determine the quantity and distribution of net benefits derived from living marine resources; (4) predict the biological, ecological, and economic impacts of existing management action and proposed management options; and (5) ensure that the observer programs can safely and efficiently collect the information required for the previous four uses.

In particular, these biological and economic data collection programs contribute to analyses required under the MSA, the Endangered Species Act (ESA), the MMPA, the National Environmental Policy Act (NEPA), the Regulatory Flexibility Act (RFA), Executive Order 12866 (EO 12866), as well as a variety of state statutes. The confidentiality of the data will be protected as required by law.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Some mandatory (e.g., vessel safety checks), most voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: July 28, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–18376 Filed 7–31–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[08–BIS–0005]

Action Affecting Export Privileges; Micei International; In the Matter of: Micei International, Respondent; Order Staying Enforcement of Final Decision and Order Pending Appeal

The Acting Under Secretary of Commerce for Industry and Security (''Acting Under Secretary'') issued a Final Decision and Order (the ''Order'') in this administrative enforcement proceeding against Respondent Micei International (''Micei'') on May 14, 2009, which was effective upon publication in the **Federal Register** on May 26, 2009. 74 FR 24788 (May 26, 2009). The Order affirmed the Administrative Law Judge's Recommended Decision and Order finding, in accordance with Section 766.7 (Default Order) of the Export Administration Regulations (the ''Regulations''),[1] that Micei had waived its right to contest the allegations contained in the (amended) charging letter issued by the Bureau of Industry and Security (''BIS''), and that Micei had, as alleged, committed 14 violations of the Regulations. The allegations involved Micei's knowing participation in seven export transactions using an individual subject to a Denial Order as an employee or agent to negotiate for and purchase items in the United States for export from the United States to Micei in Macedonia. The Order also affirmed the recommended sanctions of a civil penalty of $126,000, and a denial of Micei's export privileges for a period of five years.

On May 19, 2009, Micei filed a Petition for Immediate Stay of Publication and Enforcement of Final Decision and Order Pending Outcome of Respondent's Petition To Set Aside Default and Vacate Final Decision and Order or Alternatively Pending Appeal (''Stay Petition'').[2] On June 30, 2009, Micei filed a Motion for Stay Pending Appeal (''Stay Motion'') with the United States Court of Appeals for the District of Columbia Circuit (''D.C. Circuit''), seeking a stay of the Order pending appeal.[3]

In its June 30 filing with the DC Circuit, Micei made a number of assertions and presented documentary materials that were not part of the Stay Petition it had filed with BIS. BIS is continuing to evaluate and investigate questions surrounding the accuracy and foundation of those assertions, but nonetheless does not wish further delay in addressing and resolving the merits of Micei's petition for review. In addition, Micei has recently hired new U.S-based counsel and there are some indications that Micei may be prepared to more meaningfully engage on the issues.

Based on the circumstances here, I have decided, in performing duties delegated to me by the Acting Under Secretary, to stay enforcement of the Order pending resolution of the DC Circuit appeal.[4]

Accordingly, it is hereby ordered that enforcement of the Final Decision and Order against Micei International, dated May 14, 2009, and effective on May 26, 2009, is henceforth stayed pending resolution of the petition for review currently before the United States Court of Appeals for the District of Columbia Circuit.

This Order is effective immediately and shall be published in the **Federal Register**.

Dated: July 24, 2009.

Gay Shrum,

Acting Deputy Under Secretary of Commerce for Industry and Security.

[FR Doc. E9–18428 Filed 7–31–09; 8:45 am]

BILLING CODE 3510–DT–P

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2009). The violations at issue, which occurred in 2003, are governed by the 2003 version of the Code of Federal Regulations. 15 CFR parts 730–774 (2003). The 2009 Regulations govern the procedural aspects of this case.

[2] On May 19, 2009, Micei also filed with BIS a Petition To Set Aside Default and Vacate Final Decision and Order. On June 26, 2009, Micei filed a notice with BIS to withdraw that petition, but did not address the Stay Petition it had filed with BIS.

[3] Micei had previously filed a Notice of Appeal to the DC Circuit on May 29, 2009. Micei subsequently filed a second Notice of Appeal on June 29, 2009, petitioning for review of the Order.

[4] This determination does not constitute a finding or conclusion that BIS agrees with the assertions or evidentiary materials included in Micei's Stay Motion (or Stay Petition).

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Trademark Petitions.

Form Number(s): None.

Agency Approval Number: 0651–00xx.

Type of Request: New collection.

Burden: 862 hours.

Number of Respondents: 953 responses.

Avg. Hours per Response: 30 minutes (0.50 hours) to one hour. This includes time to gather the necessary information, create the documents, and submit the completed request to the USPTO.

Needs and Uses: The information described in this collection is used by the public for a variety of private

business purposes related to establishing and enforcing trademark rights. Information relating to the registration of a trademark is made publicly available by the USPTO. The release of information in a letter of protest is controlled and may be available upon request only.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publically available in electronic format through the Information Collection Review page at *http://www.reginfo.gov*.

Paper copies can be obtained by:

- *E-mail: Susan.Fawcett@uspto.gov.* Include ''0651–0060 National Medal of Technology and Innovation Nomination Application copy request'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Administrative Management Group, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before September 2, 2009 to Nicholas A. Fraser, OMB Desk Officer, via e-mail at *Nicholas_A._Fraser@omb.eop.gov* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Administrative Management Group.

[FR Doc. E9–18357 Filed 7–31–09; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–939]

Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (''ITC''), the Department is issuing an antidumping duty order on certain tow behind lawn groomers and certain parts thereof (lawn groomers) from the People's Republic of China (''PRC'').

EFFECTIVE DATE: August 3, 2009

FOR FURTHER INFORMATION CONTACT: Karine Gziryan, Thomas Martin or Zhulieta Willbrand, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4081, (202) 482–3936, and (202) 482–3147 respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (''the Act''), on March 31, 2009, the Department published in the **Federal Register** its final determination in the instant investigation. *See Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 29167 (June 19, 2009).

On July 27, 2009, the ITC notified the Department of its final determination, pursuant to section 705(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of subsidized imports of subject merchandise from the PRC. *See Tow–Behind Lawn Groomers From China*, Investigation Nos. 701–TA–457 and 731–TA–1153 (Final), USITC Publication 4090 (July 2009).

Scope of the Order

The scope of this order covers certain non–motorized tow behind lawn groomers, manufactured from any material, and certain parts thereof. Lawn groomers are defined as lawn sweepers, aerators, dethatchers, and spreaders. Unless specifically excluded, lawn groomers that are designed to perform at least one of the functions listed above are included in the scope of this order, even if the lawn groomer is designed to perform additional non–subject functions (*e.g.*, mowing).

All lawn groomers are designed to incorporate a hitch, of any configuration, which allows the product to be towed behind a vehicle. Lawn groomers that are designed to incorporate both a hitch and a push handle, of any type, are also covered by the scope of this order. The hitch and handle may be permanently attached or removable, and they may be attached on opposite sides or on the same side of the lawn groomer. Lawn groomers designed to incorporate a hitch, but where the hitch is not attached to the lawn groomer, are also included in the scope of the order.

Lawn sweepers consist of a frame, as well as a series of brushes attached to an axle or shaft which allows the brushing component to rotate. Lawn sweepers also include a container (which is a receptacle into which debris swept from the lawn or turf is deposited) supported by the frame. Aerators consist of a frame, as well as an aerating component that is attached to an axle or shaft which allows the aerating component to rotate. The aerating component is made up of a set of knives fixed to a plate (known as a ''plug aerator''), a series of discs with protruding spikes (a ''spike aerator''), or any other configuration, that are designed to create holes or cavities in a lawn or turf surface. Dethatchers consist of a frame, as well as a series of tines designed to remove material (*e.g.*, dead grass or leaves) or other debris from the lawn or turf. The dethatcher tines are attached to and suspended from the frame. Lawn spreaders consist of a frame, as well as a hopper (*i.e.*, a container of any size, shape, or material) that holds a media to be spread on the lawn or turf. The media can be distributed by means of a rotating spreader plate that broadcasts the media (''broadcast spreader''), a rotating agitator that allows the media to be released at a consistent rate (''drop spreader''), or any other configuration.

Lawn dethatchers with a net fully–assembled weight (*i.e.*, without packing, additional weights, or accessories) of 100 pounds or less are covered by the scope of the order. Other lawn groomers sweepers, aerators, and spreaders with a net fully–assembled weight (*i.e.*, without packing, additional weights, or accessories) of 200 pounds or less are covered by the scope of the order.

Also included in the scope of the order are modular units, consisting of a chassis that is designed to incorporate a hitch, where the hitch may or may not be included, which allows modules that perform sweeping, aerating, dethatching, or spreading operations to be interchanged. Modular units when imported with one or more lawn grooming modules with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 200 pounds or less when including a single module, are included in the scope of the order. Modular unit chasses, imported without a lawn grooming module and with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 125 pounds or less, are also covered by the scope of the order. When imported separately, modules

that are designed to perform subject lawn grooming functions (*i.e.*, sweeping, aerating, dethatching, or spreading), with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 75 pounds or less, and that are imported with or without a hitch, are also covered by the scope.

Lawn groomers, assembled or unassembled, are covered by this order. For purposes of this order, ''unassembled lawn groomers'' consist of either 1) all parts necessary to make a fully assembled lawn groomer, or 2) any combination of parts, constituting a less than complete, unassembled lawn groomer, with a minimum of two of the following ''major components'':

1) an assembled or unassembled brush housing designed to be used in a lawn sweeper, where a brush housing is defined as a component housing the brush assembly, and consisting of a wrapper which covers the brush assembly and two end plates attached to the wrapper;
2) a sweeper brush;
3) an aerator or dethatcher weight tray, or similar component designed to allow weights of any sort to be added to the unit;
4) a spreader hopper;
5) a rotating spreader plate or agitator, or other component designed for distributing media in a lawn spreader;
6) dethatcher tines;
7) aerator spikes, plugs, or other aerating component; or
8) a hitch, defined as a complete hitch assembly comprising of at least the following two major hitch components, tubing and a hitch plate regardless of the absence of minor components such as pin or fasteners. Individual hitch component parts, such as tubing, hitch plates, pins or fasteners are not covered by the scope.

The major components or parts of lawn groomers that are individually covered by this order under the term ''certain parts thereof'' are: (1) brush housings, where the wrapper and end plates incorporating the brush assembly may be individual pieces or a single piece; and (2) weight trays, or similar components designed to allow weights of any sort to be added to a dethatcher or an aerator unit.

The scope of this order specifically excludes the following: 1) agricultural implements designed to work (*e.g.*, churn, burrow, till, etc.) soil, such as cultivators, harrows, and plows; 2) lawn or farm carts and wagons that do not groom lawns; 3) grooming products incorporating a motor or an engine for the purpose of operating and/or propelling the lawn groomer; 4) lawn groomers that are designed to be hand held or are designed to be attached directly to the frame of a vehicle, rather than towed; 5) ''push'' lawn grooming products that incorporate a push handle rather than a hitch, and which are designed solely to be manually operated; 6) dethatchers with a net assembled weight (*i.e.*, without packing, additional weights, or accessories) of more than 100 pounds, or lawn groomers sweepers, aerators, and spreaders with a net fully–assembled weight (**I.E.**, without packing, additional weights, or accessories) of more than 200 pounds; and 7) lawn rollers designed to flatten grass and turf, including lawn rollers which incorporate an aerator component (*e.g.*, ''drum–style'' spike aerators).

The lawn groomers that are the subject of this order are currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.80.0010, 8432.90.0030, 8432.90.0080, 8479.89.9896, 8479.89.9897, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product included in this order.

Provisional Measures

Section 733(d) of the Act states that suspension of liquidation ordered pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of two exporters that accounted for a significant proportion of exports of lawn groomers, we extended the four-month period to no more than six months. *See Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 4929, 4936 (January 28, 2009) (''*Preliminary Determination*''). In this investigation, the six-month period beginning on the date of the publication of the *Preliminary Determination* (*i.e.*, January 28, 2009) ended on July 27, 2009.

Section 737 of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 733(d) of the Act, we have instructed U.S. Customs and Border Protection (''CBP'') to terminate suspension of liquidation and to liquidate without regard to antidumping duties (*i.e.*, release all bonds and refund all cash deposits), unliquidated entries of lawn groomers from the PRC entered, or withdrawn from warehouse, for consumption after July 27, 2009, and before the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final injury determination in the **Federal Register**.

Antidumping Duty Order

On July 27, 2009, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of less–than-fair–value imports of subject merchandise from the PRC. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct CBP to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price of the merchandise for all relevant entries of lawn groomers from the PRC. Except for the entries noted above,[1] these antidumping duties will be assessed on all unliquidated entries of lawn groomers from the PRC entered, or withdrawn from the warehouse, for consumption on or after January 28, 2009, the date on which the Department published its *Preliminary Determination. See Preliminary Determination.*

Effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit based on the estimated weighted–average antidumping duty margins listed below. The cash deposit rate for all exporter–producer combinations not listed below will be equal to the estimated weighted–average antidumping duty margin applicable to the combination. The ''PRC–wide'' rate applies to all exporters of subject merchandise not specifically listed. The weighted–average dumping margins are as follows:

[1] Namely, entries of lawn groomers from the PRC entered, or withdrawn from warehouse, for consumption after July 27, 2009, and before the date of publication of the ITC's final injury determination in the **Federal Register**.

LAWN GROOMERS FROM THE PRC

Exporter and Producer	Weighted–Average Margin (Percent)
Nantong D & B Machinery Co., Ltd.	154.72
Qingdao Huatian Truck Co., Ltd., a.k.a. Qingdao Huatian Hand Truck Co., Ltd.	154.72
PRC–wide Entity (including Jiashan Superpower Tools Co., Ltd. and Princeway Furniture (Dong Guan) Co., Ltd.)	386.28

This notice constitutes the antidumping duty order with respect to lawn groomers from the PRC pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: July 29, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–18599 Filed 7–31–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

FOR FURTHER INFORMATION CONTACT: Hallie Zink, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230; telephone (202) 482–6907.

Upcoming Sunset Reviews for September 2009

There are no Sunset Reviews scheduled for initiation in September 2009.

For information on the Department's procedures for the conduct of sunset reviews, *See* 19 CFR 351.218. This notice is not required by statute but is published as a service to the international trading community. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3, *Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Dated: July 23, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–18476 Filed 7–31–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with section 351.213 (2008) of the Department of Commerce (''the Department'') regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review (''POR''). We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of the initiation **Federal Register** notice.

Opportunity to Request a Review: Not later than the last day of August 2009,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

	Period
Antidumping Duty Proceeding	
Germany:	
Corrosion-Resistant Carbon Steel Flat Products A–428–815	8/1/08—7/31/09

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period
Seamless Line and Pressure Pipe A–428–820	8/1/08—7/31/09
Sodium Nitrite A–428–841	4/23/08—7/31/09
Italy: Granular Polytetrafluoroethylene Resin A–475–703	8/1/08—7/31/09
Japan:	
Brass Sheet & Strip A–588–704	8/1/08—7/31/09
Granular Polytetrafluoroethylene Resin A–588–707	8/1/08—7/31/09
Tin Mill Products A–588–854	8/1/08—7/31/09
Malaysia: Polyethylene Retail Carrier Bags A–557–813	8/1/08—7/31/09
Mexico: Gray Portland Cement and Cement Clinker A–201–802	8/1/08—3/31/09
Light-Walled Rectangular Pipe and Tube A–201–836	1/30/08—7/31/09
Republic of Korea:	
Corrosion-Resistant Carbon Steel Flat Products A–580–816	8/1/08—7/31/09
Light-Walled Rectangular Pipe and Tube A–580–859	1/30/08—7/31/09
Romania: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches) A–485–805	8/1/08—7/31/09
Thailand: Polyethylene Retail Carrier Bags A–549–821	8/1/08—7/31/09
The People's Republic of China: Floor Standing Metal-Top Ironing Tables and Parts Thereof A–570–888	8/1/08—7/31/09
Laminated Woven Sacks A–570–916	1/31/08—7/31/09
Light-Walled Rectangular Pipe and Tube A–570–914	1/30/08—7/31/09
Petroleum Wax Candles A–570–504	8/1/08—7/31/09
Polyethylene Retail Carrier Bags A–570–886	8/1/08—7/31/09
Sodium Nitrite A–570–925	4/23/08—7/31/09
Steel Nails A–570–909	1/23/08—7/31/09
Sulfanilic Acid A–570–815	8/1/08—7/31/09
Tetrahydrofurfuryl Alcohol A–570–887	8/1/08—7/31/09
Vietnam: Frozen Fish Fillets A–552–801	8/1/08—7/31/09
Countervailing Duty Proceedings	
Republic of Korea:	
Corrosion-Resistant Carbon Steel Plate C–580–818	1/1/08—12/31/08
Dynamic Random Access Memory Semiconductors C–580–851	1/1/08—8/10/08
Stainless Steel Sheet and Strip in Coils C–580–835	1/1/08—12/31/08
Laminated Woven Sacks C–570–917	12/3/07—12/31/08
Sodium Nitrite C–570–926	4/11/08—12/31/08
Light-Walled Rectangular Pipe and Tube C–570–915	11/30/07—12/31/08

Suspension Agreements

None.

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of August 2009. If the Department does not receive, by the last day of August 2009, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 29, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–18474 Filed 7–31–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Florida Keys National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Florida Keys National Marine Sanctuary Advisory Council: Citizen at Large—Lower Keys (member), Citizen at Large—Lower Keys (alternate), Citizen at Large—Middle Keys (member), Conservation and Environment [1 of 2] (member), Conservation and Environment [2 of 2] (member), Conservation and Environment [2 of 2] (alternate), Diving—Lower Keys (member), Diving—Lower Keys (alternate), Education and Outreach (member), Education and Outreach (alternate), Fishing—Charter Fishing Flats Guide (member), Fishing—Charter Fishing Flats Guide (alternate), Fishing—Commercial—Shell/Scale (member), Fishing—Commercial—Shell/Scale (alternate), South Florida Ecosystem Restoration (alternate), Submerged Cultural Resources (member), Submerged Cultural Resources (alternate), Tourism—Upper Keys (member) and Tourism Upper Keys (alternate). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's Charter.

DATES: Applications are due by August 21, 2009.

ADDRESSES: Application kits may be obtained from Lilli Ferguson, Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, FL 33040. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Lilli Ferguson, Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, FL 33040; (305) 292–0311 x245; *Lilli.Ferguson@noaa.gov.*

SUPPLEMENTARY INFORMATION: Per the council's Charter, if necessary, terms of appointment may be changed to provide for staggered expiration dates or member resignation mid term.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: July 16, 2009.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E9–17845 Filed 7–31–09; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–940]

Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the U.S. International Trade Commission (ITC), the Department is issuing a countervailing duty order on certain tow-behind lawn groomers and certain parts thereof (lawn groomers) from the People's Republic of China (PRC).

DATES: *Effective Date:* August 3, 2009.

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3586 and (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 705(d) of the Tariff Act of 1930, as amended (the Act), on June 19, 2009, the Department published its final determination in the countervailing duty investigation of lawn groomers from the PRC. *See Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 29180 (June 19, 2009).

On July 27, 2009, the ITC notified the Department of its final determination, pursuant to section 705(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of subsidized imports of subject merchandise from the PRC. *See Certain Tow-Behind Lawn Groomers from China,* USITC Pub. 4090, Investigation Nos. 701–TA–457 and 731–TA–1153 (Final) (July 2009).

Scope of the Order

The scope of this order covers certain non-motorized tow behind lawn groomers, manufactured from any material, and certain parts thereof. Lawn groomers are defined as lawn sweepers, aerators, dethatchers, and spreaders. Unless specifically excluded, lawn groomers that are designed to perform at least one of the functions listed above are included in the scope of this order, even if the lawn groomer is designed to perform additional non-subject functions (*e.g.,* mowing).

All lawn groomers are designed to incorporate a hitch, of any configuration, which allows the product to be towed behind a vehicle. Lawn groomers that are designed to incorporate both a hitch and a push handle, of any type, are also covered by the scope of this order. The hitch and handle may be permanently attached or removable, and they may be attached on opposite sides or on the same side of the lawn groomer. Lawn groomers designed to incorporate a hitch, but where the hitch is not attached to the lawn groomer, are also included in the scope of the order.

Lawn sweepers consist of a frame, as well as a series of brushes attached to an axle or shaft which allows the brushing component to rotate. Lawn sweepers also include a container (which is a receptacle into which debris swept from the lawn or turf is deposited) supported by the frame. Aerators consist of a frame, as well as

an aerating component that is attached to an axle or shaft which allows the aerating component to rotate. The aerating component is made up of a set of knives fixed to a plate (known as a ''plug aerator''), a series of discs with protruding spikes (a ''spike aerator''), or any other configuration, that are designed to create holes or cavities in a lawn or turf surface. Dethatchers consist of a frame, as well as a series of tines designed to remove material (*e.g.,* dead grass or leaves) or other debris from the lawn or turf. The dethatcher tines are attached to and suspended from the frame. Lawn spreaders consist of a frame, as well as a hopper (*i.e.,* a container of any size, shape, or material) that holds a media to be spread on the lawn or turf. The media can be distributed by means of a rotating spreader plate that broadcasts the media (broadcast spreader), a rotating agitator that allows the media to be released at a consistent rate (drop spreader), or any other configuration.

Lawn dethatchers with a net fully-assembled weight (*i.e.,* without packing, additional weights, or accessories) of 100 pounds or less are covered by the scope of the order. Other lawn groomers—sweepers, aerators, and spreaders—with a net fully-assembled weight (*i.e.,* without packing, additional weights, or accessories) of 200 pounds or less are covered by the scope of the order.

Also included in the scope of the order are modular units, consisting of a chassis that is designed to incorporate a hitch, where the hitch may or may not be included, which allows modules that perform sweeping, aerating, dethatching, or spreading operations to be interchanged. Modular units—when imported with one or more lawn grooming modules—with a fully assembled net weight (*i.e.,* without packing, additional weights, or accessories) of 200 pounds or less when including a single module, are included in the scope of the order. Modular unit chassis, imported without a lawn grooming module and with a fully assembled net weight (*i.e.,* without packing, additional weights, or accessories) of 125 pounds or less, are also covered by the scope of the order. When imported separately, modules that are designed to perform subject lawn grooming functions (*i.e.,* sweeping, aerating, dethatching, or spreading), with a fully assembled net weight (*i.e.,* without packing, additional weights, or accessories) of 75 pounds or less, and that are imported with or without a hitch, are also covered by the scope.

Lawn groomers, assembled or unassembled, are covered by this order. For purposes of this order, ''unassembled lawn groomers'' consist of either (1) all parts necessary to make a fully assembled lawn groomer, or (2) any combination of parts, constituting a less than complete, unassembled lawn groomer, with a minimum of two of the following ''major components'':

(1) An assembled or unassembled brush housing designed to be used in a lawn sweeper, where a brush housing is defined as a component housing the brush assembly, and consisting of a wrapper which covers the brush assembly and two end plates attached to the wrapper;

(2) A sweeper brush;

(3) An aerator or dethatcher weight tray, or similar component designed to allow weights of any sort to be added to the unit;

(4) A spreader hopper;

(5) A rotating spreader plate or agitator, or other component designed for distributing media in a lawn spreader;

(6) Dethatcher tines;

(7) Aerator spikes, plugs, or other aerating component; or

(8) A hitch, defined as a complete hitch assembly comprising of at least the following two major hitch components, tubing and a hitch plate regardless of the absence of minor components such as pin or fasteners. Individual hitch component parts, such as tubing, hitch plates, pins or fasteners are not covered by the scope.

The major components or parts of lawn groomers that are individually covered by this order under the term ''certain parts thereof'' are: (1) Brush housings, where the wrapper and end plates incorporating the brush assembly may be individual pieces or a single piece; and (2) weight trays, or similar components designed to allow weights of any sort to be added to a dethatcher or an aerator unit.

The scope of this order specifically excludes the following: (1) Agricultural implements designed to work (*e.g.,* churn, burrow, till, *etc.*) soil, such as cultivators, harrows, and plows; (2) lawn or farm carts and wagons that do not groom lawns; (3) grooming products incorporating a motor or an engine for the purpose of operating and/or propelling the lawn groomer; (4) lawn groomers that are designed to be hand held or are designed to be attached directly to the frame of a vehicle, rather than towed; (5) ''push'' lawn grooming products that incorporate a push handle rather than a hitch, and which are designed solely to be manually operated; (6) dethatchers with a net assembled weight (*i.e.,* without packing, additional weights, or accessories) of more than 100 pounds, or lawn groomers—sweepers, aerators, and spreaders—with a net fully-assembled weight (*i.e.,* without packing, additional weights, or accessories) of more than 200 pounds; and (7) lawn rollers designed to flatten grass and turf, including lawn rollers which incorporate an aerator component (*e.g.,* ''drum-style'' spike aerators).

The lawn groomers that are the subject of this order are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.80.0010, 8432.90.0030, 8432.90.0080, 8479.89.9896, 8479.89.9897, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product included in this order.

Countervailing Duty Order

On July 27, 2009, the ITC notified the Department of its final determination, pursuant to section 705(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured as a result of subsidized imports of lawn groomers from the PRC. As a result of the ITC's final determination, in accordance with section 706(a) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, countervailing duties on all unliquidated entries of lawn groomers from the PRC entered, or withdrawn from warehouse, for consumption on or after November 24, 2008, the date on which the Department published its preliminary affirmative countervailing duty determination in the **Federal Register**, and before March 24, 2009, the date on which the Department instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. *See Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination*, 73 FR 70971 (November 24, 2008). Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of lawn groomers made on or after March 24, 2009, and prior to the date of publication of the ITC's final determination in the **Federal Register**, are not liable for the assessment of

countervailing duties, due to the Department's discontinuation, effective March 24, 2009, of the suspension of liquidation.

In accordance with section 706 of the Act, the Department will direct CBP to reinstitute the suspension of liquidation for lawn groomers from the PRC, effective the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise, except for subject merchandise entered by Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited, whose net subsidy rate is *de minimis* and, hence, is excluded from this order. This exclusion will apply only to subject merchandise both produced and exported by Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited. On or after the date of publication of the ITC's final injury determination in the **Federal Register**, CBP must require,[1] at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below:

Exporter/manufacturer	Net subsidy rate (percent)
Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited[a]	[a]0.56
Jiashan Superpower Tools Co., Ltd.	13.30
Maxchief Investments Ltd.	264.98
Qingdao EA Huabang Instrument Co., Ltd.	264.98
Qingdao Hundai Tools Co., Ltd.	264.98
Qingdao Taifa Group Co., Ltd.	264.98
World Factory, Inc.	264.98
All Others	13.30

[a] *De minimis.*

This notice constitutes the countervailing duty order with respect to lawn groomers from the PRC pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the main Commerce building, for copies of an updated list of countervailing duty orders currently in effect.

[1] With the exception of Princeway Furniture (Dong Guan) Co., and Princeway Limited whose net subsidy was *de minimis*, and, hence, is excluded from this order. This exclusion will apply only to subject merchandise both produced and exported by Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited.

This countervailing duty order is issued and published in accordance with sections 705(c)(2), 706(a) and 777(i)(1) of the Act, and 19 CFR 351.211.

Dated: July 29, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–18595 Filed 7–31–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 51–2008]

Foreign–Trade Zone 82, Application for Subzone Authority, ThyssenKrupp Steel and Stainless USA, LLC, Notice of Public Hearing and Reopening of Comment Period

A public hearing will be held on the application for subzone authority at the ThyssenKrupp Steel and Stainless USA, LLC (ThyssenKrupp) facility in Calvert, Alabama (73 FR 58535–58536, 10/7/08). The Commerce examiner will hold the public hearing on September 10, 2009 at 1:00 p.m., at the Department of Commerce, Room 4830, 1401 Constitution Ave., NW, Washington, DC 20230. Interested parties should indicate their intent to participate in the hearing and provide a summary of their remarks no later than September 4, 2009.

The comment period for the case referenced above is being reopened through September 25, 2009, to allow interested parties additional time in which to comment. Rebuttal comments may be submitted during the subsequent 15-day period, until October 13, 2009. Submissions (original and one electronic copy) shall be addressed to the Board's Executive Secretary at: Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW, Washington, DC 20230.

For further information, contact Elizabeth Whiteman at Elizabeth__Whiteman@ita.doc.gov or (202) 482–0473.

Dated: July 24, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–18475 Filed 7–31–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-year (''Sunset'') Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year review (''Sunset Review'') of the antidumping duty order listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-year Review* which covers the same order.

EFFECTIVE DATE: August 3, 2009.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the Initiation of Review section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3 - *Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998). Please note that in the Initiation of Five-year (''Sunset'') Review notice that published on July 1, 2009 (74 FR 31412), the Department inadvertently initiated a Sunset Review for the antidumping duty order on Stainless Steel Wire Rod from Sweden (A–401–806). This order was revoked effective April 23, 2007. Accordingly, the Department hereby retracts its initiation of a Sunset Review of the antidumping duty order on Stainless Steel Wire Rod from Sweden.

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty order:

DOC Case No.	ITC Case No.	Country	Product	Department Contact
A–357–405	731–TA–208	Argentina	Barbed Wire & Barbless Wire Strand (3rd Review)	Dana Mermelstein (202) 482–1391

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists,

available to the public on the Department's Internet Web site at the following address:

≥http://ia.ita.doc.gov/sunset/.'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103 (c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order–specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order–specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: July 23, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–18477 Filed 7–31–09; 8:45 am]

BILLING CODE 3510–DS–S

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XQ69

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of two public meetings.

SUMMARY: Two meetings will be held to review a new assessment for petrale sole and develop control rules for specifying scientific uncertainty buffers in acceptable biological catch (ABC) specifications for groundfish and coastal pelagic species (CPS). The first meeting will be attended by the Groundfish Subcommittee of the Pacific Fishery Management Council's Scientific and Statistical Committee (SSC) to review a new assessment for petrale sole. Further, the SSC Groundfish Subcommittee will consider the scientific basis for considering estimated or alternative proxy target biomass levels or fishing mortality rates for petrale sole and other west coast flatfish stocks. The second meeting will be attended by the Groundfish and CPS Subcommittees of the SSC to develop new control rules for deciding scientific uncertainty buffers for groundfish and CPS species compliant with new National Standard 1 guidelines. Both meetings are work sessions which are open to the public.

DATES: The SSC Groundfish Subcommittee meeting to review the new petrale sole assessment will be held beginning at 8:30 a.m., Monday, August 31, 2009 and will end at 5:30 p.m. or as necessary to complete business.The SSC Groundfish and CPS Subcommittees meeting to develop control rules for scientific uncertainty buffers for groundfish and CPS species will be held beginning at 8:30 a.m., Tuesday, September 1, 2009. The meeting will continue on Wednesday, September 2, 2009 beginning at 8:30 a.m. The meeting will end at 5:30 p.m. each day, or as necessary to complete business.

ADDRESSES: Both SSC Subcommittee meetings will be held at the NOAA Western Regional Center's Sand Point Facility, Alaska Fisheries Science Center, Building 4, Traynor Room, 7600 Sand Point Way N.E., Seattle, WA 98115–6349; telephone: (206) 526–6548.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the first SSC Groundfish Subcommittee meeting is to review a new draft stock assessment for petrale sole and any other pertinent information, work with the Stock Assessment Team to make necessary revisions, and ultimately produce an SSC report for use by the Council family and other interested persons.

The purpose of the second SSC Groundfish and CPS Subcommittees meeting is to review groundfish and CPS assessments, requested analyses, and any other pertinent information to develop new control rules for deciding scientific uncertainty buffers for ABC specifications for groundfish and CPS species. An SSC report will ultimately be produced incorporating recommendations and considerations developed by the two SSC Subcommittees.

No management actions will be decided at these SSC Subcommittee meetings. The SSC Subcommittees' role will be development of recommendations and reports for consideration by the SSC and the Council at its September meeting in Foster City, CA.

Entry to the NOAA Western Regional Center's Sand Point Facility requires visitors to show a valid picture ID and register with security. A visitor's badge, which must be worn while at the NOAA Western Regional Center's Facility, will be issued to non-Federal employees participating in the meeting. Non-U.S. citizens will require advance security clearance and should call (206) 526–6548 at least 2 days prior to the meeting date.

Although non-emergency issues not contained in the meeting agendas may come before the meeting participants for discussion, those issues may not be the subject of formal action during these meetings. SSC Subcommittee 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 meeting participants' 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 Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: July 29, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–18433 Filed 7–31–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XQ67

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of its Dolphin Wahoo Advisory Panel in North Charleston, SC. See **SUPPLEMENTARY INFORMATION**.

DATES: The meeting will take place August 19–20, 2009. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 5265 International Boulevard, North Charleston, SC; telephone: (843) 308–9330.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC, 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Members of the Dolphin Wahoo Advisory Panel will meet from 3:30 p.m. until 5 p.m. on August 19, 2009, and from 8:30 a.m. until 5 p.m. on August 20, 2009.

The Advisory Panel will review actions and management alternatives in the draft Comprehensive Annual Catch Limit Amendment for the South Atlantic Region. The amendment is being prepared in order to meet the requirements of the Reauthorized Magnuson-Stevens Act, including the establishment of Maximum Sustainable Yield (MSY), Allowable Biological Catch (ABC) and Overfishing Levels (OFLs) as recommended by South Atlantic Fishery Management Council's Scientific and Statistical Committee (SSC), Annual Catch Limits (ACLs), Annual Catch Targets (ACTs) and Accountability Measures (AMs) for species currently not listed as undergoing overfishing, including dolphin and wahoo. The amendment will also include alternatives addressing the sale of dolphin from for-hire vessels and minimum size limits for dolphin caught in federal waters off the coasts of North Carolina and South Carolina and in the Mid-Atlantic and New England areas.

The AP will provide recommendations to the Council regarding the alternatives in the draft amendment. The Amendment is being prepared by the South Atlantic Fishery Management Council, with input from the Mid-Atlantic and New England Councils for decisions relative to dolphin and wahoo.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: July 29, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–18412 Filed 7–31–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XQ66

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of its King and Spanish Mackerel (Mackerel) Advisory Panel in North Charleston, SC. See **SUPPLEMENTARY INFORMATION**.

DATES: The meeting will take place August 18–19, 2009. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 5265 International Boulevard, North Charleston, SC; telephone: (843) 308–9330.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Members of the Mackerel Advisory Panel will meet from 1 p.m. until 5 p.m. on August 18, 2009, and from 8:30 a.m. until 3 p.m. on August 19, 2009.

The Advisory Panel will review actions and management alternatives in draft Amendment 18 to the Fishery Management Plan (FMP) for the Coastal Migratory Pelagic Resources (Mackerels) in the Gulf of Mexico and South Atlantic Region. The joint amendment is being prepared in order to meet the mandates of the Reauthorized Magnuson-Stevens Act, including the establishment of Maximum Sustainable Yield (MSY), Allowable Biological Catch (ABC) and Overfishing Levels (OFLs) as recommended by both the Gulf of Mexico Fishery Management Council's Scientific and Statistical Committee (SSC) and the South Atlantic Council's SSC, Annual Catch Limits (ACLs), Annual Catch Targets (ACTs) and Accountability Measures (AMs) for Gulf Migratory Group king mackerel, Gulf Migratory Group Spanish mackerel, South Atlantic Migratory Group king mackerel, South Atlantic Migratory Group Spanish Mackerel, and cobia in both the Gulf of Mexico and South Atlantic. The amendment also includes alternatives for establishing a Gulf Migratory Group and South Atlantic Migratory Group for cobia, additions to Framework procedures that would include stock assessments through the Southeast Data, Assessment, and Review (SEDAR) stock assessment program, OFLs, ABCs, ACLs and possibly Annual Catch Targets (ACTs) to the list of items that can be modified through Framework actions, and an alternative to prohibit the sale of recreational bag limit Atlantic Migratory Group king mackerel.

The AP will provide recommendations to the Council regarding the alternatives in the draft amendment. The Gulf of Mexico Fishery Management Council is taking the lead in development of joint Amendment 18.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: July 29, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–18410 Filed 7–31–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XQ68

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the ABC Control Rule Workgroup.

DATES: The meeting will convene at 1 p.m. on Monday, August 17, 2009 and conclude by 3 p.m. on Tuesday, August 18, 2009.

ADDRESSES: The meeting will be held at the Quorum, 700 N. Westshore Blvd, Tampa, FL 33609, telephone: (813) 289–8200.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The ABC Control Rule Workgroup will meet to begin the process of developing a structured decision making framework to assist in assessing scientific uncertainty, the probability of overfishing, and acceptable levels of risk when setting acceptable biological catch (ABC). The working group includes Council members, Council staff, NOAA staff, and members of the Scientific and Statistical Committee (SSC). Under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the SSC is charged with setting ABC levels for managed stocks that account for scientific uncertainty in the estimate of the overfishing limit (OFL) and any other scientific uncertainty. Determining an acceptable level of risk of overfishing when setting ABC is a policy issue that requires input from both scientists and managers. The meeting will include discussions on the Magnuson-Stevens Act National Standard 1 guidelines, sources of scientific uncertainty, approaches to developing control rules for setting ABC including decision trees and analytical methods, and scheduling of future actions by the working group.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630.

Although other non-emergency issues not on the agenda may come before the ABC Control Rule Workgroup 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 of the ABC Control Rule Workgroup will be

restricted to those issues specifically identified in the agenda 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 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 Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: July 29, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–18403 Filed 7–31–09; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0022]

Downeast Concepts, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Downeast Concepts, Inc., containing a civil penalty of $30,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 18, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0022, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: M. Reza Malihi, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7733 or Neal S. Cohen, Trial Attorney, (same address); telephone (301) 504–7504.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: July 28, 2009.

Todd A. Stevenson,

Secretary.

United States of America—Consumer Product Safety Commission

In the Matter of Downeast Concepts, Inc., CPSC Docket No. 09–C0022.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Downeast Concepts, Inc. (''*Downeast*'') and the staff (''*Staff*'') of the United States Consumer Product Safety Commission (''*CPSC*'' or the ''*Commission*'') enter into this Settlement Agreement (''*Agreement*''). The Agreement and the incorporated attached Order (''*Order*'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''*CPSA*'').

3. Downeast is a corporation organized and existing under the laws of Maine, with its principal offices located in Yarmouth, Maine. At all times relevant hereto, Downeast imported and/or sold painted metal water bottles.

Staff Allegations

4. Between February 2006 and February 2007, Downeast imported into the United States about 18,000 units of metal water bottles, marketed under the ''Backyard and Beyond'' brand and painted with assorted animal and insect graphics on the exterior (Model Numbers: 60442, 60448, 67402, 67404, 67442, 67444, 67742, 67744, 67746 and 67748 (''*Bottle(s)*'')). Downeast distributed most of the subject products to major retailers, gift shops, convenience stores, mass merchandise and drug stores nationwide from February 2006 through January 2008 and said products were then sold for about $8.00 per unit.

5. The Bottles are ''consumer product(s),'' and, at all times relevant hereto, Downeast was a ''manufacturer'' of those consumer product(s), which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(3), (5), (8), and (11), 15 U.S.C. §§ 2052(a)(3), (5), (8), and (11).

6. The Bottles are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 CFR part 1303 (the ''*Ban*''). Under the Ban, toys and other children's articles must not bear ''lead-containing paint,'' defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 CFR 1303.2(b)(1).

7. Downeast reported to CPSC on January 25, 2008 that recent testing of samples of the Bottles by an independent laboratory had demonstrated that various colors of paints used to create the designs on the outside surface of the Bottles contained a total lead content ranging from 0.07 percent to as high as 59.78 percent. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban.

8. On March 25, 2008, the Commission and Downeast announced a consumer-level recall of about 18,000 units of the Bottles because ''Surface paint on the metal water bottles contains excessive levels of lead, violating the Federal lead paint standard.''

9. Although Downeast reported no incidents or injuries associated with the Bottles, it failed to take adequate action to ensure that none would bear or contain lead-containing paint, thereby creating a risk of lead poisoning and adverse health effects to children.

10. The Bottles constitute ''banned hazardous products'' under CPSA section 8 and the Ban, 15 U.S.C. 2057 and 16 CFR 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

11. Between February 2006 and January 2008, Downeast manufactured for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the aforesaid banned hazardous Bottles, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. 2068(a)(1). Downeast committed these prohibited acts ''knowingly,'' as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

12. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Downeast is subject to civil penalties for the aforementioned violations.

Downeast's Responsive Allegations

13. Downeast denies the Staff's allegations set forth above that Downeast knowingly violated the CPSA.

Agreement of the Parties

14. Under the CPSA, the Commission has jurisdiction over this matter and over Downeast.

15. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Downeast, or a determination by the Commission, that Downeast has knowingly violated the CPSA.

16. In settlement of the Staff's allegations, Downeast shall pay a civil penalty in the amount of thirty thousand dollars ($30,000.00). The civil penalty shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury.

17. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in

16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the **Federal Register**.

18. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Downeast knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (3) a determination by the Commission of whether Downeast failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

19. The Commission may publicize the terms of the Agreement and Order.

20. The Agreement and Order shall apply to, and be binding upon, Downeast and each of its successors and assigns.

21. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Downeast and each of its successors and assigns to appropriate legal action.

22. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

23. If any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Downeast agree that severing the provision materially affects the purpose of the Agreement and Order.

Downeast Concepts, Inc.

Dated: 3/18/09.

By: _____

Frederick H. Palmer,
President, Downeast Concepts, Inc., 86 Downeast Drive, Yarmouth, ME 04096.

Dated: 3/20/09.

By: _____

David W. Bertoni, Esq.,
Brann & Isaacson, 184 Main Street, P.O. Box 3070, Lewiston, ME 04243, Counsel for Downeast Concepts, Inc.

U.S. Consumer Product Safety Commission Staff.

Cheryl A. Falvey,
General Counsel, Office of the General Counsel.

Ronald G. Yelenik,
Assistant General Counsel, Office of the General Counsel.

Dated: 4/14/09.

By: _____

M. Reza Malihi,
Trial Attorney, Office of the General Counsel.

By: _____

Neal S. Cohen,
Trial Attorney, Office of the General Counsel.

United States of America—Consumer Product Safety Commission

In the Matter of Downeast Concepts, Inc., CPSC Docket No. 09–C0022.

Order

Upon consideration of the Settlement Agreement entered into between Downeast Concepts, Inc. (''*Downeast*'') and the U.S. Consumer Product Safety Commission (''*Commission*'') staff, and the Commission having jurisdiction over the subject matter and over Downeast, and it appearing that the Settlement Agreement and Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that Downeast shall pay a civil penalty in the amount of thirty thousand dollars ($30,000.00). The civil penalty shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Downeast to make the foregoing payment when due, interest on the outstanding balance shall accrue and be paid by Downeast at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the *8th* day of *July,* 2009.

By Order of the Commission.

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–18520 Filed 7–31–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0026]

First Learning Company Limited, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with First Learning Company Limited, containing a civil penalty of $50,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 18, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0026, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: M. Reza Malihi, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7733.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: July 28, 2009.

Todd A. Stevenson,
Secretary.

United States of America—Consumer Product Safety Commission

In the Matter of First Learning Company Limited CPSC Docket No. *09–C0026*.

Settlement Agreement and Order

1. In accordance with 16 CFR 1118.20, First Learning Company Limited (''*First Learning''*) and the staff (''*Staff''*) of the United States Consumer Product Safety Commission (''*CPSC''* or the ''*Commission''*) enter into this Settlement Agreement (''*Agreement''*). The Agreement and the incorporated attached Order (''*Order''*) settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''*CPSA''*).

3. First Learning is a corporation organized and existing under the laws of Hong Kong, People's Republic of China (PRC), with its principal offices located in Kowloon, Hong Kong, PRC. First Learning's network of manufacturer representatives conduct business on its behalf through offices located in the United States. At all times relevant hereto, First Learning manufactured and/or sold toys and other children's products, among other merchandise.

Staff Allegations

4. Between April 2006 and August 2006, First Learning manufactured in China for sale in the United States about 9,400 units of certain ''Soldier Bear'' toys, including the Soldier Bear Wooden Pull-Along Learning Blocks Wagon, style number 6320, UPC code number 834162002158; the Soldier Bear Time Teacher, style #6231, UPC #834162002646; and the Soldier Bear Wooden Riding Horse, style number 6349, and UPC code number 834162003698 (collectively, ''*Soldier Bear Toy(s)''*). From August 2006 through October 2007, First Learning offered the Soldier Bear Toys for

sale or sold them to a retailer, which, in turn, offered for sale or sold these products to consumers.

5. Beginning in or before October 2006, First Learning manufactured in China for sale in the United States about 15,000 units of certain Big Wooden Learning Blocks and Jumbo Wooden Train Sets. The Big Wooden Learning Blocks consisted of 30 or 60 block pieces, sold as either the Big Wooden Learning Blocks (30 pieces), style number 7210, UPC code number 14559211, or the Big Wooden Learning Blocks (60 pieces), style number 7211, UPC code number 14559235 (collectively, the ''*Learning Block(s)*''). The Jumbo Wooden Train Sets consisted of 70 wooden pieces, sold as style number 13275A, and UPC code number 14217340 (''*Train Set(s)*''). From October 2006 through November 2007, First Learning offered the Learning Blocks and Train Sets for sale or sold them to a retailer, which, in turn, offered for sale or sold these products to consumers.

6. The Soldier Bear Toys, Learning Blocks, and Train Sets are ''consumer product(s),'' and, at all times relevant hereto, First Learning was a ''manufacturer'' of those consumer product(s), which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(3), (5), (8), and (11), 15 U.S.C. §§ 2052(a)(3), (5), (8), and (11).

7. The Soldier Bear Toys, Learning Blocks, and Train Sets are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 CFR part 1303 (the ''*Ban*''). Under the Ban, toys and other children's articles must not bear ''lead-containing paint,'' defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 CFR 1303.2(b)(1).

8. In October and November 2007, the Staff obtained the results of testing conducted by an independent testing laboratory, showing that multiple samples of the Soldier Bear Toys failed to comply with the Ban. The testing demonstrated that the red surface coating on certain components of the Soldier Bear Wooden Pull-Along Learning Blocks Wagon contained a total lead content of 1,400 mg/kg; that the black, green, orange, and red surface coatings on certain components of the Soldier Bear Time Teacher contained a total lead content from 820 mg/kg to 13,000 mg/kg; and that the orange/yellow surface coating on the Soldier Bear Wooden Riding Horse contained a total lead content of 18,000 mg/kg. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban. First Learning learned of these failing test results shortly after completion of this testing.

9. On October 15, 2007, the Staff obtained samples of the Learning Blocks and Train Sets from a retail store. In November 2007, the staff tested these samples. The testing demonstrated that the orange paint on a component of the Big Wooden Learning Blocks (30 pieces) contained a total lead content of 2.633 percent; that orange paint on a component of the Big Wooden Learning Blocks (60 pieces) contained a total lead content of 0.07 percent; and that yellow paint on a component of the Train Set contained a total lead content of 0.065 percent. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban. Through contacts with the retailer and/or the staff, First Learning learned of these failing test results shortly after completion of this testing.

10. On December 19, 2007, the Commission and the retailer announced a consumer-level recall of products, including, but not limited to, about 9,400 Soldier Bear Toys, because ''[t]he surface paint on the toys contains excessive levels of lead, violating the Federal lead paint standard.''

11. On January 24, 2008, the Commission and the retailer announced a consumer-level recall of about 15,000 units of the Learning Blocks and Train Sets because ''[s]urface paint on some pieces of the toys contains excessive levels of lead, violating the Federal lead paint standard.''

12. Although no incidents or injuries were reported by First Learning or the retailers in connection with the Soldier Bear Toys, Learning Blocks and Train Sets, First Learning failed to take adequate action to ensure that none would bear or contain lead-containing paint, thereby creating a risk of lead poisoning and adverse health effects to children.

13. The Soldier Bear Toys, Learning Blocks and Train Sets constitute ''banned hazardous products'' under CPSA section 8 and the Ban, 15 U.S.C. 2057 and 16 CFR 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

14. Between April 2006 and November 2007, First Learning sold, manufactured for sale, offered for sale, or distributed in commerce in the United States, or caused one or more of such acts, with respect to the Soldier Bear Toys, Learning Blocks and Train Sets, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. 2068(a)(1). First Learning committed these prohibited acts ''knowingly,'' as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

15. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, First Learning is subject to civil penalties for the aforementioned violations.

First Learning Response

16. First Learning denies the Staff's allegations set forth above that First Learning knowingly violated the CPSA.

Agreement of the Parties

17. Under the CPSA, the Commission has jurisdiction over this matter and over First Learning.

18. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by First Learning, or a determination by the Commission, that First Learning has knowingly violated the CPSA.

19. In settlement of the Staff's allegations, First Learning shall pay a civil penalty in the amount of fifty thousand dollars ($50,000.00). The civil penalty shall be paid in three (3) installments as follows: $10,000.00 shall be paid within thirty (30) calendar days of service of the Commission's final Order accepting the Agreement; $15,000.00 shall be paid within one hundred and twenty (120) calendar days of service of the Commission's final Order accepting the Agreement; and $25,000.00 shall be paid within one hundred and eighty (180) calendar days of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury.

20. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the **Federal Register**.

21. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, First Learning knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (3) a determination by the Commission of whether First Learning failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

22. The Commission may publicize the terms of the Agreement and Order.

23. The Agreement and Order shall apply to, and be binding upon, First Learning and each of its successors and assigns.

24. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject First Learning to appropriate legal action.

25. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

26. If any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and First Learning agree that severing the provision materially affects the purpose of the Agreement and Order.

First Learning Company Limited.

Dated: 12/10/2008.

By: _____

Leung Suk Yue,

Secretary and Director, First Learning Company Limited, Room 401, 4th Floor, Block A, Sun Fung Centre, 88 Kwok Shui Road, Kwai Hing, Hong Kong.

Dated: 12/12/2008.

By: _____

Bob Casey, Esq.,

1205 NW 25th Avenue, Portland, OR 97210–2422, Counsel for First Learning Company Limited.

U.S. Consumer Product Safety Commission Staff.

Cheryl A. Falvey,

General Counsel, Office of the General Counsel.

Ronald G. Yelenik,

Assistant General Counsel, Division of Compliance, Office of the General Counsel.

Dated: 3/6/09.

By: _____

M. Reza Malihi,

Trial Attorney, Division of Compliance, Office of the General Counsel.

United States of America—Consumer Product Safety Commission

In the Matter of First Learning Company Limited, CPSC Docket No. *09–C0026.*

Order

Upon consideration of the Settlement Agreement entered into between First Learning Company Limited (''*First Learning''*) and the U.S. Consumer Product Safety Commission (''*Commission''*) staff, and the Commission having jurisdiction over the subject matter and over First Learning, and it appearing that the Settlement Agreement and Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that First Learning shall pay a civil penalty in the amount of fifty thousand dollars ($50,000.00). The civil penalty shall be paid in three (3) installments as follows: $10,000.00 shall be paid within thirty (30) calendar days of service of the Commission's final Order accepting the Agreement; $15,000.00 shall be paid within one hundred and twenty (120) calendar days of service of the Commission's final Order accepting the Agreement; and $25,000.00 shall be paid within one hundred and eighty (180) calendar days of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury. Upon the failure of First Learning to make any of the foregoing payments when due, (i) the entire amount of the civil penalty shall become due and payable, and (ii) interest on the outstanding balance shall accrue and be paid by First Learning at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the *8th* day of *July,* 2009.

By Order of the Commission.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–18514 Filed 7–31–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0027]

A&A Global Industries, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with A&A Global Industries, Inc., containing a civil penalty of $40,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 18, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0027, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: M. Reza Malihi, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7733 or Renee K. Haslett, Trial Attorney, (same address); telephone (301) 504–7673.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: July 28, 2009.

Todd A. Stevenson,

Secretary.

United States of America, Consumer Product Safety Commission

In the Matter of A&A Global Industries, Inc.

Settlement Agreement and Order

1. In accordance with 16 CFR 1118.20, A&A Global Industries, Inc. (''*A&A*'') and the staff (''*Staff*'') of the United States Consumer Product Safety Commission (''*CPSC*'' or the ''*Commission*'') enter into this Settlement Agreement (''*Agreement*''). The Agreement and the incorporated attached Order (''*Order*'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''*CPSA*'').

3. A&A is a corporation organized and existing under the laws of Maryland, with its principal office located in Cockeysville, Maryland. At all times relevant hereto, A&A imported and/or distributed in commerce toy jewelry.

Staff Allegations

4. From approximately January 2005 to March 2007, A&A imported and/or distributed about 3.95 million units of children's ''Groovy Grabber'' bracelets (''Bracelets''), which ultimately were sold to consumers in vending machines located in malls, discount, department and grocery stores nationwide from November 2005 to March 2007 for $.25 per unit.

5. The Bracelets are ''consumer product(s),'' and, at all times relevant hereto, A&A was an ''importer'' and/or ''distributor'' of those consumer product(s), which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (7), (8), (9), and (11), 15 U.S.C. 2052(a)(5), (7), (8), (9), and (11).

6. The Bracelets are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 CFR Part 1303 (the ''*Ban*''). Under the Ban, toys and other children's articles must not bear ''lead-containing paint,'' defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 CFR 1303.2(b)(1)

7. On February 2, 2007, the Staff obtained Bracelet samples from one of A&A's customers based in New York, which subsequently were tested at the CPSC Laboratory for the presence of lead. The test results demonstrated that the yellow paint on certain Bracelet samples contained a total lead content from 7.114 percent to 7.742 percent. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban.

8. On April 3, 2007, the Commission and A&A announced a consumer-level recall of about four million units of the Bracelets because ''[t]he paint on the metallic band beneath the decorative cover contains high levels of lead. Lead is toxic if ingested by young children and can cause adverse health effects.''

9. Although A&A reported no incidents or injuries associated with the Bracelets, it failed to take adequate action to ensure that none would bear or contain lead-containing paint, thereby creating a risk of lead poisoning and adverse health effects to children.

10. The Bracelets constitute ''banned hazardous products'' under CPSA section 8 and the Ban, 15 U.S.C. 2057 and 16 CFR 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating

materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

11. From January 2005 to March 2007, A&A sold, manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the aforesaid banned hazards Bracelets in violation of section 19(a)(1) of the CPSA, 15 U.S.C. 2068(a)(1) (which acts at the time were in violation of 19(a)(2) of the CPSA, 15 U.S.C. 2068(a)(2), as the Consumer Product Safety Improvement Act of 2008, Public Law 110–314, had yet to be enacted). A&A committed these prohibited acts ''knowingly,'' as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

12. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, A&A is subject to civil penalties for the aforementioned violations.

A&A's Responsive Allegations

13. A&A contests and denies the Staff's allegations set forth in paragraphs 4 through 12.

14. A&A specifically denies that it failed to take adequate action to ensure that the Bracelets did not bear lead-containing paint exceeding the permissible limits set forth in the Ban. A&A's compliance program, at the time of the subject recall met or exceeded industry standards for ensuring compliance with the permissible lead limits set forth in the Ban. Likewise, A&A asserts that it acted responsibly and reasonably to respond to the Commission's concern regarding the Bracelets, including its prompt and voluntary implementation of a successful product recall of the Bracelets in cooperation with the Commission.

15. A&A specifically denies that any alleged violation of the CPSA occurred ''knowingly,'' as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

16. A&A has entered into the Agreement for settlement purposes only, to avoid incurring additional expenses and the distraction of litigation. Accordingly, the Agreement and Order do not constitute, and are not evidence of, any fault or wrongdoing on the part of A&A.

Agreement of the Parties

17. Under the CPSA, the Commission has jurisdiction over this matter and over A&A.

18. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by A&A, or a determination by the Commission, that A&A has knowingly violated the CPSA.

19. In settlement of the Staff's allegations, A&A shall pay a civil penalty in the amount of forty thousand dollars ($40,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury.

20. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the **Federal Register**.

21. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, A&A knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (3) a determination by the Commission of whether A&A failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

22. The Commission may publicize the terms of the Agreement and Order.

23. The Agreement and Order shall apply to, and be binding upon, A&A and each of its successors and assigns.

24. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject A&A to appropriate legal action.

25. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

26. If any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and A&A agree that severing the provision materially affects the purpose of the Agreement and Order.

A&A Global Industries, Inc.

Dated: 4/23/09.

By: _____

Eugene Lipman,

Vice President of Finance and Administration, A&A Global Industries, Inc., 17 Stenersen Lane, Cockeysville, MD 21030.

Dated: 4/27/09.

By: _____

Kathleen M. Sanzo, Esq.,

Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue, NW., Washington, DC 20004, Counsel for A&A Global Industries, Inc.

U.S. Consumer Product Safety Commission Staff

Cheryl A. Falvey,

General Counsel, Office of the General Counsel.

Ronald G. Yelenik,

Assistant General Counsel, Office of the General Counsel.

Dated: 5/12/09.

By: _____

By: _____

M. Reza Malihi,

Trial Attorney, Renee K. Haslett, Trial Attorney, Division of Compliance, Office of the General Counsel.

In the Matter of A&A Global Industries, Inc.

Order

Upon consideration of the Settlement Agreement entered into between A&A Global Industries, Inc. (''*A&A*'') and the U.S. Consumer Product Safety Commission (''*Commission*'') staff, and the Commission having jurisdiction over the subject matter and over A&A, and it appearing that the Settlement Agreement and Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that A&A shall pay a civil penalty in the amount of forty thousand dollars ($40,000.00). The civil penalty shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of A&A to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by A&A at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the *8th* day of *July* 2009.

By Order of the Commission.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–18513 Filed 7–31–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0021]

Raymond Geddes & Co., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Raymond Geddes & Co., containing a civil penalty of $40,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 18, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0021, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Sean Ward, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7602.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: July 28, 2009.

Todd A. Stevenson,

Secretary.

United States of America—Consumer Product Safety Commission

In the Matter of Raymond Geddes & Co., Provisional Acceptance of a Settlement Agreement and Order CPSC Docket No. 09–C0021.

Settlement Agreement and Order

1. In accordance with 16 CFR 1118.20, Raymond Geddes & Co. (''*Geddes''*) and the staff (''*Staff''*) of the United States Consumer Product Safety Commission (''*CPSC''* or the ''*Commission''*) enter into this Settlement Agreement (''*Agreement''*). The Agreement and the incorporated attached Order (''*Order''*) settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent Federal regulatory agency established pursuant to the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''*CPSA''*). The Commission is responsible for the enforcement of the CPSA.

3. Geddes is a corporation organized and existing under the laws of Maryland, with its principal offices located in Baltimore, Maryland. At all times relevant hereto, Geddes imported, distributed and sold pencil pouches to school supply distributors.

Staff Allegations

4. From September 1997 through October 2007, Geddes imported and sold about 84,200 units of pencil pouches, consisting of ''Stuff Keepers'' pencil pouches, Style #63525, and ''Bear Pencil Pouches,'' Style #67221 (collectively, the ''Children's Pencil Pouches''). The Children's Pencil Pouches were supplied by and purchased from Getco Toys Nanjing Co., LTD (''Getco''), of China. Geddes sold the Children's Pencil Pouches to school supply distributors nationwide.

5. The Children's Pencil Pouches are ''consumer product(s),'' and, at all times relevant hereto, Geddes was a ''manufacturer'' of those consumer product(s), which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(3), (5), (8), and (11), 15 U.S.C. 2052(a)(3), (5), (8), and (11).

6. The Children's Pencil Pouches are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 CFR part 1303 (the ''Ban''). Under the Ban, toys and other children's articles must not bear or contain ''lead-containing paint,'' defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 CFR 1303.2(b)(1).

7. On October 24, 2007, Intertek Testing Services (''Intertek'') conducted follow-up testing for total lead content on samples of metal zippers on the Stuff Keepers pencil pouches. The test results demonstrated that the surface paint on two of the metal zipper samples had a total lead content from 0.277 percent to 0.314 percent. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban. On October 30, 2007, Intertek tested the zipper pull on a Bear Pencil Pouch sample for the presence of lead. The test result demonstrated that the surface paint on the sample had a total lead content above the permissible 0.06 percent limit set forth in the Ban.

8. On November 21, 2007, the Commission and Geddes announced a consumer-level recall of about 84,200 units of the Children's Pencil Pouches because ''[t]he paint on the pencil pouches' zipper pulls contains excessive levels of lead, violating the Federal lead paint standard.''

9. Although Geddes reported no incidents or injuries from the Children's Pencil Pouches, it failed to take adequate action to ensure that they did not bear or contain lead-containing paint, thereby creating a risk of lead poisoning and adverse health effects to children.

10. The Children's Pencil Pouches constitute ''banned hazardous products'' under CPSA section 8 and the Ban, 15 U.S.C. 2057 and 16 CFR 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

11. From September 1997 through October 2007, Geddes sold, manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the Children's Pencil Pouches, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. 2068(a)(1). Geddes committed these prohibited acts ''knowingly,'' as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

12. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Geddes is subject to civil penalties for the aforementioned violations.

Geddes Response

13. Geddes denies the Staff's allegations set forth above that Geddes knowingly violated the CPSA.

Agreement of the Parties

14. Under the CPSA, the Commission has jurisdiction over this matter and over Geddes.

15. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Geddes, or a determination by the Commission, that Geddes has knowingly violated the CPSA.

16. In settlement of the Staff's allegations, Geddes shall pay a civil penalty in the amount of forty thousand dollars ($40,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

17. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the **Federal Register**.

18. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Geddes knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (3) a determination by the Commission of whether Geddes failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

19. The Commission may publicize the terms of the Agreement and Order.

20. The Agreement and Order shall apply to, and be binding upon, Geddes and each of its successors and assigns.

21. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Geddes to appropriate legal action.

22. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

23. If after the effective date hereof, any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Geddes agree that severing the provision materially affects the purpose of the Agreement and Order.

Raymond Geddes & Co.

Dated: *12/2/08.*

By: _____
Will Geddes,
President, 8901 Yellow Brick Rd., Baltimore, MD 21237–2303.

Dated: *12/8/08.*

By: _____
John Scaldara, Esq.,
Offit Kurman, 8 Park Center Court, Suite 200, Owings Mill, MD 21117, Counsel for Raymond Geddes & Co.

U.S. Consumer Product Safety Commission Staff

Cheryl A. Falvey,
General Counsel, Office of the General Counsel.

Ronald G. Yelenik,
Assistant General Counsel, Division of Compliance, Office of the General Counsel.

Dated: *11/25/08.*

By: _____
Sean R. Ward,
Trial Attorney, Division of Compliance, Office of the General Counsel.

United States of America—Consumer Product Safety Commission

In the Matter of Raymond Geddes & Co., CPSC Docket No. 09–C0021.

Order

Upon consideration of the Settlement Agreement entered into between Raymond Geddes & Co. (''*Geddes''*) and the U.S. Consumer Product Safety Commission (''*Commission''*) staff, and the Commission having jurisdiction over the subject matter and over Geddes, and it appearing that the Settlement Agreement and Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that Geddes shall pay a civil penalty in the amount of forty thousand dollars ($40,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Geddes to make any of the foregoing payments when due, interest on the unpaid amount shall accrue and be paid by Geddes at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the *8th* day of *July,* 2009.

By Order of the Commission.

Todd A. Stevenson,
Secretary, *U.S. Consumer Product Safety Commission.*

[FR Doc. E9–18522 Filed 7–31–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0023]

Family Dollar Stores, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Family Dollar Stores, Inc., containing a civil penalty of $75,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 18, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0023, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Belinda V. Bell, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7592 or M. Reza Malihi, Trial Attorney, (same address); telephone (301) 504–7733.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: July 28, 2009.

Todd A. Stevenson,
Secretary.

United States of America—Consumer Product Safety Commission

In the Matter of Family Dollar Stores, Inc., CPSC Docket No. *09–C0023.*

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Family Dollar Stores, Inc. (''*Family Dollar*'') and the staff (''*Staff*'') of the United States Consumer Product Safety Commission (''*CPSC*'' or the ''*Commission*'') enter into this Settlement Agreement (''*Agreement*''). The Agreement and the incorporated attached Order (''*Order*'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''*CPSA*'').

3. Family Dollar is a corporation organized and existing under the laws of Delaware, with its principal offices located in Matthews, North Carolina. At all times relevant hereto, Family Dollar imported and/or sold toys and children's products, among other merchandise.

Staff Allegations

4. During 2006 and 2007, Family Dollar, through its subsidiary Family Dollar Services, Inc., imported into the United States a total of about 142,000 units of certain Halloween-themed plastic pails (SKU number 1033953, and UPC number 017845000591) (''*Pail(s)*''). Specifically, Family Dollar imported 28,725 of the Pails during 2006, and an additional 112,560 in July 2007. From August 2007 through October 2007, Family Dollar stores nationwide offered the Pails for sale or sold them to consumers.

5. The Pails are ''consumer product(s),'' and, at all times relevant hereto, Family Dollar was a ''manufacturer'' and/or a ''retailer'' of those consumer product(s), which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(3), (5), (8), (11), and (13), 15 U.S.C. 2052(a)(3), (5), (8), (11), and (13).

6. The Pails are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 CFR part 1303 (the ''*Ban''*). Under the Ban, toys and other children's articles must not bear ''lead-containing paint,'' defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 CFR 1303.2(b)(1)

7. On September 28, 2007, the Staff obtained third-party laboratory results relating to, in pertinent part, testing for the presence of lead in the surface coating of a sample of the Pails purchased from a Family Dollar retail store in Ashland, Ohio. The test results demonstrated that a green coating on the outside surface of the Pail contained a total lead content of 2.1% by weight. This level of lead is in excess of the permissible 0.06 percent limit set forth in the Ban.

8. In October 2007, Family Dollar reported to CPSC that it had commissioned an independent laboratory to conduct further testing for the presence of lead in surface coatings of another twelve (12) Pail samples. As expressed in a test report issued October 5, 2007, the test results demonstrated that the Pails' green surface coating contained a total lead content of 1200 mg/kg. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban.

9. On October 25, 2007, the Commission and Family Dollar announced a consumer-level recall of about 142,000 units of the Pails because ''[t]he green paint on the pails contains excessive levels of lead, violating the Federal lead paint standard.''

10. Although Family Dollar reported no incidents or injuries associated with the Pails, it failed to take adequate action to ensure that none would bear or contain lead-containing paint, thereby creating a risk of lead poisoning and adverse health effects to children.

11. The Pails constitute ''banned hazardous products'' under CPSA section 8 and the Ban, 15 U.S.C. 2057 and 16 CFR 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead

content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

12. Beginning in 2006 and ending in October 2007, Family Dollar sold, manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the Pails, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. 2068(a)(1). Family Dollar committed these prohibited acts ''knowingly,'' as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

13. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Family Dollar is subject to civil penalties for the aforementioned violations.

Family Dollar Response

14. Family Dollar denies the Staff's allegations set forth above that Family Dollar knowingly violated the CPSA.

Agreement of the Parties

15. Under the CPSA, the Commission has jurisdiction over this matter and over Family Dollar.

16. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Family Dollar, or a determination by the Commission, that Family Dollar has knowingly violated the CPSA.

17. In settlement of the Staff's allegations, Family Dollar shall pay a civil penalty in the amount of seventy five thousand dollars ($75,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. This payment shall be made by check payable to the order of the United States Treasury.

18. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the **Federal Register**.

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Family Dollar knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (3) a determination by the Commission of whether Family Dollar failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

20. The Commission may publicize the terms of the Agreement and Order.

21. The Agreement and Order shall apply to, and be binding upon, Family Dollar and each of its successors and assigns.

22. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Family Dollar to appropriate legal action.

23. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

24. If any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Family Dollar agree that severing the provision materially affects the purpose of the Agreement and Order.

Family Dollar Stores, Inc.

Dated: *3/19/09.*

By: _____

Jacob Modla, Esq.,

Assistant Secretary and Interim General Counsel, Family Dollar Stores, Inc., 10401 Monroe Road, Matthews, NC 28105–5349.

Dated: *3/23/09.*

By: _____

Michael J. Gidding, Esq.

Brown & Gidding, P.C., 3201 N. Mexico Ave, NW., Washington, DC 20016, Counsel for Family Dollar Stores, Inc.

U.S. Consumer Product Safety Commission Staff.

Cheryl A. Falvey,

General Counsel, Office of the General Counsel, Ronald G. Yelenik, Assistant General Counsel, Division of Compliance, Office of the General Counsel.

Dated: *3/31/09.*

By: _____

Belinda V. Bell,

Trial Attorney, M. Reza Malihi, Trial Attorney, Division of Compliance, Office of the General Counsel.

United States of America—Consumer Product Safety Commission

In the Matter of Family Dollar Stores, Inc., CPSC Docket No. *09–C0023.*

Order

Upon consideration of the Settlement Agreement entered into between Family Dollar Stores, Inc. (''*Family Dollar*'') and the U.S. Consumer Product Safety Commission (''*Commission*'') staff, and the Commission having jurisdiction over the subject matter and over Family Dollar, and it appearing that the Settlement Agreement and Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that Family Dollar shall pay a civil penalty in the amount of seventy five thousand dollars ($75,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Family Dollar to make any of the foregoing payments when due, interest on the unpaid amount shall accrue and be paid by Family Dollar at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the *8th* day of *July,* 2009.

By Order of the Commission.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–18519 Filed 7–31–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0024]

Michaels Stores, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Michaels Stores, Inc., containing a civil penalty of $45,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 18, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0024, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: M. Reza Malihi, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7733.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: July 28, 2009.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Michaels Stores, Inc. (''*Michaels*'') and the staff (''*Staff*'') of the United States Consumer

Product Safety Commission (''*CPSC*'' or the ''*Commission*'') enter into this Settlement Agreement (''*Agreement*''). The Agreement and the incorporated attached Order (''*Order*'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''*CPSA*'').

3. Michaels is a corporation organized and existing under the laws of Delaware, with its principal offices located in Irving, Texas. At all times relevant hereto, Michaels imported and/or sold children's products, among other arts and crafts merchandise in various categories such as Seasonal, Kids Crafts and Paper Crafts.

Staff Allegations

4. Beginning in August 2007, Michaels imported into the United States about 310,000 units of certain seasonal writing pens, consisting of ''Flower Writers,'' ''Christmas Writers,'' ''Easter Writers'' and ''Spooky Writers'' styles, each bearing applicable themed decorations including flowers, Christmas, Easter and Halloween ornamentation (''Pen(s)''). The Pens were, in turn, offered for sale or sold to consumers at Michaels stores nationwide from August 2007 through March 2008 for about $1 per unit.

5. The Pens are ''consumer product(s),'' and, at all times relevant hereto, Michaels was a ''manufacturer'' and/or a ''retailer'' of those consumer product(s), which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(3), (5), (8), (11), and (13), 15 U.S.C. §§ 2052(a)(3), (5), (8), (11), and (13).

6. The Pens are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 CFR Part 1303 (the ''*Ban*''). Under the Ban, toys and other children's articles must not bear ''lead-containing paint,'' defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 CFR § 1303.2(b)(1)

7. On October 28, 2007, the Staff obtained from the University of Ashland's Department of Chemistry laboratory results relating to, in pertinent part, testing for the presence of lead in surface paints on samples of the Flower Writers and Christmas Writers Pens purchased from a Michaels store in Mansfield, Ohio. The University's test results demonstrated that each of twelve paint colors tested contained excessive lead levels, with an average total lead content of 2.53 percent, and an upper range as high as 5.07 percent. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban.

8. In March 2008, Michaels reported to CPSC that it had commissioned an independent laboratory to conduct further testing for the presence of lead in surface coatings on additional Pen samples. As expressed in two test reports issued concurrently, the confirmatory testing demonstrated that four (4) composite paint colors obtained from different locations of the Flower Writers Pens contained a total lead content from 4,400 parts per million (ppm) up to 37,000 ppm; and that six (6) composite paint colors obtained from different locations of the Easter Writers Pens contained a total lead content from 970 ppm to 31,000 ppm. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban.

9. On April 10, 2008, the Commission and Michaels announced a consumer-level recall of about 310,000 units of the Pens because ''The seasonal writing pens' surface coating contains high levels of lead, violating the federal lead paint standard.''

10. Although Michaels reported no incidents or injuries associated with the Pens, it failed to take adequate action to ensure that none would bear or contain lead-containing paint, thereby creating a risk of lead poisoning and adverse health effects to children.

11. The Pens constitute ''banned hazardous products'' under CPSA section 8 and the Ban, 15 U.S.C. 2057 and 16 CFR 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

12. Between August 2007 and March 2008, Michaels sold, manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the aforesaid banned hazardous Pens, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. 2068(a)(1). Michaels committed these prohibited acts ''knowingly,'' as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

13. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Michaels is subject to civil penalties for the aforementioned violations.

Michaels Response

14. Michaels denies the Staff's allegations set forth above that Michaels knowingly violated the CPSA.

Agreement of the Parties

15. Under the CPSA, the Commission has jurisdiction over this matter and over Michaels.

16. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Michaels, or a determination by the Commission, that Michaels has knowingly violated the CPSA.

17. In settlement of the Staff's allegations, Michaels shall pay a civil penalty in the amount of forty five thousand dollars ($45,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. This payment shall be made by check payable to the order of the United States Treasury.

18. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the **Federal Register**.

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Michaels knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (3) a determination by the Commission of whether Michaels failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

20. The Commission may publicize the terms of the Agreement and Order.

21. The Agreement and Order shall apply to, and be binding upon, Michaels and each of its successors and assigns.

22. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Michaels to appropriate legal action.

23. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

24. If any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Michaels agree that severing the provision materially affects the purpose of the Agreement and Order.

Michaels Stores, Inc.

Dated: *February 3, 2009.*

By: _____

Michael Veitenheimer,

Senior Vice President, General Counsel and Secretary, Michaels Stores, Inc., 8000 Bent Branch Drive, Irving, Texas 75063.

U.S. Consumer Product Safety Commission Staff.

Cheryl A. Falvey,

General Counsel, Office of the General Counsel.

Ronald G. Yelenik,

Assistant General Counsel, Division of Compliance, Office of the General Counsel.

Dated: March 6, 2009.

By: _____

M. Reza Malihi,

Trial Attorney, Division of Compliance, Office of the General Counsel.

Order

Upon consideration of the Settlement Agreement entered into between Michaels Stores, Inc. (''*Michaels''*) and the U.S. Consumer Product Safety Commission (''*Commission''*) staff, and the Commission having jurisdiction over the subject matter and over Michaels, and it appearing that the Settlement Agreement and Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further Ordered, that Michaels shall pay a civil penalty in the amount of forty five thousand dollars ($45,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Michaels to make any of the foregoing payments when due, interest on the unpaid amount shall accrue and be paid by Michaels at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the *8th* day of *July,* 2009.

By Order of the Commission.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–18518 Filed 7–31–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0025]

Hobby Lobby Stores, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Hobby Lobby Stores, Inc., containing a civil penalty of $50,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 18, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0025, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: M. Reza Malihi, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7733.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: July 28, 2009.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Hobby Lobby Stores, Inc. (''*Hobby Lobby*'') and the staff (''*Staff*'') of the United States Consumer Product Safety Commission (''*CPSC*'' or the ''*Commission*'') enter into this Settlement Agreement (''*Agreement*''). The Agreement and the incorporated attached Order (''*Order*'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''*CPSA*'').

3. Hobby Lobby is a corporation organized and existing under the laws of Oklahoma, with its principal offices located in Oklahoma City, Oklahoma. At all times relevant hereto, Hobby Lobby imported and/or sold toys and other children's products, among other merchandise such as arts and crafts, hobbies, picture framing, jewelry making, fashion fabrics, floral, cards and party items.

Staff Allegations

4. During August 2007, Hobby Lobby imported into the United States about 10,000 units of certain Halloween-themed plastic baskets, with two carrying handles, an emblem of a witch, bat or pumpkin attached to each side of the handle, and item number 5464201 located next to the price on the paper hangtag on the handle (''*Basket(s)*''). The Baskets were, in turn, offered for sale or sold to consumers at Hobby Lobby stores nationwide from August 2007 through November 2007 for about $1 per unit.

5. Also during August 2007, Hobby Lobby imported into the United States about 13,000 units of Easter-Themed Camouflage Eggs and Spinning Egg Top Toys. The Camouflage Easter Egg Treat Containers have Item #1031 printed on the front of the packaging and are white, brown and green camouflage colors, sold in a package of eight eggs, with ''Made in China for Tony Development and Mfg Ltd; TST, Kin, HK'' and UPC code number 43078 01031 printed on the back of the packing (''*Egg(s)*''). The Easter Spinning Egg Tops have Item # 1054 printed on the front of the packaging and are multi-colored and come in packages of a single egg and a rip cord, with ''Made in China for Tony Development and Mfg Ltd. TST, Kin, HK'' and UPC code number 43078 01054 printed on the back of the packaging (''*Top(s)*''). The Eggs and Tops were, in turn, offered for sale or sold to consumers at Hobby Lobby stores nationwide from January 2008 through March 2008, for about $2.50 per unit and about $2 per unit, respectively.

6. The Baskets, Eggs and Tops are ''consumer product(s),'' and, at all times relevant hereto, Hobby Lobby was a ''manufacturer'' and/or a ''retailer'' of those consumer product(s), which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(3), (5), (8), (11), and (13), 15 U.S.C. 2052(a)(3), (5), (8), (11), and (13).

7. The Baskets, Eggs and Tops are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 CFR part 1303 (the *''Ban*''). Under the Ban, toys and other children's articles must not bear ''lead-containing paint,'' defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 CFR 1303.2(b)(1)

8. Samples of the Baskets were tested by an independent laboratory for the presence of lead pursuant to the Ban. The test results demonstrated that certain samples of each contained levels of lead in excess of the permissible 0.06 percent limit set forth in the Ban. On or about October 30, 2007, the Commission informed Hobby Lobby of the violation.

9. On November 16, 2007, the Commission and Hobby Lobby announced a consumer-level recall of about 10,000 units of the Baskets because ''Surface paint on the bat, pumpkin and witch emblems attached to the baskets contains excess levels of lead, which violates the Federal lead paint ban.''

10. Samples of the Eggs and Tops were tested by an independent laboratory for the presence of lead pursuant to the Ban. The test results demonstrated that certain samples of each contained levels of lead in excess of the permissible 0.06 percent limit set forth in the Ban. On or about March 13, 2008, the Commission informed Hobby Lobby of the violation.

11. On March 21, 2008, the Commission and Hobby Lobby announced a consumer-level recall of about 13,000 units of the Eggs and Tops because ''The paint on the toys contains excessive levels of lead, violating the Federal lead paint standard.''

12. Although Hobby Lobby reported no incidents or injuries associated with the Baskets, Eggs and Tops, it failed to take adequate action to ensure that none would bear or contain lead-containing paint, thereby creating a risk of lead poisoning and adverse health effects to children.

13. The Baskets, Eggs and Tops constitute ''banned hazardous products'' under CPSA section 8 and the Ban, 15 U.S.C. 2057 and 16 CFR 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

14. Between August 2007 and March 2008, Hobby Lobby manufactured for sale, offered

for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the aforesaid banned hazardous Baskets, Eggs and Tops, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. 2068(a)(1). Hobby Lobby committed these prohibited acts ''knowingly,'' as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

15. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Hobby Lobby is subject to civil penalties for the aforementioned violations.

Hobby Lobby's Responsive Allegations

16. Hobby Lobby denies the Staff's allegations set forth above that Hobby Lobby knowingly violated the CPSA or that it failed to take adequate action to ensure that none of the products contained lead containing paint.

Agreement of the Parties

17. Under the CPSA, the Commission has jurisdiction over this matter and over Hobby Lobby.

18. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Hobby Lobby, or a determination by the Commission, that Hobby Lobby has knowingly violated the CPSA.

19. In settlement of the Staff's allegations, Hobby Lobby shall pay a civil penalty in the amount of fifty thousand dollars ($50,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. This payment shall be made by check payable to the order of the United States Treasury.

20. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed in the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the **Federal Register**.

21. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Hobby Lobby knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (3) a determination by the Commission of whether Hobby Lobby failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

22. The Commission may publicize the terms of the Agreement and Order.

23. The Agreement and Order shall apply to, and be binding upon, Hobby Lobby and each of its successors and assigns.

24. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Hobby Lobby and those designated in paragraph 23 above to appropriate legal action.

25. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

26. If any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Hobby Lobby agree that severing the provision materially affects the purpose of the Agreement and Order.

Dated: March 3, 2009.

Steve Green,
President, Hobby Lobby Stores, Inc., 7707 SW. 44th Street, Oklahoma City, OK 73179.

Dated: March 3, 2009.

Peter M. Dobelbower,
Vice President & General Counsel, Hobby Lobby Stores, Inc. U.S. Consumer Product Safety Commission Staff.

Cheryl A. Falvey,
General Counsel, Office of the General Counsel.

Ronald G. Yelenik,
Assistant General Counsel, Office of the General Counsel.

Dated: March 6, 2009.

M. Reza Malihi,
Trial Attorney, Division of Compliance, Office of the General Counsel.

Order

Upon consideration of the Settlement Agreement entered into between Hobby Lobby Stores, Inc. (*''Hobby Lobby''*) and the U.S. Consumer Product Safety Commission (*''Commission''*) staff, and the Commission having jurisdiction over the subject matter and over Hobby Lobby, and it appearing that the Settlement Agreement and Order are in the public interest, it is

ORDERED, that the Settlement Agreement be, and hereby is, accepted; and it is

FURTHER ORDERED, that Hobby Lobby shall pay a civil penalty in the amount of fifty thousand dollars ($50,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Hobby Lobby to make any of the foregoing payments when due, interest on the unpaid amount shall accrue and be paid by Hobby Lobby at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th day of July, 2009.

By Order of the Commission.

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–18516 Filed 7–31–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0029]

Dollar General Corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Dollar General Corporation, containing a civil penalty of $100,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 18, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0029, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Neal S. Cohen, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7504 or M. Reza Malihi, Trial Attorney, (same address); telephone (301) 504–7733.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: July 28, 2009.

Todd A. Stevenson,
Secretary.

In the Matter of Dollar General Corporation; Settlement Agreement

1. In accordance with 16 CFR 1118.20, Dollar General Corporation (''*DGC*''), for itself and on behalf of its wholly owned subsidiaries referenced in paragraph three (collectively referred to as ''*Dollar General*''), and the staff (''*Staff*'') of the United States Consumer Product Safety Commission (''*CPSC*'' or the ''*Commission*'') enter into this Settlement Agreement (''*Agreement*''). The Agreement and the incorporated attached Order (''*Order*'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established

pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''*CPSA*'').

3. DGC is a corporation organized and existing under the laws of Tennessee, with its principal offices located in Goodlettsville, Tennessee. At all times relevant hereto, the following wholly owned subsidiaries of DGC had principal offices located in Goodlettsville, Tennessee. Dollar General Merchandising, Inc. (''*DGMI*''), a corporation, and DG Retail, LLC, a limited liability company, were entities organized and existing under the laws of Tennessee. Dolgencorp, Inc. (''*Dolgencorp,*'') Dolgencorp of Texas, Inc., and Dolgencorp of New York, Inc. were corporations, and Dollar General Partners was a partnership, organized and existing under the laws of Kentucky. (DG Retail LLC, Dolgencorp, Dolgencorp of Texas, Inc., Dolgencorp of New York, Inc., and Dollar General Partners, are collectively referred to as the ''*Retail Subsidiaries*.'') At all times relevant hereto, Dollar General imported and/or sold toys and other children's products, among other general merchandise.

Staff Allegations

4. During September 2007, DGMI imported into the United States about 63,000 units of green, plastic Frankenstein head-shaped Tumblers (''*Tumbler(s)*''). The Tumblers were, in turn, offered for sale or sold to consumers at retail stores nationwide owned or operated by DGC or one of its Retail Subsidiaries in September 2007 for about $1 per unit.

5. Between April 2007 and July 2007, DGMI imported about 380,000 Pull-Back Action Toy Cars, comprising two styles that included a four pack of ''Super Wheels'' (UPC #400016576344) and a two pack of ''Super Racer'' cars (UPC #883788965002) (''*Toy Car(s)*''). The Toy Cars were, in turn, offered for sale or sold to consumers at retail stores nationwide owned or operated by DGC or one of its Retail Subsidiaries from April 2007 through October 2007 for about $1 per pack.

6. Between March 2005 and October 2007, Dolgencorp imported about 51,000 Children's Sunglasses, yellow in color, with the word ''CHINA'' printed on the left side of the frame, and the UPC #400007860896 and words ''Fashion Sunglasses'' and ''Time to Play Every Day'' printed on the product's red hangtag (''*Sunglasses*''). The Sunglasses were, in turn, offered for sale or sold to consumers at retail stores nationwide owned or operated by DGC or one of its Retail Subsidiaries from March 2005 through October 2007 for about $1 per unit.

7. The Tumblers, Toy Cars and Sunglasses are ''consumer product(s),'' and, at all times relevant hereto, Dollar General was a ''manufacturer'' and/or a ''retailer'' of those consumer product(s), which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(3), (5), (8), (11), and (13), 15 U.S.C. 2052(a)(3), (5), (8), (11), and (13).

8. The Tumblers, Toy Cars and Sunglasses are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 CFR Part 1303 (the ''*Ban*''). Under the Ban, toys and other children's articles must not bear ''lead-containing paint,'' defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 CFR 1303.2(b)(1)

9. On September 28, 2007, the Staff obtained from the University of Ashland's Department of Chemistry laboratory results relating to, in pertinent part, testing for the presence of lead in surface paints on samples of the Tumblers collected from a DGC retail store in Ashland, Ohio. The University's test results demonstrated that paint from the center of the eye on certain Tumbler samples contained a total lead content in excess of the permissible 0.06 percent limit set forth in the Ban.

10. On October 12, 2007, Dollar General reported to CPSC that it had commissioned an independent laboratory to conduct validation testing for the presence of lead in surface coatings on a sample of the Sunglasses. As expressed in a test report of the same date, the test results demonstrated that the yellow surface coating and gold surface coating (printing on sample) contained a total lead content in excess of the permissible 0.06 percent limit set forth in the Ban.

11. On November 6, 2007, Dollar General reported to CPSC that it had commissioned an independent laboratory to conduct testing for the presence of lead in surface coatings on multiple samples of the Toy Cars. As expressed in two test reports dated November 5, 2007, the test results demonstrated that samples of the ''4-pack'' and ''2-pack'' Toy Cars contained a total lead content in excess of the permissible 0.06 percent limit set forth in the Ban.

12. On October 4, 2007, the Commission and DGMI announced a consumer-level recall of about 63,000 units of the Tumblers because ''Surface paint on the center of the eyes of some of the cups can contain high levels of lead, violating the federal lead paint standard.'' On November 7, 2007, the Commission and DGMI announced a recall of about 380,000 units of the Toy Cars because ''Surface paint on the cars contains excessive levels of lead, violating the federal lead paint standard.'' On the next day, November 8, 2007, the Commission and Dolgencorp likewise announced a recall of about 51,000 units of the Sunglasses because ''The yellow surface paint on the sunglasses may contain excessive levels of lead, violating the federal lead paint standard.''

13. Although Dollar General reported no incidents or injuries associated with the Tumblers, Sunglasses and Toy Cars, it failed to take adequate action to ensure that none would bear or contain lead-containing paint, thereby creating a risk of lead poisoning and adverse health effects to children.

14. The Tumblers, Sunglasses and Toy Cars constitute ''banned hazardous products'' under CPSA section 8 and the Ban, 15 U.S.C. 2057 and 16 CFR 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

15. Between March 2005 and October 2007, Dollar General sold, manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the aforesaid banned hazardous Tumblers, Sunglasses and Toy Cars, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. 2068(a)(1). Dollar General committed these prohibited acts ''knowingly,'' as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

16. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Dollar General is subject to civil penalties for the aforementioned violations.

Dollar General's Responsive Allegations

17. Dollar General denies that it knowingly violated the CPSA.

18. Dollar General states that the vendors of the Tumblers, Sunglasses and Toy Cars each represented and warranted to Dollar General that the products furnished by the applicable vendor complied with all applicable laws, regulations and standards. Additionally, prior to importing the Tumblers, Sunglasses and Toy Cars, Dollar General had the products tested by a qualified independent third party laboratory for all applicable safety standards, including, without limitation, lead paint standards. The tests indicated that the products were fully compliant.

19. Thus, Dollar General neither knew, nor should have known, of any potential problems with these products. However, as a result of industry changes and in an abundance of caution, Dollar General voluntarily commenced validation re-testing of toys to confirm initial test results. Dollar General tested hundreds of samples and, of those, discovered that two, the Sunglasses and Toy Cars, did not meet applicable standards. Dollar General notified the CPSC of the results and promptly initiated a voluntary recall of the items.

Agreement of the Parties

20. Under the CPSA, the Commission has jurisdiction over this matter and over Dollar General.

21. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Dollar General, or a determination by the Commission, that Dollar General has knowingly violated the CPSA.

22. In settlement of the Staff's allegations, DGC shall pay, on behalf of Dollar General, a civil penalty in the amount of one hundred thousand dollars ($100,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. This payment shall be made by check payable to the order of the United States Treasury.

23. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16

CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the **Federal Register**.

24. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Dollar General knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (3) a determination by the Commission of whether Dollar General failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

25. The Commission may publicize the terms of the Agreement and Order.

26. The Agreement and Order shall apply to, and be binding upon, Dollar General and each of its successors and assigns.

27. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject those referenced in paragraph 26 above to appropriate legal action.

28. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or otherwise altered, without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

29. If any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Dollar General agree that severing the provision materially affects the purpose of the Agreement and Order.

DOLLAR GENERAL CORPORATION

Dated: *June 24, 2009.*

By: _____

Susan S. Lanigan,
Executive Vice President and General Counsel, Dollar General Corporation, 100 Mission Ridge, Goodlettsville, TN 37072.

Dated: *June 24, 2009.* _____

By: _____

Robert R. Stephenson,
Deputy General Counsel,
Dollar General Corporation.

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

Cheryl A. Falvey,
General Counsel, Office of the General Counsel.

Ronald G. Yelenik,
Assistant General Counsel, Office of the General Counsel.

Dated: *June 25, 2009.* _____

By: _____

Neal S. Cohen,
Trial Attorney, Division of Compliance, Office of the General Counsel.

By: _____

M. Reza Malihi,
Trial Attorney, Division of Compliance, Office of the General Counsel.

In the Matter of Dollar General Corporation; Order

Upon consideration of the Settlement Agreement entered into between Dollar General Corporation (''*DGC*''), for itself and on behalf of its wholly owned subsidiaries, Dollar General Merchandising, Inc., DG Retail, LLC, Dolgencorp, Inc., Dolgencorp of Texas, Inc., Dolgencorp of New York, Inc., and Dollar General Partners (collectively referred to as ''*Dollar General*''), and the U.S. Consumer Product Safety Commission (''*Commission''*) staff, and the Commission having jurisdiction over the subject matter and over Dollar General, and it appearing that the Settlement Agreement and Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that DGC shall pay, on behalf of Dollar General, a civil penalty in the amount of one hundred thousand dollars ($100,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury.

Upon the failure of DGC to make any of the foregoing payments when due, interest on the unpaid amount shall accrue and be paid by DGC at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the *8th* day of *July* 2009.

BY ORDER OF THE COMMISSION:

_____

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–18508 Filed 7–31–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0030]

Haier America Trading, LLC, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with Haier America Trading, LLC, containing a civil penalty of $587,500.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 18, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0030, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Lead Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: July 29, 2009.

Todd A. Stevenson,
Secretary.

United States of America—Consumer Product Safety Commission

In the Matter of Haier America Trading, LLC, CPSC Docket No. *09–C0030.*

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Haier America Trading, LLC (''Haier America'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. Haier America is a limited liability company organized and existing under the laws of New York, with its principal offices located in New York, New York. At all times relevant hereto, Haier America sold appliances.

Staff Allegations

4. From on or about January to July 2004, Haier America distributed in commerce, including through importation and sale to retailers, multiple units of the Haier America Oscillating Tower Fan model FTM140GG (''Fan'').

5. The Fans are ''consumer product[s],'' and, at all times relevant hereto, Haier America was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (11), 15 U.S.C. 2052(a)(5), (8), and (11).

6. From May to October 2004, Haier America received 14 reports of Fan incidents, some of which involved fires and injuries.

7. From May to October 2004, Haier America obtained information about the Fans through investigation, testing, and analysis.

8. The incident reports and other information that Haier America received about the Fans raised defect and hazard concerns for Haier America.

9. On November 22, 2005, Haier America and the Commission announced a recall of the Fans. As indicated in part in the recall Press Release, the defect and hazard involved repeated bending of the Fan wires from the base to the tower during oscillation, which caused the wires to break and arc, resulting in a fire hazard.

10. By no later than July 1, 2004, Haier America had obtained information that reasonably supported the conclusion that the Fans contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Haier America to immediately inform the Commission of the Fans' defect and risk.

11. Haier America did not report to the Commission regarding the Fans until December 22, 2004, after the Commission staff requested that Haier America report. In addition, at the time that it reported, Haier America failed to furnish all required information. Haier America thereby failed to immediately and adequately inform the Commission about the Fans' defect and risk as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4). This failure constituted a prohibited act under CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4).

12. Haier America knowingly committed this prohibited act, as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). Pursuant to CPSA section 20, 15 U.S.C. 2069, Haier America's prohibited act subjected it to civil penalties.

Haier America Response

13. Haier America denies the Staff's allegations set forth in paragraphs 4–12 above, including, but not limited to, any allegation that Haier America failed timely to notify the Commission in accordance with section 15 of the CPSA.

Agreement of the Parties

14. Under the CPSA, the Commission has jurisdiction over this matter and over Haier America.

15. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Haier America, or a determination by the Commission, that Haier America knowingly violated the CPSA. Upon issuance of, and Haier America's compliance with, the final Order, the Commission regards this matter as resolved and agrees not to bring a civil penalty action against Haier America based upon the Staff's allegations set forth in paragraphs 4–12 above regarding the Fan.

16. In settlement of the Staff's allegations, Haier America shall pay a civil penalty in the amount of five hundred eighty-seven thousand five hundred dollars ($587,500.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

17. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

18. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Haier America knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Haier America failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

19. The Commission may publicize the terms of the Agreement and the Order.

20. The Agreement and the Order shall apply to, and be binding upon, Haier America and each of its successors and assigns.

21. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject those persons or entities referenced in the preceding paragraph to appropriate legal action.

22. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

23. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Haier America agree that severing the provision materially affects the purpose of the Agreement and the Order.

Haier America Trading, LLC.

Dated: _____

By: _____

Michael Jemal,

President and CEO, Haier America Trading, LLC, 1356 Broadway, New York, N.Y. 10018.

Dated: 6/1/09.

By: _____

Eric A. Rubel, Esq.,

Arnold & Porter LLP, 555 12th Street, NW., Washington, DC 20004–1206, Counsel for Haier America Trading LLC.

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

Cheryl A. Falvey,

General Counsel.

Ronald G. Yelenik,

Assistant General Counsel, Office of the General Counsel.

Dated: 6/19/09.

By: _____

Seth B. Popkin,

Lead Trial Attorney, Division of Compliance, Office of the General Counsel.

United States of America—Consumer Product Safety Commission

In the Matter of Haier America Trading, LLC, CPSC Docket No. 09–C0030.

Order

Upon consideration of the Settlement Agreement entered into between Haier America Trading, LLC (''Haier America'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Haier America, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that Haier America shall pay a civil penalty in the amount of five hundred eighty-seven thousand five hundred dollars ($587,500.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Haier America to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Haier America at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the *28th* day of *July,* 2009.

By Order of the Commission:

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–18506 Filed 7–31–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0028]

Cardinal Distributing Company, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with Cardinal Distributing Company, Inc., containing a civil penalty of $100,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 18, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0028, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: M. Reza Malihi, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7733.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: July 28, 2009.

Todd A. Stevenson,
Secretary.

United States of America—Consumer Product Safety Commission

In the Matter of Cardinal Distributing Company, Inc., CPSC Docket No. 09–C0028.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Cardinal Distributing Company, Inc. (''*Cardinal*'') and the staff (''*Staff*'') of the United States Consumer Product Safety Commission (''*CPSC*'' or the ''*Commission*'') enter into this Settlement Agreement (''*Agreement*''). The Agreement and the incorporated attached Order (''*Order*'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051—2089 (''*CPSA*'').

3. Cardinal is a corporation organized and existing under the laws of Maryland, with its principal offices located in Baltimore, Maryland. At all times relevant hereto, Cardinal imported and/or sold toy jewelry.

Staff Allegations

4. Between November 2005 and April 2007, Cardinal imported into the United States about 900,000 units of toy jewelry, consisting of Children's ''Sportswear'' Necklaces, Item # 8261 (''*Necklace(s)*''), and Children's Charm Bracelets, Item # INK705 (''*Bracelet(s)*''). Cardinal offered for sale or sold most of the subject products through vending machines located in malls, discount, department and grocery stores nationwide from January 2006 through April 2007 for $0.25 per unit.

5. The Necklaces and Bracelets are ''consumer product(s),'' and, at all times relevant hereto, Cardinal was a ''manufacturer'' and/or a ''retailer'' of those consumer product(s), which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(3), (5), (8), (11), and (13), 15 U.S.C. 2052(a)(3), (5), (8), (11), and (13).

6. The Necklaces and Bracelets are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 CFR part 1303 (the ''*Ban*''). Under the Ban, toys and other children's articles must not bear ''lead-containing paint,'' defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 CFR 1303.2(b)(1)

7. On February 16, 2007, the Staff obtained samples of the Necklaces from one of Cardinal's customers based in Illinois, which subsequently were tested at the CPSC Laboratory for the presence of lead. The test results demonstrated that the yellow paint on certain Necklace samples contained a total lead content from 0.519 percent to 0.726 percent. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban.

8. Cardinal reported to CPSC on April 10, 2007 that recent testing of the Bracelets by an independent laboratory had demonstrated that their surface coating contained a total lead content as high as 1.5 percent. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban.

9. On April 17, 2007, the Commission and Cardinal announced a consumer-level recall of about 900,000 units of the Necklaces and Bracelets because ''The paint on this jewelry contains high levels of lead. Lead is toxic if ingested by young children and can cause adverse health effects.''

10. Although Cardinal reported no incidents or injuries associated with the Necklaces and Bracelets, it failed to take adequate action to ensure that none would bear or contain lead-containing paint, thereby creating a risk of lead poisoning and adverse health effects to children.

11. The Necklaces and Bracelets constitute ''banned hazardous products'' under CPSA section 8 and the Ban, 15 U.S.C. 2057 and 16 CFR 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

12. Between November 2005 and April 2007, Cardinal sold, manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the aforesaid banned hazardous Necklaces and Bracelets, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. 2068(a)(1). Cardinal committed these prohibited acts ''knowingly,'' as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

13. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Cardinal is subject to civil penalties for the aforementioned violations.

Cardinal Response

14. Cardinal denies the Staff's allegations set forth above that Cardinal knowingly violated the CPSA.

Agreement of the Parties

15. Under the CPSA, the Commission has jurisdiction over this matter and over Cardinal.

16. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Cardinal, or a determination by the Commission, that Cardinal has knowingly violated the CPSA.

17. In settlement of the Staff's allegations, Cardinal shall pay a civil penalty in the amount of one hundred thousand dollars ($100,000.00). The civil penalty shall be paid in two (2) installments as follows: $50,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; and $50,000.00 shall be paid within six (6) months of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury.

18. The CPSC agrees to take no further action involving Cardinal with respect to CPSC Sample Nos. 07–302–0148 and 07–302–0149 (Children's Rings with Dice or Horseshoes, Release No. 07–174), and CPSC No. RP070318 (Children's Turquoise Rings, Release No. 07–189).

19. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the

Agreement within fifteen (15) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Cardinal knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (3) a determination by the Commission of whether Cardinal failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and Order.

22. The Agreement and Order shall apply to, and be binding upon, Cardinal and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Cardinal to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Cardinal agree that severing the provision materially affects the purpose of the Agreement and Order.

CARDINAL DISTRIBUTING COMPANY, INC.

Dated: 11/13/08.

By: _____

Daniel Paszkiewicz,
President, Cardinal Distributing Company, Inc., 6801 Quad Avenue, Baltimore, MD 21237.

Dated: 11/14/08.

By: _____

Caroline A. Pilch, Esq.,
Yen Pilch Komadina & Flemming, P.C., 6017 North 15th Street, Phoenix, AZ 85014, Counsel for Cardinal Distributing Company, Inc.

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

Cheryl A. Falvey,
General Counsel, Office of the General Counsel.

Ronald G. Yelenik,
Assistant General Counsel, Division of Compliance, Office of the General Counsel.

Dated: 4/14/09.

By: _____

M. Reza Malihi,
Trial Attorney, Division of Compliance, Office of the General Counsel.

United States of America—Consumer Product Safety Commission

In the Matter of Cardinal Distributing Company, Inc., CPSC Docket No. 09–C0028.

Order

Upon consideration of the Settlement Agreement entered into between Cardinal Distributing Company, Inc. (''*Cardinal*'') and the U.S. Consumer Product Safety Commission (''*Commission*'') staff, and the Commission having jurisdiction over the subject matter and over Cardinal, and it appearing that the Settlement Agreement and Order are in the public interest, it is

ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

further ordered, that Cardinal shall pay a civil penalty in the amount of one hundred thousand dollars ($100,000.00). The civil penalty shall be paid in two (2) installments as follows: $50,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; and $50,000.00 shall be paid within six (6) months of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Cardinal to make any of the foregoing payments when due, (i) the entire amount of the civil penalty shall become due and payable, and (ii) interest on the outstanding balance shall accrue and be paid by Cardinal at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the *8th* day of *July* 2009.

By Order of the Commission:

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–18512 Filed 7–31–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0120]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition, Technology and Logistics, Department of Defense.

ACTION: Notice.

In compliance with section 35006(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Under Secretary of Defense for Acquisition, Technology, and Logistics announces the proposed extension of a public information collection for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of DoD's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or forms of information technology.

DATES: Consideration will be given to all comments received by October 2, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Standardization Program Office (DSPO), Defense Logistics Agency, J–307, Attention: Ms. Karen Bond, 8725 John J. Kingman Road, Mail Stop 6233, Fort Belvoir, VA 20060–6221, or contact the Defense Standardization Program Office (DSPO) at (703) 767–6871.

Title, Associated Forms, and OMB Number: Acquisition Management Systems and Data Requirements Control List (AMSDL); Numerous Forms; 0704–0188.

Needs and Uses: The Acquisition Management Systems and Data Requirements Control List (AMSDL) is a list of data requirements used in Department of Defense (DoD) contracts. The information collected will be used by DoD personnel and other DoD contractors to support the design, test, manufacture, training, operation, and maintenance of procured items, including weapons systems critical to the national defense.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Annual Burden Hours: 26,915,328.

Number of Respondents: 944.

Responses per Respondent: 432.

Average Burden per Response: 66 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Acquisition Management Systems and Data Requirements Control List (AMSDL) is a list of data requirements used in Department of Defense contracts. Information collection requests are contained in DoD contract actions for supplies, services, hardware, and software. This information is collected and used by DoD and its component Military Departments and Agencies to support the design, test, manufacture, training, operation, maintenance, and logistical support of procured items, including weapons systems. The collection of such data is essential to accomplishing the assigned mission of the Department of Defense. Failure to collect this information would have a detrimental effect on the DoD acquisition programs and the National Security.

Information used to prepare the burden hours is contained in the ASSIST Online database.

Dated: July 17, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–18397 Filed 7–31–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0145]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 2, 2009.

Title, Form, and OMB Number: USMEPCOM MEPS Customer Satisfaction Survey, OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 60,000.

Responses per Respondent: 1.

Annual Responses: 60,000.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 10,000.

Needs and Uses: This information collection requirement is necessary to aid the MEPS in evaluating effectiveness of current policies and core processes, identifying unmet customer needs, and allocating resources more efficiently.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 22, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–18399 Filed 7–31–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–HA–0121]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces the extension of an existing public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 2, 2009.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of the Assistant Secretary of Defense for Health Affairs (OASD), Tricare Operations Division, ATTN: Colonel Gary Martin, 5111 Leesburg Pike, Falls Church, VA 22041–3206, or call TRICARE Operations Division, at 703–681–0947.

Title; Associated Form; and OMB Number: Department of Defense Active Duty/Reserve Forces Dental Examination; DD Form 2813; OMB Number 0720–0222.

Needs and Uses: The information collection requirement is necessary to obtain and record the dental health status of members of the Armed Forces. This form is the means for civilian dentists to record the results of their

findings and provide the information to the member's military organization. The military organizations are required by Department of Defense policy to track the dental status of its members.

Affected Public: Business or other profit; Not-for-profit institutions.

Annual Burden Hours: 42,500.

Number of Respondents: 850,000.

Responses per Respondent: 1.

Average Burden per Response: 3 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are medical professionals who provide dental services to the general public. Members of the Armed Forces of the United States are the recipients of the dental examination. The Armed Forces Reserve component members must maintain their dental health at a predetermined level so problems do not occur when they are deployed to a military operation. Reserve component members usually receive their dental care from civilian dentists; therefore it would be civilian dentists who would complete the form. Following a routine dental examination, the dentist would review the categories listed on the form and circle the number corresponding to the condition that best describes the dental health of the patient. If dental problems can be identified, they are indicated on the form. Once the form is complete and the dentist signs it, the members take the form back to the organization to which they belong. The information on the form is logged into a databse. The form is kept in the health record until no longer needed and then it is destroyed.

Dated: July 17, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–18400 Filed 7–31–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2009–HA–0013]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 2, 2009.

Title and OMB Number: Public Perceptions of Military Health Care System; OMB Control Number 0720–0038.

Type of Request: Extension.

Number of Respondents: 1,000.

Responses per Respondent: 1.

Annual Responses: 1,000.

Average Burden per Response: 8 minutes.

Annual Burden Hours: 133.

Needs and Uses: The goal of this survey effort is to determine the public's perceptions of Military Health Care and compare and contrast that with their perceptions of U.S. Health Care.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: July 24, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–18402 Filed 7–31–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2009–HA–0012]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 2, 2009.

Title and OMB Number: TRICARE Dental Program (TDP) Dentist's Claim Form DD 5578 G 9/05 and TRICARE Dental Program Dentist's Claim Form DD 5678 F 10/05 OCONUS; OMB No. 0720–0035.

Type of Request: Extension.

Number of Respondents: 64,930.

Responses per Respondent: 62.

Annual Responses: 4,025,660.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 1,006,415.

Needs and Uses: The TDP Claim Form(s) CONUS/OCONUS are required to gather information to make payment for legitimate dental claims and to assist in contractor surveillance and program integrity investigations and to audit financial transactions where the Department of Defense has a financial stake. The information from the claim form is also used to provide important cost-share explanations to the beneficiary.

Affected Public: Business or other-for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make

these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: July 24, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–18401 Filed 7–31–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0109]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 2, 2009.

Title, Form, and OMB Number: Request for Examination; USMEPCOM Form 680–3A–E; OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 850,000.

Responses per Respondent: 1.

Annual Responses: 850,000.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 141,950.

Needs and Uses: This information collection requirement is necessary to gather the required data for determining eligibility to join the Armed Forces and for establishing personal records on those enlisting. USMEPCOM Form 680–3A–E serves as a processing checklist and security verification of applicants for military service completing qualification requirements. Information collected on USMEPCOM Form 680–3A–E is transferred electronically into DD Form 1966 and helps decrease administration time required to complete the applicant's record.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 22, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–18398 Filed 7–31–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2009–0052]

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Office of Admissions announces the proposed extension of a public information collection and seeks public comment on provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, unity, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 2, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to the United States Air Force Academy, Office of Admissions, 2304 Cadet Drive, Suite 236, USAFA, CO 80840, or call the United States Air Force Academy, Office of Admissions, (719) 333–7291.

Title, Associated form, and OMB Number: Air Force Academy Secondary School Transcript; USAF Form 148; OMB Number 0701–0066.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 4,000.

Number of Respondents: 7,500.

Responses per Respondent: 1.

Average Burden per Response: 32 Minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United

States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Dated: July 24, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–18395 Filed 7–31–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2009–0051]

Proposed Collection; Comment Request

AGENCY: Office of Admissions, Headquarters United States Air Force Academy, Department of the Air Force, Department of Defense.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of Admissions, Headquarters United States Air Force Academy announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. *Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 2, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of Admissions, 2304 Cadet Drive, Suite 236, USAF Academy, CO 80840, or telephone 719–333–7291.

Title; Associated Form; and OMB Number: United States Air Force Academy Writing Sample; United States Air Force Academy Form 0–878; OMB Number 0701–0147.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals and households.

Annual Burden Hours: 4100.

Number of Respondents: 4100.

Responses per Respondent: 1.

Average Burden per Response: 1 hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Dated: July 17, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–18440 Filed 7–31–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2009–0050]

Proposed Collection; Comment Request

AGENCY: DoD Commercial Airlift Division.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* DoD Commercial Airlift Division announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 2, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the DoD Commercial Airlift Division (A34B), 402 Scott Drive, Unit 3A1, Scott AFB, IL 62225–5302, or call HQ AMC/A34B, DoD Commercial Airlift Division, at 618–229–4801.

Title; Associated Form; and OMB Number: DoD Statement of Intent, AMC Form 207; OMB Number 0701–0137.

Needs and Uses: The Department of Defense Commercial Airlift Division (HQ AMC/A34B) is responsible for the assessment of a commercial air carrier's ability to provide quality, safe, and reliable airlift to the Department of Defense. HQ AMC/A34B uses Air Mobility Command (AMC) Form 207 to acquire information needed to make a determination if the commercial carriers can support the Department of Defense. Information is evaluated and used in the

approval process. Failure to respond renders the commercial air carrier ineligible for contracts to provide air carriers service to the Department of Defense.

Affected Public: Business or other for profit; not-for-profit institutions.

Annual Burden Hours: 300.

Number of Respondents: 15.

Responses per Respondent: 1.

Average Burden per Response: 20 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are commercial air carriers desiring to supply airlift services to DOD. AMC Form 207 provides vital information form the carriers needed to determine their eligibility to participate in the DOD Air Transportation Program.

Dated: July 17, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–18396 Filed 7–31–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing:

U.S. Patent No. 7,255,059: ADJUSTABLE ADAPTER ASSEMBLY// U.S. Patent No. 7,262,360: UNDERWATER POWER GENERATION USING UNDERWATER THERMOCLINE//U.S. Patent No. 7,263,190: SYSTEM FOR SECURING THE CONFIDENTIALITY OF ELECTRONICALLY STORED DATA IN THE EVENT OF THE PHYSICAL THEFT THEREOF//U.S. Patent No. 7,263,208: AUTOMATED THRESHOLD SELECTION FOR A TRACTABLE ALARM RATE//U.S. Patent No. 7,263,588: DATA STORAGE SYSTEM USING GEOGRAPHICALLY-DISTRIBUTED STORAGE DEVICES/ FACILITIES//U.S. Patent No. 7,264,204: UNMANNED AERIAL VEHICLE CATCHER//U.S. Patent No. 7,266,939: MOISTURE-ABSORBING CELLULOSE-BASED MATERIAL AND METHOD FOR MAKING SAME//U.S. Patent No. 7,272,242: OBJECT DETECTION IN ELECTRO-OPTIC SENSOR IMAGES// U.S Patent No. 7,296,528: ANGLED LANDING PLATFORM//U.S. Patent No. 7,296,530: UNMANNED SYSTEM FOR UNDERWATER OBJECT INSPECTION, IDENTIFICATION AND/OR NEUTRALIZATION//U.S. Patent No. 7,298,277: DEPTH MONITORING AND ALERT SYSTEM//U.S. Patent No. 7,299,152: CORRELATING EVENT DATA FOR LARGE GEOGRAPHIC AREA//U.S. Patent No. 7,299,714: TELESCOPING AND LOCKING LEVER ARM//U.S. Patent No. 7,301,851: UNDERWATER HULL SURVEY SYSTEM//U.S. Patent No. 7,315,485: SYSTEM AND METHOD FOR TARGET CLASSIFICATION AND CLUTTER REJECTION IN LOW-RESOLUTION IMAGERY//U.S. Patent No. 7,342,399: MAGNETIC ANOMALY SENSING-BASED SYSTEM FOR TRACKING A MOVING MAGNETIC TARGET//U.S. Patent No. 7,342,847: METHOD OF ESTIMATING ALONG-TRACK DISPLACEMENT OF AN UNDERWATER VEHICLE//U.S. Patent No. 7,383,019: FIELD DATA COLLECTION AND RELAY STATION// U.S. Patent No. 7,373,523: PREPARING DATA FOR STORAGE IN A SECURE FASHION//U.S. Patent No. 7,386,151: SYSTEM AND METHOD FOR ASSESSING SUSPICIOUS BEHAVIORS//U.S. Patent No. 7,406,001: UNDERWATER ACOUSTIC BEACON AND METHOD OF OPERATING SAME FOR NAVIGATION//U.S. Patent No. 7,421,349: BEARING FAULT SIGNATURE DETECTION//U.S. Patent No. 7,428,939: WATERJET DRIVE HOVERCRAFT WITH ADJUSTABLE TRIM SYSTEM//U.S. Patent No. 7,448,527: SELF-WELDING FASTENER//U.S. Patent No. 7,467,579: MINE CLEARING DEVICE INCORPORATING PNEUMATIC THRUST AND UNBIASED MOTION// U.S. Patent No. 7,484,447: MINE CLEARING DEVICE INCORPORATING UNBIASED MOTION//U.S. Patent No. 7,484,467: DEEP WATER LIFT SYSTEM REMOTE PENDANT//U.S. Patent No. 7,484,646: DIVE MASK INDEX BRACKET//U.S. Patent No. 7,484,749: FRAME TOW-BAR ADAPTER/U.S. Patent No. 7,513,210: MODULAR SPONSON WITH REPLACEABLE SECTIONS//U.S. Patent No. 7,515,738: BIOMETRIC DATA COLLECTION AND STORAGE SYSTEM//U.S. Patent No. 7,530,320: UNDERWATER WATER CANNON DEFENSE SYSTEM.//

ADDRESSES: Requests for copies of the patents cited should be directed to Office of Counsel, Naval Surface Warfare Center Panama City Division, 110 Vernon Ave., Panama City, FL 32407–7001.

FOR FURTHER INFORMATION CONTACT: Mr. James Shepherd, Patent Counsel, Naval Surface Warfare Center Panama City Division, 110 Vernon Ave., Panama City, FL 32407–7001, telephone (850) 234–4646.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: July 28, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–18467 Filed 7–31–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Southern Indiana Innovators, LLC

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy. The Department of the Navy hereby gives notice of its intent to grant to Southern Indiana Innovators, LLC, a revocable, nonassignable, exclusive license to practice in the United States, the Government-owned invention described below:

U.S. Patent 6,767,015 (Navy Case 84636): issued July 27, 2004, entitled ''THERMAL TARGET''.

DATES: Anyone wishing to object to the grant of this license has fifteen days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with Naval Surface Warfare Center, Crane Division, Code OOL, Bldg. 2, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Division, Code OOL, Bldg. 2, 300 Highway 361, Crane, IN 47522–5001, telephone (812) 854–4100.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: July 28, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–18468 Filed 7–31–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

July 27, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–838–000.

Applicants: Questar Pipeline Company.

Description: Questar Pipeline Company submits Thirteenth Revised Sheet No 1 et al. to its FERC Gas Tariff, First Revised Volume No 1.

Filed Date: 07/22/2009.

Accession Number: 20090722–0144.

Comment Date: 5 p.m. Eastern Time on Monday, August 3, 2009.

Docket Numbers: RP09–839–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Transcontinental Gas Pipe Line Company, LLC submits Third Revised Sheet 24 to its FERC Gas Tariff, Fourth Revised Volume 1, to be effective 8/1/09.

Filed Date: 07/22/2009.

Accession Number: 20090722–0148.

Comment Date: 5 p.m. Eastern Time on Monday, August 3, 2009.

Docket Numbers: RP09–840–000.

Applicants: Questar Overthrust Pipeline Company.

Description: Questar Overthurst Pipeline Company's submits its Annual Fuel Reimbursement Report and Variance Adjustment Calculations for the period ended 5/31/09.

Filed Date: 07/24/2009.

Accession Number: 20090724–0097.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 5, 2009.

Docket Numbers: RP09–841–000.

Applicants: Tuscarora Gas Transmission Company.

Description: Tuscarora Gas Transmission Company submits First Revised Sheet 4 et al. to FERC Gas Tariff, Original Volume 1 to reflect the requirements of Order 712.

Filed Date: 07/24/2009.

Accession Number: 20090724–0099.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 5, 2009.

Docket Numbers: CP09–448–000.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company submits an abbreviated application for permission and approval to abandon natural gas service (Rate Schedule X–99).

Filed Date: 07/23/2009.

Accession Number: 20090723–5076.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 4, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–18501 Filed 7–31–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2005–0490; FRL–8936–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Consolidated Emissions Reporting Rule (Renewal); EPA ICR No. 0916.13, OMB Control No. 2060–0088

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 2, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2005–0490, to: (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation, 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dennis Beauregard, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Mail Code C339–02, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919)–541–5512; fax number: (919)–541–0684; e-mail address: *beauregard.dennis@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the

procedures prescribed in 5 CFR 1320.12. On April 21, 2009 (74 FR 18226), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2005–0490, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing 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 public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Consolidated Emissions Reporting Rule (Renewal).

ICR numbers: EPA ICR No. 0916.13, OMB Control No. 2060–0088.

ICR Status: This ICR is scheduled to expire on October 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9 and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA has promulgated a Consolidated Emissions Reporting Rule (CERR) (40 CFR part 51, subpart A) to coordinate new emissions inventory reporting requirements with existing requirements of the Clean Air Act (CAA) and the 1990 Amendments. Under the CERR, 55 State and territorial air quality agencies, including the District of Columbia (DC), as well as an estimated 49 local air quality agencies, must annually submit emissions data for point sources emitting specified levels of volatile organic compounds, oxides of nitrogen, carbon monoxide, sulfur dioxide, particulate matter less than or equal to 10 micrometers in diameter, particulate matter less than or equal to 2.5 micrometers in diameter ($PM_{2.5}$), and ammonia (NH_3).

Every 3 years, states are required to submit a point source inventory, as well as a statewide stationary nonpoint, nonroad mobile, onroad mobile, and biogenic source inventory for all criteria pollutants (including lead and lead compounds) and their precursors. The emissions data submitted for the annual and 3-year cycle inventories for stationary point, nonpoint, nonroad mobile, and onroad mobile sources are used by EPA's Office of Air Quality Planning and Standards to assist in developing ambient air quality emission standards, performing regional modeling, and preparing national trends assessments and special analyses and reports. Any data submitted to EPA under the CERR is in the public domain and cannot be treated as confidential.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 31 hours per response. The total number of respondents is assumed to be 1,863. This total number of respondents includes 104 State agencies that are subject to the CERR data reporting requirements and 1,759 sources that are not subject, but are assumed to incur the burden for reporting estimates of $PM_{2.5}$ and NH_3 to State agencies. 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 which have subsequently changed; 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.

Respondents/Affected Entities: 55 State and territorial air pollution control agencies, 49 local air agencies, and 1,759 industry sources.

Estimated Number of Respondents: 1,863.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 57,698.

Estimated Total Annual Cost: $230,880, includes $230,880 annualized capital or operational and maintenance costs.

Changes in the Estimates: There is a decrease of 474 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to use of updated point source reporting data from the 2005 National Emissions Inventory indicating fewer Type A sources will be reported annually to EPA.

Dated: July 21, 2009.

Jenny Noonan Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E9–18478 Filed 7–31–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Standards (SFFAS) 34, ''The Hierarchy of Generally Accepted Accounting Principles for Federal Entities, Including the Application of Standards Issued by the Financial Accounting Standards Board''

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standards (SFFAS) 34, *The Hierarchy of Generally Accepted Accounting Principles for Federal Entities, Including the Application of Standards Issued by the Financial Accounting Standards Board.*

SFFAS 34 incorporates the hierarchy of generally accepted accounting principles (GAAP) into the FASAB's authoritative literature. The ''GAAAP hierarchy'' consists of the sources of accounting principles used in the preparation of financial statements of Federal reporting entities that are presented in conformity with GAAP and the framework for selecting those principles.

The statement is available on the FASAB home page *http://www.fasab.gov/exposure.html.* Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at (202) 512–7350.

Authority: Federal Advisory Committee Act, Public Law 92–463.

Dated: July 29, 2009.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. E9–18449 Filed 7–31–09; 8:45 am]

BILLING CODE 1610–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 28, 2009.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Morgan Stanley, New York, New York; to acquire up to 9.9 percent of the voting shares of Community Bankers Trust Corporation, Glen Allen, Virginia, and thereby indirectly acquire voting shares of Bank of Essex, Essex, Virginia.

Board of Governors of the Federal Reserve System, July 29, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–18448 Filed 7–31–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0026]

Federal Acquisition Regulation; Submission for OMB Review; Change Order Accounting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0026).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning change order accounting. A request for public comments was published in the **Federal Register** at 74 FR 18718, April 24, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 2, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Contract Policy Division, GSA, (202) 501–1448 or via e-mail at *Beverly.Cromer@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR clause 52.243–6, Change Order Accounting, requires that, whenever the estimated cost of a change or series of related changes exceed $100,000, the contracting officer may require the contractor to maintain separate accounts for each change or series of related changes. The account shall record all incurred segregable, direct costs (less allocable credits) of work, both changed and unchanged, allocable to the change.

These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the matter is conclusively disposed of under the Disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes.

B. Annual Reporting Burden

Respondents: 8,750.
Responses per Respondent: 18.
Annual Responses: 157,500.
Hours per Response: .084.
Total Burden Hours: 13,230.

C. Annual Recordkeeping Burden

Recordkeepers: 8,750.
Hours per Recordkeeper: 1.5.
Total Recordkeeping Burden Hours: 13,125.
Total Burden Hours: 26,355.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from

the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, Room 4041, Washington, DC 20405, telephone (202) 501–4755.

Please cite OMB Control No. 9000–0026, Change Order Accounting, in all correspondence.

Dated: July 28, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–18465 Filed 7–31–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0094]

Federal Acquisition Regulation; Submission for OMB Review; Debarment and Suspension

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning [subject]. A request for public comments was published in the **Federal Register** at 74 FR 18716 on April 24, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 2, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward Loeb, Contract Policy Division, GSA (202) 501–0650 or via e-mail at *Edward.Loeb@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR requires contracts to be awarded to only those contractors determined to be responsible. Instances where a firm or its principals have been indicted, convicted, suspended, proposed for debarment, debarred, or had a contract terminated for default are critical factors to be considered by the contracting officer in making a responsible determination, 52.209–5, Certification Responsibility Matters, requires the disclosure of this information.

B. Annual Reporting Burden

Respondents: 89,995.
Responses per Respondent: 12.223.
Annual Responses: 1,100,000.
Hours per Response: 0.0833.
Total Burden Hours: 91,667.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0094, Debarment and Suspension, in all correspondence.

Dated: July 28, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–18466 Filed 7–31–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0336]

Animal Drug User Fee Rates and Payment Procedures for Fiscal Year 2010

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates and payment procedures for fiscal year (FY) 2010 animal drug user fees. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Animal Drug User Fee Act of 2003 (ADUFA) and the Animal Drug User Fee Amendments of 2008 (ADUFA II), authorizes FDA to collect user fees for certain animal drug applications and supplements, on certain animal drug products, on certain establishments where such products are made, and on certain sponsors of such animal drug applications and/or investigational animal drug submissions. This notice establishes the fee rates for FY 2010.

FOR FURTHER INFORMATION CONTACT: Visit FDA's Web site at *http://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm* or contact Lisa Kable, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7529 Standish Pl., Rockville, MD 20855, 240–276–9718. For general questions, you may also e-mail the Center for Veterinary Medicine (CVM) at: *cvmadufa@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 740 of the act (21 U.S.C. 379j-12) establishes four different kinds of user fees: (1) Fees for certain types of animal drug applications and supplements, (2) annual fees for certain animal drug products, (3) annual fees for certain establishments where such products are made, and (4) annual fees for certain sponsors of animal drug applications and/or investigational animal drug submissions (21 U.S.C. 379j-12(a)). When certain conditions are met, FDA will waive or reduce fees (21 U.S.C. 379j-12(d)).

For FY 2009 through FY 2013, the act establishes aggregate yearly base revenue amounts for each of these fee categories. Base revenue amounts established for years after FY 2009 are subject to adjustment for workload. Fees for applications, establishments, products, and sponsors are to be established each year by FDA so that the revenue for each fee category will approximate the level established in the statute, after the level has been adjusted for workload.

For FY 2010, the animal drug user fee rates are: $209,400 for an animal drug application; $145,200 for a supplemental animal drug application for which safety or effectiveness data is required and for an animal drug application subject to the criteria set forth in section 512(d)(4) of the act (21 U.S.C. 360b(d)(4)); $6,185 for an annual

product fee; $73,850 for an annual establishment fee; and $57,100 for an annual sponsor fee. FDA will issue invoices for FY 2010 product, establishment, and sponsor fees by December 31, 2009, and these invoices will be due and payable within 30 days of issuance of the invoice.

The application fee rates are effective for applications submitted on or after October 1, 2009, and will remain in effect through September 30, 2010. Applications will not be accepted for review until FDA has received full payment of application fees and any other animal drug user fees owed.

II. Revenue Amount for FY 2010

A. Statutory Fee Revenue Amounts

ADUFA II (Public Law 110–316 signed by the President on August 14, 2008) specifies that the aggregate revenue amount for FY 2010 for each of the 4 animal drug user fee categories is $4,320,000, before any adjustment for workload is made. (See 21 U.S.C. 379j-12(b)(1) through (b)(4).)

B. Inflation Adjustment to Fee Revenue Amount

The amounts established in ADUFA II for each year for FY 2009 through FY 2013 include an inflation adjustment; so, no further inflation adjustment is required.

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

For each FY beginning in FY 2010, ADUFA provides that fee revenue amounts shall be further adjusted to reflect changes in review workload (21 U.S.C. 379j-12(c)(1)).

FDA calculated the average number of each of the five types of applications and submissions specified in the workload adjustment provision (animal drug applications, supplemental animal drug applications for which data with respect to safety or efficacy are required, manufacturing supplemental animal drug applications, investigational animal drug study submissions, and investigational animal drug protocol submissions) received over the 5-year period that ended on September 30, 2002 (the base years), and the average number of each of these types of applications and submissions over the most recent 5-year period that ended June 30, 2009.

The results of these calculations are presented in the first two columns of table 1 of this document. Column 3 reflects the percent change in workload over the two 5-year periods. Column 4 shows the weighting factor for each type of application, reflecting how much of the total FDA animal drug review workload was accounted for by each type of application or submission in the table during the most recent 5 years. Column 5 of table 1 of this document is the weighted percent change in each category of workload, and was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of the table the sum of the values in column 5 is added, reflecting a total change in workload of -22% percent for FY 2010. This is the workload adjuster for FY 2010.

TABLE 1.—WORKLOAD ADJUSTER CALCULATION (NUMBERS MAY NOT ADD DUE TO ROUNDING)

Application Type	Column 1 5-Year Average (Base Years)	Column 2 Latest 5-Year Average	Column 3 Percent Change	Column 4 Weighting Factor	Column 5 Weighted % Change
New Animal Drug Applications (NADAs)	28.80	12.40	-57%	0.0319	-2%
Supplemental NADAs With Safety or Efficacy Data	23.40	13.60	-42%	0.0233	-1%
Manufacturing Supplements	366.6	435.20	19%	0.1605	3%
Investigational Study Submissions	336.60	242.80	-28%	0.5930	-17%
Investigational Protocol Submissions	292.40	204.80	-30%	0.1913	-6%
FY 2010 Workload Adjuster					-22%

ADUFA specifies that the workload adjuster may not result in fees that are less than the fee revenue amount in the statute (21 U.S.C. 379j-12(c)(1)(B)). Because applying the FY 2010 workload adjuster would result in fees less than the statutory amount, the workload adjustment will not be applied in FY 2010. As a result, the statutory revenue target amount for each of the 4 categories of fees stand at $4,320,000 with the new total revenue target for fees in FY 2010 being $17,280,000.

III. Adjustment for Excess Collections in Previous Years

Under the provisions of ADUFA, if the agency collects more fees than were provided for in appropriations in any year, FDA is required to reduce its anticipated fee collections in a subsequent fiscal year by that amount (21 U.S.C. 379j-12(g)(4)) prior to its amendment under ADUFA II). Table 2 of this document shows the amount of collections realized and the amount provided in appropriations acts, and the amount to be offset in a subsequent year, as of the end of the latest complete fiscal year, 2008, which is the final year of ADUFA.

TABLE 2.—FEES COLLECTED, FEES APPROPRIATED, AND OFFSET FOR FUTURE COLLECTIONS—AS OF SEPTEMBER 30, 2008

Fiscal Year Cohort	Fees Collected	Fees Appropriated	Amount to Offset Future Collections
2004	$5,154,700	$5,000,000	$154,700

TABLE 2.—FEES COLLECTED, FEES APPROPRIATED, AND OFFSET FOR FUTURE COLLECTIONS—AS OF SEPTEMBER 30, 2008—Continued

Fiscal Year Cohort	Fees Collected	Fees Appropriated	Amount to Offset Future Collections
2005	$8,519,101	$8,354,000	$165,101
2006	$10,945,866	$11,318,000	$0
2007	$13,189,060	$11,604,000	$1,585,060[1]
2008	$11,177,600	$13,696,000	$0
Total			$1,904,861
Amount Offset When Fees for FY 2008 Were Determined			$320,000
Amount Offset When Fees for FY 2009 Were Determined			$1,344,000[2]
Remaining Balance to Be Offset When FY 2013 Fees Are Set			$240,861

[1] Some fees for FY 2007 were collected at the end of FY 2008 and were therefore not reflected in the **Federal Register** document announcing animal drug user fee rates and payment procedures for FY 2009 (September 15, 2008; 73 FR 53254). These additional fees amount to $240,861 and represent the remaining balance to be offset.

[2] The amount shown in the corresponding chart last year was $1,342,316 (73 FR 53254). When the reduction was taken this amount was divided by 4, so it could be distributed among the 4 categories of fees (application fees, establishment fees, product fees and sponsor fees) and then it was rounded to the nearest thousand dollars, which amounted to $336,000, for each of these categories. Thus, the total reduction actually taken in FY 2009 was $336,000 times 4, or a total of $1,344,000.

When ADUFA fees were established for FY 2008 and FY 2009, the amount of fee revenues for each year was reduced by $320,000 and $1,344,000 of collections in excess of appropriations, respectively. That leaves a total of $240,861 collected under ADUFA I remaining to be offset. ADUFA II amended the annual offset provision of ADUFA I to require one offset when FY 2013 fees are set in August of 2012, if aggregate collections from FY 2009 through 2011 plus the amount of fees estimated to be collected for FY 2012 exceed aggregate appropriations over the same period (21 U.S.C. 379j-12(g)(4), as amended by ADUFA II). FDA will include the remaining $240,861 in excess collections from FY 2004 through FY 2008 in the calculations when it determines whether or not there will be an offset in FY 2013, the final year of ADUFA II. FDA is not offsetting for excess collections at this time.

IV. Application Fee Calculations for FY 2010

The terms ''animal drug application'' and ''supplemental animal drug application'' are defined in section 739 of the act (21 U.S.C. 379j-11(1) and (2)).

A. Application Fee Revenues and Numbers of Fee-Paying Applications

The application fee must be paid for any animal drug application or supplemental animal drug application that is subject to fees under ADUFA and that is submitted on or after September 1, 2003. The application fees are to be set so that they will generate $4,320,000 in fee revenue for FY 2010. This is the amount set out in the statute and no adjustments are required for FY 2010. The fee for a supplemental animal drug application for which safety or effectiveness data are required and for an animal drug application subject to criteria set forth in section 512(d)(4) is to be set at 50 percent of the animal drug application fee. (See 21 U.S.C. 379j-12(a)(1)(A)(ii), as amended by ADUFA II.)

To set animal drug application fees and supplemental animal drug application fees to realize $4,320,000, FDA must first make some assumptions about the number of fee-paying applications and supplements the agency will receive in FY 2010.

The agency knows the number of applications that have been submitted in previous years. That number fluctuates significantly from year to year. In estimating the fee revenue to be generated by animal drug application fees in FY 2010, FDA is assuming that the number of applications that will pay fees in FY 2010 will equal the average number of submissions over the 4 most recent years (including an estimate for the current year). This may not fully account for possible year to year fluctuations in numbers of fee-paying applications, but FDA believes that this is a reasonable approach after 6 years of experience with this program.

Over the past 4 years, the average number of animal drug applications that would have been subject to the full fee was 8.25, including the number for the most recent year, estimated at 6. Over this same period, the average number of supplemental applications and applications subject to the criteria set forth in section 512(d)(4) of the act that would have been subject to half of the full fee was 13.25, including the number for the most recent year, estimated at 9.

Thus, for FY 2010, FDA estimates receipt of 8.25 fee paying original applications and 13.25 fee-paying supplemental animal drug applications and applications subject to the criteria set forth is section 512(d)(4) of the act which pay half of the full fee.

B. Fee Rates for FY 2010

FDA must set the fee rates for FY 2010 so that the estimated 8.25 applications that pay the full fee and the estimated 13.25 supplements and applications subject to the criteria set forth in section 512(d)(4) of the act that pay half of the full fee will generate a total of $4,320,000. To generate this amount, the fee for an animal drug application, rounded to the nearest hundred dollars, will have to be $290,400, and the fee for a supplemental animal drug application for which safety or effectiveness data are required and for applications subject to the criteria set forth in section 512(d)(4) of the act will have to be $145,200.

V. Product Fee Calculations for FY 2010

A. Product Fee Revenues and Numbers of Fee-Paying Products

The animal drug product fee (also referred to as the product fee) must be paid annually by the person named as the applicant in a new animal drug application or supplemental new animal drug application for an animal drug product submitted for listing under

section 510 of the act (21 U.S.C. 360), and who had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003. (See 21 U.S.C. 379j-12(a)(2).) The term ''animal drug product'' is defined in 21 U.S.C. 379j-11(3). The product fees are to be set so that they will generate $4,320,000 in fee revenue for FY 2010. This is the amount set out in the statute and no adjustments are required for FY 2010.

To set animal drug product fees to realize $4,320,000, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2010. FDA developed data on all animal drug products that have been submitted for listing under section 510 of the act, and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of July 2009, FDA estimates that there are a total of 776 products submitted for listing by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA estimates that a total of 776 products will be subject to this fee in FY 2010.

In estimating the fee revenue to be generated by animal drug product fees in FY 2010, FDA is assuming that 10 percent of the products invoiced, or about 77.6, will not pay fees in FY 2010 due to fee waivers and reductions. Based on experience with other user fee programs and the first 6 years of ADUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying products in FY 2010.

Accordingly, the agency estimates that a total of 698.4 (776 minus 77.6) products will be subject to product fees in FY 2010.

B. Product Fee Rates for FY 2010

FDA must set the fee rates for FY 2010 so that the estimated 698.4 products that pay fees will generate a total of $4,320,000. To generate this amount will require the fee for an animal drug product, rounded to the nearest 5 dollars, to be $6,185.

VI. Establishment Fee Calculations for FY 2010

A. Establishment Fee Revenues and Numbers of Fee-Paying Establishments

The animal drug establishment fee (also referred to as the establishment fee) must be paid annually by the person who: (1) Owns or operates, directly or through an affiliate, an animal drug establishment; (2) is named as the applicant in an animal drug application or supplemental animal drug application for an animal drug product submitted for listing under section 510 of the act; (3) had an animal drug application or supplemental animal drug application pending at FDA after September 1, 2003; and (4) whose establishment engaged in the manufacture of the animal drug product during the fiscal year. (See 21 U.S.C. 379j-12(a)(3).) An establishment subject to animal drug establishment fees is assessed only 1 such fee per fiscal year. (See 21 U.S.C. 379j-12(a)(3).) The term ''animal drug establishment'' is defined in 21 U.S.C. 379j-11(4). The establishment fees are to be set so that they will generate $4,320,000 in fee revenue for FY 2010. This is the amount set out in the statute and no adjustments are required for FY 2010.

To set animal drug establishment fees to realize $4,320,000, FDA must make some assumptions about the number of establishments for which these fees will be paid in FY 2010. FDA developed data on all animal drug establishments and matched this to the list of all persons who had an animal drug application or supplement pending after September 1, 2003. As of July 2009, FDA estimates that there are a total of 65 establishments owned or operated by persons who had an animal drug application or supplemental animal drug application pending after September 1, 2003. Based on this, FDA believes that 65 establishments will be subject to this fee in FY 2010.

In estimating the fee revenue to be generated by animal drug establishment fees in FY 2010, FDA is assuming that 10 percent of the establishments invoiced, or 6.5, will not pay fees in FY 2010 due to fee waivers and reductions. Based on experience with the first 6 years of ADUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying establishments in FY 2010.

Accordingly, the agency estimates that a total of 58.5 establishments (65 minus 6.5) will be subject to establishment fees in FY 2010.

B. Establishment Fee Rates for FY 2010

FDA must set the fee rates for FY 2010 so that the estimated 58.5 establishments that pay fees will generate a total of $4,320,000. To generate this amount will require the fee for an animal drug establishment, rounded to the nearest 50 dollars, to be $73,850.

VII. Sponsor Fee Calculations for FY 2010

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The animal drug sponsor fee (also referred to as the sponsor fee) must be paid annually by each person who: (1) Is named as the applicant in an animal drug application, except for an approved application for which all subject products have been removed from listing under section 510 of the act or has submitted an investigational animal drug submission that has not been terminated or otherwise rendered inactive; and (2) had an animal drug application, supplemental animal drug application, or investigational animal drug submission pending at FDA after September 1, 2003. (See 21 U.S.C. 379j-11(6) and 379j-12(a)(4).) An animal drug sponsor is subject to only one such fee each fiscal year. (See 21 U.S.C. 379j-12(a)(4).) The sponsor fees are to be set so that they will generate $4,320,000 in fee revenue for FY 2010. This is the amount set out in the statute, and no adjustments are required for FY 2010.

To set animal drug sponsor fees to realize $4,320,000, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2010. Based on the number of firms that would have met this definition in each of the past 6 years, FDA estimates that a total of 161 sponsors will meet this definition in FY 2010.

Careful review indicates that about one third or 33 percent of all of these sponsors will qualify for minor use/minor species waiver or reduction (21 U.S.C. 379j-12(d)(1)(C)). Based on the agency's experience to date with sponsor fees, FDA's current best estimate is that an additional 20 percent will qualify for other waivers or reductions, for a total of 53 percent of the sponsors invoiced, or 85.3, who will not pay fees in FY 2010 due to fee waivers and reductions. FDA believes that this is a reasonable basis for estimating the number of fee-paying sponsors in FY 2010.

Accordingly, the agency estimates that a total of 75.7 sponsors (161 minus 85.3) will be subject to and pay sponsor fees in FY 2010.

B. Sponsor Fee Rates for FY 2010

FDA must set the fee rates for FY 2010 so that the estimated 75.7 sponsors that pay fees will generate a total of $4,320,000. To generate this amount will require the fee for an animal drug sponsor, rounded to the nearest 50 dollars, to be $57,100.

VIII. Fee Schedule for FY 2010

The fee rates for FY 2010 are summarized in table 3 of this document.

TABLE 3.—FY 2010 FEE RATES

Animal Drug User Fee Category	Fee Rate for FY 2010
Animal Drug Application Fees	
Animal Drug Application	$290,400
Supplemental Animal Drug Application for Which Safety or Effectiveness Data Are Required or Animal Drug Application Subject to the Criteria Set Forth in Section 512(d)(4) of the Act	$145,200
Animal Drug Product Fee	$6,185
Animal Drug Establishment Fee[1]	$73,850
Animal Drug Sponsor Fee[2]	$57,100

[1] An animal drug establishment is subject to only one such fee each fiscal year.
[2] An animal drug sponsor is subject to only one such fee each fiscal year.

IX. Procedures for Paying the FY 2010 Fees

A. Application Fees and Payment Instructions

The appropriate application fee established in the new fee schedule must be paid for an animal drug application or supplement subject to fees under ADUFA that is submitted after September 30, 2009. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration, by wire transfer, or electronically using Pay.gov. (The Pay.gov payment option is available to you after you submit a cover sheet. Click the ''Pay Now'' button.) On your check, bank draft, or U.S. postal money order, please write your application's unique Payment Identification Number (PIN), beginning with the letters AD, from the upper right-hand corner of your completed Animal Drug User Fee Cover Sheet. Also write the FDA post office box number (P.O. Box 953877) on the enclosed check, bank draft, or money order. Your payment and a copy of the completed Animal Drug User Fee Cover Sheet can be mailed to: Food and Drug Administration, P.O. Box 953877, St. Louis, MO, 63195–3877.

If payment is made by wire transfer, send payment to: U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, FDA Deposit Account Number: 75060099, U.S. Department of Treasury routing/transit number: 021030004, SWIFT Number: FRNYUS33. You are responsible for any administrative costs associated with the processing of a wire transfer. Contact your bank or financial institution regarding additional fees.

If you prefer to send a check by a courier such as Federal Express (FEDEX) or United Parcel Service (UPS), the courier may deliver the check and printed copy of the cover sheet to: U.S. Bank, Attn: Government Lockbox 953877, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery contact the U.S. Bank at 314–418–4821. This telephone number is only for questions about courier delivery.)

The tax identification number of the Food and Drug Administration is 530196965. (Note: In no case should the payment for the fee be submitted to FDA with the application.)

It is helpful if the fee arrives at the bank at least a day or two before the application arrives at FDA's CVM. FDA records the official application receipt date as the later of the following: The date the application was received by FDA's CVM, or the date U.S. Bank notifies FDA that your payment in the full amount has been received, or when the U.S. Treasury notifies FDA of receipt of an electronic or wire transfer payment. U.S. Bank and the U.S. Treasury are required to notify FDA within 1 working day, using the PIN described previously.

B. Application Cover Sheet Procedures

Step One—Create a user account and password. Log on to the ADUFA Web site at *http://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm* and, under Tools and Resources click ''The Animal Drug User Fee Cover Sheet'' and then click ''Create ADUFA User Fee Cover Sheet.'' For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process.

Step Two—Create an Animal Drug User Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your user name and password, complete the steps required to create an Animal Drug User Fee Cover Sheet. One cover sheet is needed for each animal drug application or supplement. Once you are satisfied that the data on the cover sheet is accurate and you have finalized the cover sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique PIN.

Step Three—Send the payment for your application as described in section IX.A of this document.

Step Four—Please submit your application and a copy of the completed Animal Drug User Fee Cover Sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855.

C. Product, Establishment, and Sponsor Fees

By December 31, 2009, FDA will issue invoices and payment instructions for product, establishment, and sponsor fees for FY 2010 using this Fee Schedule. Payment will be due and payable within 30 days of issuance of the invoice. FDA will issue invoices in November 2010 for any products, establishments, and sponsors subject to fees for FY 2010 that qualify for fees after the December 2009 billing.

Dated: July 28, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–18459 Filed 7–31–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0340]

Animal Generic Drug User Fee Rates and Payment Procedures for Fiscal Year 2010

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates and payment procedures for fiscal year (FY) 2010 generic new animal drug user fees. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Animal Generic Drug User Fee Act of 2008 (AGDUFA), authorizes FDA to collect user fees for certain abbreviated applications for generic new animal drugs, on certain generic new animal drug products, and on certain sponsors of such abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs. This notice establishes the fee rates for FY 2010.

For FY 2010, the generic animal drug user fee rates are: $75,000 for each abbreviated application for a generic new animal drug; $3,255 for each generic new animal drug product; $54,050 for each generic new animal drug sponsor paying 100 percent of the sponsor fee; $40,537 for each generic new animal drug sponsor paying 75 percent of the sponsor fee; and $27,025 for a generic new animal drug sponsor paying 50 percent of the sponsor fee. FDA will issue invoices for FY 2010 product and sponsor fees by December 31, 2009. These fees will be due and payable within 30 days of the issuance of the invoices.

The application fee rates are effective for all abbreviated applications for a generic new animal drug submitted on or after October 1, 2009, and will remain in effect through September 30, 2010. Applications will not be accepted for review until the FDA has received full payment of related application fees and any other fees owed under the Animal Generic Drug User Fee program.

FOR FURTHER INFORMATION CONTACT: Visit the FDA Web site at *http://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/default.htm* or contact Bryan Walsh, Center for Veterinary Medicine (HFV–10), Food and Drug Administration, 7529 Standish Pl., Rockville, MD 20855, 240–276–9730. For general questions, you may also e-mail the Center for Veterinary Medicine (CVM) at: *cvmagdufa@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 741 of the act (21 U.S.C. 379j–21) establishes three different kinds of user fees: (1) Fees for certain types of abbreviated applications for generic new animal drugs, (2) annual fees for certain generic new animal drug products, and (3) annual fees for certain sponsors of abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs (21 U.S.C. 379j–21(a)). When certain conditions are met, FDA will waive or reduce fees for generic new animal drugs intended solely to provide for a minor use or minor species indication (21 U.S.C. 379j–21(d)).

For FY 2009 through FY 2013, the act establishes aggregate yearly base revenue amounts for each of these fee categories. Base revenue amounts established for years after FY 2009 may be adjusted for workload. Fees for applications, products, and sponsors are to be established each year by FDA so that the revenue for each fee category will approximate the level established in the statute, after the level has been adjusted for workload.

II. Revenue Amount for FY 2010

A. Statutory Fee Revenue Amounts

AGDUFA (Title II of Public Law 110–316 signed by the President on August 14, 2008) specifies that the aggregate revenue amount for FY 2010 for abbreviated application fees is $1,532,000 and each of the other two generic new animal drug user fee categories, annual product fees and annual sponsor fees, is $1,787,000 each, before any adjustment for workload is made (see 21 U.S.C. 379j–21(b)).

B. Inflation Adjustment to Fee Revenue Amount

The amounts established in AGDUFA for each year for FY 2009 through FY 2013 include an inflation adjustment, so no inflation adjustment is required.

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

For each FY beginning after FY 2009, AGDUFA provides that statutory fee revenue amounts shall be further adjusted to reflect changes in review workload (21 U.S.C. 379j–21(c)(1)).

FDA calculated the average number of each of the four types of applications and submissions specified in the workload adjustment provision (abbreviated applications for generic new animal drugs, manufacturing supplemental abbreviated applications for generic new animal drugs, investigational generic new animal drug study submissions, and investigational generic new animal drug protocol submissions) received over the 5-year period ended on September 30, 2008 (the base years), and the average number of each of these types of applications and submissions over the most recent 5-year period that ended on June 30, 2009.

The results of these calculations are presented in the first two columns of table 1 of this document. Column 3 reflects the percent change in workload over the two 5-year periods. Column 4 shows the weighting factor for each type of application, reflecting how much of the total FDA generic new animal drug review workload was accounted for by each type of application or submission in the table during the most recent 5 years. Column 5 of table 1 is the weighted percent change in each category of workload, and was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of table 1, the sum of the values in column 5 is calculated, reflecting a total change in workload of negative 11.2 percent for FY 2010. This is the workload adjuster for FY2010.

TABLE 1.—WORKLOAD ADJUSTER CALCULATION

Application type	Column 1 5-Year Avg. (Base Years)	Column 2 Latest 5-Year Avg.	Column 3 Percent Change	Column 4 Weighting Factor	Colum 5 Weighted Percent Change
Abbreviated New Animal Drug Applications (ANADAs)	44.20	38.00	-14%	59%	-8.3%

TABLE 1.—WORKLOAD ADJUSTER CALCULATION—Continued

Application type	Column 1 5-Year Avg. (Base Years)	Column 2 Latest 5-Year Avg.	Column 3 Percent Change	Column 4 Weighting Factor	Colum 5 Weighted Percent Change
Manufacturing Supplements ANADAs	114.80	101.20	-12%	15%	-1.8%
Generic Investigational Study Submissions	18.00	19.60	9%	10%	.9%
Generic Investigational Protocol Submissions	21.60	18.80	-13%	16%	-2.1%
FY 2010 AGDUFA Workload Adjuster					-11.2%

AGDUFA specifies that the workload adjuster may not result in fees for a fiscal year that are less than the statutory revenue amount (21 U.S.C. 379j–21(c)(1)(B)) for that fiscal year. Because applying the workload adjuster for FY 2010 would result in fees less than the statutory amount, the workload adjustment will not be applied in FY 2010. As a result, the statutory revenue amount for each category of fees for FY 2010 ($1,532,000 for application fees and $1,787,000 for both product and sponsor fees) becomes the revenue target for the fees in FY 2010, for a total inflation-adjusted fee revenue target in FY 2010 of $5,106,000 for fees from all three categories.

III. Abbreviated Application Fee Calculations for FY 2010

The term ''abbreviated application for a generic new animal drug'' is defined in 21 U.S.C. 379j–21(k)(1).

A. Application Fee Revenues and Numbers of Fee-Paying Applications

The application fee must be paid for abbreviated applications for a generic new animal drug that is subject to fees under AGDUFA and that is submitted on or after July 1, 2008. The application fees are to be set so that they will generate $1,532,000 in fee revenue for FY 2010. This is the amount set out in the statute.

To set fees for abbreviated applications for generic new animal drugs to realize $1,532,000, FDA must first make some assumptions about the number of fee-paying abbreviated applications it will receive during FY 2010.

The agency knows the number of applications that have been submitted in previous years. That number fluctuates significantly from year to year. FDA is making estimates and applying different assumptions for two types of submissions: Original submissions of abbreviated applications for generic new animal drugs and ''reactivated'' submissions of abbreviated applications for generic new animal drugs. Any original submissions of abbreviated applications for generic new animal drugs that were received by the FDA before July 1, 2008, were not assessed fees (21 U.S.C. 379j–21(a)(1)(A)). Some of these nonfee paying submissions were later resubmitted after July 1 because the initial submission was not approved by the FDA (i.e. the FDA marked the submission as incomplete and requested additional nonadministrative information) or because the original submission was withdrawn by the sponsor. Because these abbreviated applications for generic new animal drugs are resubmitted after July 1, 2008, they are assessed fees. In this notice, FDA refers to these resubmitted applications as ''reactivated'' applications.

Regarding original submissions of abbreviated applications for generic new animal drugs, FDA is assuming that the number of applications that will pay fees in FY 2010 will equal 30-percent less than the average number of submissions over the 5 most recent years. This 30-percent reduction is made because of the anticipated impact of fees on the number on submissions. During FY 2010, FDA estimates it will receive only 5 original submissions of abbreviated applications for generic new animal drugs, compared to average receipts of 16.2 per year over the latest 5 years, including our FY 2009 estimate. Applying a 30-percent reduction to the 16.2 average, the estimate for original submissions of abbreviated applications for generic new animal drugs for FY 2010 is 11.3. (If the number of original submissions of abbreviated applications for generic new animal drugs does not increase over the next year, a higher percent reduction will have to be applied a year from now when fees are set for FY 2011.)

Regarding reactivated submissions of abbreviated applications for generic new animal drugs, FDA is applying a 50-percent reduction based on the FDA's experience with these types of submissions during the second year of other user fee programs. This assumption is based on the fact that there were a limited number of original submissions of abbreviated applications for generic new animal drugs received by FDA before July 1, 2008, and which were not assessed fees. For these original submissions that were not approved before July 1, 2008, resubmission to the FDA would trigger an application fee (21 U.S.C. 379j–21(a)(1)(A)). Once these initial original submissions of abbreviated applications for generic new animal drugs received by the FDA before July 1, 2008, have either been withdrawn or resubmitted, ''reactivation submissions'' will cease completely. This reduction is consistent with estimates made when this user fee program was in the development process. During FY 2009, FDA estimates it will receive only 3 reactivated submissions of abbreviated applications for generic new animal drugs, compared to average receipts of 18.2 per year over the most recent 5 years, including our estimate for FY 2009. Applying a 50-percent reduction to the 18.2 average, the estimate for reactivated submissions of abbreviated applications for generic new animal drugs for FY 2010 is 9.1. These reductions may not fully account for possible year to year fluctuations in numbers of fee-paying applications, but FDA believes that this is a reasonable approach after about 6 years of experience with a similar user fee program.

Based on the previous assumptions, FDA is estimating that it will receive a total of 20.4 fee paying generic new animal drug applications in FY 2010 (11.3 original applications and 9.1 reactivations).

B. Fee Rates for FY 2010

FDA must set the fee rates for FY 2010 so that the estimated 20.4 abbreviated applications that pay the fee will generate a total of $1,532,000. To generate this amount, the fee for a

generic new animal drug application, rounded to the nearest hundred dollars, will have to be $75,000.

IV. Generic New Animal Drug Product Fee Calculations for FY 2010

A. Product Fee Revenues and Numbers of Fee-Paying Products

The generic new animal drug product fee (also referred to as the product fee) must be paid annually by the person named as the applicant in an abbreviated new animal drug application or supplemental abbreviated application for generic new animal drugs for an animal drug product submitted for listing under section 510 of the act (21 U.S.C. 360), and who had an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(a)(2)). The term ''generic new animal drug product'' means each specific strength or potency of a particular active ingredient or ingredients in final dosage form marketed by a particular manufacturer or distributor, which is uniquely identified by the labeler code and product code portions of the national drug code, and for which an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug has been approved (21 U.S.C. 379j–21(k)(6)). The product fees are to be set so that they will generate $1,787,000 in fee revenue for FY 2010. This is the amount set out in the statute and no further adjustments are required for FY 2010.

To set generic new animal drug product fees to realize $1,787,000, FDA must make some assumptions about the number of products for which these fees will be paid in FY 2010. FDA gathered data on all generic new animal drug products that have been submitted for listing under section 510 of the act, and matched this to the list of all persons who FDA estimated would have an abbreviated new animal drug application or supplemental abbreviated application pending after September 1, 2008. FDA estimates a total of 610 products submitted for listing by persons who had an abbreviated application for a generic new animal drug or supplemental abbreviated application for a generic new animal drug pending after September 1, 2008. Based on this, FDA believes that a total of 610 products will be subject to this fee in FY 2010.

In estimating the fee revenue to be generated by generic new animal drug product fees in FY 2010, FDA is assuming that 10 percent of the products invoiced, or 61, will not pay fees in FY 2010 due to fee waivers and reductions. Based on experience with other user fee programs and the first 6 years of ADUFA, FDA believes that this is a reasonable basis for estimating the number of fee-paying products in FY 2010.

Accordingly, the agency estimates that a total of 549 (610 minus 61) products will be subject to product fees in FY 2010.

B. Product Fee Rates for FY 2010

FDA must set the fee rates for FY 2010 so that the estimated 549 products that pay fees will generate a total of $1,787,000. To generate this amount will require the fee for a generic new animal drug product, rounded to the nearest five dollars, to be $3,255.

V. Generic New Animal Drug Sponsor Fee Calculations for FY 2010

A. Sponsor Fee Revenues and Numbers of Fee-Paying Sponsors

The generic new animal drug sponsor fee (also referred to as the sponsor fee) must be paid annually by each person who: (1) is named as the applicant in an abbreviated application for a new generic animal drug, except for an approved application for which all subject products have been removed from listing under section 510 of the act, or has submitted an investigational submission for a generic new animal drug that has not been terminated or otherwise rendered inactive; and (2) had an abbreviated application for a generic new animal drug, supplemental abbreviated application for a generic new animal drug, or investigational submission for a generic new animal drug pending at FDA after September 1, 2008 (see 21 U.S.C. 379j–21(k)(7) and 379j–21(a)(3)). A generic new animal drug sponsor is subject to only one such fee each fiscal year (see 21 U.S.C. 379j–21(a)(3)(B)). Applicants with more than 6 approved abbreviated applications will pay 100 percent of the sponsor fee, applicants with 2 to 6 approved abbreviated applications will pay 75 percent of the sponsor fee, and applicants with 1 or fewer approved abbreviated applications will pay 50 percent of the sponsor fee (see 21 U.S.C. 379j–21(a)(3)(B)). The sponsor fees are to be set so that they will generate $1,787,000 in fee revenue for FY 2010. This is the amount set out in the statute and no adjustments are required for FY 2010.

To set generic new animal drug sponsor fees to realize $1,787,000, FDA must make some assumptions about the number of sponsors who will pay these fees in FY 2010. Based on the number of firms that meet this definition, FDA estimates that in FY 2010, 11 sponsors will pay 100 percent fees, 11 sponsors will pay 75 percent fees, and 35 sponsors will pay 50 percent fees. That totals the equivalent of 36.75 full sponsor fees (11 times 100 percent or 11, plus 11 times 75 percent or 8.25, plus 35 times 50 percent or 17.5).

FDA estimates that about 10 percent of all of these sponsors, or 3.675, may qualify for a minor use/minor species waiver.

Accordingly, the agency estimates that the equivalent of 33.075 full sponsor fees (36.75 minus 3.675) are likely to be paid in FY 2010.

B. Sponsor Fee Rates for FY 2010

FDA must set the fee rates for FY 2010 so that the estimated equivalent of 33.075 full sponsor fees will generate a total of $1,787,000. To generate this amount will require the 100-percent fee for a generic new animal drug sponsor, rounded to the nearest $50, to be $54,050. Accordingly, the fee for those paying 75 percent of the full sponsor fee, rounded to the nearest $5, will be $40,537, and the fee for those paying 50 percent of the full sponsor fee will be $27,025.

VI. Fee Schedule for FY 2010

The fee rates for FY 2010 are summarized in table 2 of this document.

TABLE 2.—FY 2010 FEE RATES

Generic New Animal Drug User Fee Category	Fee Rate for FY 2010
Abbreviated Application Fee for Generic New Animal Drug Application	$75,000
Generic New Animal Drug Product Fee	$3,255
100 Percent Generic New Animal Drug Sponsor Fee(1)	$54,050
75 Percent Generic New Animal Drug Sponsor Fee(1)	$40,537
50 Percent Generic New Animal Drug Sponsor Fee(1)	$27,025

(1) An animal drug sponsor is subject to only one fee each fiscal year

VII. Procedures for Paying FY 2010 Generic New Animal Drug User Fees

A. Abbreviated Application Fees and Payment Instructions

The FY 2010 fee established in the new fee schedule must be paid for an abbreviated new animal drug application subject to fees under AGDUFA that is submitted on or after October 1, 2009. Payment must be made

in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration, by wire transfer, or by automatic clearing house (ACH) using Pay.gov. (The Pay.gov payment option is available to you after you submit a cover sheet. Click the ''Pay Now'' button). On your check, bank draft, U.S. or postal money order, please write your application's unique Payment Identification Number, beginning with the letters ''AG'', from the upper right-hand corner of your completed Animal Generic Drug User Fee Cover Sheet. Also write the FDA post office box number (PO Box 953877) on the enclosed check, bank draft, or money order. Your payment and a copy of the completed Animal Generic Drug User Fee Cover Sheet can be mailed to: Food and Drug Administration, P.O. Box 953877, St. Louis, MO, 63195–3877.

If payment is made via wire transfer, send payment to U. S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Account Name: Food and Drug Administration, Account Number: 75060099, Routing Number: 021030004, Swift Number: FRNYUS33. You are responsible for any administrative costs associated with the processing of a wire transfer. Contact your bank or financial institution regarding the amount of the fees that need to be paid in addition to the wire transfer amount.

If you prefer to send a check by a courier such as FEDEX or UPS, the courier may deliver the check and printed copy of the cover sheet to: US Bank, Attn: Government Lockbox 953877, 1005 Convention Plaza, St. Louis, Missouri 63101. (Note: This address is for courier delivery only. If you have any questions concerning courier delivery contact the US Bank at 314–418–4821. This phone number is only for questions about courier delivery.)

The tax identification number of the Food and Drug Administration is 530196965. (Note: In no case should the payment for the fee be submitted to FDA with the application.)

It is helpful if the fee arrives at the bank at least a day or two before the abbreviated application arrives at FDA's Center for Veterinary Medicine. FDA records the official abbreviated application receipt date as the later of the following: The date the application was received by FDA's Center for Veterinary Medicine, or the date US Bank notifies FDA that your payment in the full amount has been received, or when the U. S. Department of the Treasury notifies FDA of payment. US Bank and the United States Treasury are required to notify FDA within one working day, using the Payment Identification Number described previously.

B. Application Cover Sheet Procedures

Step One—Create a user account and password. Log onto the AGDUFA website at *http://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/ucm137049.htm* and scroll down the page until you find the link ''Create AGDUFA User Fee Cover Sheet.'' Click on that link and follow the directions. For security reasons, each firm submitting an application will be assigned an organization identification number, and each user will also be required to set up a user account and password the first time you use this site. Online instructions will walk you through this process.

Step Two—Create an Animal Generic Drug User Fee Cover Sheet, transmit it to FDA, and print a copy. After logging into your account with your user name and password, complete the steps required to create an Animal Generic Drug User Fee Cover Sheet. One cover sheet is needed for each abbreviated animal drug application. Once you are satisfied that the data on the cover sheet is accurate and you have finalized the Cover Sheet, you will be able to transmit it electronically to FDA and you will be able to print a copy of your cover sheet showing your unique Payment Identification Number.

Step Three—Send the Payment for your application as described in Section VII.A of this document.

Step Four—Please submit your application and a copy of the completed Animal Generic Drug User Fee Cover Sheet to the following address: Food and Drug Administration, Center for Veterinary Medicine, Document Control Unit (HFV–199), 7500 Standish Pl., Rockville, MD 20855.

C. Product and Sponsor Fees

By December 31, 2009, FDA will issue invoices and payment instructions for product and sponsor fees for FY 2010 using this fee schedule. Fees will be due and payable 30 days after the issuance of the invoices. FDA will issue invoices in November 2010 for any products and sponsors subject to fees for FY 2010 that qualify for fees after the December 2009 billing.

Dated: July 28, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–18458 Filed 7–31–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0347]

Draft Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Melons; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Melons.'' This draft guidance is intended to cover the entire melon supply chain, both domestic firms and foreign firms exporting melons into the United States, to enhance the safety of melons by recommending practices to minimize microbial food safety hazards and to prevent microbial contamination. This draft guidance, when finalized, will supplement existing FDA guidances, including the 1998 ''Guidance to Industry: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables,'' which applies to fresh produce commodities, and the 2008 ''Guidance to Industry: Guide to Minimize Microbial Food Safety Hazards of Fresh-cut Fruits and Vegetables,'' which applies to fresh-cut produce.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by October 2, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Food Safety (HFS–317), Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–436–2651. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Willette Crawford, Center for Food

Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1111.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled ''Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Melons.'' This draft guidance covers melons that are grown and harvested for fresh market (i.e., fresh, unprocessed form) or for ''fresh-cut/value-added products'' (i.e., minimally processed, such as trimmed, peeled, sliced or diced, and then bagged or prepackaged), cooled, shipped to retail, wholesale or for processing, and offered for sale to the consumer. The term ''melons'' as used in this draft guidance includes raw agricultural commodities and fresh-cut/value-added products derived from cantaloupe (also known as muskmelons), honeydew, watermelon, and variety melons (e.g., ''Canary,'' ''Crenshaw,'' and ''Galia''). This draft guidance is based primarily on melon industry guidelines issued in 2005 (Ref. 1), along with agency experience and information from other recent public and private programs.

FDA is issuing this draft guidance as Level 1 draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the microbiological hazards presented by fresh and fresh-cut melons and the recommended control measures for such hazards in production and harvesting, postharvest operations, processing, distribution, and retail and food service handling of such produce. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to publish notice in the **Federal Register** soliciting public comment on each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA will publish a 60-day notice on the proposed collection of information in a future issue of the **Federal Register**.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov*.

V. References

The following reference has been placed on display in the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Fleming, P., Pool, W., and Gorny, J., editors; ''Commodity Specific Food Safety Guidelines for the Melon Supply Chain'' (1st ed.); Produce Marketing Association and United Fresh Produce Association; November 7, 2005. Accessed online at *http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/FruitsVegetablesJuices/GuidanceComplianceRegulatoryInformation/ucm168609.htm*.

Dated: July 28, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–18452 Filed 7–31–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0346]

Draft Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Tomatoes; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Tomatoes.'' This guidance is intended to cover the entire tomato supply chain, both domestic firms and foreign firms exporting tomatoes into the United States, to enhance the safety of tomatoes by recommending practices to minimize microbial food safety hazards and to prevent microbial contamination. This draft guidance, when finalized, will supplement existing FDA guidances, including the 1998 ''Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables,'' which applies to fresh produce commodities, and the 2008 ''Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Fresh-cut Fruits and Vegetables,'' which applies to fresh-cut produce.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by October 2, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Food Safety (HFS–317), Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–436–2651. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2024.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled ''Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Tomatoes.'' This draft guidance covers the growing,

harvesting, packing, processing, and distribution of tomatoes, along with retail and food service preparation. Such tomatoes may be grown and harvested either from an open field or a greenhouse; they may be packed or repacked either for the fresh market or for ''fresh-cut/value-added processing'' (i.e., minimally processed, such as by slicing or dicing, and then bagged or prepackaged); and then shipped either to food service operations or retail establishments where they are offered for sale to the consumer. The use of the term ''tomatoes'' in this document includes raw agricultural commodities and fresh-cut/value-added products. This draft guidance is based primarily on tomato industry guidelines issued in July 2008 (Ref. 1), along with agency experience and information from other recent public and private programs.

FDA is issuing this draft guidance as Level 1 draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the microbiological hazards that may result in contamination of fresh and fresh-cut tomatoes and the recommended control measures for such hazards in the growing, harvesting, packing, processing, and distribution of tomatoes, along with retail and food service preparation. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to publish notice in the **Federal Register** soliciting public comment on each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA will publish a 60-day notice on the proposed collection of information in a future issue of the **Federal Register**.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov*.

V. References

The following reference has been placed on display in the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. North American Tomato Trade Workgroup and United Fresh Produce Association. ''Commodity Specific Food Safety Guidelines for the Fresh Tomato Supply Chain.'' 2d ed., July 2008. Accessed online at *http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/FruitsVegetablesJuices/GuidanceComplianceRegulatoryInformation/ucm171695.htm*.

Dated: July 28, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–18453 Filed 7–31–09; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0348]

Draft Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Leafy Greens; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Leafy Greens.'' This draft guidance is intended to cover the entire leafy greens supply chain, both domestic firms and foreign firms exporting leafy greens products into the United States, to enhance the safety of leafy greens by recommending practices to minimize microbial food safety hazards and to prevent microbial contamination. This draft guidance, when finalized, will supplement existing FDA guidances, including the 1998 ''Guidance to Industry: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables,'' which applies to fresh produce commodities, and the 2008 ''Guidance to Industry: Guide to Minimize Microbial Food Safety Hazards of Fresh-cut Fruits and Vegetables,'' which applies to fresh-cut produce.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by October 2, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Food Safety (HFS–317), Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–436–2651. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Amy Green, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2025.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled ''Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards of Leafy Greens.'' This draft guidance covers leafy greens that are grown and harvested then packed or cooled for fresh market or for ''fresh-cut/value-added processing'' (i.e., minimally processed, such as chopped or shredded, moved through a series of washes, and then bagged or prepackaged), shipped to food service or retail establishments, and offered for

sale to the consumer. The term ''leafy greens'' as used in this draft guidance includes raw agricultural commodities and fresh-cut/value-added products. Examples of leafy greens include iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula, and chard. Leafy greens do not include herbs such as cilantro and parsley.

This draft guidance is based primarily on leafy greens industry guidelines issued in 2006 (Ref. 1), along with agency experience and information from other recent public and private programs. The leafy greens industry has since updated and supplemented its 2006 guidelines with additional recommendations on the production and harvest of leafy greens that include quantitative metrics and measures to assist industry in implementing the guidelines (Ref. 2). This draft guidance does not include these more specific and quantitative metrics and measures. We are considering the extent to which more specific measures, including metrics, should be utilized to help verify the implementation and efficacy of the Federal recommendations and industry practices. We are also evaluating the extent to which metrics can be applied to diverse geographic areas within the United States and internationally. FDA invites comment on whether such information should be incorporated into the guidance, when finalized.

FDA is issuing this draft guidance as Level 1 draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the microbiological hazards presented by fresh and fresh-cut leafy greens products and the recommended control measures for such hazards in production and harvesting, postharvest operations, processing, distribution, and retail and food service handling of such produce. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to publish notice in the **Federal Register** soliciting public comment on each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA will publish a 60-day notice on the proposed collection of information in a future issue of the **Federal Register**.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov*.

V. References

The following references have been placed on display in the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Gorny, J., et al., editors, ''Commodity Specific Food Safety Guidelines for the Lettuce and Leafy Greens Supply Chain'' (1st ed.); International Fresh-cut Produce Association, Produce Marketing Association, United Fresh Fruit and Vegetable Association, Western Growers Association; April 25, 2006. Accessed online at *http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/FruitsVegetablesJuices/GuidanceComplianceRegulatoryInformation/ucm168630.htm*.

2. See ''Commodity Specific Food Safety Guidelines for the Production and Harvest of Lettuce and Leafy Greens''; Produce Marketing Association, United Fresh Fruit and Vegetable Association, and Western Growers Association; last revised June 13, 2008. Accessed online at *http://www.caleafygreens.ca.gov/trade/documents/LGMAAcceptedGAPs06.13.08.pdf*. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

Dated: July 28, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–18451 Filed 7–31–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Treatment of Cancer Using Metal Coordinating Compounds That Kill Multi-Drug Resistant Cancer Cells

Description of Invention: One of the major hindrances to successful cancer chemotherapy is the development of multi-drug resistance (MDR) in cancer cells. MDR is frequently caused by the increased expression or activity of ABC transporter proteins in response to the toxic agents used in chemotherapy. Research has generally been directed to overcoming MDR by inhibiting the activity of ABC transporters. However, compounds that inhibit ABC transporter activity often elicit strong and undesirable side-effects, restricting their usefulness as therapeutics.

In an alternative approach to reducing the debilitating effects of MDR during cancer therapy, scientists at the NIH have identified a family of compounds

whose activities are enhanced, rather than decreased, in MDR cancer cells. Particular embodiments of these ''MDR-selective compounds'' include certain metal coordinating compounds. Recent evidence suggests that these MDR-selective compounds can be used to kill cancer cells that overexpress ABC transporters or to re-sensitize multi-drug resistant cancer cells to chemotherapeutics. Furthermore, the effectiveness of these compositions in killing MDR cancer cells correlates directly with the level of ABC transporter expression. Importantly, MDR-selective compounds are not inhibitors of ABC transporters, thereby reducing the likelihood of undesirable side-effects during treatment. Thus, MDR-selective compounds represent a powerful strategy for treating multi-drug resistant cancers as a direct chemotherapeutic and as agents that can re-sensitize MDR cancer cells for treatment with additional chemotherapeutic agents.

Applications

- Treatment of cancers associated with multi-drug resistance, either alone or in combination with other therapeutics.
- Re-sensitization of multi-drug resistant cancer cells to chemotherapeutic agents.

Advantages

- MDR-selective compounds capitalize on one of the most common drawbacks to cancer therapies (MDR) by using it as an advantage for treating cancer.
- The compositions do not inhibit the function of ABC transporters, reducing the chance of side-effects during treatment.
- The effects of MDR-selective compounds correlate with the level of ABC transporter expression, allowing healthy cells which do not express high levels of ABC transporters to better survive treatment.

Development Status: Preclinical stage of development.

Patent Status: U.S. Provisional Application No. 61/182,511 (HHS Reference No. E–157–2009/0–US–01).

Inventors: Gergely Szakacs *et al.* (NCI).

For More Information, See

- C Hegedus *et al.* Interaction of ABC multidrug transporters with anticancer protein kinase inhibitors: substrates and/or inhibitors? Curr Cancer Drug Targets. 2009 May;9(3):252–272.
- MD Hall *et al.* Synthesis, activity, and pharmacophore development for isatin-beta-thiosemicarbazones with selective activity toward multidrug-resistant cells. J Med Chem. 2009 May 28;52(10):3191–3204.
- U.S. Patent Application Publication 20080214606 A1 (U.S. Patent Application 11/629,233).

Licensing Status: Available for licensing.

Licensing Contact: David A. Lambertson, Ph.D.; 301–435–4632; *lambertsond@mail.nih.gov*.

Collaborative Research Opportunity: The Institute of Enzymology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize MDR-selective compounds. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Non Toxic Peptide Treatment for Dyslipidemic and Vascular Disorders

Description of Invention: Dyslipidemia and vascular disorders such as hyperlipidemia, hypercholesterolemia, HDL deficiency, coronary heart disease, atherosclerosis, or thrombic stroke, have become major health concerns in recent years. Various approaches to treating these diseases have led to mixed success with some undesirable side effects. Long term administration of some regimens aimed at reducing cholesterol levels in cells can lead to persistent hypertriglyceridemia; a condition that is characterized by chronically high triglycerides in the blood. Other approaches, such as using peptides to stimulate the efflux of lipids from cells, are also associated with high toxicity, which has limited their use.

This technology uses peptide and peptide analogues with multiple amphipathic alpha helical domains that have the dual ability to promote lipid efflux from cells and stimulate lipoprotein lipase activity, without inducing toxicity. It consists of motifs that mimick apolipoprotein A–I (apoA–I), the most abundant protein constituent of high density lipoproteins (HDLs) that is capable of inducing cellular lipid efflux, and motif resembling apolipoprotein C–II (apoC–II), a known activator of lipoprotein lipase. Peptides constructed with these structural domains are capable of stimulating lipid efflux and activating lipoprotein lipase, leading to a reduced incidence of hypertriglyceridemia. Unlike previous methods, some amphipathic peptides cause transient hypertriglyceridema in mice that lasts for less than 8 hours. Mice treated with these modified peptides have shown preserved liver function as they have failed to express increased levels of biomarkers for liver damage and prevent hypertriglyceridemia. Furthermore, treated mice show a reduced level of pro-atherogenic lipoproteins. This technology demonstrates specific control of lipid efflux and transport; a desirable property that gives it a significant advantage for treating or preventing a vast range of vascular diseases and their dyslipidemic precursors.

This technology also encompasses a method for identifying non-cytotoxic peptides that promote lipid efflux from cells and activates lipoprotein lipase.

Applications and Advantages

- Peptide treatment of dyslipidemic and vascular disorders.
- Transient hypertriglyceridemia with no reported toxicity.
- Method of identifying therapeutic non-cytotoxic peptides.

Development Status: Pre-clinical.

Inventor: Alan T. Remaley and Marcelo Amar (NHLBI).

Publication: AT Remaley, F Thomas, JA Stonik, SJ Demosky, SE Bark, EB Neufeld, AV Bocharov, TG Vishnyakova, AP Patterson, TL Eggerman, S Santamarina-Fojo, HB Brewer. Synthetic amphipathic helical peptides promote lipid efflux from cells by an ABCA1-dependent and an ABCA1-independent pathway. J Lipid Res. 2003 Apr;44(4):828–836.

Patent Status: U.S. Provisional Application No. 60/045,213 filed 15 Apr 2008 (HHS Reference No. E–138–2008/0–US–01); PCT Application No. PCT/US2009/040560 filed 14 Apr 2009 (HHS Reference No. E–138–2008/0–PCT–02).

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301–435–4521; *sayyidf@mail.nih.gov*.

Methods for Treating or Ameliorating Fibrosis by Inhibiting the Interaction Between IL–21 Receptor (IL–21R) and IL–21

Description of Invention: This invention includes methods for treating or ameliorating fibrosis by inhibiting the interaction between IL–21 Receptor (IL–21R) and IL–21 using either anti-IL21R monoclonal antibodies (or binding fragments of anti-IL–21R mAbs), anti-IL21 monoclonal antibodies (or binding fragments of anti-IL–21 mAbs) or soluble IL–21R (or binding fragments of IL–21R). It is believed that the TH2 immune response, induced by IL–21, plays a major role in the pathogenesis of tissue fibrosis. Antagonism of IL–21R by anti-IL–21R monoclonal antibodies or the sequestration of IL–21 by soluble IL–

21R or anti-IL–21 monoclonal antibodies has been demonstrated to reduce TH2 immune responses associated with fibrosis in animal models.

The causes of chronic tissue fibrosis are diverse and the market for a therapeutic that targets fibrosis is large. Fibrosis is associated with diverse causes which include: genetic diseases (such as cystic fibrosis); autoimmune diseases (such as scleroderma); chronic viral infections (such as hepatitis), parasitic infections (such as schistosomiasis); and occupational exposures to causative agents (such as asbestosis). Additionally, many cases of tissue fibrosis are idiopathic.

Application: The treatment or amelioration of tissue fibrosis.

Inventors: Thomas A. Wynn (NIAID); Deborah A Young; Mary Collins; and Michael J. Grusby.

Relevant Publication: J Pesce *et al.* The IL–21 receptor augments Th2 effector function and alternative macrophage activation. J Clin Invest 2006 Jul;116(7):2044–2055.

Patent Status: U.S. patent application no. 11/402,885 (priority date April 14, 2005) and international patent applications including European patent application No. EP06/0750009 (HHS Reference No. E–250–2005).

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Surekha Vathyam, Ph.D.; 301–435–4076; *vathyams@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this invention. Please contact Nicole Mahoney at 301–435–9017 or *mahoneyn@niaid.nih.gov* for more information.

Use of Discoidin Domain Receptor 1 (DDR1) and Agents That Affect the DDR1/Collagen Pathway

Description of Invention: Dendritic cells (DCs) are pivotal antigen-presenting cells for initiation of an immune response. Indeed, dendritic cells provide the basis for the production of an effective immune response to a vaccine, particularly for antigens wherein conventional vaccination is inadequate. DCs are also important in the production on an immune response to tumor antigens.

The present invention discloses methods of using the receptor tyrosine kinase discoidin domain receptor 1 (DDR1) to facilitate the maturation/differentiation of DCs or macrophages. Activating agents of DDR1 may be useful in the induction of highly potent, mature DCs or highly differentiated macrophages from DC precursors, such as monocytes. Use of this method may enhance the antigen presenting capabilities of the immune system, leading to a more effective overall immune response.

Inventor: Teizo Yoshimura (NCI).

Relevant Publications

1. H Kamohara *et al.* Discoidin domain receptor 1 isoform-a (DDR1a) promotes migration of leukocytes in three-dimensional collagen lattices. FASEB J. 2001 Dec;15(14):2724–2726.
2. W Matsuyama *et al.* Interaction of discoidin domain receptor 1 isoform b (DDR1b) with collagen activates p38 mitogen-activated protein kinase and promotes differentiation of macrophages. FASEB J. 2003 Jul;17(10):1286–1288.

Patent Status: U.S. Application No. 10/507,385 filed 09 Sep 2004 (HHS Reference No. E–083–2002/2–US–02).

Licensing Status: Available for licensing.

Licensing Contact: Betty B. Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov*.

Dated: July 28, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–18504 Filed 7–31–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Tumorigenic MEF/3T3 Tet-Off Mouse Fibroblast Cell Line Stably Transfected With a T7–Tagged Srp20 Expression Construct (pJR17)

Description of Technology: Alternative RNA splicing is a means by which the human genome can produce many more proteins from the genes available. It is emerging that aberrations in alternative RNA splicing contributes to the development of cancers. SRp20 is a cellular splicing factor that is involved in the process of alternative splicing of RNA. Investigators at the National Cancer Institute (NCI), National Institutes of Health (NIH) have discovered that SRp20 is overexpressed in many types of cancer and furthermore promotes the induction and maintenance of tumor cell growth. This was demonstrated in part by engineering a non-tumorigenic cell to become tumorigenic in mice by overexpressing SRp20.

Research Material available for licensing is a tumorigenic MEF/3T3 tet-off mouse fibroblast cell line stably transfected with a T7-tagged SRp20 expression construct (pJR17) that is under the transcriptional control of tetracycline.

Applications: Use in pre-clinical development of therapeutic approaches to cancer that target aberrant alternative RNA splicing.

Advantages: Transcriptional control of expression using Tet-off system; Availability of stably transfected cell line saves time and effort for other investigators.

Market: Research Tool.

Development Status: Ready to use.

Inventors: Zhi-Ming Zheng and Rong Jia (NCI).

Publications: Manuscript in preparation.

Patent Status: HHS Reference No. E–229–2009/0—Research Material. Patent protection is not being sought for this technology.

Licensing Status: Available for licensing.

Licensing Contact: Sabarni Chatterjee, Ph.D.; 301–435–5587; *chatterjeesa@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Center for Cancer Research, HIV and AIDS Malignancy Branch, is seeking statements of capability or interest from

parties interested in collaborative research to further develop, evaluate, or commercialize A Tumorigenic MEF/3T3 Tet-Off Mouse Fibroblast Cell Line Stably Transfected with a T7–Tagged Srp20 Expression Construct (pJR17). Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Truncated Methanocarba Adenosine Derivatives as A_3 Adenosine Receptor Antagonists

Description of Technology: Novel A_3 adenosine antagonists available for licensing. A_3 receptors are particularly highly expressed in inflammatory cells, making it a potentially desirable target for inflammatory diseases. This technology relates to highly specific antagonists and partial agonists of A_3 adenosine receptors, which are negatively coupled to adenylate cyclase and have been broadly implicated in inflammation, cardiovascular disease, and cancer. Further, A_3 adenosine receptors have been implicated in allergies, asthma, and chronic obstructive pulmonary disease.

Advantages: There are four known subtypes of adenosine receptors (A_1, A_{2A}, A_{2B}, and A_3). All are positively or negatively linked to cAMP, but have different distributions and different therapeutic potentials. In particular, the use of A_1 and A_2 selective ligands has been limited by the ubiquity of expression of the receptors throughout the body and the resultant side effects. On the other hand, high levels of A_3 receptor expression are limited to the CNS, testes, and the immune system. Thus, A_3 receptors represent a potentially highly specific target for treating related diseases.

Inventor: Kenneth A. Jacobson (NIDDK).

Related Publication: A Melman, B Wang, BV Joshi, ZG Gao, S de Castro, CL Heller, SK Kim, LS Jeong, KA Jacobson. Selective A_3 adenosine receptor antagonists derived from nucleosides containing a bicyclo[3.1.0]hexane ring system. Bioorg Med Chem. 2008 Sep 15;16(18):8546–8556.

Patent Status: U.S. Provisional Application No. 61/085,588 filed 01 Aug 2008 (HHS Reference No. E–285–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Steve Standley, Ph.D.; 301–435–4074; *sstand@mail.nih.gov*

Collaborative Research Opportunity: The NIDDK, Laboratory of Bioorganic Chemistry is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize A_3 adenosine receptor antagonists. Please contact Kenneth A. Jacobson, Ph.D. at *kajacobs@helix.nih.gov* or the NIDDK Office of Technology Transfer and Development at 301–451–3636 for more information.

Novel Proteins From the Sand Fly *Lutzomyia longipalpis* Are Potent Inhibitors of Complement Activity

Description of Technology: This invention relates to the discovery that five proteins from the salivary glands of *Lutzomyia longipalpis,* LJM04, LJM11, LJM19, LJM26, and LJL143, have anti-complement activity. These proteins demonstrate potent inhibition of both the classical and alternative pathways for complement activation. All proteins, excluding LJM19, were shown to bind and inhibit the C3b molecule, thus inactivating an integral component of the complement pathway.

The complement system is a very important line of defense against pathogens, and is involved in many pathologies and syndromes affecting human health. It is therefore envisioned that these five novel proteins may be used to treat conditions where the complement system is involved including lupus erythematosus, juvenile arthritis, and complications associated with cardiac surgery and hemodialysis.

Applications:

- Potent inhibition of complement activity.
- Treatment of diseases involving the complement system.

Development Status: Early Stage.

Inventors: Jesus G. Valenzuela *et al.* (NIAID).

Relevant Publication: RR Cavalcante, MH Pereira, NF Gontijo. Anti-complement activity in the saliva of phlebotomine sand flies and other haematophagous insects. Parasitology 2003 Jul;127(Pt 1):87–93.

Patent Status: U.S. Provisional Application No. 61/142,098 filed 31 Dec 2008 (HHS Reference No. E–205–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Jeffrey A. James, PhD; 301–435–5474; *jeffreyja@mail.nih.gov.*

Potent Anti-Coagulant Activity of a Novel Protein From the Sand Fly *Lutzomyia longipalpis*

Description of Technology: The salivary gland lysates of *Lutzomyia longipalpis,* the New World sand fly and main vector for visceral leishmaniasis, contain an anti-coagulant protein that helps the fly complete its blood meal. This invention relates to the identification of LJL143, a salivary gland protein of *L. longipalpis,* as a specific inhibitor of coagulation factor Xa. LJLl43 is secreted in the saliva of *L. longipalpis* and exerts its effects by tightly binding the catalytic site of factor Xa. By directly binding the catalytic site, it is believed that the potent anti-coagulant activity of LJL143 will be accompanied by reduced side effects compared to anti-coagulant drugs that rely on activating serine proteases. LJL143 has a novel sequence with no reported homology in the gene bank, and is the first anti-coagulant factor identified in sand flies.

LJLl43 may be used for inhibiting factor Xa activity *in vivo* or as a prototype for designing specific inhibitors of factor Xa. Because of its high specificity, LJLl43 may be used as an anti-coagulant in a number of pro-coagulant diseased states including deep venous thrombosis, coronary artery disease, non-hemorrhagic stroke, and unstable angina with potentially reduced side effects.

Applications:

- Safe and effective anti-coagulant for therapeutic use.
- Treatment of several conditions such as deep venous thrombosis, coronary artery disease, non-hemorrhagic stroke, and unstable angina.

Advantages: May be safer than other important blood thinning drugs such as Warfarin.

Development Status: Early Stage.

Market: Predicted $7.4 billion anti-coagulant market by 2016.

Inventors: Jesus G. Valenzuela *et al.* (NIAID).

Publication: JG Valenzuela, M Garfield, ED Rowton, VM Pham. Identification of the most abundant secreted proteins from the salivary glands of the sand fly *Lutzomyia longipalpis,* vector of *Leishmania chagasi.* J Exp Biol. 2004 Oct;207(Pt 21):3717–3729.

Patent Status: U.S. Provisional Application No. 61/142,107 filed 31 Dec 2008 (HHS Reference No. E–204–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Jeffrey A. James, PhD; 301–435–5474; *jeffreyja@mail.nih.gov.*

Novel Dopamine Receptor Ligands as Therapeutics for Central Nervous System Disorders

Description of Technology: The dopamine D3 receptor subtype is a member of the dopamine D2 subclass of receptors. These receptors have been

implicated in a number of CNS disorders, including psychostimulant abuse, psychosis and Parkinson's disease. Compounds that bind with high affinity and selectivity to D3 receptors can not only provide important tools with which to study the structure and function of this receptor subtype, but may also have therapeutic potential in the treatment of numerous psychiatric and neurologic disorders.

The 4-phenylpiperazine derivatives are an important class of dopamine D3 selective ligands. However, due to their highly lipophilic nature, these compounds suffer from solubility problems in aqueous media and reduced bioavailability. To address this problem, a process was designed to introduce functionality into the carbon chain linker of these compounds. Compared to currently available dopamine D3 receptor ligands, the resulting compounds show improved pharmacological properties and D3 selectivities but due to their more hydrophilic nature, these derivatives are predicted to have improved water solubility and bioavailability.

Applications:

- Therapeutics for a variety of psychiatric and neurologic disorders
- Research tools to study D3 receptor structure and function

Advantages:

- Improved pharmacological properties and selectivity over existing dopamine D3 receptor ligands
- Hydrophilic nature likely to lead to improved water solubility and bioavailability

Development Status: Pre-clinical discovery.

Further R&D Needed:

- Evaluate selected compounds in animal models of drug abuse, psychosis, obesity and Parkinson's disease.
- Design and synthesize novel, functionalized analogs using both classical and computational drug design to improve D3 receptor affinity and selectivity.
- Evaluate compounds for binding in D3 and D2 receptor expressing cell lines and in in vitro functional assays.
- Correlate in vitro binding affinities with in vivo function in rats and monkeys and evaluate compounds in knockout mice models.
- Pursue PET and SPECT imaging agents by radiolabel of D3 ligands and evaluation in rats and non-human primates.

Inventors: Amy H. Newman (NIDA), Peter Grundt (NIDA), Jianjing Cao (NIDA), *et al.*

Patent Status: PCT Application No. Pct/US2007/71412 filed 15 Jun 2007, which published as WO 2008/153573 on 18 Dec 2008 (HHS Reference No. E–128–2006/0–PCT–01).

Licensing Status: Available for licensing.

Licensing Contact: Charlene Sydnor, PhD; 301–435–4689; *sydnorc@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute on Drug Abuse's Medications Discovery Research Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize 4-phenylpiperazine derivatives as dopamine D3 selective ligands. Please contact Vio Conley, MS at 301–435–2031 or *conleyv@mail.nih.gov* for additional information.

High-Yield Methods of Producing Biliverdin

Description of the Technology: This invention describes methods of making high yields of biliverdin, the pharmaceutical compositions of biliverdin made using that process, and methods of using the compositions therapeutically.

In reaction to a wide range of cellular stresses, hemoglobin is naturally metabolized to biliverdin, which is then quickly metabolized to bilirubin, a bile pigment, through a highly conserved set of enzymes. Both bilirubin and biliverdin are normally processed for rapid excretion, and excessive serum levels of bilirubin have known toxic effects (most notably jaundice). Surprisingly, research in the past decade has shown that decreasing serum levels correlate *inversely* with the prognosis of various disorders, such as ischemia/reperfusion injuries, atherosclerosis, organ transplantation, and several autoimmune diseases. Indeed, in animal-model studies, inducing a mild case of jaundice actually improved outcome. Unfortunately, bilirubin is relatively insoluble, and so is not a practical pharmaceutical itself.

Biliverdin has lower direct toxicity and substantially greater solubility than bilirubin, and also appears to have some direct therapeutic effects similar to bilirubin. Accordingly, biliverdin has been widely studied lately. Generating high yields of pure biliverdin is difficult, however, because any system with the enzymes to break down hemoglobin also has enzymes converting biliverdin to bilirubin. The inventors have created a system of generating microorganisms (yeast) lacking the enzymes that break biliverdin down to bilirubin.

Applications: Production of biliverdin for immunomodulatory and cytoprotective therapy (or adjuvant) in any condition involving an overactive immune response.

Advantages:

- High yield of biliverdin with low contamination of bilirubin.
- Produces only active isomers of biliverdin.
- Unlike prior methods, new method uses starting material that is inexpensive and plentiful.

Development Status: Successful generation of *Candida albicans* with biliverdin-generating system.

Inventors: Michael L. Pendrak and David D. Roberts (NCI).

Patent Status: HHS Reference No. E–040–2004/0—Issued U.S. Patent 7,504,243; Pending U.S. Application 12/364,054 (divisional, filed 02 Feb 2009).

Relevant Publication: ML Pendrak *et al.* Heme oxygenase in Candida albicans is regulated by hemoglobin and is necessary for metabolism of exogenous heme and hemoglobin to alpha-biliverdin. J Biol Chem. 20 Jan 2004;279(5):3426–3433.

Licensing Status: Available for licensing.

Licensing Contact: Bruce Goldstein, JD, MS; (301) 435–5470; *goldsteb@mail.nih.gov.*

Collaborative Research Opportunity: The Laboratory of Pathology in the Center for Cancer Research of the National Cancer Institute is seeking parties interested in collaborative research directed toward clinical applications of biliverdin. For more information about the research, please contact either Dr. Michael Pendrak (NCI/CCR Laboratory of Pathology) at (301) 496–6264, or Dr. April Franks (NCI Technology Transfer Center) at (301) 496–0477.

Dated: July 28, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–18496 Filed 7–31–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0338]

Medical Device User Fee Rates for Fiscal Year 2010

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the

fee rates and payment procedures for medical device user fees for fiscal year (FY) 2010. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device User Fee and Modernization Act of 2002 (MDUFMA), the Medical Device User Fee Stabilization Act of 2005 (MDUFSA), and the Medical Device User Fee Amendments of 2007 (title II of the Food and Drug Administration Amendments Act of 2007 (FDAAA)), authorizes FDA to collect user fees for certain medical device submissions, and annual fees both for certain periodic reports and for certain establishments subject to registration. The FY 2010 fee rates are provided in this document. These fees apply from October 1, 2009, through September 30, 2010. To avoid delay in the review of your application, you should pay the fee before or at the time you submit your application to FDA. The fee you must pay is the fee that is in effect on the later of the date that your application is received by FDA or the date your fee payment is received. If you want to pay a reduced small business fee, you must qualify as a small business before you make your submission to FDA; if you do not qualify as a small business before you make your submission to FDA, you will have to pay the higher standard fee. This document provides information on how the fees for FY 2010 were determined, the payment procedures you should follow, and how you may qualify for reduced small business fees.

FOR FURTHER INFORMATION CONTACT:

For information on MDUFMA: Visit FDA's Web site, *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Overview/MedicalDeviceUserFeeand/ModernizationActMDUFMA/default.htm*.

For questions relating to this notice: David Miller, Office of Financial Management (HFA–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3917.

SUPPLEMENTARY INFORMATION:

I. Background

Section 738 of the act (21 USC 379j) establishes fees for certain medical device applications, submissions, supplements, and notices (for simplicity, this document refers to these collectively as ''submissions''); for periodic reporting on class III devices; and for the registration of certain establishments. Under statutorily-defined conditions, a qualified applicant may receive a fee waiver or may pay a lower small business fee. (See 21 U.S.C. 379j(d) and (e).)

Under the act, the fee rate for each type of submission is set at a specified percentage of the standard fee for a premarket application (a premarket application is a premarket approval application (PMA), a product development protocol (PDP), or a biologics licensing application (BLA)). The act specifies the standard fee for a premarket application for each year from FY 2008 through FY 2012; the standard fee for a premarket application received by FDA during FY 2010 is $217,787. From this starting point, this document establishes FY 2010 fee rates for other types of submissions, and for periodic reporting, by applying criteria specified in the act.

The act specifies the annual fee for establishment registration for each year from FY 2008 through FY 2012; the registration fee for FY 2010 is $2,008. There is no reduction in the registration fee for small businesses. An establishment must pay the registration fee if it is any of the following types of establishments:

- *Manufacturer*. An establishment that makes by any means any article that is a device, including an establishment that sterilizes or otherwise makes such article for or on behalf of a specification developer or any other person.
- *Single-Use Device Reprocessor*. An establishment that performs additional processing and manufacturing operations on a single-use device that has previously been used on a patient.
- *Specification Developer*. An establishment that develops specifications for a device that is distributed under the establishment's name but which performs no manufacturing, including an establishment that, in addition to developing specifications, also arranges for the manufacturing of devices labeled with another establishment's name by a contract manufacturer.

The fees for FY 2010 go into effect on October 1, 2009, and will remain in effect through September 30, 2010.

II. Fees for FY 2010

Under the act, all submission fees and the periodic reporting fee are set as a percent of the standard (full) fee for a premarket application (see 21 U.S.C. 379j(a)(2)(A)), and the act sets the standard fee for a premarket application, including a BLA, a premarket report, and an efficacy supplement, at $217,787 for FY 2010 (see 21 U.S.C. 379j(b)); this is referred to as the ''base fee''). The fees set by reference to the base fee are—

- For a panel-track supplement, 75 percent of the base fee;
- For a 180-day supplement, 15 percent of the base fee;
- For a real-time supplement, 7 percent of the base fee;
- For a 30-day notice, 1.6 percent of the base fee;
- For a 510(k) premarket notification, 1.84 percent of the base fee;
- For a 513(g) request for classification information, 1.35 percent of the base fee; and
- For an annual fee for periodic reporting concerning a class III device, 3.5 percent of the base fee.

For all submissions other than a 510(k) premarket notification, a 30-day notice, and a 513(g) request for classification information, the small business fee is 25 percent of the standard (full) fee. (See 21 U.S.C. 379j(d)(2)(C).) For a 510(k) premarket notification submission, a 30-day notice, and a 513(g) request for classification information, the small business fee is 50 percent of the standard (full) fee. (See 21 U.S.C. 379j(e)(2)(C).)

The statute sets the annual fee for establishment registration at $2,008 on FY 2010, and there is no small business rate for the annual establishment registration fee; all establishments pay the same fee. The statute authorizes increases in the annual establishment fee for FY 2010 and subsequent years if the estimated number of establishments submitting fees for FY 2009 is fewer than 12,250. (See 21 U.S.C. 379j(c)(2)(A).) FDA estimates that the number of establishments submitting fees in FY 2009 will be in excess of 12,250, so no establishment fee increase is warranted under this provision of the statute.

Table 1 of this document sets out the FY 2010 rates for all medical device fees.

TABLE 1.—MEDICAL DEVICE FEES FOR FY 2010

Application Fee Type	Standard Fee, as a Percent of the Standard Fee for a Premarket Application	FY 2010 Standard Fee	FY 2010 Small Business Fee
Premarket application (a PMA submitted under section 515(c)(1) of the act (21 U.S.C. 360e(c)(1)), a PDP submitted under section 515(f) of the Act, or a BLA submitted under section 351 of the Public Health Service (PHS) Act (42 U.S.C. 262))	Set in statute	$217,787	$54,447
Premarket report (submitted under section 515(c)(2) of the act)	100%	$217,787	$54,447
Efficacy supplement (to an approved BLA under section 351 of the PHS Act)	100%	$217,787	$54,447
Panel-track supplement	75%	$163,340	$40,835
180-day supplement	15%	$32,668	$8,167
Real-time supplement	7%	$15,245	$3,811
510(k) premarket notification submission	1.84%	$4,007	$2,004
30-day notice	1.6%	$3,485	$1,742
513(g) (21 U.S.C. 360c(g)) request for classification information	1.35%	$2,940	$1,470
Annual Fee Type			
Annual fee for periodic reporting on a class III device	3.5%	$7,623	$1,906
Annual establishment registration fee (to be paid by each establishment that is a manufacturer, a single-use device reprocessor, or a specification developer, as defined by 21 U.S.C. 379i(13))	Set in statute	$2,008	$2,008

III. How to Qualify as a Small Business for Purposes of Medical Device Fees

If your business has gross receipts or sales of no more than $100 million for the most-recent tax year, you may qualify for reduced small business fees. If your business has gross sales or receipts of no more than $30 million, you may also qualify for a waiver of the fee for your first premarket application (PMA, PDP, or BLA) or premarket report. You must include the gross receipts or sales of all of your affiliates along with your own gross receipts or sales when determining whether you meet the $100 million or $30 million threshold. If you want to pay the small business fee rate for a submission, or you want to receive a waiver of the fee for your first premarket application or premarket report, you should submit the materials showing you qualify as a small business 60 days before you send your submission to FDA. If you make a submission before FDA finds that you qualify as a small business, you must pay the standard fee for that submission.

If your business qualified as a small business for FY 2009, your status as a small business will expire at the close of business on September 30, 2009. You must re-qualify for FY 2010 in order to pay small business fees during FY 2010.

If you are a domestic (U.S.) business, and wish to qualify as a small business for FY 2010, you must submit the following to FDA:

(1) A completed FY 2010 MDUFMA Small Business Qualification Certification (Form FDA 3602). This form is provided in FDA's guidance document, ''FY 2010 Medical Device User Fee Small Business Qualification and Certification,'' available on FDA's Web site at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Overview/MedicalDeviceUserFeeandModernizationActMDUFMA/default.htm.* This form is not available separate from the guidance document.

(2) A certified copy of your Federal (U.S.) Income Tax Return for the most recent tax year. The most recent tax year will be 2009, except—

- If you submit your FY 2010 MDUFMA Small Business Qualification before April 15, 2010, and you have not yet filed your return for 2009, you may use tax year 2008.
- If you submit your FY 2010 MDUFMA Small Business Qualification on or after April 15, 2010, and have not yet filed your 2009 return because you obtained an extension, you may submit your most-recent return filed prior to the extension.

(3) For each of your affiliates, either—

- If the affiliate is a domestic (U.S.) business, a certified copy of the affiliate's Federal (U.S.) income tax return for the most recent tax year, or
- If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected. The applicant should also submit a statement signed by the head of the applicant's firm or by its chief financial officer that the applicant has submitted certifications for all of its

affiliates, identifying the name of each affiliate, or that the applicant has no affiliates.

If you are a foreign business, and wish to qualify as a small business for FY 2010, you must submit the following:

(1) A completed FY 2010 MDUFMA Foreign Small Business Qualification Certification (Form FDA 3602A). This form is provided in FDA's guidance document, ''FY 2010 Medical Device User Fee Small Business Qualification and Certification,'' available on FDA's Internet site at *http://www.fda.gov/cdrh/mdufma*. This form is not available separate from the guidance document.

(2) A National Taxing Authority Certification, completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. This Certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected.

(3) For each of your affiliates, either—

- If the affiliate is a domestic (U.S.) business, a certified copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year (2008 or later), or
- If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates for the gross receipts or sales collected. The applicant should also submit a statement signed by the head of the applicant's firm or by its chief financial officer that the applicant has submitted certifications for all of its affiliates, identifying the name of each affiliate, or that the applicant has no affiliates.

IV. Procedures for Paying Application and Annual Report Fees

If your application or submission is subject to a fee and your payment is received by FDA from October 1, 2009, through September 30, 2010, you must pay the fee in effect for FY 2010. The later of the date that the application or annual report is received in the reviewing center's document room or the date that the check is received by U.S. Bank determines whether the fee rates for FY 2009 or FY 2010 apply. FDA must receive the correct fee at the time that an application or annual report is submitted, or the application or annual report will not be accepted for filing or review.

FDA requests that you follow the steps below before submitting a medical device application or annual report subject to a fee. Please pay close attention to these procedures to ensure that FDA links the fee with the correct application. (Note: In no case should the check for the fee be submitted to FDA with the application.)

A. Step One—Secure a Payment Identification Number (PIN) and Medical Device User Fee Cover Sheet From FDA Before Submitting Either the Application or the Payment (Note: Both the FY 2009 and FY 2010 fee rates will be available on the Cover Sheet Web Site beginning on the date of publication of this document, and only the FY 2010 rates will appear after September 30, 2009)

Log on to the MDUFMA Web site at: *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Overview/MedicalDeviceUserFeeandModernizationActMDUFMA/default.htm* and, under the MDUFMA Forms heading, click on the link ''User Fee Cover Sheet.'' Complete the Medical Device User Fee cover sheet. Be sure you choose the correct application submission date range. (Two choices will be offered until October 1, 2009. One choice is for applications that will be received on or before September 30, 2009, which will be subject to FY 2009 fee rates. A second choice is for applications that will be received on or after October 1, 2009, which will be subject to FY 2010 fee rates.) After completing data entry, print a copy of the Medical Device User Fee cover sheet and note the unique PIN located in the upper right-hand corner of the printed cover sheet.

B. Step Two—Electronically Transmit a Copy of the Printed Cover Sheet with the PIN to FDA's Office of Financial Management

Once you are satisfied that the data on the cover sheet is accurate, electronically transmit that data to FDA according to instructions on the screen. Because electronic transmission is possible, applicants are required to set up a user account and use passwords to assure data security in the creation and electronic submission of cover sheets.

C. Step Three—Submit Payment for the Completed Medical Device User Fee Cover Sheet as Described in this Section, Depending on the Method You Will Use to Make Payment

(1) If paying with a paper check:

- All paper checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. (FDA's tax identification number is 53–0196965, should your accounting department need this information.)
- Please write your application's unique PIN, from the upper right-hand corner of your completed Medical Device User Fee cover sheet, on your check.
- Mail the paper check and a copy of the completed cover sheet to: Food and Drug Administration, P.O. Box 956733, St. Louis, MO, 63195–6733. (Please note that this address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)If you prefer to send a check by a courier (such as Federal Express (FEDEX), DHL, United Parcel Service (UPS), etc.), the courier may deliver the check to: U.S. Bank, Attn: Government Lockbox 956733, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This address is for courier delivery only. Contact the U.S. Bank at 314–418–4821 if you have any questions concerning courier delivery.)

It is helpful if the fee arrives at the bank at least 1 day before the application arrives at FDA. FDA records the official application receipt date as the later of the following: (1) The date the application was received by FDA or (2) the date U.S. Bank receives the payment. U.S. Bank is required to notify FDA within 1 working day, using the PIN described previously in this document.

(2) If Paying With Credit Card or Electronic Check (Automated Clearing House (ACH)):

FDA has partnered with the U.S. Department of the Treasury to utilize Pay.gov, a web based payment application, for online electronic payment. Pay.gov can now be used to submit online payments for cover sheets to the FDA. You now have the option to make a payment via electronic check or credit card after submitting your coversheet. To pay online, select the ''Pay Now'' button. Credit card transactions for cover sheets are limited to $4,000.00.

(3) If paying with a wire transfer:

- Please include your application's unique PIN, from the upper right-hand corner of your completed Medical

Device User Fee cover sheet, in your wire transfer. Without the PIN your payment may not be applied to your cover sheet and review of you application will be delayed.

• The originating financial institution usually charges a wire transfer fee between $15.00 and $35.00. Please ask your financial institution about the fee and include it with your payment to ensure that your cover sheet is fully paid.Use the following account information when sending a wire transfer: New York Federal Reserve Bank, U.S. Department of Treasury, TREAS NYC, 33 Liberty St, New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 5600 Fishers Lane, Rockville, MD 20857.

D. Step Four—Submit Your Application to FDA With a Copy of the Completed Medical Device User Fee Cover Sheet

For all applications sent after August 1, 2009, please submit your application and a copy of the completed Medical Device User Fee cover sheet to one of the following addresses:

(1) Medical device applications should be submitted to: Food and Drug Administration, Center for Devices and Radiological Health, Document Mail Center— WO66, rm. 0609, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002.

(2) Biologic applications should be sent to: Food and Drug Administration, Center for Biologics Evaluation and Research, Document Control Center (HFM–99), suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448.

V. Procedures for Paying Annual Establishment Fees

If you are required to pay an annual establishment registration fee, you must pay for each establishment prior to registration. Payment must be submitted by first creating a Device Facility Use Fee (DFUF) order through the User Fee Web site at *https://fdasfinapp8.fda.gov/OA_HTML/fdaCAcdLogin.jsp*. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) You will be issued a PIN once you place your order. After payment has been processed, you will be issued a payment confirmation number (PCN). You will not be able to register your establishment if you do not have a PIN and a PCN. An establishment required to pay an annual establishment registration fee is not legally registered in FY 2010 until it has completed the steps below to register and pay any applicable fee. (See 21 U.S.C. 379j(f)(2).)

Companies that do not manufacture any product other than a licensed biologic are required to register in the Blood Establishment Registration (BER) system. FDA's Center for Biologics and Research (CBER) will send establishment registration fee invoices annually to these companies.

A. Step One—Submit a Device Facility User Fee Order With a PIN From FDA Before Registering or Submitting Payment

To submit a DFUF Order, you must create or have previously created a user account and password for the User Fee Web site listed previously in this section. After creating a user name and password, log into the Establishment Registration User Fee 2010 store. Complete the DFUF order by entering the number of establishments you are registering. Once you are satisfied that the data on the order is accurate, electronically transmit that data to FDA according to instructions on the screen. Print a copy of the final DFUF order and note the unique PIN located in the upper right-hand corner of the printed order.

B. Step Two—Pay For Your Device Facility User Fee Order

Unless paying by credit card, all payments must be in U. S. currency and drawn on a U.S. bank.

(1) If paying with credit card or electronic check (ACH):

The DFUF order will include payment information, including details on how you can pay online using a credit card or electronic checks. Follow the instructions provided to make an electronic payment.

(2) If paying with a paper check:

If you prefer not to pay online, you may pay by a check, in U.S. dollars and drawn on a U.S. bank, mailed to: Food and Drug Administration, P.O. Box 70961, Charlotte, NC 28272–0961. (Note: This address is different from the address for payments of application and annual report fees and is to be used only for payment of annual establishment registration fees.)

If a check is sent by a courier that requests a street address, the courier can deliver the check to: Wachovia Bank, Attn: Food and Drug Administration—Lockbox 70961, rm. NC0810, 1525 West WT Harris Blvd., Charlotte, NC 28262. (Note: This Wachovia Bank address is for courier delivery only; do not send mail to this address.)

Please make sure that both of the following are written on your check: (1) The FDA post office box number (P.O. Box 70961) and (2) the PIN that is printed on your order. A copy of your printed order should also be mailed along with your check. FDA's tax identification number is 53–0196965.

(3) If paying with a wire transfer:

Wire transfers may also be used to pay annual establishment fees. To send a wire transfer, please read and comply with the following information:

• Include your order's unique PIN, from the upper right-hand corner of your completed Medical Device User Fee order, in your wire transfer. Without the PIN your payment may not be applied to your facility and your registration will be delayed.

• The originating financial institution usually charges a wire transfer fee between $15.00 and $35.00. Please ask your financial institution about the fee and include it with your payment to ensure that your order is fully paid. Use the following account information when sending a wire transfer: New York Federal Reserve Bank, US.. Dept of Treasury, TREAS NYC, 33 Liberty St, New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 5600 Fishers Lane, Rockville, MD 20857.

C. Step Three—Complete the Information Online to Update Your Establishment's Annual Registration for FY 2010, or to Register a New Establishment for FY 2010

Go to CDRH's Web site at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/HowtoMarketYourDevice/RegistrationandListing/default.htm* and click the ''Access Electronic Registration'' link on the left of the page. This opens up a new page with important information about the FDA Unified Registration and Listing System (FURLS). After reading this information, click on the link (Access Electronic Registration) at the bottom of the page. This link takes you to an FDA Industry Systems page with tutorials that demonstrate how to create a new FURLS user account if your establishment did not create an account in FY 2009. Biologics license manufacturers should register in the BER system at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/EstablishmentRegistration/BloodEstablishmentRegistration/default.htm.*

Enter your existing account ID and password to log into FURLS. From the FURLS/FDA Industry Systems menu, there will be a button that you will click to go to the Device Registration and Listing Module (DRLM) of FURLS. New establishments will need to register and existing establishments will update

their annual registration using choices on the DRLM menu. Once you choose to register or update your annual registration the system will prompt you through the entry of information about your establishment and your devices. If you have any problems with this process, e-mail: *reglist@cdrh.fda.gov* or call 301–796–7400 for assistance. (Note: this e-mail address and this telephone number are for assistance with establishment registration only, and not for any other aspects of medical device user fees.) Problems with BER should be directed to *bloodregis@fda.hhs.gov* or call 301–827–3546.

D. Step Four—Enter Your DFUF Order PIN and PCN

After completing your annual or initial registration and device listing, you will be prompted to enter your DFUF order PIN and PCN, when applicable. This process does not apply to licensed biologic devices. CBER will send invoices for payment of the establishment registration fee to companies who only manufacture licensed biologics devices. Fees are only required for those establishments defined in section I of this document.

Dated: July 28, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–18456 Filed 7–31–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting; Moving Into the Future—New Dimensions and Strategies for Women's Health Research for the National Institutes of Health

Notice is hereby given that the Office of Research on Women's Health (ORWH), Office of the Director, National Institutes of Health, Department of Health and Human Services, in collaboration with the Warren Alpert Medical School of Brown University and the Women & Infants Hospital of Rhode Island, will convene a public hearing and scientific workshop on September 21–23, 2009, at the Women & Infants Hospital of Rhode Island Conference Center, Providence, Rhode Island.

Purpose of the Meeting

With rapid advances in science and wider global understanding of women's health and sex/gender contributions to well-being and disease, the purpose of the meeting is to ensure that NIH continues to support cutting-edge women's health research that is based upon the most advanced techniques and methodologies. The meeting format is designed to promote an interactive discussion involving leading scientists, advocacy groups, public policy experts, health care providers, and the general public. The Providence meeting is the third in a series that will be convened throughout the Nation to help the ORWH and NIH move into the next decade of women's health research.

As science and technology advance and fields such as computational biology demonstrate the power of interdisciplinary research, it remain critical for sex and gender factors to be integrated into broad experimental methodologies and scientific approaches across the lifespan. Biomedical and behavioral research are also necessary to understand how cultural, ethnic, and racial differences influence the causes, diagnosis, progression, treatment, and outcome of disease among different populations, including women of diverse geographic locations and socioeconomic backgrounds. Furthermore, health differences among diverse populations of women remain a critical area in need of continued focus and attention.

The ORWH challenges all meeting attendees to assist the NIH in defining the women's health research agenda of the future by thinking beyond traditional women's health issues. The ORWH and NIH ask meeting participants to consider creative strategies to identify areas of research that are best poised for advancement, identify innovative ways in which persistent issues of health and disease can be addressed, and explore new horizons of scientific concepts and investigative approaches. Attention also needs to be paid to new areas of science application, new technologies, and continuing basic science investigations. Clinical questions that are not currently the focus of research priorities need to be considered to ensure that women's health research is optimally served and that the ORWH can continue to provide leadership for the benefit of women's health, nationally and internationally.

Meeting Format

The meeting will consist of public testimony, scientific panels, and eight concurrent scientific working groups. Specifically, on September 21, individuals representing a full spectrum of organizations interested in biomedical and behavioral research on women's health issues will have an opportunity to provide public testimony from 1:30 to 5:30 p.m. On September 22 and 23, plenary sessions will focus on the intersection of health care, public policy, and biomedical research; on emerging issues and trends in health care; and on research paradigms of the future. The eight concurrent afternoon sessions on September 22 will focus on a range of research areas, including Prenatal, Infancy, and Childhood Years; Adolescent Years; Reproductive and Middle Years; Pregnancy; Menopausal Transition; Elderly, Frail Elderly, and Healthy Aging; Oral Health and Systemic Conditions; and Careers in Dentistry, Bioengineering, and other Non-Medical Disciplines.

On September 23 the morning session will be devoted to reports by the working group co-chairs regarding the recommendations emerging from working group deliberations on the previous day. The meeting will adjourn at 1:15 p.m. on September 23.

Public Testimony

The ORWH invites individuals with an interest in research related to women's health to provide written and/or oral testimony on these topics and/or on issues related to the sustained advancement of women in various biomedical careers. Due to time constraints, only one representative from an organization or professional specialty group may give oral testimony. Individuals not representing an organized entity but a personal point of view are similarly invited to present written and/or oral testimony. A letter of intent to present oral testimony is necessary and should be sent electronically to *http://www.orwhmeetings.com/movingintothefuture/* or by mail to Ms. Jory Barone, Educational Services, Inc., 4350 East-West Highway, Suite 1100, Bethesda, MD 20814, no later than September 13, 2009. The date of receipt of the communication will establish the order of those selected to give oral testimony at the September meeting.

Those wishing to present oral testimony are also asked to submit a written form of their testimony that is limited to a maximum of 10 pages, double spaced, 12-point font, and should include a brief description of their organization. Electronic submission to the above Web site is preferred; however, for those who do not have access to electronic means, written testimony, bound by the restrictions previously noted and postmarked no later than September 13, 2009, can be mailed to Ms. Jory Barone at the above address. All written presentations must meet the established

page limitations. Submissions exceeding this limit will not be accepted and will be returned. Oral testimony of this material at the meeting will be limited to no more than 5–6 minutes in length.

Because of time constraints for oral testimony, testifiers may not be able to present the complete information as it is contained in their written form submitted for inclusion in the public record for the meeting. Therefore, testifiers are requested to summarize the major points of emphasis from the written testimony, not to exceed 6 minutes of oral testimony. Those individuals or organizations that have indicated they will present oral testimony at the meeting in Providence will be notified prior to the meeting regarding the approximate time for their oral presentation.

Individuals and organizations wishing to provide written statements *only* should send a copy of their statements, electronically or by mail, to the above Web site or address by September 13, 2009. Written testimony received by that date will be made available at the September 21–23 meeting. Logistics questions related to this meeting should be addressed to Ms. Jory Barone at ESI, while program-specific questions should be addressed to Ms. Maureen Pearlman at the Warren Alpert Medical School of Brown University, Providence, Rhode Island, 401–276–7800, ext. 123, *mpearlman@wihri.org.*

At the conclusion of the regional meetings, the ORWH will hold a meeting at the NIH to summarize the deliberations from the regional conferences. The resulting report to the ORWH and the NIH will ensure that women's health research in the coming decade continues to support a vigorous research agenda incorporating the latest advances in technology and cutting-edge science.

Dated: July 28, 2009.

Raynard S. Kington,

Acting Director, National Institutes of Health.

[FR Doc. E9–18535 Filed 7–31–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: September 22, 2009.

Time: 8 a.m. to 4:10 p.m.

Agenda: America's Demographic and Cultural Transformation: Implications for the Cancer Enterprise.

Place: The Westin Seattle, 1900 Fifth Avenue, Seattle, WA 98101.

Contact Person: Abby B. Sandler, PhD, Executive Secretary, Chief, Institute Review Office, Office of the Director, 6116 Executive Blvd., Suite 220, MSC 8349, National Cancer Institute, NIH, Bethesda, MD 20892–8349. (301) 451–9399. *sandlera@mail.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.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 28, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–18531 Filed 7–31–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 for Biomedical Imaging and Bioengineering.

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/or 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 grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering. NACBIB, September 2009.

Date: September 11, 2009.

Open: 9 a.m. to 1 p.m.

Agenda: Report from the Institute Director, other Institute Staff and presentations of working group reports.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Closed: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Anthony Demsey, PhD, Director, National Institute of Biomedical Imaging, and Bioengineering, 6701 Democracy Boulevard, Room 241, Bethesda, MD 20892.

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.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.701, ARRA Related Biomedical Research and Research Support Awards. National Institutes of Health, HHS)

Dated: July 28, 2009.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–18529 Filed 7–31–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0339]

Prescription Drug User Fee Rates for Fiscal Year 2010

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2010. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Prescription Drug User Fee Amendments of 2007 (Title 1 of the Food and Drug Administration Amendments Act of 2007 (FDAAA)) (PDUFA IV), authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such products. Base revenue amounts to be generated from PDUFA fees were established by PDUFA IV, with provisions for certain adjustments. Fee revenue amounts for applications, establishments, and products are to be established each year by FDA so that one-third of the PDUFA fee revenues FDA collects each year will be generated from each of these categories. This notice establishes fee rates for FY 2010 for application fees for an application requiring clinical data ($1,405,500), for an application not requiring clinical data or a supplement requiring clinical data ($702,750), for establishment fees ($457,200), and for product fees ($77,720). These fees are effective on October 1, 2009, and will remain in effect through September 30, 2010. For applications and supplements that are submitted on or after October 1, 2009, the new fee schedule must be used. Invoices for establishment and product fees for FY 2010 will be issued in August 2009, using the new fee schedule.

FOR FURTHER INFORMATION CONTACT: David Miller, Office of Financial Management (HFA–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3917.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 735 and 736 of the act (21 U.S.C. 379g and 379h, respectively), establish three different kinds of user fees. Fees are assessed on the following: (1) Certain types of applications and supplements for approval of drug and biological products, (2) certain establishments where such products are made, and (3) certain products (section 736(a) of the act). When certain conditions are met, FDA may waive or reduce fees (section 736(d) of the act).

For FY 2008 through FY 2012, the base revenue amounts for the total revenues from all PDUFA fees are established by PDUFA IV. The base revenue amount for FY 2008 is to be adjusted for workload, and that adjusted amount becomes the base amount for the remaining 4 fiscal years. That adjusted base revenue amount is increased for drug safety enhancements by $10,000,000 in each of the subsequent 4 fiscal years, and the increased total is further adjusted each year for inflation and workload. Fees for applications, establishments, and products are to be established each year by FDA so that revenues from each category will provide one-third of the total revenue to be collected each year.

This notice uses the fee base revenue amount for FY 2008 published in the **Federal Register** of October 12, 2007 (72 FR 58103), adjusts it for the 2010 drug safety increase (see section 736(b)(4) of the act) for inflation, and for workload, and then establishes the application, establishment, and product fees for FY 2010. These fees are effective on October 1, 2009, and will remain in effect through September 30, 2010.

II. Fee Revenue Amount for FY 2010

The total fee revenue amount for FY 2010 is $569,207,000, based on the fee revenue amount specified in the statute, including additional fee funding for drug safety and adjustments for inflation and changes in workload. The statutory amount and a one-time base adjustment are described in sections II.A and II.B of this document. The adjustment for inflation is described in section II.C of this document, and the adjustment for changes in workload in section II.D of this document.

A. FY 2010 Statutory Fee Revenue Amounts Before Adjustments

PDUFA IV specifies that the fee revenue amount before adjustments for FY 2010 for all fees is $437,783,000 ($392,783,000 specified in section 736(b)(1) of the act plus an additional $45,000,000 for drug safety in FY 2010 specified in section 736(b)(4) of the act).

B. Base Adjustment to Statutory Fee Revenue Amount

The statute also specifies that $354,893,000 of the base amount is to be further adjusted for workload increases through FY 2007 (see section 736(b)(1)(B) of the act). The adjustment on this amount is to be made in accordance with the workload adjustment provisions that were in effect for FY 2007, except that the adjustment for investigational new drug (IND) workload is based on the number of INDs with a submission in the previous 12 months rather than on the number of new commercial INDs submitted in the same 12-month period.

For each FY beginning in FY 2004, the Prescription Drug User Fee Amendments of 2002 (PDUFA III) provided that fee revenue amounts, after they had been adjusted for inflation, should be further adjusted to reflect changes in workload for the process for the review of human drug applications (see section 736(c)(2) of the act). The conference report accompanying PDUFA III, House of Representatives Report number 107–481, provides guidance on how the workload adjustment provision of PDUFA III is to be implemented. Following that guidance, FDA calculated the average number of each of the four types of submissions specified in the workload adjustment provision (human drug applications, commercial INDs, efficacy supplements, and manufacturing supplements) received over the 5-year period that ended on June 30, 2002 (base years), and the average number of each of these types of applications over the most recent 5-year period that ended June 30, 2007. PDUFA IV directs that this same method be used in making the workload adjustment apply to the 2008 statutory revenue amount, except that for this calculation the number of commercial INDs with a submission in the previous 12 months is used for each 12-month period rather than the number of new commercial INDs submitted (see section 736(b) of the act, as amended by PDUFA IV).

The results of these calculations are presented in the first two columns of table 1 of this document. Column 3 reflects the percent change in workload over the two 5-year periods. Column 4 shows the weighting factor for each type of application, estimating how much of the total FDA drug review workload was accounted for by each type of application in the table during the most recent 5 years. Column 5 of table 1 of this document is the weighted percent change in each category of workload. This was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of the table the sum of the values in column 5 is added, reflecting a total increase in workload of 11.73 percent when compared to the base years.

TABLE 1.—SUMMARY WORKLOAD ADJUSTER CALCULATION TO BE APPLIED TO PDUFA IV STATUTORY BASE

Application Type	Column 1 5-Year Average Base Years (Ending 6/30/2002)	Column 2 5-Year Average (Ending 6/30/2007)	Column 3 Percent Change	Column 4 Weighting Factor	Column 5 Weighted Percent Change
NDAs/biologics license applications (BLAs)	119.6	123.8	3.5%	35.2%	1.24%
Active INDs	4,751.8	5,528.2	16.3%	44.2%	7.22%
Efficacy supplements	159.2	163.4	2.6%	7.4%	0.20%
Manufacturing supplements	2,100.6	2,589.2	23.3%	13.2%	3.07%
Workload adjuster to be applied to the statutory base					11.73%

Increasing the PDUFA IV statutorily specified amount of $354,893,000 by the specified workload adjuster (11.73 percent) results in an increase of $41,629,000, rounded to the nearest thousand. Adding this amount to the $437,783,000 statutorily specified amount from section II.A of this document, results in a total adjusted PDUFA IV base revenue amount of $479,412,000, before further adjustment for inflation and changes in workload after FY 2007.

C. Inflation Adjustment to FY 2010 Fee Revenue Amount

PDUFA IV provides that fee revenue amounts for each fiscal year after FY 2008 shall be adjusted for inflation. The adjustment must reflect the greater of the following amounts: (1) The total percentage change that occurred in the Consumer Price Index (CPI) (all items; U.S. city average) during the 12-month period ending June 30 preceding the fiscal year for which fees are being set; (2) the total percentage pay change for the previous fiscal year for Federal employees stationed in the Washington, DC metropolitan area; or (3) the average annual change in cost, per full time equivalent (FTE) FDA position, of all personnel compensation and benefits paid for the first 5 of the previous 6 fiscal years. PDUFA IV provides for this annual adjustment to be cumulative and compounded annually after FY 2008 (see section 736(c)(1) of the act).

The first factor is the CPI increase for the 12-month period ending in June 2009. The CPI for June 2009 was 215.693, and the CPI for June 2008 was 218.815. (These CPI figures are available on the Bureau of Labor Statistics Web site at *http://data.bls.gov/cgi-bin/surveymost?bls* by checking the first box under ''Price Indexes'' and then clicking ''Retrieve Data'' at the bottom of the page.) (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) The CPI for June 2009 is 1.43 percent lower than the CPI for the previous 12-month period.

The second factor is the increase in pay for the previous fiscal year (FY 2009 in this case) for Federal employees stationed in the Washington, DC metropolitan area. This figure is published by the Office of Personnel Management, and found on their Web site at *http://www.opm.gov/flsa/oca/09tables/html/dcb.asp* above the salary table. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.) For FY 2009 it was 4.78 percent.

The third factor is the average change in FDA cost for compensation and benefits per FTE over the previous 5 of the most recent 6 fiscal years (FY 2003 through 2008). The data on total compensation paid and numbers of FTE paid, from which the average cost per FTE can be derived, are published in FDA's Justification of Estimates for Appropriations Committees. Table 2 of this document summarizes that actual cost and FTE use data for the specified fiscal years, and provides the percent change from the previous fiscal year and the average percent change over the most 5 recent fiscal years, which is 5.54 percent.

TABLE 2.—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGE

Fiscal Year	2004	2005	2006	2007	2008	Annual Average Increase for Latest 5 Years
Total PC&B	$1,042,749	$1,077,604	$1,114,704	$1,144,369	$1,215,627	
Total FTE	10,141	9,910	9,698	9,569	9,811	
PC&B per FTE	$102,825	$108,739	$114,942	$119,591	$123,905	
% Change from previous year	8.59%	5.75%	5.70%	4.05%	3.61%	5.54%

The inflation increase for FY 2010 is 5.54 percent. This is the greater of the CPI change during the 12-month period ending June 30 preceding the fiscal year for which fees are being set (-1.43 percent), the increase in pay for the previous fiscal year (FY 2009 in this case) for Federal employees stationed in the Washington, DC metropolitan area (4.78 percent), and the average annual change in cost, per FTE FDA position, of all personnel compensation and benefits paid for the first 5 of the previous 6 fiscal years (5.54 percent). Because the average change in pay per FTE (5.54 percent) is the highest of the three factors, it becomes the inflation

adjustment for total fee revenue for FY 2010.

The inflation adjustment for FY 2009 was 5.64 percent. This is the greater of the CPI increase during the 12-month period ending June 30 preceding the fiscal year for which fees were being set (June 30, 2008, which was 5.05 percent), the increase in pay for FY 2008 for Federal employees stationed in Washington, DC (4.49 percent), or the average annual change in cost, per FTE FDA position, of all personnel compensation and benefits paid for the first 5 of the previous 6 fiscal years (5.64 percent).

PDUFA IV provides for this inflation adjustment to be cumulative and compounded annually after FY 2008 (see section 736(c)(1) of the act). This factor for FY 2010 (5.54 percent) is compounded by adding one to it and then multiplying it by one plus the inflation adjustment factor for FY 2009 (5.64 percent). The result of this multiplication of the inflation factors for the 2 years since FY 2008 (1.0554 times 1.0564 percent) becomes the inflation adjustment for FY 2010. This inflation adjustment for FY 2010 is 11.15 percent.

Increasing the FY 2010 fee revenue base of $479,412,000, by 11.15 percent yields an inflation-adjusted fee revenue amount for FY 2010 of $532,866,000, rounded to the nearest thousand dollars, before the application of the FY 2010 workload adjustment.

D. Workload Adjustment to the FY 2010 Inflation Adjusted Fee Revenue Amount

PDUFA IV does not allow FDA to adjust the total revenue amount for workload beginning in FY 2010 unless the independent accounting firm study is complete (see section 736(c)(2)(C) of the act). That study, conducted by Deloitte Touche, LLP, was completed on March 31, 2009, and is available online at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm164339.htm*. The study found that the adjustment methodology used by FDA reasonably captures changes in workload for reviewing human drug applications under PDUFA IV. Accordingly, FDA continues to use the workload adjustment methodology that it utilized in FY 2009, and FDA intends to continue using this methodology through the end of PDUFA IV.

For each fiscal year beginning in FY 2009, PDUFA IV provides that fee revenue amounts, after they have been adjusted for inflation, shall be further adjusted to reflect changes in workload for the process for the review of human drug applications (see section 736(c)(2) of the act). PDUFA IV continues the PDUFA III workload adjustment with modifications, and provides for a new additional adjustment for changes in review activity.

FDA calculated the average number of each of the four types of applications specified in the workload adjustment provision: (1) Human drug applications, (2) active commercial INDs (applications that have at least one submission during the previous 12 months), (3) efficacy supplements, and (4) manufacturing supplements received over the 5-year period that ended on June 30, 2007 (base years), and the average number of each of these types of applications over the most recent 5-year period that ended June 30, 2009.

The calculations are summarized in of table 3 of this document. The 5-year averages for each application category are provided in Column 1 (''5-Year Average Base Years 2002–2007'') and Column 2a (''5 Year Average 2004–2009'').

PDUFA IV specifies that FDA make additional adjustments for changes in review activities to the first two categories (human drug applications and active commercial INDs). These adjustments, specified under PDUFA IV, are summarized in columns 2b and 2c in table 3 of this document. The number in the NDAs/BLAs line of column 2b of table 3 of this document is the percent by which the average workload for meetings, annual reports, and labeling supplements for NDAs and BLAs has changed from the 5-year period 2002 through 2007 to the 5-year period 2004 through 2009. Likewise, the number in the ''Active commercial INDs'' line of column 2b of table 3 of this document is the percent by which the workload for meetings and special protocol assessments for active commercial INDs has changed from the 5-year period 2002 through 2007 to the 5-year period 2004 through 2009. There is no entry in the last two lines of column 2b because the adjustment for changes in review workload does not apply to the workload for efficacy supplements and manufacturing supplements.

Column 3 of table 3 of this document reflects the percent change in workload from column 1 to column 2c. Column 4 shows the weighting factor for each type of application, estimating how much of the total FDA drug review workload was accounted for by each type of application in the table during the most recent 5 years. Column 5 of table 3 of this document is the weighted percent change in each category of workload. This was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of table 3 of this document is the sum of the values in column 5 that are added, reflecting an increase in workload of 6.82 percent for FY 2010 when compared to the base years.

TABLE 3.—WORKLOAD ADJUSTER CALCULATION FOR FY 2010

Application Type	Column 1 5-Year Average Base Years 2002–2007	Column 2a 5-Year Average 2004–2009	Column 2b Adjustment for Changes in Review Activity	Column 2c is Column 2a Increased by Column 2b	Column 3 Percent Change (Column 1 to Column 2c)	Column 4 Weighting Factor	Column 5 Weighted Percent Change
NDAs/BLAs	123.8	133.0	-0.73%	132.0	6.6%	34.8%	2.31%
Active commercial INDs[1]	5,528.2	6,078.0	-0.71%	6,035.0	9.2%	44.5%	4.08%
Efficacy supplements	163.4	169.4	NA	169.4	3.7%	8.7%	0.32%
Manufacturing supplements	2,589.2	2,613.6	NA	2,613.6	0.9%	12.0%	0.11%

TABLE 3.—WORKLOAD ADJUSTER CALCULATION FOR FY 2010—Continued

Application Type	Column 1 5-Year Average Base Years 2002–2007	Column 2a 5-Year Average 2004–2009	Column 2b Adjustment for Changes in Review Activity	Column 2c is Column 2a Increased by Column 2b	Column 3 Percent Change (Column 1 to Column 2c)	Column 4 Weighting Factor	Column 5 Weighted Percent Change
FY 2010 workload adjuster							6.82%

[1] Table 3 published in the **Federal Register** of August 1, 2008 (73 FR 45017), showed the average number of active INDs for the base years of 2002–2007 as 5,755.8. FDA discovered that a small subset of INDs had been double counted in the number reported last year. That error has been corrected in the revised number of 5528.2 reflected in the table this year. Had the error not been made, the workload adjustment in FY 2009 would have been 3.76 percent rather than the 2.98 percent published in the **Federal Register** last year.

The 2010 workload adjuster reflected in the calculations in table 3 of this document is 6.82 percent. Therefore the inflation-adjusted revenue amount of $532,866,000 from section II.C of this document will be increased by the 2010 workload adjuster of 6.82 percent, resulting in a total adjusted revenue amount in FY 2010 of $569,207,000, rounded to the nearest thousand dollars.

E. Rent and Rent-Related Adjustment to the FY 2010 Adjusted Fee Revenue Amount

PDUFA specifies that for FY 2010 and each subsequent fiscal year, the revenue amount will be decreased if the actual cost paid for rent and rent-related expenses for preceding fiscal years are less than estimates made for such fiscal years in FY 2006 (see section 736(c)(3) of the act). The only fiscal year which has been completed, and for which FDA has complete data at this time, is FY 2008. Table 4 of this document shows the estimates of rent and rent-related costs for FY 2008 made in 2006 and the actual costs at the end of the fiscal year.

TABLE 4.—COMPARISON OF ACTUAL AND ESTIMATED RENT AND RENT-RELATED EXPENSES FOR FY 2008

	Estimates Made in 2006	Actual FY 2008 Year-End Costs
Center for Drug Evaluation and Research rent & rent-related expenses	$46,732,000	$51,619,000
Center for Biologics Evaluation and Research rent & rent-related expenses	$22,295,000	$26,715,000
TOTAL	$69,027,000	$78,334,000

Because FY 2008 costs for rent and rent-related items exceeded the estimates of these costs made in 2006, no decrease in the FY 2010 estimated PDUFA revenues is required under this provision of PDUFA.

PDUFA specifies that one-third of the total fee revenue is to be derived from application fees, one-third from establishment fees, and one-third from product fees (see section 736(b)(2) of the act). Accordingly, one-third of the total revenue amount ($569,207,000), i.e., $189,736,000 (rounded to the nearest thousand dollars), is the total amount of fee revenue that will be derived from each of these fee categories.

III. Application Fee Calculations

A. Application Fee Revenues and Application Fees

Application fees will be set to generate one-third of the total fee revenue amount, or $189,736,000, rounded to the nearest thousand dollars, in FY 2010, as calculated previously in this document.

B. Estimate of Number of Fee-Paying Applications and Establishment of Application Fees

For FY 2008 through FY 2012, FDA will estimate the total number of fee-paying full application equivalents (FAEs) it expects to receive the next fiscal year by averaging the number of fee-paying FAEs received in the 5 most recent fiscal years. This use of the rolling average of the 5 most recent fiscal years is the same method that has applied for the last 6 years.

In estimating the number of fee-paying FAEs that FDA will receive in FY 2010, the 5-year rolling average for the most recent 5 years will be based on actual counts of fee-paying FAEs received for FY 2005 through FY 2009. For FY 2009, FDA is estimating the number of fee-paying FAEs for the full year based on the actual count for the first 9 months and estimating the number for the final 3 months, as we have done for the past 7 years.

Table 5 of this document shows, in column 1, the total number of each type of FAE received in the first 9 months of FY 2009, whether fees were paid or not. Column 2 shows the number of FAEs for which fees were waived or exempted during this period, and column 3 shows the number of fee-paying FAEs received through June 30, 2009. Column 4 estimates the 12-month total fee-paying FAEs for FY 2009 based on the applications received through June 30, 2009. All of the counts are in FAEs. A full application requiring clinical data counts as one FAE. An application not requiring clinical data counts as one-half an FAE, as does a supplement requiring clinical data. An application that is withdrawn, or refused for filing, counts as one-fourth of an FAE if the applicant initially paid a full application fee, or one-eighth of an FAE if the applicant initially paid one-half of the full application fee amount.

TABLE 5.—FY 2009 FULL APPLICATION EQUIVALENTS RECEIVED THROUGH JUNE 30, 2009, AND PROJECTED THROUGH SEPTEMBER 30, 2009

Application or Action	Column 1 Total Received Through 6/30/2009	Column 2 Fee Exempt or Waived Through 6/30/2009	Column 3 Total Fee Paying Through 6/30/2009	Column 4 12-Month Fee-Paying Projection
Applications requiring clinical data	88.75	32.75	56	74.7
Applications not requiring clinical data	15.5	4.5	11	14.7
Supplements requiring clinical data	47.5	8.5	39	52
Withdrawn or refused to file	0.625	0	0.625	0.8
Total	153.375	45.75	106.25	142.2

In the first 9 months of FY 2009, FDA received 153.375 FAEs, of which 106.25 were fee-paying. Based on data from the last 10 fiscal years, on average, 25 percent of the applications submitted each year come in the final 3 months. Dividing 106.25 by 3 and multiplying by 4 extrapolates the amount to the full 12 months of the fiscal year and projects the number of fee-paying FAEs in FY 2008 at 142.2.

As table 6 of this document shows, the average number of fee-paying FAEs received annually in the most recent 5-year period, and including our estimate for FY 2009, is 135.0 FAEs. FDA will set fees for FY 2010 based on this estimate as the number of full application equivalents that will pay fees.

TABLE 6.—FEE-PAYING FAE 5-YEAR AVERAGE

Fiscal Year	2005	2006	2007	2008	2009	5-Year Average
Fee-Paying FAEs	121.5	136.7	134.4	140.0	142.2	135.0

The FY 2010 application fee is estimated by dividing the average number of full applications that paid fees over the latest 5 years, 135.0, into the fee revenue amount to be derived from application fees in FY 2010, $189,736,000. The result, rounded to the nearest $100, is a fee of $1,405,500 per full application requiring clinical data, and $702,750 per application not requiring clinical data or per supplement requiring clinical data.

IV. Fee Calculations for Establishment and Product Fees

A. Establishment Fees

At the beginning of FY 2009, the establishment fee was based on an estimate that 400 establishments would be subject to, and would pay, fees. By the end of FY 2009, FDA estimates that 450 establishments will have been billed for establishment fees, before all decisions on requests for waivers or reductions are made. FDA again estimates that a total of 20 establishment fee waivers or reductions will be made for FY 2009. In addition, FDA estimates that another 15 full establishment fees will be exempted this year based on the orphan drug exemption in FDAAA (see section 736(k) of the act). Subtracting 35 establishments (20 waivers plus the estimated 15 establishments under the orphan exemption) from 450 leaves a net of 415 fee-paying establishments. FDA will use 415 for its FY 2010 estimate of establishments paying fees, after taking waivers and reductions into account. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($189,736,000) by the estimated 415 establishments, for an establishment fee rate for FY 2010 of $457,200 (rounded to the nearest $100).

B. Product Fees

At the beginning of FY 2009, the product fee was based on an estimate that 2,380 products would be subject to and would pay product fees. By the end of FY 2009, FDA estimates that 2,450 products will have been billed for product fees, before all decisions on requests for waivers, reductions, or exemptions are made. FDA assumes that there will be about 50 waivers and reductions granted. In addition, FDA estimates that another 20 product fees will be exempted this year based on the orphan drug exemption in FDAAA (see section 736(k) of the act). FDA estimates that 2,380 products will qualify for product fees in FY 2009, after allowing for waivers and reductions, including the orphan drug products eligible under the FDAAA exemption, and will use this number for its FY 2010 estimate. Accordingly, the FY 2010 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($189,736,000) by the estimated 2,380 products for a FY 2010 product fee of $79,720 (rounded to the nearest $10).

V. Fee Schedule for FY 2010

The fee rates for FY 2010 are set out in table 7 of this document:

TABLE 7.

Fee Category	Fee Rates for FY 2010
APPLICATIONS	
Requiring clinical data	$1,405,500
Not requiring clinical data	$702,750
Supplements requiring clinical data	$702,750
ESTABLISHMENTS	$457,200
PRODUCTS	$79,720

VIII. Fee Payment Options and Procedures

A. Application Fees

The appropriate application fee established in the new fee schedule must be paid for any application or supplement subject to fees under PDUFA that is received after September 30, 2009. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Please include the user fee identification (ID) number on your

check, bank draft, or postal money order. Your payment can be mailed to: Food and Drug Administration, P.O. Box 70963, Charlotte, NC 28272–0963.

If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: Wachovia Bank, Attn: Food and Drug Administration Lockbox 70963, 1525 West WT Harris Blvd., rm. NC0810, Charlotte, NC 28262. (Note: This Wachovia Bank address is for courier delivery only.)

Please make sure that the FDA post office box number (P.O. Box 70963) is written on the check, bank draft, or postal money order.

Wire transfer payment may also be used. Please reference your unique user fee ID number when completing your transfer. The originating financial institution usually charges a wire transfer fee between $15.00 and $35.00. Please ask your financial institution about the fee and include it with your payment to ensure that your fee is fully paid. The account information is as follows: New York Federal Reserve Bank, US Dept of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 5600 Fishers Lane, Rockville, MD 20857.

Application fees can also be paid online with an electronic check (ACH). FDA has partnered with the U.S. Department of the Treasury to utilize Pay.gov, a Web-based payment application, for online electronic payment. The Pay.gov feature is available on the FDA Web site after the user fee ID number is generated.

The tax identification number of the Food and Drug Administration is 53–0196965.

B. Establishment and Product Fees

FDA will issue invoices for establishment and product fees for FY 2010 under the new fee schedule in August 2009. Payment will be due on October 1, 2009. FDA will issue invoices in November 2010 for any products and establishments subject to fees for FY 2010 that qualify for fees after the August 2009 billing.

Dated: July 28, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–18457 Filed 7–31–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974; Report of Altered Systems of Records

AGENCY: Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA).

ACTION: Notice of Altered Systems of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the Health Resources and Services Administration (HRSA) is proposing to alter four existing systems of records (SORs) for the reasons indicated below:

09–15–0002: Records of Patient's Personal Valuables and Monies, HHS/HRSA/BPHC

HRSA is updating the system location, categories of individuals covered by the system, storage, retrievability, safeguards, retention and disposal, system manager, and notification procedure. HRSA is also adding a new routine use, number 3 (breach notification language).

09–15–0003: Contract Physicians and Consultants, HHS/HRSA/BPHC

HRSA is updating the system location, categories of individuals covered by the system, categories of records in the system, authority for maintenance of the system, retention and disposal, and system manager. HRSA is also adding a new routine use, number 6 (breach notification language).

09–15–0007: Patient's Medical Record System Public Health Service Hospitals, HHS/HRSA/BPHC

HRSA is updating the system location (Appendix 2—Federal Records Centers), categories of individuals covered by the system, categories of records in the system, authority for maintenance of the system, purpose of the system, physical safeguards, retention and disposal, system manager, and notification procedure. HRSA is deleting four routine uses, numbers 6 (Bureau of Prisons (BP) to report results of examination and treatment of patients examined and/or treated for and on behalf of the BP), 7 (Federal, state or private health benefit plans for billing purposes), 14 (Disclosure may be made to a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. The contractor is required to maintain Privacy Act safeguards with respect to such records), and 19 (To organizations or individuals with agreements to provide photocopying or medical record data abstracting services. (a) PBS may inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with the human immunodeficiency virus (HIV) of their exposure to HIV, under the following circumstances:

1. The information has been obtained in the course of clinical activities at PHS facilities carried out by PHS personnel or contractors;

2. The PHS employee or contractor has made reasonable efforts to counsel and encourage the subject individual to provide the information to the individual's sexual or needle-sharing partner(s);

3. The PBS employee or contractor determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and

4. The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices. (b) PHS may disclose information to State or local public health departments, to assist in the notification of the subject individual's sexual and/or needle-sharing partner(s), or in the verification that the subject individual has, notified such sexual or needle-sharing partner(s). HRSA is also adding one new routine use, number 16 (breach notification language).

09–15–0028: Public Health Service Clinical Affiliation Trainee Records, HHS/HRSA/BPHC

HRSA is updating the system location, authority for maintenance of the system, retrievability, safeguards, retention and disposal, and system manager. HRSA is also deleting one routine use, number 2 (to representatives of medical/allied health training program accreditation of PHS Training Programs), and adding a new routine use, number 6 (breach notification language).

DATES: HRSA filed an altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on *July 23, 2009.* To ensure all parties have adequate time in which to comment, the altered systems, including the routine uses, will become effective 30 days from

the publication of the notice or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless HRSA receives comments that require alterations to this notice.

ADDRESSES: Please address comments to Associate Administrator, Health Resources and Services Administration, 5600 Fishers Lane, Room 17–105, Rockville, Maryland 20857. Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m. (Eastern Standard Time Zone), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Renee Painter, Administrative Officer, National Hansen's Disease Program, Bureau of Primary Health Care, 1770 Physician's Park Drive, Room 113, Baton Rouge, Louisiana 70816; Telephone (225) 756–3773. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HRSA's Bureau of Primary Health Care's National Hansen's Disease Program (NHDP) (formerly Gillis W. Long Hansen's Disease Center) relocated from Carville, Louisiana, to Baton Rouge, Louisiana. The proposed changes to the systems of records maintained at the NHDP are to update the system location, categories of individuals covered by the systems, categories of records in the systems, authority for maintenance of the systems, routine uses, retrievability, storage, safeguards, retention and disposal, system managers, and notification procedures.

Dated: July 9, 2009.

Mary K. Wakefield,

Administrator.

SYSTEM NUMBER:

09–15–0002.

SYSTEM NAME:

Record of Patients' Personal Valuables and Monies, HHS/HRSA/BPHC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Hansen's Disease Program, 1770 Physician's Park Drive, Baton Rouge, Louisiana 70816.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals admitted to the National Hansen's Disease Program (NHDP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information regarding personal valuables such as watches or rings, and monies checked in by the patients for safe-keeping.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 321 of the Public Health Service Act.

PURPOSE(S):

The purpose of the system is to provide for the safekeeping of patients' valuables. Records may also be used by the HHS Audit Agency for audit purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

a. HHS, or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

• Storage: Valuables and monies (contents verified by the patient and a witness) are placed in an envelope by the patient. Name, hospital number, and list of contents are written on the envelope and on flap. It is sealed and receipt flap is given to the patient. The envelope is then placed in locked cabinet or safe. Actions are documented in the patient's medical record.

• Retrievability: Presentation of receipt flap, name, and hospital number. Return of valuables is documented in the medical record.

• Safeguards:

1. Authorized Users: DNHDP personnel responsible for the security of valuables and monies.

2. Physical Safeguards: All documents are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with the DHHS Chapter 45–13 and Chapter PHS.hf: 45–13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Documentation within the medical record is retained indefinitely until authority to destroy medical records is received.

HOW DESTROYED:

Incinerator or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Medical Records Coordinator, National Hansen's Disease Program, 1770 Physician's Park Drive, Baton Rouge, Louisiana 70816.

NOTIFICATION PROCEDURE:

Write to the National Hansen's Disease Program, Medical Records Coordinator, 1770 Physician's Park Drive, Baton Rouge, Louisiana 70816. Individual must provide positive identification such as driver's license, passport, voter registration card, union card, or a written certification verifying his or her identity. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

Same as notification procedures.

CONTESTING RECORD PROCEDURES:

Write to the official at the address specified in the notification procedures above, and reasonably identify the record, specify the information to be contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Patient and admission record.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SYSTEM NUMBER:

09–15–0003

SYSTEM NAME:

Contract Physicians and Consultants, HHS/HRSA/BPHC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Hansen's Disease Program, 1770 Physician's Park Drive, Baton Rouge, Louisiana 70816.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medical and allied health professionals (*e.g.*, physicians, nurses, physical therapists, and dentists) who have contracted with the National Hansen's Disease Program to provide services to beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Duplicate of original contract and personal data qualifications. Original contracts developed by the National Hansen's Disease Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 320 of the Public Health Service Act, as amended (42 U.S.C. 247e), the National Hansen's Disease Program; section 321 of the Public Health Service Act, as amended (42 U.S.C. 248), Control and Management of Hospitals; and section 326 of the Public Health Service Act, as amended (42 U.S.C. 253), Medical services to Coast Guard, National Oceanic and Atmospheric Administration, and the Public Health Service.

PURPOSE(S):

To monitor contract negotiations and compliance, to review credentials, and to collect statistical data required to manage the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

3. Where a contract between a component of the Department and a labor organization recognized under E.O. 11491 provides that the agency will disclose personal records relevant to the organization's mission, records in this system of records may be disclosed to such organization.

4. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) Any HHS employee in his or her official capacity; or (c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

5. Disclosure may be made to State Boards of Medical Examiners and to equivalent State licensing boards of professional review actions which adversely affect the clinical privileges of health care professionals who either:

1. Are or were employed by the Federal Government;

2. Provide or have provided health care service under a fee-for-service contract with the Federal Government; or

3. Provide or have provided health care services on behalf of the Federal Government as a volunteer or as a visiting fellow.

Boards of Medical Examiners and equivalent State licensing boards are required by the Health Care Quality Improvement Act of 1986 and by the Medicare and Medicaid Patient and Program Protection Act of 1987 to report this information to the National Practitioner Data Bank.

6. To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

- Storage: File folders.
- Retrievability: Name and contract number.
- Safeguards:

1. Authorized Users: HHS medical and financial management staff and contracting personnel.

2. Physical Safeguards: All documents are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with DHHS Chapter 45–13 and Chapter PHS.hf: 45–13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Duplicate contracts: Held 1–3 years dependent upon renewal. Destroyed per authority General Records Schedule 5 and 7.

ORIGINAL CONTRACTS:

1. Transactions of more than 10,000: Destroy 6 years and 3 months after final payment.

2. Transactions of 10,000 or less: Destroy 3 years after final payment.

SYSTEM MANAGER(S) AND ADDRESS:

Contracting Officer, National Hansen's Disease Program, 1770 Physician's Park Drive, Baton Rouge, Louisiana 70816.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address above. The individual must provide positive identification, such as driver's license, passport, voter registration card, or written certification verifying his or her identity. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

Same as notification procedures.

CONTESTING RECORD PROCEDURES:

Write to the System Manager at the address specified above, and reasonably identify the record, specify the

information to be contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Medical, allied health professionals and dentists.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SYSTEM NUMBER:

09–15–0007

SYSTEM NAME:

Patients Medical Record System Public Health Service Hospitals, HHS/HRSA/BPHC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See Appendices 1 and 2. A list of sites where individually identifiable data is currently located is available upon request to the System Manager.

Appendix 1

A. Public Health Service Facilities: Director, Public Health Service Health Data Center, 1770 Physicians Park Drive, Baton Rouge, Louisiana 70816.

B. Successor Organizations: Director, Johns Hopkins Medical Service, 3100 Wyman Park Drive, Baltimore, Maryland 21211. Administrator, Lutheran Medical Center, 2609 Franklin Boulevard, Cleveland, Ohio 44114. Administrator, Martins Point Health Center, 331 Veranda Street, Portland, Maine 04103. Director, Pacific Medical Center, 1200 12th Avenue South, Seattle, Washington 98144.

Appendix 2—Federal Records Centers

- Area served: Buffalo, New York OutPatient Clinic, San Juan, and Staten Island. Central Plains Federal Records Center, 200 Space Center Drive, Lee's Summit, Missouri 64064–1182.
- Area served: Chicago and Detroit. Federal Records Center, 7358 S. Pulaski Road, Chicago, Illinois 60629–5898.
- Area served: Cincinnati and Detroit. Federal Records Center, 3150 Springboro Road, Dayton, Ohio 45439–1883.
- Area served: Atlanta, Charleston, Jacksonville, Memphis, Miami, Mobile, Savannah and Tampa. Federal Records Center, 4712 Southpark Boulevard, Ellenwood, Georgia 30294.
- Area served: 090 section of Houston, New Orleans, Galveston and Nassau Bay. Federal Records Center, P.O. Box 6216, Fort Worth, Texas 76115.
- Area served: 512 section of Houston, New Orleans, Galveston/Nassau Bay. Federal Records Center, 17501 W. 98th Street, Suite 47–48, Lenexa, Kansas 66219.
- Area served: San Diego and San Pedro. Federal Records Center, P.O. Box 6719, 23123 Cajalco Road, Perris, California 92570–7298.
- Area served: Philadelphia and Pittsburg. Federal Records Center, 14700 Townsend Road, Philadelphia, Pennsylvania 19154–1096.
- Area served: San Francisco and Honolulu. Federal Records Center, 1000 Commodore Drive, San Bruno, California 94066–2350.
- Area served: Honolulu and Portland, Oregon. Federal Records Center, 6125 Sand Point Way, NE., Seattle, Washington 98115–7999.
- Area served: Buffalo, DC, Norfolk, Port Arthur, St. Louis Space Park Memorial, Seattle, New Orleans, Tampa, San Francisco, Galveston, Seattle and Maryland. Washington National Records Center, 4205 Suitland Road, Suitland, Maryland 20746.
- Area served: Boston, Maine, Massachusetts, Kentucky and Indiana. Federal Records Center, 380 Trapelo Road, Waltham, Massachusetts 02154–6399.
- Area served: Individuals with Hansen's disease, examined and/or treated at the National Hansen's Disease Program (formerly Public Health Service Hospital), National Hansen's Disease Programs, 1770 Physician's Park Drive, Baton Rouge, Louisiana 70816.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Uniformed and non-uniformed individuals treated as inpatients in Public Health Service Hospitals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical examination, diagnostic and treatment data; information for proof of eligibility; social data such as address and birth date; disease registers, such as Hansen's disease and tumor and surgical procedure registers; treatment logs, medical summaries and correspondence (for example, family to doctor, doctor to doctor, doctor to clinic).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 320 of the Public Health Service Act, as amended (42 U.S.C. 247e), the National Hansen's Disease Program; and section 326 of the Public Health Service Act, as amended (42 U.S.C. 253), Medical Services to Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

PURPOSE(S):

The purposes of this system are:

1. To serve as a basis for planning patient care and for continuity in the evaluation of the patient's condition and treatment to furnish documentary evidence of the course of the patient's medical evaluation, treatment and change in condition during the hospital stay, ambulatory care or emergency visit, or while being followed in a facility-based home care program;

2. To document communications between the responsible practitioner and any other health professional's contribution to the patient's care and treatment in order to assist in protecting the legal interests of the patient, the hospital or clinic, and responsible practitioners;

3. To provide data for use in facility management, continuing education, Department initiatives, quality assurance activities and research at the National Hansen's Disease Program, Baton Rouge, Louisiana.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to:

1. Any community health organization, government agency, private physician and/or company which has requested or arranged for an examination, treatment or care of an individual.

2. Army, Navy, Air Force to report results of examination or treatment of their uniformed service personnel.

3. Department of Transportation to report results of examination/treatment of their uniformed services personnel found to be suffering from conditions that render them hazardous to themselves or to others.

4. Department of Commerce to report results of examination/treatment of uniformed services and other personnel of that agency.

5. Immigration and Customs Enforcements (ICE) to report results of examination/treatment of aliens examined and treated for and in behalf of that agency.

6. U.S. Department of Labor, Office of Workers' Compensation Programs for persons claiming compensation benefits due to personal injury while employed by the Government.

7. Organizations such as Joint Commission on Accreditation of Hospitals for accreditation of hospitals and clinics, and American Medical Association for accreditation of resident training programs. Medical records are used to document quality of service by health care providers.

8. Health professions students serving an affiliation at the institution and their parent education program; students provide patient care and use medical records in performance of their duties.

9. Non-agency physicians providing continuing care to current and former

Public Health Service Beneficiaries, laboratories performing tests for the continuing care of these patients, and successor organizations providing health care in former Public Health Service hospitals and clinics.

10. Veterans Administration to assist uniformed service personnel, retirees and veterans to obtain medical care or benefits.

11. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

12. A record may be disclosed for a research purpose, when the Department: (a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; (d) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

13. Organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review.

14. Information regarding the commission of crimes or the reporting or occurrence of communicable diseases, tumors, child abuse, births, deaths, alcohol or drug abuse, etc. as may be required by health providers and facilities, by state law, or regulation of the department of health or other agency of the state or its subdivision in which the facility is located. Disclosure may be made to organizations as specified by the state law or regulation such as birth and deaths to vital statistics agencies and crimes to law enforcement agencies. Disclosure of the contents of records which pertain to patient identity, diagnosis, prognosis or treatment of alcohol or drug abuse is restricted under the provisions of the Confidentiality of Alcohol and Drug Abuse Patient Records Regulations 42 CFR part 2 as authorized by 21 U.S.C. 1175 and 42 U.S.C. 4582, as amended by Public Law 93–283. To the extent possible, identical restrictions are applied to the disclosure of the contents of records pertaining to individuals with other programs who are participating in employee counseling programs.

15. In the event of litigation where the defendant is

a. The Department, any component of the Department, or any employee of the Department in his or her official capacity;

b. The United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or

c. Any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual. Disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

16. To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

- Storage: File folders, magnetic tape, disk or laser optical media, punch cards, and microfilm.
- Retrievability: Indexed by name, register number, number control register, disease and operation, and uniformed services service number (which is the Social Security number (SSN)). Those records indexed by SSN are retrieved in accordance with section 7(a)(2)(B) of the Privacy Act.
- Safeguards:

1. Authorized Users: Health care practitioners, and other allied health personnel, medical and allied health students and administrative personnel for determination of eligibility for care and facility management; qualified research personnel with approved protocol; Public Health Service Commissioned Personnel Operations Division; and Public Health Service Claims Officer.

2. Physical Safeguards: Magnetic tapes, discs, other computer equipment and other forms of personal data are stored in areas where fire and life safety codes are strictly enforced. All documents are protected during lunch hours and nonworking hours in locked file cabinets in double-locked storage areas.

3. Procedural Safeguards: A password is required to access the terminal and a data set name controls the release of data only to authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with Privacy Act safeguards. The contractor is required to maintain confidentiality safeguards with respect to these records. These safeguards are in accordance with DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual, and Part 6 of the DHHS Information Resources Management Manual. The Memorandums of Agreement between the successor organizations and the Public Health Service require the successor organizations to comply with the Privacy Act. Public Health Service and HHS guidelines have been provided to each successor organization.

RETENTION AND DISPOSAL:

1. Former Public Health Service Hospitals/Clinics: Destroyed 50 years after date of last treatment, inactive medical records for active duty uniformed service personnel and non-uniformed service personnel.

2. National Hansen's Disease Program: Retained at facility—not transferred to a Federal Records Center. Destroyed, as appropriate, after 50 years, or when no

longer needed for research purposes, as determined by the project leader or principal investigator.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Public Health Service Health Data Center, National Hansen's Disease Program, 1770 Physician's Park Drive, Baton Rouge, Louisiana 70816.

NOTIFICATION PROCEDURE:

To determine the existence of a record, write to: Public Health Service Health Data Center, National Hansen's Disease Program, 1770 Physician's Park Drive, Baton Rouge, Louisiana 70816.

If requesting records by mail, a written certification verifying identity must be provided. If appearing in person at the National Hansen's Disease Program, Baton Rouge, Louisiana, positive identification such as a driver's license, passport, or voter's registration card must be provided. An individual who requests access to a medical/dental record shall designate in writing, at the time the request is made, a responsible representative who will be willing to review the record and inform the subject individual of its contents. Finally, a parent or guardian who requests notification of access to a child's/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child/incompetent person as well as his/her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified in the notification procedures above, and reasonably identify the record, specify the information to be contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Individual, health care personnel, other hospitals and physicians, employers, social agencies, maritime unions, shipping companies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SYSTEM NUMBER:

09–15–0028

SYSTEM NAME:

Public Health Service Clinical Affiliation Trainee Records, HHS/HRSA/BPHC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Hansen's Disease Program, 1770 Physicians Park Drive, Baton Rouge, Louisiana 70816.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students in Public Health Service training programs or serving clinical affiliation in National Hansen's Disease Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Transcripts of past education, application for training, training program staff and clinical supervisor evaluations and progress reports, course grades and evidence of completion of training requirements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 320 of the Public Health Service Act, as amended (42 U.S.C. 247e), the National Hansen's Disease Program; and section 327A of the Public Health Service Act, as amended (42 U.S.C. 254), Interdepartmental Work.

PURPOSE(S):

To provide communication between educational and supervisory staff for evaluation of trainees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

To Educational Program staff of affiliated college/university to provide reports of student trainee's progress in training;

1. To prospective employers for professional reference;

2. To professional boards or associations to certify the student's progress in or completion of training as required for professional license, registration certification, etc.

3. To a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

4. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when

a. HHS, or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

5. To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

- Storage: File folders.
- Retrievability: By year of training and alphabetically by last name.
- Safeguards:
  - Authorized Users: Rehabilitation and Educational Services Coordinator, National Hansen's Disease Program, work and staff supervisors and administrative personnel.
  - Physical Safeguards: All documents are protected during lunch hours and nonworking hours in locked file cabinets and locked storage areas.
  - Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Access to records is strictly limited to those staff members trained in accordance with DHHS Chapter 45–13 and Chapter PHS.hf: 45–13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Retained 5 years, then destroyed per authority of General Records Schedule 1.29.

SYSTEM MANAGER(S) AND ADDRESS:

Rehabilitation and Educational Services Coordinator, National Hansen's Disease Program, 1770 Physician's Park Drive, Baton Rouge, Louisiana 70816.

NOTIFICATION PROCEDURE:

The individual should contact the Director, National Hansen's Disease Program, 1770 Physicians Park Drive, Baton Rouge, Louisiana 70816, and provide name, date of birth and approximate dates of training to allow positive identification of the record.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the facility mentioned at the address specified in the notification procedures above, and reasonably identify the record, specify the information to be contested, and state corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Individuals, clinical supervisors, instructors, training program staff and administrative personnel of facility and affiliated college/university.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E9–18439 Filed 7–31–09; 8:45 am]
BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0351]

Seafood Hazard Analysis and Critical Control Points Alliance for Education and Training (U18)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to receive and consider a single source application for the award of a cooperative agreement in fiscal year 2009 (FY09) to the University of Florida for the support of the Seafood Hazard Analysis and Critical Control Points (HACCP) Alliance for Education and Training. The goal of the Seafood HACCP Alliance for Education and Training is to provide partial support, periodic clerical assistance, and personnel travel to national and international events and committee meetings.

DATES: Important dates are as follows:

1. The application due date is August 24, 2009.
2. The anticipated start date is in September 2009.
3. The opening date is August 3, 2009.
4. The expiration date is August 25, 2009.

FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT:

Center Contact: Barbara Kennedy, Center for Food Safety and Applied Nutrition (HFS–669), 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2056, e-mail: *Barbara.Kennedy@fda.hhs.gov*.

Scientific/Programmatic Contact: Stanley Serfling, Center for Food Safety and Applied Nutrition (HFS–325), 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2320, e-mail: *stanley.serfling@fda.hhs.gov*.

Grants Management Contact: Camille Peake, Division of Acquisition Support and Grants (HFA–500), Food and Drug Administration , 5630 Fishers Lane, rm. 2139, Rockville, MD 20857, 301–827–7175, FAX: 301–827–7101, e-mail: *Camille.Peake@fda.hhs.gov*.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *http://www.cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

RFA–FD–09–014
Catalog of Federal Domestic Assistance Number: 93.103

A. Background

This FOA issued by the Office of Food Safety is soliciting a sole source grant application from University of Florida that proposes to provide funding in support of the Seafood HACCP Alliance for Education and Training. The Seafood HACCP Alliance remains the primary training and educational program supporting both regulatory and commercial governance of seafood and aquaculture product safety in the U.S.A. FDA actively participates with the Alliance and values their educational programs, which are essential and consistent with the prevailing federal mandates for HACCP education and training for commercial interests and inspectors in state and federal agencies. Our funds will provide partial support, periodic clerical assistance, and personnel travel to national and international events and committee meetings. These are pertinent to the Alliance Steering Committee objectives: Related supplies for communications and educational programs, telecommunication and computer equipment for communications and production of educational materials, and possible part-time student labor for temporary assignments.

B. Research Objectives

The Seafood HACCP Alliance remains the primary training and educational program supporting both regulatory and commercial governance of seafood and aquaculture product safety in the U.S.A.

Leadership for the Alliance has been anchored in the Florida Sea Grant College Program based at the University of Florida since its beginning in 1994. The Alliance continues to function under the structure of a formal Steering Committee, which is built on a backbone of cooperative extension services aligned with representation from every pertinent federal agency, i.e., the U.S. Department of Agriculture, FDA, and the U.S. Department of Commerce, and the leading national seafood trade associations, i.e., National Fisheries Institute and the National Food Processors Association (recently changed to the Seafood Processors Association). This is a large, complex, and multifaceted effort that involves every pertinent state regulatory agency in the nation with protocols established through the Association of Food & Drug Officials (AFDO) and the six regional AFDO affiliates. The protocols include standards for approving training materials, trainers, and courses, and procedures for certifications and records for course graduates and evaluations. This organizational structure has involved every state in the nation and every cooperative extension program in the respective state universities. The Alliance is well recognized across the nation and about the world, and their educational services are expected. This network remains experienced and poised for continuing services.

In addition, FDA will support the general management of the Seafood HACCP Alliance as positioned in the Florida Sea Grant College Program at the University of Florida. The activities associated with Alliance Steering Committee objectives are multifaceted and involve numerous individuals about the nation working through the wide variety of programs. These working arrangements have been in operation and productive for well over 10 years.

This cooperative agreement will enable the University of Florida to continue and strengthen the valued utility and proven impacts of the existing Seafood HACCP Alliance for Education and Training through updates, additions, and new programs that address the changes in seafood

safety risks, regulations, and commerce that have occurred through the past decade. These changes are particularly necessary to address the emerging concerns for imported products and new regulatory guidance anticipated in early 2009.

C. Eligibility Information

Competition is limited to the University of Florida. FDA believes that continued support of Seafood HACCP Alliance for Education and Training is appropriate because the University of Florida is uniquely qualified to fulfill the objectives of the proposed cooperative agreement.

II. Award Information/Funds Available

A. Award Amount

The estimated amount of funds available for support in FY09 will be for up to $115,000 total costs (direct plus indirect costs), with the possibility of 4 additional years of support for up to $460,000, subject to the availability of funds. Future year amounts will depend on annual appropriations and successful performance.

B. Length of Support

The award will provide 1 year of support and include future recommended support for 4 additional years, contingent upon satisfactory performance in the achievement of project and program reporting objectives during the preceding year and the availability of Federal FY appropriations.

III. Paper Application, Registration, and Submission Information

To submit a paper application in response to this FOA, applicants should first review the full announcement located at *http://www.cfsan.fda.gov*. A copy of the full text of this announcement will be posted on FDA's Center for Food Safety and Applied Nutrition Web site at *http://www.cfsan.fda.gov*. Click on ''National Food Safety Program;'' click *www.FoodSafety.gov*; click Search & Site index; search on ''CFSAN Grants.'' (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.) Persons interested in applying for a grant may obtain an application from the PHS 398 application instructions available at *http://grants.nih.gov/grants/forms.htm*. (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.) For paper submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet Number (DUNS)
- Step 2: Register With Central Contractor Registration
- Step 3: Register With Electronic Research Administration (eRA) Commons

Steps 1 and 2, in detail, can be found at: *http://www07.grants.gov/applicants/organization_registration.jsp.* Step 3, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp.*

After you have followed these steps, submit paper applications to: Camille Peake (see **FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT**).

Dated: July 27, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–18416 Filed 7–31–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1851–DR; Docket ID FEMA–2008–0018]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1851–DR), dated July 13, 2009, and related determinations.

DATES: *Effective Date:* July 13, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 13, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Tennessee resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of June 12–14, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Terry L. Quarles, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Tennessee have been designated as adversely affected by this major disaster:

Fayette, Haywood, and Shelby Counties for Public Assistance.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–18405 Filed 7–31–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1850–DR; Docket ID FEMA–2008–0018]

Illinois; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois (FEMA–1850–DR), dated July 2, 2009, and related determinations.

DATES: *Effective Date:* July 22, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Illinois is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 2, 2009.

Hamilton and Union Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–18404 Filed 7–31–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1848–DR; Docket ID FEMA–2008–0018]

Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–1848–DR), dated June 24, 2009, and related determinations.

DATES: *Effective Date:* July 24, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 24, 2009.

Morris County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–18409 Filed 7–31–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1845–DR; Docket ID FEMA–2008–0018]

Arkansas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA–1845–DR), dated June 16, 2009, and related determinations.

DATES: *Effective Date:* July 24, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arkansas is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 16, 2009.

Pope County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to iNdividuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–18408 Filed 7–31–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008–OMM–0042]

MMS Information Collection Activity: 1010–0128, Subpart O, Well Control and Production Safety Training, Extension of a Collection; Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0128).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR 250, Subpart O, Well Control and Production Safety Training, and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by *September 2, 2009.*

ADDRESSES: You should submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0128), either by fax (202) 395–5806 or e-mail (*OIRA_DOCKET@omb.eop.gov*).

Please also send a copy to MMS by either of the following methods:

- *http://www.regulations.gov*. Under the tab More Search Options, click Advanced Docket Search, then select Minerals Management Service from the agency drop-down menu, then click submit. In the Docket ID column, select MMS–2008–OMM–0042 to submit public comments and to view supporting and related materials. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's User Tips link. Submit comments to *regulations.gov* by September 2, 2009. The MMS will post all comments.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference Information Collection 1010–0128 in your subject line and include your name and address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation that requires the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart O, Well Control and Production Safety Training.

OMB Control Number: 1010–0128.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-use and easement, and pipeline right-of-way. Operations in the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) of the OCS Lands Act requires that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.'' To carry out these responsibilities, the Minerals Management Service (MMS) has issued rules governing training requirements for certain personnel working in the OCS at 30 CFR 250, Subpart O, Well Control and Production Safety Training. Responses are mandatory or required to obtain or retain a benefit and are primarily on occasion. No questions of a sensitive nature are asked. The MMS protects information considered proprietary according to 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection,* and 30 CFR Part 252, *Outer Continental Shelf (OCS) Oil and Gas Information Program.*

The MMS will use the information collected under subpart O regulations to ensure that workers in the OCS are properly trained with the necessary skills to perform their jobs in a safe and pollution-free manner. In some instances, MMS will conduct oral interviews of offshore employees to evaluate the effectiveness of a company's training program. We do the oral interviews to gauge how effectively the companies are implementing their own training program. The MMS would use the interview form and keep the information internally. This information is necessary to verify training compliance with the requirements.

Frequency: On occasion or annual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 1,144 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30, CFR 250, Subpart O	Reporting and recordkeeping requirement	Hour burden	Average Number of annual responses	Annual burden hours
1503(b)	Develop training plans. **Note**: Existing lessees/respondents already have training plans developed. This number reflects development of plans for any new lessees.	70	2	140
1503(c)	Maintain copies of training plan and employee training documentation/record for 5 years.	1½ hr. (plan)	130	195
		2 hrs. for records		260

Citation 30, CFR 250, Subpart O	Reporting and recordkeeping requirement	Hour burden	Average Number of annual responses	Annual burden hours
1503(c)	Upon request, provide MMS copies of employee training documentation or provide copy of training plan.	5	31	155
1507(b)	Employee oral interview conducted by MMS	½ hr	650	325
1507(c), (d); 1508; 1509	Written testing conducted by MMS or authorized representative.	Not considered information collection under 5 CFR 1320.3(h)(7)		0
1510(b)	Revise training plan and submit to MMS	12	5	60
250.1500–1510	General departure or alternative compliance requests not specifically covered elsewhere in subpart O.	3	3	9
Total Hour Burden			821	1,144

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no paperwork non-hour cost burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on May 1, 2009, we published a **Federal Register** notice (74 FR 20330) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by September 2, 2009.

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.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: July 15, 2009.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E9–18418 Filed 7–31–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–1310–DB]

Notice of Intent (NOI) To Prepare an Environmental Impact Statement for the LaBarge Platform Project, Sublette County and Lincoln County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: The Bureau of Land Management (BLM) Field Office, Pinedale, WY, intends to prepare an Environmental Impact Statement (EIS) and to solicit public comments pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and in response to a proposal filed by EOG Resources, Inc. (EOG) regarding issues and resource information for the proposed LaBarge Platform Project, Sublette County and Lincoln County, Wyoming. The project is primarily a natural gas exploration and development project.

DATES: This notice initiates the public scoping process. The BLM can best use public input if comments and resource information are submitted within 45 days from publication of this notice.

To provide the public with an opportunity to review the proposal and project information, the BLM will host public meetings in Pinedale, LaBarge, Big Piney, and Kemmerer, Wyoming. The BLM will announce the dates, times, and locations for these meetings at least 15 days prior to the event. Announcements will be made by news release to the media, individual letter mailings, and posting on the project, Web site listed below.

http://www.blm.gov/wy/st/en/info/NEPA/pfodocs/labarge_platform.html.

ADDRESSES: You may submit comments on issues and planning criteria related to the LaBarge Platform Project EIS by any of the following methods:

- *Web Site: http://www.blm.gov/wy/st/en/info/NEPA/pfodocs/labarge_platform.html.*
- *E-mail: LaBarge_Platform_WYMail@blm.gov.*
- *Fax:* (307) 367–5329.
- *Mail:* Bureau of Land Management, Pinedale Field Office, Attn: LaBarge Platform Project Manager, P.O. Box 768, Pinedale, WY 82941.

Documents pertinent to this proposal may be examined at the Pinedale Field Office.

FOR FURTHER INFORMATION CONTACT: For information or to add your name to the

project mailing list, contact Lauren McKeever, Project Leader, Telephone 307–367–5300; e-mail *lauren_mckeever@blm.gov.*

SUPPLEMENTARY INFORMATION: The LaBarge Platform Project is generally located between Townships 26 and 31 North, Ranges 111 through 114 West, 6th Principal Meridian, Sublette, and Lincoln Counties, Wyoming. The project area is located within 3 miles of Big Piney, Wyoming, within 1 mile of La Barge, Wyoming and 60 miles northwest of Rock Springs, Wyoming. The project area covers approximately 218,000 acres of mixed Federal, State, and private lands. The BLM Pinedale Field Office and Rock Springs Field Office manage the Federal lands in the project area. The Pinedale Field Office will serve as the lead office.

The proposed action is in conformance with the Pinedale Resource Management/Final Environmental Impact Statement and Record of Decision (ROD), 2008, and the Green River Resource Management Plan and its ROD, 1997.

The LaBarge Platform Project is located in an area of existing oil and gas development, some of which dates back to the 1920s. The project area is comprised of 70 percent public lands administered by the BLM, 5 percent lands managed by the State of Wyoming and 24 percent private lands. Approximately 74 percent of the subsurface resources are Federal mineral estate. In April 2008, EOG submitted to the BLM a proposal to expand oil and natural gas exploration and development operations that would result in further development and additional wells in the existing LaBarge Platform and East LaBarge fields which have been in production since the 1920s.

The purpose of the proposed project is to explore, extract, and recover oil and natural gas. EOG proposes to develop up to approximately 605 new oil and gas wells from an estimated 455 well pads as infill, exploratory, or step-out wells to all productive formations including but not limited to: Baxter, Frontier, and Mesa Verde. Associated facilities in the proposal include roads, well pads, and gathering pipelines. No additional ancillary facilities are included as part of the proposal nor considered as part of this analysis.

The estimated life-of-project would be about 40–50 years. Depending on the geological characteristics of the target formation, wells would be drilled using a combination of vertical, directional, and horizontal drilling techniques. The proposal calls for a 10-year construction and drilling period.

A number of other operators within or near the EOG project area expect to drill and develop approximately 175 natural gas wells within the reasonably foreseeable future. These possible wells would be analyzed in a separate alternative and addressed in the cumulative effects portion of this EIS document.

During the preparation of the EIS, interim exploration and development will be subject to development guidelines and decisions made in applicable NEPA documents, including but not limited to: Coordinated Activity Plan for the Big Piney/LaBarge Area, and ROD, 1991; Enron Oil & Gas Company East LaBarge Infill Drilling Project Environmental Assessment (EA), Finding of No Significant Impact and Decision Record 1992; the Green River Resource Management Plan and Final EIS and ROD, 1997; and the Pinedale Resource Management Plan/Final EIS and ROD, 2008.

The LaBarge Platform Project area is adjacent to the project area considered in the South Piney Natural Gas Project Draft EIS (2005). The proponent of the South Piney Project has not submitted any revised proposals nor has the BLM been contacted about continuing any further NEPA process. Therefore, the BLM has concluded its NEPA process and no further environmental documents will be prepared for the South Piney Project proposal.

The EIS for the LaBarge Platform Project will analyze the environmental consequences of implementing the proposed action and alternatives to the proposed action, including a No Action alternative. Other alternatives that may be considered in detail include drilling surface densities and pace of development different from those of the proposed action.

Your input is important and will be considered in the environmental analysis process. All comment submittals must include the commenter's name and street address. Comments including the names and addresses of the respondent will be available for public inspection at the above offices during normal business hours, Monday through Friday, except Federal holidays. Before including your address, phone number, e-mail address, or any other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information may be publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: May 22, 2009.

Donald A. Simpson,

State Director.

[FR Doc. E9–18309 Filed 7–31–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: St. Lawrence University, Department of Anthropology, Canton, NY; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of St. Lawrence University, Department of Anthropology, Canton, NY. The human remains were removed from St. Lawrence County, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the number of tribes that were determined to be culturally affiliated in a Notice of Inventory Completion previously published in the **Federal Register** (73 FR 50996–50997, August 29, 2008) by adding the Oneida, Cayuga, and Onondaga Indian Nations, in addition to the Mohawk Nation. After publication, St. Lawrence University determined that the Oneida, Mohawk, Cayuga, and Onondaga Nations are all culturally affiliated with the Native American human remains, which are currently in the possession of the Department of Anthropology, St. Lawrence University.

In the **Federal Register** of August 29, 2008, paragraph numbers 6–10 are corrected by substituting the following:

The region of Gouverneur has been occupied by Native Americans from 10,000 BP up to the historic period and

beyond. The St. Lawrence River and its tributaries were continually used as part of Native American hunting and fishing grounds. During the French and Indian War, Native Americans who occupied the Oswegatchie River region (Oswegatchie is a tributary of the St. Lawrence River), which included the Oneida, Mohawk, Cayuga, and Onondaga, were dislocated as a result of the war. Many Native Americans were forced to abandon their settlements, which included the abandonment of La Presentation in 1759. Many Iroquoian families were forced to migrate to present-day St. Regis where they were adopted by the Mohawk. Consultation with tribal representatives of the Mohawks of Akwesasne (which is composed of the Saint Regis Mohawk Tribe, New York; Mohawk Council of Akwesasne; and Mohawk Nation Council of Chiefs) provided additional lines of evidence.

Through ongoing consultation with Native American groups and Lauren French, examination of the human remains, and review of the available literature, officials of St. Lawrence University have determined that the human remains are Native American and most likely share common Iroquoian identity with the Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; and the Mohawks of Akwesasne (which is composed of the Saint Regis Mohawk Tribe, New York; Mohawk Council of Akwesasne; and Mohawk Nation Council of Chiefs).

Officials of the St. Lawrence University, Department of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represents the physical remains of one individual of Native American ancestry. Officials of the St. Lawrence University, Department of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; and Saint Regis Mohawk Tribe, New York. Lastly, officials of the St. Lawrence University, Department of Anthropology have determined that there is a cultural relationship between the human remains and the Mohawk Council of Akwesasne and Mohawk Nation Council of Chiefs.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Richard A. Gonzalez, Department of Anthropology, St. Lawrence University, Canton, NY 13617, telephone (315) 229–5745, before September 2, 2009. Repatriation of the human remains to the Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; and Saint Regis Mohawk Tribe, New York (which also represents the Mohawk Council of Akwesasne and the Mohawk Nation Council of Chiefs), may proceed after that date if no additional claimants come forward.

St. Lawrence University is responsible for notifying the Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; Saint Regis Mohawk Tribe, New York; Mohawk Council of Akwesasne; and Mohawk Nation Council of Chiefs that this notice has been published.

Dated: July 14, 2009.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–17666 Filed 7–31–09; 8:45 am]

BILLING CODE 4312–50–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–208 (Third Review)]

Barbed Wire and Barbless Wire Strand From Argentina

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on barbed wire and barbless wire strand from Argentina.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on barbed wire and barbless wire strand from Argentina would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is September 2, 2009. Comments on the adequacy of responses may be filed with the Commission by October 19, 2009. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* August 3, 2009.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 13, 1985, the Department of Commerce issued an antidumping duty order on imports of barbed wire and barbless wire strand from Argentina (50 FR 46808). Following five-year reviews by Commerce and the Commission, effective May 12, 1999, Commerce issued a continuation of the antidumping duty order on imports of barbed wire and barbless fencing wire from Argentina (64 FR 42653). Following second five-year reviews by Commerce and the Commission, effective September 20, 2004, Commerce issued a continuation of the antidumping duty order on imports of barbed wire and barbless fencing wire from Argentina (69 FR 56190). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 09–5–202, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Argentina.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and in its expedited first and second five-year review determinations, the Commission defined the *Domestic Like Product* as barbed wire and barbless wire strand, consistent with Commerce's sope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and in its expedited first and second five-year review determinations, the Commission defined the *Domestic Industry* as producers of barbed wire and barbless wire strand.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b)(19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 2, 2009. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is October 19, 2009. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be provided in response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a

union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2003.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2008, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2003, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.
Issued: July 27, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9–18186 Filed 7–31–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0082]

Civil Division; Agency Information Collection Activities: Revision of a Currently Approved Collection

ACTION: 60-Day Notice of Information Collection Under Review: Annuity Broker Declaration Form.

The Department of Justice (DOJ), Civil Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 2, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Director, Communications Office, Civil Division, U.S. Department of Justice, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Annuity Broker Qualification Declaration Form.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* U.S. Department of Justice, Civil Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals. Abstract: This declaration is to be submitted annually to determine whether a broker meets the qualifications to be listed as an annuity broker pursuant to Section 111015(b) of Public Law 107–273.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that 300 respondents will complete the form annually within approximately 1 hour.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual burden hours to complete the certification form is 300 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: July 28, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–18426 Filed 7–31–09; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Amendment to Consent Decrees Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on July 28, 2009, the Department of Justice lodged with the United States District Court for the Southern District of Ohio a proposed First Amendment to the Interim Partial Consent Decree on Sanitary Sewer Overflows and Consent Decree on Combined Sewer Overflows, Wastewater Treatment Plants and Implementation of Capacity Assurance Program Plan (''Global Decree''), which were entered by the Court on June 9, 2009 in *United States and State of Ohio* v. *Board of County Commissioners of Hamilton County and the City of Cincinnati,* Civil Action Nos. C–1–02–107 and C–1–02–108. The proposed First Amendment to the Consent Decrees conforms certain paragraphs of the Consent Decrees to the scheduling approach and certain other requirements set forth in the defendants' Wet Weather Improvement Program (WWIP), which was developed pursuant to the Consent Decrees and conditionally approved by the United States, the State of Ohio, and the Ohio River Valley Water Sanitation Commission on June 5, 2009, subject to the Court's approval of the proposed modifications to the Consent Decrees.

The proposed First Amendment would change Paragraph IX.B of the Global Decree to allow a phased approach to the schedule for implementation of the program, instead of requiring a fixed end date for all projects specified in advance in the WWIP. The first phase of work is estimated to cost $1.145 billion (in 2006 dollars) and, under the proposed First Amendment, must be completed by December 31, 2018. The WWIP and the First Amendment set forth the projects that must be completed in one or more subsequent stages and the process for establishing the remainder of the schedule, which must be as expeditious as practicable. The proposed First Amendment would also make a few technical and schedule changes to specific capital improvement projects required by the Consent Decrees.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed First Amendment to the Consent Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, 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. In either case, the comments should refer to *United States et al.* v. *Board of County Commissioners of Hamilton County and the City of Cincinnati,* D.J. Ref. 90–5–1–6–341A.

The First Amendment to the Consent Decrees may be examined at the Office of the United States Attorney for the Southern District of Ohio, 221 E. 4th

Street, Atrium II, Suite 400, Cincinnati, Ohio 45202, and at U.S. EPA Region V, 77 West Jackson Blvd., Chicago, IL 60604–3590. A copy of the First Amendment to the Consent Decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. During the public comment period, the First Amendment to the Consent Decrees may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the First Amendment to the Consent Decrees 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 number (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 $4.75 (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–18455 Filed 7–31–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on July 23, 2009, a proposed Consent Decree (''Decree'') in *United States* v. *Colorado Interstate Gas Co.,* Civil Action No. 2:09–CV–0649–TS, was lodged with the United States District Court for the District of Utah, Central Division.

The Consent Decree requires Colorado Interstate Gas Co. to (1) Achieve and maintain compliance with the Clean Air Act (''CAA'') and its implementing regulations; (2) pay a civil penalty and emission fees totaling $1,020,000; and (3) fund for one year the operation of two ambient air monitoring stations on the Uintah and Ouray Indian Reservation.

The United States filed a Complaint with the Consent Decree pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), alleging Clean Air Act violations at a natural gas compressor station owned and operated by CIG in Uintah County, Utah, within the exterior boundaries of the Uintah and Ouray Indian Reservation. The Consent Decree would resolve the claims alleged in the Complaint. The ultimate entry of the Consent Decree by the District Court of Utah would end this litigation.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to the *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 Civil Action No. 2:09–CV–0649–TS, D.J. Ref. No. 90–5–2–1–07660/2.

The Decree may be examined at the Office of the United States Attorney, District of Utah, 185 South State Street, Suite 300, Salt Lake City, Utah 84111. It also may be examined at the offices of U.S. EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202. During the public comment period, the Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

A copy of the Decree may 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 $8.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–18460 Filed 7–31–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 28 CFR 50.7, notice is hereby given that, for a period of 30 days, the United States will receive public comments on a proposed Consent Decree (''Decree'') in *United States* v. *City of New Orleans, et al.,* Civil Action No. 02–3618, Section ''E'', which was lodged with the United States District Court for the Eastern District of Louisiana on July 16, 2009.

In this action the United States, on behalf of the United States Environmental Protection Agency (''EPA''), sought to recover response costs from certain parties. EPA incurred such costs in response to releases and threatened releases of hazardous substances from the Agriculture Street Landfill located in New Orleans, Louisiana. The proposed Consent Decree resolves the United States' claims against Delta By-Products, Inc., Edward Levy Metals, Inc., and counter-claims against the United States in this matter.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the 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. *City of New Orleans, et al.,* D.J. Ref. 90–11–3–1638/2.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Louisiana, 500 Poydras Street, Suite 210, New Orleans, Louisiana 70130, and at the offices of EPA, Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. The Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the 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 $7.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–18463 Filed 7–31–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on High Efficiency Dilute Gasoline Engine II

Notice is hereby given that, on June 17, 2009, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 et seq. (''the Act''), Southwest Research Institute—Cooperative Research Group on High-Efficiency Dilute Gasoline Engine II, (''HEDGE II'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Volkswagen Group of America, Inc., Herndon, VA has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group remains open, and HEDGE II intends to file additional written notifications disclosing all changes in membership.

On February 19, 2009, HEDGE II filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 2, 2009 (74 FR 15003).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–18324 Filed 7–31–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on June 22, 2009, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AIM GmbH, Freiburg, Germany; and Tundra Semiconductor Corporation, Fremont, CA have been added as parties to this venture. In addition, in the last filing of PXI Systems, the name ''DAQTron, Inc.'' was inadvertently misspelled ''DAWTron, Inc.'' Accordingly, DAQTron, Inc., Roswell, GA has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on May 22, 2009. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 10, 2009 (74 FR 24034).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–18323 Filed 7–31–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronic Engineers

Notice is hereby given that, on July 6, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Institute of Electrical and Electronic Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Acts provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 22 new standards have been initiated and 9 existing standards are being revised. More details regarding these changes can be found at *http://standards.ieee.org/standardswire/sba/5-09.html.*

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on May 1, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 22, 2009 (74 FR 24034).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–18325 Filed 7–31–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on June 22, 2009, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ascor, Inc., has changed its name to Gigatronics, San Ramon, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on April 10, 2009. A notice was published in the **Federal**

Register pursuant to section 6(b) of the Act on May 21, 2009 (74 FR 23884).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–18327 Filed 7–31–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Clean Diesel V

Notice is hereby given that, on June 17, 2009, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Clean Diesel V (''Clean Diesel V'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Johnson Matthey Inc., Malvern, PA has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Clean Diesel V intends to file additional written notifications disclosing all changes in membership.

On January 10, 2008, Clean Diesel V filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 25, 2008 (73 FR 10064).

The last notification was filed with the Department on March 31, 2009. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 7, 2009 (74 FR 21403).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–18328 Filed 7–31–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment Standards Administration

Office of Workers' Compensation Programs; Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend the Office of Management and Budget (OMB) approval of the Information Collection: Claim for Medical Reimbursement (Form OWCP–915). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 2, 2009.

ADDRESSES: Mr. Steven D. Lawrence, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0292, fax (202) 693–1451, E-mail *Lawrence.Steven@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, *et seq.,* the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.,* and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* All three statutes require OWCP to pay for covered medical treatment that is provided to beneficiaries, and also to reimburse beneficiaries for any out-of-pocket covered medical expenses they have paid. Form OWCP–915, Claim for Medical Reimbursement, is used for this purpose and collects the necessary beneficiary and medical provider data in a standard format. This information collection is currently approved for use through March 31, 2010.

II. Review Focus

The Department of Labor is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to provide payment for certain covered medical services to injured employees who are covered under the Acts.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Claim for Medical Reimbursement.

OMB Number: 1215–0193.

Affected Public: Individual or Households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 28,150.

Total Annual Responses: 67,296.

Estimated Total Burden Hours: 11,171.

Estimated Time per Response: 10 minutes.

Frequency: On occasion.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintenance): $103,636.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the

information collection request; they will also become a matter of public record.

Dated: July 29, 2009.

Steven D. Lawrence,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E9–18446 Filed 7–31–09; 8:45 am]

BILLING CODE 4510–CH–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2009–0144]

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 April 8, 2009.

1. *Type of submission, new, revision, or extension:* Extension.
2. *The title of the information collection:* Export and Import of Nuclear Equipment and Material 10 CFR part 110.
3. *Current OMB approval number:* 3150–0036.
4. *The form number if applicable:* NRC Form 830 and NRC Form 831.
5. *How often the collection is required:* On occasion.
6. *Who will be required or asked to report:* Any person in the U.S. who wishes to export or import nuclear material or equipment subject to the requirements of a general or specific license.
7. *An estimate of the number of annual responses:* 946 (843 responses + 103 recordkeeping).
8. *The estimated number of annual respondents:* 103.
9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 524.
10. *Abstract:* Persons in the U.S. who export or import nuclear material or equipment under a general or specific authorization must comply with certain reporting and recordkeeping requirements under 10 CFR part 110.

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 September 2, 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. Christine J. Kymn, Office of Information and Regulatory Affairs (3150–0036), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Christine J. Kymn@omb.eop.gov* or submitted by telephone at (202) 395–4638.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 27th day of July 2009.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–18436 Filed 7–31–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–391; ASLBP No. 09–893–01–OL–BD01]

Establishment of Atomic Safety and Licensing Board; Tennessee Valley Authority

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding: Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 2)

This proceeding concerns a request for hearing from petitioners Southern Alliance for Clean Energy, Tennessee Environmental Council, We the People, the Sierra Club, and the Blue Ridge Environmental Defense League. The hearing request was submitted in response to a May 1, 2009 Notice of Receipt of Update to Application for Facility Operating License and Notice of Opportunity for Hearing for the Watts Bar Nuclear Plant, Unit 2 (74 FR 20350). Petitioners challenge the updated application filed by Tennessee Valley Authority for a facility operating license for the Watts Bar Nuclear Plant, Unit 2, to be located in Rhea County, Tennessee.

The Board is comprised of the following administrative judges:

Lawrence G. McDade, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Paul B. Abramson, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Gary S. Arnold, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E–Filing rule, which the NRC promulgated in August 2007 (72 FR 49139).

Issued at Rockville, Maryland, this 28th day of July 2009.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E9–18437 Filed 7–31–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0336; Docket No. 50–293; License No. DPR–35; Docket Nos. 50–003, 50–247; License Nos. DPR–5, DPR–26; Docket No. 50–286; License No. DPR–64; Docket Nos. 50–333 and 72–12; License No. DPR–59; Docket Nos. 50–271 and 72–59; License No. DPR–28; Docket Nos. 50–155 and 72–43; License No. DPR–6]

In the Matter of: Entergy Nuclear Operations, Inc.; Entergy Nuclear Generation Co. (Pilgrim Nuclear Power Station); Entergy Nuclear Indian Point 2, LLC (Indian Point Nuclear Generating Unit Nos. 1 and 2) and 72–51 Entergy Nuclear Indian Point 3, LLC (Indian Point Nuclear Generating Unit No. 3), Entergy Nuclear FitzPatrick, LLC (James A. FitzPatrick Nuclear Power Plant), Entergy Nuclear Vermont Yankee, LLC; (Vermont Yankee Nuclear Power Station), Entergy Nuclear Palisades, LLC (Palisades Nuclear Plant) (Big Rock Point); Order Extending the Effectiveness of the Approval of the Indirect Transfer of Facility Operating Licenses

I

Entergy Nuclear Operations, Inc. (ENO) and Entergy Nuclear Generation Company (Entergy Nuclear) are co-holders of the Facility Operating License, No. DPR–35, which authorizes the possession, use, and operation of the Pilgrim Nuclear Power Station (Pilgrim). Pilgrim is a boiling water nuclear reactor that is owned by Entergy Nuclear and operated by ENO. The facility is located on the western shore of Cape Cod in the town of Plymouth on the Entergy Nuclear site in Plymouth County, Massachusetts.

ENO and Entergy Nuclear Indian Point 2, LLC (ENIP2) are co-holders of the Facility Operating License, No. DPR–5, which authorizes the possession of the Indian Point Nuclear Generating Unit No. 1 (IP1). IP1 is a pressurized water nuclear reactor that is owned by ENIP2 and maintained by ENO. IP1 was permanently shut down in 1974 and placed in a safe storage condition pending decommissioning. The facility is located in Westchester County, New York.

ENO and ENIP2 are co-holders of the Facility Operating License, No. DPR–26, which authorizes the possession, use, and operation of the Indian Point Nuclear Generating Unit No. 2 (IP2). ENO and Entergy Nuclear Indian Point 3, LLC (ENIP3) are co-holders of the Facility Operating License, No. DPR–64, which authorizes the possession, use, and operation of the Indian Point Nuclear Generating Unit No. 3 (IP3). IP2 and IP3 are both pressurized water nuclear reactors that are owned by ENIP2 and ENIP3, respectively, and operated by ENO. The facilities are located in Westchester County, New York.

ENO and Entergy Nuclear FitzPatrick, LLC (EN–FitzPatrick) are co-holders of the Facility Operating License, No. DPR–59, which authorizes the possession, use, and operation of the James A. FitzPatrick Nuclear Power Plant (FitzPatrick). FitzPatrick is a boiling water nuclear reactor that is owned by EN–FitzPatrick and operated by ENO. The facility is located in Scriba, Oswego County, New York.

ENO and Entergy Nuclear Vermont Yankee, LLC (EN–Vermont Yankee) are co-holders of the Facility Operating License, No. DPR–28, which authorizes the possession, use, and operation of the Vermont Yankee Nuclear Power Station (Vermont Yankee). Vermont Yankee is a boiling water nuclear reactor that is owned by EN–Vermont Yankee and operated by ENO. The facility is located in the town of Vernon, Windham County, Vermont.

ENO and Entergy Nuclear Palisades, LLC (EN–Palisades) are co-holders of the Renewed Facility Operating License, No. DPR–20, which authorizes the possession, use, and operation of the Palisades Nuclear Plant (Palisades). Palisades is a pressurized water nuclear reactor that is owned by EN–Palisades and operated by ENO. The facility is located in Van Buren County, Michigan.

ENO and EN–Palisades are co-holders of the Facility Operating License, No. DPR–06, which authorizes the possession of Big Rock Point. Big Rock Point is an independent spent fuel storage installation (ISFSI) that is owned by EN–Palisades and operated by ENO. The facility is located in Charlevoix County, Michigan.

II

The NRC's Orders dated July 28, 2008, consented to the indirect transfer of control of the licenses of the above facilities pursuant to Section 50.80 of Title 10 of the *Code of Federal Regulations* in connection with a proposed corporate restructuring and establishment of Enexus Energy Corporation. By its terms, the Orders of July 28, 2008, become null and void if the license transfers are not completed by July 28, 2009, unless upon application and for good cause shown, such date is extended by the Commission.

III

By letter dated May 15, 2009, as supplemented by letter dated May 29, 2009, ENO, acting on behalf of itself, Entergy Nuclear, ENIP2, ENIP3, EN–FitzPatrick, EN–Vermont Yankee, and EN–Palisades, submitted a request for an extension of the effectiveness of the Orders of July 28, 2008, such that they would remain effective until January 28, 2010. According to the submittal, diligent efforts have been made to obtain the required State and Federal regulatory approvals, and many of the required approvals have been obtained. However, proceedings are ongoing before the New York State Public Service Commission and the State of Vermont Public Service Board and these two State agencies may not complete their regulatory approval processes in time to complete the restructuring and establishment of Enexus Energy Corporation prior to July 28, 2009, as required by the NRC Orders consenting to the proposed restructuring and associated indirect license transfers.

In addition, according to the submittal, considerable progress has been made in securing financing to support the proposed transactions. However, uncertainties in the current financial markets and the need to obtain required State regulatory approvals have slowed the process of obtaining all of the requisite financing necessary to complete the transactions, making it difficult for the licensees to conclude that all of the necessary arrangements will be complete in time to support a closing of the transactions by July 28, 2009.

Finally, the licensee has concluded that there has been no material change in the technical and financial qualifications presented in the original application and relied upon by the NRC staff under which the NRC issued the Orders. According to the submittal, the technical qualifications of the new organization and other bases for approving the transfers remain intact, and the various inter-company contractual arrangements and the financial support arrangements, as described in the original application and supplemental information, remain valid and fully support the NRC staff's findings.

On June 3, 2009, Mr. Sherwood Martinelli submitted a request for hearing regarding the extension, which is currently pending before the Commission.

The NRC staff has considered the submittal of May 15, 2009, as supplemented by letter dated May 29, 2009, and has determined that good cause has been shown to extend the effectiveness of the Orders of July 28, 2008, as requested.

IV

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the effectiveness of the Orders of July 28, 2008, described herein, are extended such that if the proposed corporate restructuring and establishment of Enexus Energy Corporation is not consummated by January 28, 2010, the Orders of July 28, 2008, shall become null and void, unless upon application and for good cause shown, such date is further extended by Order.

This Order is effective upon issuance.

For further details with respect to this Order, see the submittal dated May 15, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML091420271), as supplemented by letter dated May 29, 2009 (ADAMS Accession No. ML091600059), which may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site: *http://www.nrc.gov*.

Dated at Rockville, Maryland, this 24th day of July 2009.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Office of Federal and State Materials and Environmental Management Programs.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Michael F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E9–18435 Filed 7–31–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0337]

Florida Power & Light Company; Notice of Receipt and Availability of Application for a Combined License

On June 30, 2009, Florida Power & Light Company (FPL or the applicant) filed with the Nuclear Regulatory Commission (NRC, the Commission) pursuant to section 103 of the Atomic Energy Act and Title 10 of the *Code of Federal Regulations* (10 CFR) part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' an application for a combined license (COL) for two AP1000 advanced passive pressurized water reactor nuclear power plants at the Turkey Point facility near the town of Homestead in Miami-Dade County, Florida. The reactors are to be identified as Turkey Point Units 6 and 7.

An applicant may seek a COL in accordance with subpart C of 10 CFR part 52. The information submitted by the applicant includes certain administrative information such as financial qualifications submitted pursuant to 10 CFR 52.77, as well as technical information submitted pursuant to 10 CFR 52.79. The applicant requested exemptions from certain requirements of section IV.A.2. of Appendix D to 10 CFR part 52 and 10 CFR 52.79(a)(36)(iii) and 10 CFR 52.80(d), as described in part 7 of the application. Also, FPL requested a Limited Work Authorization under 10 CFR 50.10(d) in advance of the COL to allow the early performance of certain construction activities. Subsequent **Federal Register** notices will address the acceptability of the tendered COL application for docketing and provisions for participation of the public in the COL review process.

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*. The accession number for the cover letter of the application is ML091830589. The complete application is available at *http://www.nrc.gov/reactors/new-reactors/col/turkey-point.html*. Future publicly available documents related to the application will also be posted in ADAMS. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 23rd day of July 2009.

For the Nuclear Regulatory Commission.

Amy M. Snyder,

Senior Project Manager, AP 1000 Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E9–18486 Filed 7–31–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60392; File No. SR–Phlx–2009–57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to a Pilot Program for U.S. Dollar-Settled Foreign Currency Options

July 28, 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 July 8, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to initiate a Pilot Program, for a period beginning July 13, 2009 and ending December 31, 2009, applicable to specialists and Registered Options Traders (''ROTs'')[3] trading certain U.S. dollar-settled foreign currency options (''FCOs''), specifically the Mexican peso, Swedish krona, South African rand or the New Zealand dollar (''Pilot FCOs'').[4] The Pilot Program would allow the Exchange to waive the applicable specialist and ROT option transaction fees for specialists and ROTs trading Pilot FCOs.[5] Furthermore, the Exchange Pilot Program would allow the Exchange to pay a $1,700 monthly stipend (''Monthly Stipend'') per currency to each member organization acting as a specialist.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. The term ''ROT'' shall include a Streaming Quote Trader, and a Remote Streaming Quote Trader. *See* Exchange Rule 1014.

[4] The Exchange recently filed to list and trade options in these Pilot FCOs. *See* Securities Exchange Release No. 61069 (June 24, 2009), 74 FR 31782 (July 2, 2009) (SR–Phlx–2009–40) (modifying the pricing methodology for FCOs). The Pilot FCOs are listed and traded electronically over the Exchange's options trading platform.

[5] FCOs are currently traded on the Exchange under the name PHLX World Currency Options® (''WCOs'').

While changes to the Exchange's fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective on July 13, 2009 through December 31, 2009.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, 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.

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 create an additional financial incentive for specialists and ROTs to make markets in the Pilot FCOs. By paying specialists a Monthly Stipend on the Pilot FCOs of $1,700 per currency, the Exchange hopes to defray the operational costs of the specialists. Specifically, the Exchange seeks to defray the specialists' costs associated with their obligations to continuously quote and support the Pilot FCOs.[6] The Monthly Stipend will be paid on a per currency basis. For example, a member organization acting as a specialist in two of the Pilot FCOs will receive $3,400 per month.

In addition, the Exchange proposes to waive the options transaction charges assessed on specialists and ROTs in the Pilot FCOs in order to further encourage the trading of the Pilot FCOs. Currently, specialists pay a transaction fee of $.24 per contract as do ROTs.[7] The Exchange believes the revenue generated from customer transaction charges and increased order flow would offset the foregone transaction fees of $.24 per contract that is currently assessed on specialists and ROTS, thereby allowing the Exchange to recoup those fees while increasing order flow and generating increased revenues.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the Pilot Program will generate additional order flow to the Exchange by creating incentives to trade FCOs as well as defray operational costs for specialists.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and paragraph (f)(2) of Rule 19b–4[11] 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–Phlx–2009–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–57. 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–Phlx–2009–57 and should be submitted on or before August 24, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–18421 Filed 7–31–09; 8:45 am]

BILLING CODE 8010–01–P

[6] The Exchange currently pays a subsidy, an Options Floor Broker Subsidy, to member organizations with Exchange registered floor brokers for eligible contracts that are entered into the Exchange's trading system to provide an incentive to floor brokers for increased order flow. *See* Securities Exchange Release No. 59705 (April 3, 2009), 74 FR 16906 (April 13, 2009) (SR–Phlx–2009–28).

[7] Customers are assessed a transaction fee of $.44 per options transaction charge in FCOs.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

BNSF Railway Company

(Waiver Petition Docket Number FRA–2009–0065)

The BNSF Railway Company (BNSF) and the Brotherhood of Locomotive Engineers and Trainmen (BLET) seek a limited waiver from compliance of the provisions of the Federal hours of service law for yard assignments. The parties state that their request is not for system-wide application, but rather specifically identified assignments listed in their application, which may be found at *http://www.regulations.gov* under the docket number listed above.

Specifically, BNSF and BLET are requesting a limited waiver of U.S.C. 21103(a)(4), which states that a train employee may not be required or allowed to remain or go on duty after that employee has initiated an on-duty period each day for 6 consecutive days, unless that employee has had at least 48 hours off duty at the employee's home terminal. BNSF and BLET currently have collective bargaining agreements which provide for the trainmen's return to duty with less than 48 hours off duty following 6 consecutive days in which an on duty period was initiated.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2009–0065) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 20 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov*.

Anyone is able to search the electronic form of any written communications and 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).

Issued in Washington, DC on July 28, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–18441 Filed 7–31–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian National Railway Company

(Waiver Petition Docket Number FRA–2009–0074)

The Canadian National Railway Company (CN), the United Transportation Union (UTU), and the Brotherhood of Locomotive Engineers and Trainmen (BLET) jointly seek a waiver from compliance of the provisions of U.S.C. 21103(a)(4), which mandates 48 and 72 hour off duty periods following qualifying number of days in which an on duty period was initiated. The parties state that their current collective bargaining agreements offer an enhanced level of safety and rest beyond the provisions of § 21103(a)(4). The entire joint CN, UTU and BLE petition may be viewed at *http://www.regulations.gov* under the docket number listed above.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2009–0074) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 20 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written

communications and 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).

Issued in Washington, DC on July 28, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–18442 Filed 7–31–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian National Railway Company

(Waiver Petition Docket Number FRA–2009–0075)

The Canadian National Railway Company (CN), the United Transportation Union (UTU), and the Brotherhood of Locomotive Engineers and Trainmen (BLET) jointly petitioned to establish a pilot project under 49 U.S.C. 21108 providing for an alternative means of measuring the monthly cycle under which employees' on-duty hours are capped at 276 hours per month. The pilot project would be made possible by a partial waiver of 49 U.S.C. 21103(a)(1), permitting the cap on total service for certain train employees to be computed on other than a calendar month basis. The parties propose to divide the affected employees into two groups, one of which would measure their on-duty time from the first day of each month to the last day of the same month. For the other group, the measurement would be made from the fifteenth (15th) day of the month until the fourteenth (14th) day of the following month. The parties aver that this approach will be as effective as the statutory pattern in preventing fatigue while ensuring that rested employees will be available throughout each calendar month. The entire joint CN, UTU and BLE petition may be viewed at *http://www.regulations.gov* under the docket number listed above.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings, since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (Docket Number FRA–2009–0075) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 20 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and 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).

Issued in Washington, DC, on July 28, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–18443 Filed 7–31–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 213 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

CSX Transportation

(Waiver Petition Docket Number FRA–2008–0111)

In accordance with the conditions set forth in the continuous rail test pilot waiver granted on May 22, 2009, CSX Transportation hereby requests an extension until May 22, 2010, to further evaluate the process for the accepted practice of stop/start rail test hand verification.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2008–0111) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular

business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and 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).

Issued in Washington, DC on July 28, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–18444 Filed 7–31–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2009–0155]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt twenty-one individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective August 3, 2009. The exemptions expire on August 3, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://www.regulations.gov.*

Background

On June 12, 2009, FMCSA published a notice of receipt of Federal diabetes exemption applications from twenty-one individuals, and requested comments from the public (74 FR 28097). The public comment period closed on July 13, 2009, and no comments were received.

FMCSA has evaluated the eligibility of the twenty-one applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible.

The September 3, 2003 **Federal Register** Notice (68 FR 52441) in conjunction with the November 8, 2005, **Federal Register** Notice (70 FR 67777) provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These twenty-one applicants have had ITDM over a range of 1 to 43 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage their diabetes, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the June 2, 2009, **Federal Register** Notice (74 FR 28097). Therefore, they will not be repeated in this notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologist's medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of

severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not they are related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the twenty-one exemption applications, FMCSA exempts: Eugene L. Bradley, John F. Carruthers, Keith A. Craven, Jose E. Cruz, Daniel L. Dixon, Michael A. Garufi, Joseph P. Jurewicz II, Dana N. Larsen, Jason G. Leavitt, Chad M. Morris, Thomas M. Petee, Jim A. Phelps, Larry R. Price, James F. Rabideau, Jr., Stanley N. Reneau, Richard D. Ritenour, John E. Spano, Delton N. Stewart, Mark S. Sundberg, Timothy G. Walls, and Kelly R. Winslow from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: July 24, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–18450 Filed 7–31–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Notice and Request for Comments

AGENCY: Community Development Financial Institutions Fund.

ACTION: Notice and request for comments.

SUMMARY: The U.S. 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 Community Development Financial Institutions Fund (the Fund) is soliciting comments concerning the ''New Markets Tax Credit (NMTC) Program—Allocation Application'' (hereafter, the Application).

DATES: Written comments must be received on or before October 2, 2009 to be assured of consideration.

ADDRESSES: Direct all comments to Matthew Josephs, NMTC Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, by e-mail to *cdfihelp@cdfi.treas.gov,* or by facsimile to (202) 622–7754. Please note this is not a toll free number.

FOR FURTHER INFORMATION CONTACT: The Application and the NMTC Program Notice of Allocation Availability (NOAA) for the FY 2009 allocation round (74 FR 4077, January 22, 2009) may be obtained from the NMTC Program page of the Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Matthew Josephs, NMTC Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, by e-mail to *cdfihelp@cdfi.treas.gov,* or by facsimile to (202) 622–7754. Please note this is not a toll free number.

SUPPLEMENTARY INFORMATION:

Title: New Markets Tax Credit (NMTC) Program—Allocation Application.

OMB Number: 1559–0016.

Abstract: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted in the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC § 45D and created the NMTC Program. The Department of the Treasury, through the Fund, administers the NMTC Program, which provides an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in low-income communities. In order to receive the tax credit, taxpayers make Qualified Equity Investments (QEIs) in Community Development Entities (CDEs): substantially all of the QEI proceeds must in turn be used by the CDE to provide investments in businesses and real estate developments in low-income communities.

The tax credit provided to the investor totals 39 percent of the amount of the investment and is claimed over a seven-year period. In each of the first three years, the investor receives a credit equal to five percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is six percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the seven-year period without forfeiting any credit amounts they have received.

The Fund is responsible for certifying organizations as CDEs, and administering the competitive allocation of tax credit authority to CDEs, which it does through annual allocation rounds. As part of the award selection process, all CDEs are required to prepare and submit the Application, which includes four key sections (Business Strategy; Community Impact; Management Capacity; and Capitalization Strategy). During the first phase of the review process, each Application is rated and scored independently by three different readers.

In scoring each Application, reviewers rate each of the four evaluation sections as follows: Weak (0–5 points); Limited (6–10 points); Average (11–15 points); Good (16–20 points); and Excellent (21–25 points). Applications can be awarded up to ten additional ''priority'' points for demonstrating a track record of serving disadvantaged business and communities and/or for committing to make investments in projects owned by unrelated parties. If one or more of the three readers provides an anomalous score, and it is determined that such an anomaly would affect the outcome of the final awardee pool, then a fourth reviewer will score the Application, and the anomalous score would likely be dropped.

Once all of the scores have been finalized, including anomaly score adjustments, those Applications that meet minimum aggregate scoring thresholds in each of the four major review sections (as well as a minimum overall scoring threshold) are eligible to be considered for an allocation. They are reviewed by an internal Fund panel, with a Lead Panelist making an award recommendation to a Panel Manager, and the Panel Manager making an award recommendation to the Selecting Official. If the Selecting Official's award recommendation varies significantly from the recommendation of the Panel Manager, then a Reviewing Official makes the final award determination. Awards are made, in descending order of the final rank score, until the available allocation authority for a given round is fully expended.

Current Actions: Preparing for the upcoming FY 2010 NMTC Program allocation round.

Type of Review: Extension.

Affected Public: CDEs seeking NMTC Program allocation authority.

Estimated Number of Respondents: 249.

Estimated Annual Time per Respondent: 200 hours.

Estimated Total Annual Burden Hours: 49,800 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and may be published on the Fund Web site at *http://www.cdfifund.gov. 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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

The Fund specifically requests comments concerning the Application, Application review process, and the following questions:

1. Is the information that is currently collected by the Application necessary and appropriate for the Fund to consider for the purpose of making award decisions? Please consider each question and table in the Application. Are there questions or tables that are redundant and/or unnecessary? Should additional questions or tables be added to ensure collection of more relevant information?

2. Are the thresholds contained in Question 17 of the Application appropriate, given current economic conditions? If not, what should the criteria include? Should the Fund provide a range of flexible product commitments based on a discount of interest rates below market as defined by basis point reductions (or other product flexibilities) or continue to present commitment options in percentage terms?

3. A CDE is entitled to earn five ''priority points'' for committing to invest substantially all of its QEI proceeds in businesses in which persons unrelated to the CDE hold the majority equity interest (within the meaning of I.R.C. section 267(b) or 707(b)(1)). With respect to the timing of this test, the CDFI Fund has determined that it is to be applied after the initial investment is made, and for the life of the seven-year compliance period (though an exception is permitted if events unforeseen at the time of the initial investment cause the CDE to have to subsequently take a controlling interest in the business). Is it appropriate that this test is applied after the investment is made, or should the CDFI consider applying this test before the investment is made? If the test is to be applied before the investment is made, then how should the Fund treat circumstances whereby the receipt of the QEI and the investment in the business is essentially a simultaneous transaction, particularly when the CDE may not have any owners identified prior to the QEI closing?

4. The Application currently collects outcome information on the applicant's historic community impacts and projected economic development impacts in Table C1 and Table C2, respectively, and collects information on projected community development impacts in Question 30. Are there changes that should be made in the way projected economic development is currently measured? Are there other outcomes/impacts for which the Fund should be collecting information to ensure effective use of the NMTC? Should the Fund have a greater focus on community development outcomes/impacts? Alternatively, should the Fund focus exclusively on economic development outcomes/impacts?

5. Do Question 56 and Table F1 of the Application capture all sources of compensation and profits that the applicant and its affiliates receive in connection with NMTC transactions? How can collection of this information be improved? How should the Fund use this information? For example, should the Fund make the applicant's stated fees a specific condition of the Allocation Agreement, and should the Fund set limits on fees in the Allocation Agreement?

6. In any given Application round, the Fund requires applicants that have received awards in previous rounds to demonstrate that they have been able to raise minimum threshold amounts of QEIs from their prior awards (see the 2009 NOAA for the current minimum threshold requirements). Are these current minimum threshold requirements sufficient? Should the Fund consider using different measurements, such as the amount of QEIs that have been deployed as investments in low-income communities?

7. The Fund generally caps award amounts to any one organization in a given round. In the 2009 Application round, this cap was set at $125 million. Is this an appropriate amount? Should the Fund consider raising the cap significantly (*e.g.,* to $250 million), and prohibit a CDE that receives such a large allocation award from applying again for an established period of time?

8. In April 2009, the Government Accountability Office released a report titled: ''New Markets Tax Credit: Minority Entities Are Less Successful in Obtaining Awards than Non-Minority Entities'' (GAO–09–536). Are there actions that the Fund should take in order to increase the number of minority CDE applicants and allocatees?

9. Are there changes that can be made to the application process or elsewhere, that will increase the amount of Qualified Low-Income Community Investments that support activities that have not traditionally received large scale financing from NMTC investment proceeds (*e.g.,* loans and investments for small business operations; loans to and investments in other CDEs, including CDFIs; purchase of loans from other CDEs; etc.)?

10. Currently, the Fund uses economic distress factors from the most recent decennial census to qualify eligible census tracts and to verify, when applicable, that awardees are serving ''severely'' distressed communities. Are there other public sources of data on economic indicators (*e.g.,* American Community Survey three- and five-year estimates for poverty rate, area median income, and unemployment rate) that are updated

more frequently and readily available that the Fund should accept?

Authority: 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D–1.

Dated: July 28, 2009.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. E9–18525 Filed 7–31–09; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Social Inspector General for the Troubled Asset Relief Program; Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the SIGTARP Performance Review Board.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Special Inspector General for the Troubled Asset Relief Program Performance Review Board (PRB). The purpose of this Board is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions in SIGTARP. The Board will perform PRB functions for other bureau positions if requested.

Compostion of SIGTARP PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the Board members are as follows:

Kevin Puvalowski, Deputy Special Inspector General.

Dr. Eileen Ennis, Deputy Special Inspector General, Operations.

Barry Holman, Deputy Special Inspector General, Audit.

Christopher Sharply, Deputy Special Inspector General, Investigations.

Brian Saddler, Chief Counsel to the Special Inspector General.

DATES: *Effective Date:* Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Sally Ruble, Human Resources Specialist, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, Telephone: 202 927–9457.

Dated: July 24, 2009.

Deborah Mason,

Director, Human Resources, Operations Division.

[FR Doc. E9–18200 Filed 7–31–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF THE TREASURY

Departmental Offices; Privacy Act of 1974, as Amended

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Proposed New Privacy Act System of Records for the Home Affordable Modification Program.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the U.S. Department of the Treasury (''Treasury'' or the ''Department'') is giving notice that it proposes to establish a new system of records necessary to administer the Home Affordable Modification Program and related homeownership preservation programs (''HAMP'').

DATES: We have requested that OMB waive eight days of its review period for this system of records. If OMB grants the waiver, the system of records is effective upon publication in the **Federal Register**; if OMB does not grant the waiver, we will implement the system on September 14, 2009. In any event, we will not disclose any information under a routine use until 32 days after publication. We may defer implementation of this system of records or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation. Comments must be received no later than September 4, 2009.

ADDRESSES: Comments should be sent to the Deputy Assistant Secretary Fiscal Operations and Policy, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The Department will make such comments available for public inspection and copying in the Department's Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990. All comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Theodore R. Kowalsky, Manager, Data & Information Technology, Office of Fiscal & Financial Agents, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, 202–927–9445 or at *Ted.Kowalsky@do.treas.gov.*

SUPPLEMENTARY INFORMATION: The Department established HAMP, pursuant to the Emergency Economic Stabilization Act of 2008 (Pub. L. 110–343), to enable eligible homeowners who have a record of making timely mortgage payments, but are experiencing hardships in doing so, to modify the principal amounts and interest rates of their mortgage loans. HAMP facilitates such mortgage loan modifications by providing subsidies to mortgage loan servicers who agree to them. The Department administers HAMP with the assistance of designated Financial Agents.

The Department establishes this new system of records to provide Treasury and its Financial Agents with access to information about mortgage borrowers and their respective home mortgage loans that is necessary to determine whether, and to what extent, borrowers qualify for loan modification assistance.

The report of this new system of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

The proposed new system of records, entitled ''Home Affordable Modification Program—Treasury/DO .218,'' is published in its entirety below.

Dated: July 28, 2009.

Melissa Hartman,

Acting Deputy Assistant Secretary, Privacy and Treasury Records.

TREASURY/DO .218

SYSTEM NAME:

Home Affordable Modification Program Records—Treasury/DO.

SYSTEM LOCATION:

The Office of Financial Stability, Department of the Treasury, Washington, DC. Other facilities that maintain this system of records are located in Urbana, MD and at a backup facility located in Reston, VA. Both facilities belong to the Federal National Mortgage Association (''Fannie Mae''), which has been designated as a Financial Agent for HAMP.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains information about mortgage borrowers that is submitted to the Department or

its Financial Agents by loan servicers that participate in HAMP. Information collected pursuant to HAMP is subject to the Privacy Act only to the extent that it concerns individuals; information pertaining to corporations and other business entities and organizations is not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains loan-level information about individual mortgage borrowers (including loan records and financial records). Typically, these records include, but are not limited to, the individual's name, Social Security Number, mailing address, and monthly income, as well as the location of the property subject to the loan, property value information, payment history, and type of mortgage.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Emergency Economic Stabilization Act of 2008 (Pub. L. 110–343) (the ''EESA'').

PURPOSE(S):

The purpose of this system of records is to facilitate administration of HAMP by the Department and its Financial Agents, including by enabling them to (i) collect and utilize information collected from mortgage loan servicers, including loan-level information about individual mortgage holders; and (ii) produce reports on the performance of HAMP, such as reports that concern loan modification eligibility and ''exception reports'' that identify certain issues that loan servicers may experience with servicing loans.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena where arguably relevant to a proceeding, or in connection with criminal law proceedings;

(4) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Provide information to third parties during the course of a Department investigation to the extent necessary to obtain information pertinent to that investigation;

(6) Disclose information to a consumer reporting agency to use in obtaining credit reports;

(7) Disclose information to a debt collection agency for use in debt collection services;

(8) Disclose information to a Financial Agent of the Department, its employees, agents, and contractors, or to a contractor of the Department, for the purpose of ensuring the efficient administration of HAMP and compliance with relevant guidelines, agreements, directives and requirements, and subject to the same or equivalent limitations applicable to Department's officers and employees under the Privacy Act;

(9) Disclose information originating or derived from participating loan servicers back to the same loan servicers as needed, for the purposes of audit, quality control, and reconciliation and response to borrower requests about that same borrower;

(10) Disclose information to Financial Agents, financial institutions, financial custodians, and contractors to (a) Process mortgage loan modification applications, including, but not limited to, enrollment forms; (b) implement programs relating to HAMP; (c) investigate and correct erroneous information submitted to the Department or its Financial Agents; (d) compile and review statistics to improve the quality of services provided under HAMP; or (e) develop, test and enhance computer systems used to administer HAMP;

(11) Disclose information to financial institutions, including banks and credit unions, for the purpose of disbursing payments and/or investigating the accuracy of information required to complete transactions pertaining to HAMP and for administrative purposes, such as resolving questions about a transaction;

(12) Disclose information to the appropriate Federal financial regulator or State financial regulator, or to the appropriate Consumer Protection agency, if that agency has jurisdiction over the subject matter of a complaint or inquiry, or the entity that is the subject of the complaint or inquiry;

(13) Disclose information and statistics to the Department of Housing & Urban Development and the Federal Housing Finance Agency to improve the quality of services provided under HAMP and to report on the program's overall execution and progress, if such agencies have jurisdiction over the subject matter of a complaint or inquiry, or the entity that is the subject of the complaint or inquiry;

(14) Disclose information to appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(15) Disclose information to the U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the Department or in representing the Department in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, where the use of such information by the DOJ is deemed by the Department to be relevant and necessary to the litigation, and such proceeding names as a party or interests:

(a) The Department or any component thereof, including the Office of Financial Stability (''OFS'');

(b) Any employee of the Department in his or her official capacity;

(c) Any employee of the Department in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the Department determines that litigation is likely to affect the Department or any of its components, including OFS.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in the system of records is stored in a transactional database and an operational data store. Information from the system will also be captured in hard-copy form and stored in filing cabinets managed by personnel working on HAMP.

RETRIEVABILITY:

Information about individuals may be retrieved from the system by reference including the mortgage borrower's name, Social Security Number, address, or loan number.

SAFEGUARDS:

Safeguards designed to protect information contained in the system against unauthorized disclosure and access include, but are not limited to: (i) Department and Financial Agent policies and procedures governing privacy, information security, operational risk management, and change management; (ii) requiring Financial Agent employees to adhere to a code of conduct concerning the aforementioned policies and procedures; (iii) conducting background on all personnel with access to the system of records; (iv) training relevant personnel on privacy and information security; (v) tracking and reporting incidents of suspected or confirmed breaches of information concerning borrowers; (vi) establishing physical and technical perimeter security safeguards; (vii) utilizing antivirus and intrusion detection software; (viii) performing risk and controls assessments and mitigation, including production readiness reviews; (ix) establishing security event response teams; and (x) establishing technical and physical access controls, such as role-based access management and firewalls.

Loan servicers that participate in HAMP (i) have agreed in writing that the information they provide to Treasury or to its Financial Agents is accurate, and (ii) have submitted a ''click through'' agreement on a Web site requiring the loan servicer to provide accurate information in connection with using the Program Web site. In addition, the Treasury's Financial Agents will conduct loan servicer compliance reviews to validate data collection controls, procedures, and records.

RETENTION AND DISPOSAL:

Information is retained in the system on back-up tapes or in hard-copy form for seven years, except to the extent that either (i) the information is subject to a litigation hold or other legal retention obligation, in which case the data is retained as mandated by the relevant legal requirements, (ii) or the Treasury and its financial agents need the information to carry out the Program. Destruction is carried out by degaussing according to industry standards. Hard copy records are shredded and recycled.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Deputy Assistant Secretary, Fiscal Operations and Policy, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, to gain access to records maintained in this system, or to amend or correct information maintained in this system, must submit a written request to do so in accordance with the procedures set forth in 31 CFR §§ 1.26–.27. Address such requests to: Director, Disclosure Services Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURE:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information about mortgage borrowers contained in the system of records is obtained from loan servicers who participate in HAMP or developed by the Treasury and its Financial Agents in connection with HAMP. Information is not obtained directly from individual mortgage borrowers to whom the information pertains.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–18454 Filed 7–31–09; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Monday,
August 3, 2009

Part II

Department of Labor

Office of Labor-Management Standards

29 CFR Part 471

Notification of Employee Rights Under Federal Labor Laws; Proposed Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 471

RIN 1215–AB70

Notification of Employee Rights Under Federal Labor Laws

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes a regulation to implement Executive Order 13496, which was signed by President Barack Obama on January 30, 2009. Executive Order 13496 (''the Executive Order,'' ''the Order,'' or ''EO 13496'') requires nonexempt Federal departments and agencies to include within their Government contracts specific provisions requiring that contractors and subcontractors with whom they do business post notices informing their employees of their rights as employees under Federal labor laws. The Executive Order requires the Secretary (''Secretary'') of the Department of Labor (''Department'') to initiate a rulemaking to prescribe the size, form, and content of the notice that must be posted by a contractor under paragraph 1 of the contract clause described in section 2 of the Order. Under the Executive Order, Federal Government contracting departments and agencies must include the required contract provisions in every Government contract, except for collective bargaining agreements and contracts for purchases under the Simplified Acquisition Threshold, and except in those cases in which the Secretary exempts a contracting department or agency with respect to particular contracts or subcontracts or class of contracts or subcontracts pursuant to section 4 of the Order. As required by the Executive Order, this proposed rule establishes the content of the notice required by the Executive Order's contract clause, and implements other provisions of the Executive Order, including provisions regarding sanctions, penalties, and remedies that may be imposed if the contractor or subcontractor fails to comply with its obligations under the Order and the implementing regulations.

DATES: Comments regarding this proposed rule must be received by the Department of Labor on or before September 2, 2009.

ADDRESSES: You may submit comments, identified by 1215–AB70, only by the following methods:

Internet—Federal eRulemaking Portal. Electronic comments may be submitted through *http://www.regulations.gov.* To locate the proposed rule, use key words such as ''Department of Labor'' or ''Notification of Employee Rights Under Federal Labor Laws'' to search documents accepting comments. Follow the instructions for submitting comments.

Delivery: Comments should be sent to: Denise M. Boucher, Director of the Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210. Because of security precautions the Department continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments.

The Office of Labor-Management Standards (OLMS) recommends that you confirm receipt of your delivered comments by contacting (202) 693–0123 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877–8339 (TTY/TDD). Only those comments submitted through *http://www.regulations.gov,* hand-delivered, or mailed will be accepted. Comments will be available for public inspection at *http://www.regulations.gov* and during normal business hours at the above address.

The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters not to include their personal information such as Social Security numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will become viewable by the public via the *http://www.regulations.gov* Web site. It is the responsibility of the commenter to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's e-mail address unless the commenter chooses to include that information as part of his or her comment.

FOR FURTHER INFORMATION CONTACT: Denise M. Boucher, Director, Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, (202) 693–1185 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION: *The Proposed Rule is organized as follows*:

I. Background—provides a brief description of the development of the Proposed Rule
II. Authority—cites the legal authority supporting the Proposed Rule, Departmental re-delegation authority, and interagency coordination authority
III. Overview of the Rule—outlines the proposed regulatory text
IV. Regulatory Procedures—sets forth the applicable regulatory requirements and requests comments on specific issues

I. Background

On January 30, 2009, President Barack Obama signed Executive Order 13496, entitled ''Notification of Employee Rights Under Federal Labor Laws.'' 74 FR 6107 (February 4, 2009). The purpose of the Order is ''to promote economy and efficiency in Government procurement'' by ensuring that employees of certain Government contractors are informed of their rights under Federal labor laws. *Id.,* Sec. 1. As the Order states, ''When the Federal Government contracts for goods or services, it has a proprietary interest in ensuring that those contracts will be performed by contractors whose work will not be interrupted by labor unrest. The attainment of industrial peace is most easily achieved and workers' productivity is enhanced when workers are well informed of their rights under Federal labor laws, including the National Labor Relations Act (Act), 29 U.S.C. 151 *et seq.*'' The Order reiterates the declaration of national labor policy contained in the National Labor Relations Act (''NLRA''), 29 U.S.C. 151, that ''encouraging the practice and procedure of collective bargaining and * * * protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection'' will ''eliminate the causes of certain substantial obstructions to the free flow of commerce'' and ''mitigate and eliminate these obstructions when they have occurred.'' *Id.,* Section 1, quoting 29 U.S.C. 151. As the Order concludes, ''[r]elying on contractors whose employees are informed of such rights under Federal labor laws facilitates the efficient and economical completion of the Federal Government's contracts.'' *Id.*

The Order achieves the goal of notification to employees of federal contractors of their legal rights through two related mechanisms. First, Section 2 of the Order provides the complete text of a contract clause that Government contracting departments and agencies must include in all covered Government contracts and subcontracts. 74 FR at 6107–6108, Sec. 2. Second, through incorporation of the specified clause in its contracts with the Federal government, contractors thereby agree to post a notice in conspicuous places in their plants and offices informing employees of their rights under Federal labor laws. *Id.,* Sec. 2, Para. 1.

The Order states that the Secretary of Labor (''Secretary'') ''shall be responsible for [its] administration and enforcement.'' 74 FR at 6108, Sec. 3. To that end, the Order delegates to the Secretary the authority to ''adopt such rules and regulations and issue such orders as are necessary and appropriate to achieve the purposes of this order.'' *Id.,* Sec. 3(a). In particular, the Order requires the Secretary to prescribe the content, size, and form of the employee notice. *Id.,* Sec. 3(b). In addition, the Order permits the Secretary, among other things, to make modifications to the contractual provisions required to be included in Government contracts (Sec. 3(c)); to provide exemptions for contracting departments or agencies with respect to particular contracts or subcontracts or class of contracts or subcontracts for certain specified reasons (Sec. 4); to establish procedures for investigations of Government contractors and subcontractors to determine whether the required contract provisions have been violated (Sec. 5); to conduct hearings regarding compliance (Sec. 6); and to provide for certain remedies in the event that violations are found (Sec. 7). *Id.,* 74 FR at 6108–6109. Accordingly, the Secretary proposes the following regulations to implement the policies and procedures set forth in the Executive Order. The specific standards and procedures proposed to implement the Executive Order will be discussed in detail in Section III., Overview of the Rule, below.

II. Authority

A. Legal Authority

The President issued Executive Order 13496 pursuant to his authority under ''the Constitution and laws of the United States,'' expressly including the Federal Property and Administrative Services Act ''Procurement Act,'' 40 U.S.C. 101 *et seq.* The Procurement Act authorizes the President to ''prescribe policies and directives that [he] considers necessary to carry out'' the statutory purposes of ensuring ''economical and efficient'' government procurement and supply. 40 U.S.C. 101, 121(a). Executive Order 13496 delegates to the Secretary of Labor the authority to ''adopt such rules and regulations and issue such orders as are necessary and appropriate to achieve the purposes of this order.'' 74 FR at 6108, Sec. 3. The Secretary has delegated her authority to promulgate these regulations to the Assistant Secretary for Employment Standards. Secretary's Order 01–2008 (May 30, 2008), 73 FR 32424 (published June 6, 2008).

B. Interagency Coordination

Section 12 of the Executive Order requires the Federal Acquisition Regulatory Council (FAR Council) to take action to implement provisions of the Order in the Federal Acquisition Regulation (FAR). 74 FR at 6110. Accordingly, the Department has coordinated with the FAR Council in inserting language implementing the Executive Order into the FAR.

III. Overview of the Rule

The Department's proposed rule, which establishes standards and procedures for implementing and enforcing Executive Order 13496, is set forth in subchapter D, Part 471 of Volume 29 of the Code of Federal Regulations (CFR). Subpart A of the proposed rule sets out definitions, the prescribed requirements for the size, form and content of the employee notice, exceptions for certain types of contracts, and exemptions that may be applicable to contracting departments and agencies with respect to a particular contract or subcontract or class of contracts or subcontracts. Subpart B of the proposed rule sets out standards and procedures related to complaint procedures, compliance evaluations, and enforcement of the rule. Subpart C sets out other standards and procedures related to certain ancillary matters. The discussion below is organized in the same manner, and explains the Department's adoption of the standards and procedures set out in the regulatory text, which follows. The Department invites comments on any issues addressed by the proposals in this rulemaking.

Subpart A—Definitions, Requirements for Employee Notice, and Exceptions and Exemptions

Subpart A contains definitions of terms used in the rule, requirements for the content, size and form of the notice that a contractor must post to its employees, the types of contracts that are excepted from the rule and applicable exemptions available to a contracting department or agency with respect to a particular contract or subcontract or class of contracts or subcontracts.

Definitions

The definitions proposed in this rule are derived largely from the definitions of the same terms in the Department's Office of Federal Contract Compliance Programs (OFCCP) regulations at 41 CFR part 60–1.3 and the former regulations implementing Executive Order 13201, 29 CFR Part 470 (2008), rescinded under authority of E.O. 13496, 74 FR 14045 (March 30, 2009). Slight variations between the definitions proposed here and those upon which they were modeled were made in order to accommodate the terms to Executive Order 13946. The Department invites comments regarding the definitions proposed in Section 471.1 below.

Requirements for Employee Notice

As noted above, Executive Order 13496 requires the Secretary to ''prescribe the size, form and content of the notice'' that contractors must post to notify employees of their rights. Sec. 3(b), E.O. 13496, 74 FR at 6108. The proposed rule fulfills the Secretary's obligation to establish standards and procedures regarding each of these issues, which are discussed in turn below.

Section 471.2(a) of the proposed rule sets out in full the four paragraphs that the Executive Order requires to be included in all non-excepted Government contracts. The first paragraph of the proposed contract clause specifies the content of the notice that must be provided to employees of Federal contractors. The proposed notice contains those employee rights established under the National Labor Relations Act (''NLRA''), 29 U.S.C. 151, *et seq.* The Secretary believes providing notice of the rights under the NLRA bests effectuates the purpose of the Executive Order. Section 1 of the Executive Order clearly states that the Order's policy is to attain industrial peace and enhance worker productivity through the notification of workers of ''their rights under Federal labor laws, including the National Labor Relations Act.'' 74 FR at 6107, Sec. 1. The policy of the Executive Order goes on to emphasize the foundation underlying the NLRA, which is to encourage collective bargaining and to protect workers' rights to freedom of association and self-organization, and notes that

efficiency and economy in government contracting is promoted when contractors inform their employees of ''such rights.'' Further, the contract clause prescribed by the Order requires Federal contractors to post the notice ''in conspicuous places in and about plants and offices *where employees covered by the National Labor Relations Act* engage in activities related to performance of the contract * * *.'' 74 FR at 6107, Sec. 2, Para. 1 (emphasis added). As a result, the Executive Order's terms provide that the employee notice it requires must be posted only by employers in the private sector, with some statutory exceptions, and need not be posted by employers in the public sector.[1]

In establishing a description of rights under the NLRA in the proposed notice, the Department believes that such rights are best presented to employees following a concise preamble that provides context to such rights. Therefore, section 471.2 of the proposed rule sets out the following text for inclusion in the notice to employees prior to the description of employee rights under the NLRA:

> It is the policy of the United States to encourage collective bargaining and protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid and protection.

The content of the above notice derives from section 1 of the NLRA, 29 U.S.C. 151, and E.O. 13496, Section 1. The Department seeks comments on this description of policy in the proposed section 471.2.

In proposing to include the statutory rights under the NLRA in the required notice, the Secretary considered the level of detail the notice should contain regarding those statutory rights. A broad statement of employee rights under the NLRA appears in section 7 of the Act, which states:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities * * *.

29 U.S.C. 157. The Department considered requiring a verbatim replication of the statute's enumeration of employee rights in Section 7 of the NLRA. Alternatively, the Department considered including a simplified list of rights based upon the statutory provision, which would include the right of employees to: Organize; form, join, or assist any union; bargain collectively through representatives of their own choice; act together for other mutual aid or protection; or choose not to engage in any of these protected concerted activities.

However, the Department does not believe that posting the statutory language itself or a simplified list of rights in a notice will be likely to convey the information necessary to best inform employees of their rights under the Act. Instead, the Department proposes that the statement of employee rights contained in Appendix A to Subpart A of Part 471 be required for inclusion in the notice. This statement contains greater detail of NLRA rights, derived from Board or court decisions implementing such rights—which will more effectively convey such rights to employees. A more complete and readable text will also better enable employees to apply the rights to actual workplace situations. Additionally, employees will be better apprised of their rights under the NLRA if the notice also contains examples of general circumstances, also derived from Board or court decisions further implementing section 7 and other provisions of the NLRA, that constitute violations of their rights under the Act. With the above principles in mind, the Department devised a notice that provides employees with a more than rudimentary overview of their rights under the NLRA, in a user-friendly format, while simultaneously not overwhelming employees with information that is unnecessary and distracting in the limited format of a notice.

The Department invites comment on this statement of employee rights proposed for inclusion on the required notice to employees. In particular, the Department requests comment on whether the notice contains sufficient information of employee rights under the Act; whether the notice effectively conveys the information necessary to best inform employees of their rights under the Act; and whether the notice achieves the desired balance between providing an overview of employee rights under the Act and limiting unnecessary and distracting information.

Moreover, proposed § 471.2 also requires that the notice of employee rights contain NLRB contact information and basic enforcement procedures to enable employees to find out more about their rights under the Act and to proceed with enforcement if necessary. Accordingly, the required notice confirms that illegal conduct will not be permitted, provides information regarding the NLRB and filing a charge with that agency, and indicates that the Board will prosecute violators of the Act. Furthermore, the notice indicates that there is a 6-month statute of limitations applicable to making allegations of violations and provides NLRB contact information for use by employees. The Department invites suggested additions or deletions to these procedural provisions that would improve the content of the notice of employee rights.

Paragraph 4 of the contract clause in the Executive Order requires the contractor to incorporate only paragraphs 1 through 3 of the clause in its subcontracts. *See* 74 FR at 6108, Sec. 2, para. 4. A narrow reading of the operation of this provision outside the full context of the Executive Order might suggest that the obligation to include the contract clause is limited to contracts between the government agency and the prime contractor. Under this reading, subcontractors would be required only to post the notice of employee rights, and their subcontractors (sometimes called second tier contractors) would have no responsibilities under the Executive Order. However, the provisions of the Executive Order establishing exemptions and exceptions for the application of the Executive Order's obligations do not expressly specify that its obligations do not flow past the first tier subcontractor, a significant limitation that one would expect to be made explicitly in the text of the Executive Order rather than by operation of the contract clause's incorporation provision. In addition, in the Department's past regulatory treatment of a similar issue, it has adapted through regulation the application of an Executive Order's contract inclusion provisions so that the obligation to abide by the mandates of the orders flows to subcontractors below the first tier. *See, e.g.,* 69 FR 16376, 16378 (Mar. 29, 2004) (final rule implementing E.O. 13201) (based on identical contract incorporation provision, ''the intent of the Order was clearly that the clause be passed to

[1] Under the NLRA, the term ''employer'' excludes the United States government, any wholly owned government corporation, or any State or political subdivision. 29 U.S.C. 152(2). As a result, employees of these public-sector employers are not ''employees'' covered by the NLRA. The NLRA's definition of ''employee'' also excludes those employed as agricultural laborers, in the domestic service of any person or family in a home, by a parent or spouse, as an independent contractor, as a supervisor, or by an employer subject to the Railway Labor Act, such as railroads and airlines. 29 U.S.C. 152(3).

subcontractors below the first tier''); 57 FR 49588, 49591 (Nov. 2, 1992) (final rule implementing E.O. 12800) (''It is clear, however, that the intent of Executive Order 12800 was that the clause flow down below the first tier level''). The Department's experience with regulatory implementation of all these Executive Orders is that requiring the obligations of the Executive Order to flow past the first tier subcontractor best achieves the purposes of the Executive Orders. For these reasons, the Department has concluded that in order to fully implement the intent of E.O. 13496, Sec. 471.2(a) has been adapted to require the inclusion of paragraphs 1 through 4 of the contract clause. The Department seeks comments on this proposal.

Proposed § 471.2(b) provides that the employee notice clause is to be set out verbatim in a contract, subcontract or purchase order, rather than being incorporated by reference in those documents. Proposed § 471.2(c) implements Section 3(c) of the Executive Order, 74 FR 6108, permitting the Secretary to modify the contract clause under certain specified circumstances as needed from time to time. The Department requests comment regarding the utility of setting out the employee notice clause verbatim, as opposed to incorporation by reference, to ensure that contractors will be aware of their contractual obligation to post the required notice.

The contract clause in the Executive Order requires a contractor to post the employee notice conspicuously ''in and about its plants and offices * * * including in all places where notices to employees are customarily posted both physically and electronically.'' 74 FR 6107, Sec. 2, para. 2. As a result, a contractor is required to post the notice physically at its place of operation where employees are likely to see it. Proposed § 471.2(d) provides that the Department will print the required employee notice poster and supply it to Federal contractors through the Federal contracting agency. In addition, the poster may be obtained from OLMS, whose contact information is provided in this subsection of the proposed rule, or can be downloaded from OLMS's Web site, *http://www.olms.dol.gov.* The Secretary has concluded that the Department's printing of the poster and provision of it to Federal contractors will reduce the burden on those contractors to comply with the Executive Order and this regulation, and will ensure conformity and consistency with the Secretary's specifications for the notice. Proposed § 471.2(d) also permits contractors to reproduce in exact duplicate the poster supplied by the Department to satisfy their obligations under the Executive Order and this rule. The Department invites comment on its proposal to make available print and electronic format posters containing the employee notice.

Those contractors that customarily post notices to employees electronically must also post the required notice electronically. In § 471.2(e), the Department proposes that such contractors may satisfy the electronic posting requirement on any web site that is maintained by the contractor or subcontractor and customarily used for employee notices, whether external or internal. A contractor must display prominently on its Web page or electronic site where other employee notices are customarily placed a link to the DOL's web page that contains the full text of the employee notice. The contractor must also place the link in the prescribed text contained in § 471.2(e). The prescribed text is the introductory language of the notice. The Department seeks comments on this proposal for electronic compliance. In addition, the Department seeks comment on whether it should prescribe standards regarding the size, clarity, location, and brightness with regard to the link, including how to prescribe electronic postings that are at least as large, clear and conspicuous as the contractor's other posters.

Exceptions for Specific Types of Contracts and Exemptions Available to Contracting Departments or Agencies With Respect to Particular Contractors or Subcontracts

The Executive Order expressly excepts from its application two types of Government contracts: Collective bargaining agreements as defined in 5 U.S.C. 7103(a)(8) and contracts involving purchases below the simplified acquisition threshold as defined in the Office of Federal Procurement Policy Act, 41 U.S.C. 403; 74 FR at 6107, Sec. 2. The simplified acquisition threshold is currently set at $100,000. 41 U.S.C. 403. Section 471.3(a)(1) and (2) of the proposed rule implement these exceptions. In addition, the Executive Order's provision regarding its effective date excepts contracts resulting from solicitations issued prior to the effective date of the final rule promulgated pursuant to this rulemaking. 74 FR 6111, Sec. 16. Proposed § 471.3(a)(3) implements this provision of the Executive Order.

As proposed in § 471.2(a), all nonexempt prime contractors and subcontractors are required to include the employee notice contract clause in each of their nonexempt subcontracts so that the obligation to notify employees of their rights flows to subcontractors of a government contract as well. The Executive Order does not except from its coverage subcontracts involving purchases below the simplified acquisition threshold. The Department has defined ''subcontract'' in the definitional section of the rule to include only those subcontracts that are necessary to the performance of the government contract. *See* § 471.1(r); *see also OFCCP* v. *Monongahela R.R.,* 85–OFC–2, 1986 WL 802025 (Recommended Decision and Order, April 2, 1986), aff'd, (Deputy Under Secretary's Final Decision and Order, Mar. 11, 1987) (railroad transporting coal to power generation plant of energy company contracting with GSA was subcontractor because delivery of coal is necessary to for the power company to perform under its contract with GSA). Although this rule may result in coverage of subcontracts with relatively *de minimis* value in the overall scheme of government contracts, covered subcontractors include only those who are performing subcontracts that are necessary to the performance of the prime contract. The Department invites comment on whether a further limitation on the application of the rule to subcontracts is necessary, and if it is, whether such a limitation is best accomplished through the application of this or another standard, for instance, a threshold related to the monetary value of the subcontract.

In addition to the exceptions for certain contracts, the Executive Order establishes two exemptions that the Secretary, in her discretion, may provide to contracting departments or agencies that the Secretary finds appropriate for exemption. 74 FR 6108, Sec. 4. These provisions permit the Secretary to exempt a contracting department or agency or group of departments or agencies from the requirements of any or all of the provisions of the Order with respect to a particular contract or subcontract or any class of contracts or subcontracts if she finds either that the application of any of the requirements of the Order would not serve its purposes or would impair the ability of the government to procure goods or services on an economical and efficient basis, or that special circumstances require an exemption in order to serve the national interest. *Id.* Proposed § 471.3(b) implements these exemptions. Proposed § 471.3(b) provides for the submission of written requests for exemptions to the

Deputy Assistant Secretary for Labor-Management Programs, and further provides that the Deputy Assistant Secretary may withdraw an exemption if a determination is made that such action is necessary or appropriate to achieve the purposes of the rule. The Department invites comments on the standards and procedures for requesting an exemption and the Department's withdrawal of a granted exemption.

Finally, proposed § 471.4 implements the policy noted above that the Executive Order requires notice-posting in those workplaces in which employees covered by the NLRA perform their work under the Federal contract. Thus, this rule does not apply to employers excluded from the definition of ''employer'' in the NLRA, 29 U.S.C. 152(2), and employers of employees excluded from the definition of ''employee'' under the NLRA, 29 U.S.C. 152(3). As a result, Federal, State and local public-sector employers are not covered by this rule. 29 U.S.C. 152(2). Also excluded are employers of workers employed: as agricultural laborers; in the domestic service of any person or family in a home; by a parent or spouse; as an independent contractor; as a supervisor; or by an employer subject to the Railway Labor Act, such as railroads and airlines. 29 U.S.C. 152(3).

Subpart B—General Enforcement; Compliance Review and Complaint Procedures

Subpart B of the proposed rule establishes standards and procedures the Department will use to determine compliance with obligations of the rule, take complaints regarding noncompliance, address findings of violations, provide hearings for certain matters, impose sanctions, including debarment, and provide for reinstatement in the case of debarment. The standards and procedures proposed in this subpart are taken largely from the Department's prior rule administering and enforcing Executive Order 13201, 66 FR 11221 (February 22, 2001). *See* 29 CFR Part 470 (2008), rescinded under authority of E.O. 13496, 74 FR 14045 (March 30, 2009). The Department invites comment on the administrative and enforcement procedures proposed in Subpart B.

The Department's Office of Federal Contract Compliance Programs (''OFCCP'') administers and enforces several laws that ban discrimination and require Federal contractors and subcontractors to take affirmative action to ensure that all individuals have an equal opportunity for employment. Therefore, OFCCP already has responsibility for monitoring, evaluating and ensuring that contractors doing business with the Federal government conduct themselves in a manner that complies with certain Federal laws. Proposed § 471.10 builds on this practice and expertise, and establishes authority in the Deputy Assistant Secretary for Federal Contract Compliance to conduct evaluations to determine whether a contractor is in compliance with the requirements of this rule. Under proposed § 471.10(a), such evaluations may be done solely for the purpose of assessing compliance with this rule, or may be undertaken in conjunction with an assessment of a Federal contractors' compliance with other laws under OFCCP's jurisdiction. This proposed section also establishes standards regarding location of the posted notice that will be used by OFCCP to assess compliance and indicates that an evaluation record will reflect efforts made toward conciliation, corrective action and/or recommendations regarding enforcement actions.

Proposed § 471.11 provides for the Department's acceptance of written complaints alleging that a contractor doing business with the Federal government has failed to post the notice required by this rule. The proposed section establishes that no special complaint form is required, but that complaints must be in writing. In addition, as proposed in § 471.11, written complaints must contain certain information, including the name, address and telephone number of the person submitting the complaint, and the name and address of the Federal contractor alleged to have violated this rule. This proposed section establishes that written complaints may be submitted either to OFCCP or OLMS, and the contact information for each agency is contained in this subsection. Finally, proposed § 471.11 establishes that OFCCP will conduct investigations of complaints submitted under this section, make compliance findings based on such investigations, and include in the investigation record any efforts made toward conciliation, corrective action, and recommended enforcement action,

Proposed § 471.12 sets out the initial steps that the Department will take in the event that a contractor is found to be in violation of this rule, including making reasonable efforts to secure compliance through conciliation. Under this proposed section, a noncompliant contractor must take action to correct the violation and commit in writing to maintain compliance in the future. If the contractor fails to come into compliance, OLMS may proceed with enforcement efforts proposed in § 471.13.

Proposed § 471.13 implements Section 6 of the Executive Order, 74 FR 6108–6109, and establishes steps that the Department will take in the event that conciliation efforts fail to bring a contractor into compliance with this rule. Under this proposed section, enforcement proceedings may be initiated if violations are found as a result of either a compliance evaluation or a complaint investigation, or in those cases in which a contractor refuses to allow a compliance evaluation or complaint investigation or refuses to cooperate with the compliance evaluation or complaint investigation, including failing to provide information sought during those procedures. The enforcement procedures proposed in § 471.13 rely primarily on the Department's regulations at 29 CFR part 18, which govern administrative hearings before Administrative Law Judges (ALJ), and, in particular, on the provisions for expedited hearings at 29 CFR 18.42. The procedures in this proposed section establish that an ALJ will make recommended findings and conclusions regarding any alleged violation to the Assistant Secretary for Employment Standards (''Assistant Secretary''), who will issue a final administrative order. The final administrative order may include a cease-and-desist order or other appropriate remedies in the event that a violation is found. The procedures in this proposed section also establish timetables for submitting exceptions to the ALJ's recommended order to the Assistant Secretary, and also provide for the use of expedited proceedings.

Proposed § 471.14 addresses the imposition of sanctions and penalties in cases in which violations are found, and establishes post-hearing procedures related to such sanctions or penalties. Section 7 of the Executive Order provides the framework for the scope and nature of remedies the Department may order in the event of a violation. 74 FR 6109. Section 7(a) of the Executive Order provides that the Secretary may issue a directive that the contracting department or agency cancel, terminate, suspend, or cause to be cancelled, terminated or suspended any contract or portion of a contract for noncompliance. *Id.* In addition, the Executive Order indicates that contracts may be cancelled, terminated or suspended absolutely, or their continuance may be conditioned on a requirement for future compliance. *Id.* Prior to issuing such a directive, the Secretary must offer the head of the contracting department or

agency an opportunity to object in writing to the remedy contemplated, and the objections must contain reasons why the contract is essential to the agency's mission. *Id.* Finally, Section 7 of the Executive Order prevents the imposition of such a remedy if the head of the contracting department or agency, or his or her designee, continues to object to the issuance of the directive. *Id.* Proposed § 471.14(a), (b), (c), and (d)(1) fully implement the standards and procedures established in Section 7(a) of the Executive Order.

Section 7(b) of the Executive Order provides that the Secretary may issue an order debarring noncompliant contractors ''until such contractor has satisfied the Secretary that such contractor has complied with and will carry out the provisions of the order.'' 74 FR 6109. As with the remedies discussed above, prior to the imposition of debarment, the Secretary must offer the head of the contracting department or agency an opportunity to object in writing to debarment, and the objections must contain reasons why the contract is essential to the agency's mission. *Id.* Finally, Section 7(b) of the Executive Order prevents the imposition of debarment if the head of the contracting department or agency, or his or her designee, continues to object to it. *Id.* Proposed § 471.14(d)(3) of the rule establishes the availability of the debarment remedy. Section 471.14(f) of the proposed rule indicates that the Assistant Secretary will periodically publish and distribute the names of contractors or subcontractors that have been debarred for noncompliance.

Proposed § 471.15 permits a contractor or subcontractor to seek a hearing before the Assistant Secretary before the imposition of any of the remedies outlined above. Finally, proposed § 471.16 provides contractors or subcontractors that have been debarred under this rule an opportunity to seek reinstatement by requesting such in a letter to the Assistant Secretary. Under this proposed provision, the Assistant Secretary may reinstate the debarred contractor or subcontractor if he or she finds that the contractor or subcontractor has come into compliance with this rule and has shown that it will fully comply in the future.

As noted above, § 471.2(a) requires all nonexempt prime contractors and subcontractors to include the employee notice contract clause in each of its nonexempt subcontracts so that the obligation to notify employees of their rights is binding upon each successive subcontractor. Regarding enforcement of the requirements of the rule as to subcontractors, the Executive Order requires the contractor to ''take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance.'' 74 FR 6108, Sec. 2, para. 4. Accordingly, in the event that the Department determines that a subcontractor is out of compliance with the requirements of this rule regarding employee notice or inclusion of the contract clause in the subcontractor's own subcontracts, the Secretary may direct the contractor to require the noncompliant subcontractor to come into compliance. As indicated in the Executive Order, if such a directive causes the contractor to become involved in litigation with the subcontractor, the contractor may request the United States to enter the litigation in order to protect the interests of the United States. 74 FR 6108, Sec. 2, para. 4. If the contractor is unable to compel subcontractor compliance on its own accord, the compliance review, complaint, investigation, conciliation, hearing and decision procedures established in Sections 471.10 through 471.16 to assess and resolve contractor compliance with the requirements of this rule are also applicable to subcontractors. In those instances in which a contractor fails to take the action directed by the Secretary regarding a subcontractor's noncompliance, the contractor may be subject to the same enforcement and remedial procedures that apply when it is determined to be out of compliance regarding the requirements to provide employee notice or include the contract clause in its contracts. *See* § 471.13(a)(1).

Subpart C—Ancillary Matters

A number of discrete issues unconnected to the issues addressed in the two previous subparts merit attention in this proposed rule, and they are set out in this subpart. Consequently, this Subpart addresses delegations of authority within and outside the Department to administer and enforce this proposed rule, rulings under or interpretations of the Executive Order, standards prohibiting intimidation, threats, coercion or other interference with rights protected under this rule, and other provisions of the Executive Order that are included in this proposed rule. The Department invites comment on any issues addressed in this subpart.

Proposed § 471.20 implements Section 11 of the Executive Order, 74 FR 6110, which permits the delegation of the Secretary's authority under the Order to Federal agencies within or outside the Department. Section 471.21 of the proposed rule indicates that the Assistant Secretary has authority to make rulings under or interpretations of this rule. Proposed § 471.22 seeks to prevent intimidation or interference with rights protected under this rule, so it proposes that the sanctions and penalties available for noncompliance set out in § 471.14 be available should a contractor or subcontractor fail to take all steps necessary to prevent such intimidation or interference. Activities protected by this proposed section include filing a complaint, furnishing information, or assisting or participating in any manner in a compliance evaluation, a complaint investigation, hearing or any other activity related to the administration and enforcement of this rule. Finally, proposed § 471.23 implements Section 9 of the Executive Order, 74 FR 6109, which requires that contracting departments and agencies cooperate with the Secretary in carrying out her functions under the Order, and implements Section 15 of the Executive Order, 74 FR 6110, which establishes general guidelines for the Order's implementation.

IV. Regulatory Procedures

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. 58 FR 51735, 51735–51736. The Department has determined that this rule is not an ''economically significant'' regulatory action under section 3(f)(1) of Executive Order 12866. 58 FR 51738. Based on the Department's analysis, including a cost impact analysis set forth more fully below with regard to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* this rule is not likely to: (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. 58 FR 51738. As a result, the Department has concluded that a full economic impact and cost/benefit analysis is not required for the rule under section 6(a)(3)(B) of the Executive Order. 58 FR 51741. However, because of its importance to the public,

the rule was reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* requires agencies promulgating proposed rules to prepare an initial regulatory flexibility analysis and to develop alternatives wherever possible, when drafting regulations that will have a significant impact on a substantial number of small entities. The focus of the RFA is to ensure that agencies ''review rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the [RFA].'' Executive Order 13272, Sec. 1, 67 FR 53461 (''Proper Consideration of Small Entities in Agency Rulemaking''). However, an agency is relieved of the obligation to prepare an initial regulatory flexibility for a proposed rule if the Agency head certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C 605. Based on the analysis below, in which the Department has estimated the financial burdens to covered small contractors and subcontractors associated with complying with the requirements contained in this proposed rule, the Department has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule will not have a significant economic impact on a substantial number of small entities.

The primary goal of the Executive Order and these implementing regulations is the notification to employees of their rights with respect to collective bargaining and other protected, concerted activity. This goal is achieved through the incorporation of a contract clause in all covered Government contracts. The Executive Order and this rule impose the obligation to ensure that the contract clause is included in all Government contracts not on private contractors, but on Government contracting departments and agencies, which are not ''small entities'' that come within the focus of the RFA. Therefore, the costs attendant to learning of the obligation to include the contract clause in Government contracts and modifying those contracts in order to comply with that obligation is a cost borne by the Federal government, and is not incorporated into this analysis.

Once the required contract clause is included in the Government contract, contractors then begin to assume the burdens associated with compliance. Those obligations include posting the required notice and incorporating the contract clause into all covered subcontracts, thus making the same obligations binding on covered subcontractors. For the purposes of this analysis, the Department estimates that, on average, each prime contractor will subcontract some portion of its prime contract three times, and the prime contractor therefore will expend time ensuring that the contract clause is included in its subcontracts and notifying those subcontractors of their attendant obligations. To the extent that subcontractors subcontract any part of their contract with the prime contractor, they, in turn, will be required to expend time ensuring that the contract clause is included in the next tier of subcontracts and notifying the next-tier subcontractors of their attendant obligations. Therefore, for the purpose of determining time spent on compliance, the Department will not differentiate between the obligations of prime contractors and subsequent tiers of subcontractors in assessing time spent on compliance; the Department assumes that all contractors, whether prime contractor or subcontractor, will spend equivalent amounts of time engaging in compliance activity.

The Department estimates that each contractor will spend a total of 3.5 hours per year in order to comply with this rule, which includes 90 minutes for the contractor to learn about the contract and notice requirements, train staff, and maintain records; 30 minutes for contractors to incorporate the contract clause into each subcontract and explain its contents to subcontractors; 30 minutes acquiring the notice from a government agency or Web site; and 60 minutes posting them physically and electronically, depending on where and how the contractor customarily posts notices to employees. The Department assumes that these activities will be performed by a professional or business worker, who, according to Bureau of Labor statistics data, earned a total hourly wage of $31.02 in January, 2009, including accounting for fringe benefits. The Department then multiplied this figure by 3.5 hours to estimate the average annual costs for contractors and subcontractors to comply with this rule. Accordingly, this proposed rule is estimated to impose average annual costs of $108.57 per contractor (3.5 hours × $31.02). These costs will decrease in subsequent years based on a contractor's increasing familiarity with the rule's requirements and having already satisfied its posting requirements in earlier years.

Based upon figures obtained from USASpending.gov, which compiles information on federal spending and contractors across government agencies, the Department concludes that there were 186,536 unique Federal contractors holding Federal contracts in FY 2008.[2] Although this rule does not apply to Federal contracts below the simplified acquisition threshold, the Department does not have a means by which to calculate what portion of all Federal contractors hold *only* contracts with the government below the simplified acquisition threshold to which the rule would not apply in any respect. Therefore, in order to determine the number of entities affected by this rule, the Department used all Federal contractors as a basis, regardless of the size of the government contract held. Based on data analyzed in the Federal Procurement Data System (fpds.gov), which compiles data about types of contractors, of all 186,536 unique Federal prime contractors, approximately 35% are ''small entities'' as defined by the Small Business Administration (SBA) size standards.[3]

[2] The Federal Funding Accountability and Transparency Act of 2006, Pub.L. 109–282, (Sept. 26, 2006), requires that the Office of Management and Budget establish a single searchable Web site, accessible by the public for free, that includes for each Federal award, among other things: (1) The name of the entity receiving the award; (2) the amount of the award; (3) information on the award including transaction type, funding agency, etc.; (4) the location of the entity receiving the award; and (5) a unique identifier of the entity receiving the award. *See* 31 U.S.C.A. § 6101 note. In compliance with this requirement, USASpending.gov was established.

[3] The Federal Procurement Data System compiles data regarding small business ''actions'' and small business ''dollars'' using the criteria employed by SBA to define ''small entities.'' In FY 2008, small business actions accounted for 50% of all Federal procurement action. However, deriving a percentage of contractors that are small using the ''action'' data would overstate the number of small contractors because contract actions reflect more than just contracts; they include modifications, blanket purchase agreement calls, task orders, and federal supply schedule orders. As a result, there are many more contract actions than there are contracts or contractors. Accordingly, a single small contractor might have hundreds of actions, *e.g.,* delivery or task orders, placed against its contract. These contract actions would be counted individually in the FPDS, but represent only one small business.

Also reflected in FPDS, in FY 2008, small business ''dollars'' accounted for 19% of all Federal dollars spent. However, deriving a percentage of contractors that are small using the ''dollars'' data would understate the number of small contractors. Major acquisitions account for a disproportionate share of the dollar amounts and are almost exclusively awarded to large businesses. For instance, Lockheed Martin was awarded $34 billion in contracts in FY 2008, which accounted for 6% of all Federal spending in that year. The top five federal contractors, all large businesses, accounted for over 20% of contract dollars in FY 2008. As a result, because the largest Federal contractors disproportionately represent ''dollars'' spent by the

Therefore, for the purposes of the RFA analysis, the Department estimates that this rule will affect 65,288 small Federal prime contractors.

As noted above, for the purposes of this analysis, the Department estimates that each prime contractor subcontracts a portion of the prime contract three times, on average. However, the community of prime contractors does not utilize a unique subcontractor for each subcontract; the Department assumes that subcontractors may be working under several prime contracts for either a single prime contractor or multiple prime contractors, or both. In addition, some subcontractors may also be holding prime contracts with the government, so they may already be counted as affected entities. Therefore, in order to determine the unique number of subcontractors affected by this rule, the Department estimates there are the same number of unique subcontractors as prime contractors, resulting in the estimate that 186,536 subcontractors are affected by this rule. Further, for the purposes of this analysis, the Department assumes that all subcontractors are ''small entities'' as defined by SBA size standards. Therefore, in order to estimate the total number of ''small'' contractors affected by this rule, the Department has added together the estimates for the number of small prime contractors calculated above (65,288) with the estimate of all subcontractors (186,536), all of which we assume are small. Accordingly, the Department estimates that 251,824 small prime and subcontractors are affected by this rule.

Based on this analysis, the Department concludes that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act does not define either ''significant economic impact'' or ''substantial'' as it relates to the number of regulated entities. 5 U.S.C. 601. In the absence of specific definitions, ''what is 'significant' or 'substantial' will vary depending on the problem that needs to be addressed, the rule's requirements, and the preliminary assessment of the rule's impact.'' *See A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,* Office of Advocacy, U.S. Small Business Administration at 17, available at *http://www.sba.gov.* As to economic impact, one important indicator is the cost of compliance in relation to revenue of the entity or the percentage of profits affected. *Id.* In this case, the Department has determined that the average cost of compliance with this rule in the first year for all Federal contractors and subcontractors will be $108.57. The Department concludes that this economic impact is not significant. Furthermore, the Department has determined that of the entire regulated community of all 186,536 prime contractors and all 186,536 subcontractors, 67% percent of that regulated community constitute small entities (251,824 small contractors divided by all 373,072 contractors). Although this figure represents a substantial number of federal contractors and subcontractors, because Federal contractors are derived from virtually all segments of the economy and across industries, this figure is a small portion of the national economy overall. *Id.* at 20 (''the substantiality of the number of businesses affected should be determined on an industry-specific basis and/or the number of small businesses overall''). Accordingly, the Department concludes that the rule does not impact a substantial number of small entities in a particular industry or segment of the economy. Therefore, under 5 U.S.C. 605, the Department concludes that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform

For purposes of the Unfunded Mandates Reform Act of 1995, this proposed rule would not include any Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year.

Paperwork Reduction Act

Certain sections of this proposed rule, including § 471.11(a) and (b), contain information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA). As required by the PRA, the Department has submitted a copy of these sections to OMB for its review.

The proposed rule requires contractors to post notices and cooperate with any investigation into a failure to comply with the requirements of part 471 as the result of a complaint or a compliance evaluation. It also permits employees to file complaints with the Department alleging that a contractor has failed to comply with those requirements. The application of the PRA to those requirements is discussed below.

The proposed rule imposes certain minimal burdens associated with the posting of the employee notice poster required by the Executive Order and § 471.2(a). As noted in § 471.2(e), the Department will supply the notice, and contractors will be permitted to post exact duplicate copies of the notice. Under the regulations implementing the PRA, ''[t]he public disclosure of information originally supplied by the Federal government to [a] recipient for the purpose of disclosure to the public'' is not considered a ''collection of information'' under the Act. *See* 5 CFR 1320.3(c)(2). Therefore, the posting requirement is not subject to the PRA.

The proposed rule would also impose certain burdens on the contractor associated with cooperating with an investigation into failure to comply with the requirements of part 471 as the result of a complaint or in connection with a compliance evaluation. The regulations implementing the PRA exempt any information collection requirements imposed by an administrative agency during the conduct of an administrative action against specific individuals or entities. *See* 5 CFR 1320.4. Once the agency opens a case file or equivalent about a particular party, this exception applies during the entire course of the investigation, before or after formal charges or complaints are filed or formal administrative action is initiated. *Id.* Therefore, this exemption would apply to the Department's investigation of complaints alleging violations of the Order or this proposed rule as well as compliance evaluations.

As for the burden hour estimate for employees filing complaints, we estimate, based on the experience of the Office of Federal Contract Compliance Programs (OFCCP) administering other laws applicable to Federal contractors, that it will take an average of 1.28 hours for such a complainant to compose a complaint containing the necessary information and to send that complaint to the Department. This number is also consistent with the burden estimate for filing a complaint under E.O. 13201 and the now-revoked part 470 regulations.

The Department has estimated it would receive a total of 50 employee complaints in any given year, which is significantly larger than the estimate contained its most recent PRA submission for E.O. 13201. In that

Federal government, the FPDB's data on small ''dollars'' spent understates the number of small entities with which the Federal government does business.

The Department concludes that the percentage of all Federal contractors that are ''small'' is probably somewhere between 19% and 50%, the two percentages derived from the FPDS figures on small ''actions'' and small ''dollars.'' The mean of these two percentages is approximately 35%, and the Department will use this figure above to estimate how many of all Federal contractors are ''small entities'' in SBA's terms.

submission, the Department estimated it would receive 20 employee complaints. This number itself had been revised downwards because the Department never received any employee complaints pursuant to the now-revoked 29 CFR part 470 regulations. Because the applicability of the proposed rule and E.O. 13496 is greater in scope than the now-revoked part 470 and E.O. 13201 in terms of geography (the now-revoked part 470 regulations only applied to states without right-to-work laws, whereas the proposed rule applies nationwide), the Department has revised upwards its estimate of employee complaints under the proposed rule from 20 to 50. In addition, E.O. 13201 required the posting of a notice containing information of interest to only a few—employees who may have objected to paying union dues or fees for non-representational activities—while the information in the poster required by this regulation should be of interest to all employees.

The Department calculated the estimates of annualized cost to respondents for the hour burdens associated with this collection of information. Specifically, it used the data from the Bureau of Labor Statistics (BLS) National Compensation Survey: Occupation Wages in the United States (NCS), 2007 (Bulletin 2704), to calculate the cost of the burden hours associated with employee complaints. The NCS Bulletin indicates that the average hourly wage for all workers during 2007, the most recent year available, was $19.88 per hour. Therefore, we estimate that the cost to a complainant of filing a complaint under E.O. 13496 will be $25.92, or $25.45 ($19.88 × 1.28) + $0.47 for postage and envelope ($0.44 postage and $0.03 for the envelope). We further estimate, as stated above, that 50 individual complaints will be filed each year. Therefore, we project that this collection of information will impose on employees who file complaints a total annual cost burden of $1,296.00 ($25.92 per complaint × 50 complaints).

Proposed § 471.3(b) permits contracting departments to submit written requests for an exemption from the obligations of the Executive Order (waiver request) as to particular contracts or classes of contracts under specified circumstance. The PRA does not cover the costs to the Federal government for the submission of waiver requests by contracting agencies or departments or for the processing of waiver requests by the Department of Labor. The regulations implementing the PRA define the term ''burden,'' in pertinent part, as ''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.'' 5 CFR 1320.3(b)(1). The definition of the term ''person'' in the same regulations includes ''an individual, partnership, association, corporation (including operations of government-owned contractor-operated facilities), business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision.'' 5 CFR 1320.3(k). It does not include the Federal government or any branch, political subdivision, or employee thereof. Therefore, the cost to the Federal government for the submission of waiver requests by contracting agencies and departments need not be taken into consideration.

The Department invites the public to comment on whether each of the proposed collections of information: (1) Ensures that the collection of information is necessary to the proper performance of the agency, including whether the information will have practical utility; (2) estimates the projected burden, including the validity of the methodology and assumptions used, accurately; (3) enhances the quality, utility, and clarity of the information to be collected; and (4) minimizes 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). Comments must be submitted by September 2, 2009 to: Desk Officer for the Department of Labor, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.

Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that the proposed rule does not have ''federalism implications.'' The employee notice required by the Executive Order and part 471 must be posted only by employers covered under the NLRA. Therefore, the proposed rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Executive Order 13084 (Consultation and Coordination With Indian Tribal Governments)

The Department certifies that this Proposed Rule does not impose substantial direct compliance costs on Indian tribal governments.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Request for Comments

This proposed rule would implement Executive Order 13496. The Department invites comments about the NPRM from interested parties, including current and potential Government contractors, subcontractors, and vendors, and current and potential employees of such entities; labor organizations; public interest groups; Federal contracting agencies; and the public.

List of Subjects in 29 CFR Part 471

Administrative practice and procedure, Government contracts, employee rights, Labor unions.

Text of Proposed Rule

Accordingly, a new Subchapter D, consisting of Part 471, is proposed to be added to 29 CFR Chapter IV to read as follows:

Subchapter D. Notification of Employee Rights Under Federal Labor Laws

PART 471—OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS; NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

Subpart A—Definitions, Requirements for Employee Notice, and Exceptions and Exemptions

Sec.
471.1 What definitions apply to this part?
471.2 What employee notice clause must be included in Government contracts?
471.3 What exceptions apply and what exemptions are available?
471.4 What employers are not covered under the rule?
Appendix A to Subpart A of Part 471—Text of Employee Notice Clause

Appendix B to Subpart A of Part 471—Electronic Link Language

Subpart B—General Enforcement; Compliance Review and Complaint Procedures

471.10 How will the Department determine whether a contractor is in compliance with Executive Order 13496 and this part?
471.11 What are the procedures for filing and processing a complaint?
471.12 What are the procedures to be followed when a violation is found during a complaint investigation or compliance evaluation?
471.13 Under what circumstances, and how, will enforcement proceedings under Executive Order 13496 be conducted?
471.14 What sanctions and penalties may be imposed for noncompliance, and what procedures will the Department follow in imposing such sanctions and penalties?
471.15 Under what circumstances must a contractor be provided the opportunity for a hearing?
471.16 Under what circumstances may a contractor be reinstated?

Subpart C—Ancillary Matters

471.20 What authority under this part or Executive Order 13496 may the Secretary delegate, and under what circumstances?
471.21 Who will make rulings and interpretations under Executive Order 13496 and this part?
471.22 What actions may the Assistant Secretary take in the case of intimidation and interference?
471.23 What other provisions apply to this part?

Authority: 40 U.S.C. 101 *et seq.*; Executive Order 13496, 74 FR 6107 (February 4, 2009); Secretary's Order 01–2008, 73 FR 32424 (June 6, 2008).

Subpart A—Definitions, Requirements for Employee Notice, and Exceptions and Exemptions

§ 471.1 What definitions apply to this part?

Assistant Secretary means the Assistant Secretary for Employment Standards, United States Department of Labor, or his or her designee.

Collective bargaining agreement means an agreement, as defined in the Federal Service Labor-Management Relations Statute, entered into by an agency and the exclusive representative of employees in an appropriate unit to set terms and conditions of employment of those employees.

Construction means the construction, rehabilitation, alteration, conversion, extension, demolition, weatherization, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term construction also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

Construction work site means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair, and any temporary location or facility at which a contractor or subcontractor meets a demand or performs a function relating to the contract or subcontract.

Contract means, unless otherwise indicated, any Government contract or subcontract.

Contracting agency means any department, agency, establishment, or instrumentality in the executive branch of the Government, including any wholly owned Government corporation, that enters into contracts.

Contractor means, unless otherwise indicated, a prime contractor or subcontractor.

Department means the U.S. Department of Labor.

Employee notice clause means the contract clause that Government contracting departments and agencies must include in all Government contracts and subcontracts pursuant to Executive Order 13496 and this part.

Government means the Government of the United States of America.

Government contract means any agreement or modification thereof between any contracting agency and any person for the purchase, sale, or use of personal property or non-personal services. The term ''personal property,'' as used in this section, includes supplies, and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements). The term ''non-personal services'' as used in this section includes, but is not limited to, the following services: Utilities, construction, transportation, research, insurance, and fund depository. The term Government contract does not include:

(1) Agreements in which the parties stand in the relationship of employer and employee; and

(2) Federal financial assistance, as defined in 29 CFR 31.2.

Labor organization means any organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

Modification of a contract means any alteration in the terms and conditions of that contract, including amendments, renegotiations, and renewals.

Order or *Executive Order* means Executive Order 13496 (74 FR 6107, January 30, 2009).

Person means any natural person, corporation, partnership, unincorporated association, State or local government, and any agency, instrumentality, or subdivision of such a government.

Prime contractor means any person holding a contract with a contracting agency, and, for the purposes of subparts B and C of this part, includes any person who has held a contract subject to the Executive Order and this part.

Related rules, regulations, and orders of the Secretary of Labor, as used in § 471.2 of this part, means rules, regulations, and relevant orders of the Assistant Secretary for Employment Standards, or his or her designee, issued pursuant to the Executive Order or this part.

Secretary means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

Simplified acquisition threshold means the dollar amount set by Congress under the Office of Federal Policy Procurement Act. As indicated in this Part, government contracts valued below the dollar amount set in the Simplified Acquisition Threshold are not subject to this Part.

Subcontract means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or non-personal services that, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

Subcontractor means any person holding a subcontract and, for the purposes of subparts B and C of this part, any person who has held a subcontract subject to the Executive Order and this part.

Union means a labor organization as defined in paragraph (k) of this section.

United States, as used herein, shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

§ 471.2 What employee notice clause must be included in Government contracts?

(a) *Government contracts.* With respect to all contracts covered by this part, Government contracting departments and agencies shall, to the extent consistent with law, include the language set forth in Appendix A to Subpart A of Part 471 in every Government contract, other than collective bargaining agreements as defined in § 471.1 and purchase orders under the simplified acquisition threshold as defined in § 471.1.

(b) *Inclusion by reference not permitted.* The employee notice clause must be quoted verbatim in a contract, subcontract, or purchase order. The clause may not be made part of the contract, subcontract, or purchase order by words of incorporation or inclusion.

(c) *Adaptation of language.* Whenever the Assistant Secretary finds that an Act of Congress, clarification of existing law by the courts or the National Labor Relations Board, or other circumstances make modification of the contractual provisions necessary to achieve the purposes of Executive Order 13496 and this part, the Assistant Secretary promptly shall issue such rules, regulations, or orders as are needed to cause the substitution or addition of appropriate contractual provisions in Government contracts thereafter entered into.

(d) *Obtaining employee notice poster.* The required employee notice poster, printed by the Department, will be provided by the Federal contracting agency or may be obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs. A copy of the poster may also be downloaded from the Office of Labor-Management Standards Web site at *http://www.olms.dol.gov.* Additionally, contractors may reproduce and use exact duplicate copies of the Department's official poster.

(e) *Electronic postings of employee notice poster.* A contractor or subcontractor that customarily posts notices to employees electronically must also post the required notice electronically. Such contractors or subcontractors satisfy the electronic posting requirement by displaying prominently on any Web site that is maintained by the contractor or subcontractor and customarily used for employee notices, whether external or internal, a link to the Department of Labor's Web site that contains the full text of the poster. The language that must constitute the link is contained in Appendix B to Subpart A to Part 471.

§ 471.3 What exceptions apply and what exemptions are available?

(a) *Exceptions for specific types of contracts.* The requirements of this part do not apply to

(1) Collective bargaining agreements as defined in § 471.1.

(2) Government contracts that involve purchases below the simplified acquisition threshold as defined in § 471.1. Therefore, the employee notice clause need not be included in contracts for purchases below that threshold, provided that:

(i) No agency or contractor is permitted to procure supplies or services in a way designed to avoid the applicability of the Order and this part; and

(ii) The employee notice clause must be included in contracts and subcontracts for indefinite quantities, unless the contracting agency or contractor has reason to believe that the amount to be ordered in any year under such a contract or subcontract will be less than the simplified acquisition threshold.

(3) Government contracts resulting from solicitations issued prior to the date of the effective date of this rule.

(b) *Exemptions for certain contracts.* The Deputy Assistant Secretary for Labor-Management Programs may exempt a contracting agency department or agency or groups of departments or agencies from the requirements of this part with respect to a particular contract or subcontract or any class of contracts or subcontracts when the Deputy Assistant Secretary finds that:

(1) The application of any of the requirements of this part would not serve its purposes or would impair the ability of the Government to procure goods or services on an economical and efficient basis; or

(2) Special circumstances require an exemption in order to serve the national interest.

(c) *Procedures for requesting an exemption and withdrawals of exemptions.* Requests for exemptions under this subsection from an agency or department must be in writing, and must be directed to the Deputy Assistant Secretary for Labor-Management Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5603, Washington, DC 20210. The Deputy Assistant Secretary for Labor-Management Programs may withdraw an exemption granted under this section when, in the Deputy Assistant Secretary's judgment, such action is necessary or appropriate to achieve the purposes of this part.

§ 471.4 What employers are not covered under this part?

(a) The following employers are excluded from the definition of ''employer'' in the National Labor Relations Act (NLRA), and are not covered by the requirements of this part:

(1) The United States or any wholly owned Government corporation;

(2) Or any Federal Reserve Bank;

(3) Or any State or political subdivision thereof, or any person subject to the Railway Labor Act;

(4) Or any labor organization (other than when acting as an employer);

(5) Or anyone acting in the capacity of officer or agent of such labor organization.

(b) Additionally, employers exclusively employing workers who are excluded from the definition of ''employee'' under the NLRA are not covered by the requirements of this part. Those excluded employees are employed:

(1) As agricultural laborers;

(2) In the domestic service of any family or person at his home;

(3) By his parent or spouse;

(4) As an independent contractor;

(5) As a supervisor as defined under the NLRA; or

(6) By an employer subject to the Railway Labor Act.

Appendix A to Subpart A of Part 471—Text of Employee Notice Clause

''1. During the term of this contract, the contractor agrees to post a notice, of such size and in such form, and containing such content as the Secretary of Labor shall prescribe, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically. The ''Secretary's Notice'' shall include the following information:

''NOTICE TO EMPLOYEES

RIGHTS OF EMPLOYEES UNDER THE NATIONAL LABOR RELATIONS ACT

''It is the policy of the United States to encourage collective bargaining and protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid and protection.

''Under federal law, you have the right to:

Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.

Form, join or assist a union.

Bargain collectively through a duly selected union for a contract with your employer setting your wages, benefits, hours, and other working conditions.

Discuss your terms and conditions of employment with your co-workers or a union; join other workers in raising work-related complaints with your employer, government agencies, or members of the public; and seek and receive help from a union subject to certain limitations.

Take action with one or more co-workers to improve your working conditions, including attending rallies on non-work time, and leafleting on non-work time in non-work areas.

Strike and picket, unless your union has agreed to a no-strike clause and subject to certain other limitations. In some circumstances, your employer may permanently replace strikers.

Choose not to do any of these activities, including joining or remaining a member of a union.

''It is illegal for your employer to:

Prohibit you from soliciting for the union during non-work time or distributing union literature during non-work time, in non-work areas.

Question you about your union support or activities.

Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in other activity for mutual aid and protection, or because you choose not to engage in any such activity.

Threaten to close your workplace if workers choose a union to represent them.

Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.

Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances, for example, as where doing so might interfere with patient care.

Spy on or videotape peaceful union activities and gatherings or pretend to do so.

It is illegal for a union or for the union that represents you in bargaining with your employer to: discriminate or take other adverse action against you based on whether you have joined or support the union.

''If your rights are violated:

Illegal conduct will not be permitted. The National Labor Relations Board (NLRB), an agency of the United States government, will protect your right to a free choice concerning union representation and collective bargaining and will prosecute violators of the National Labor Relations Act. The NLRB may order an employer to rehire a worker fired in violation of the law and to pay lost wages and benefits and may order an employer or union to cease violating the law. The NLRB can only act, however, if it receives information of unlawful behavior within six months.

''If you believe your rights or the rights of others have been violated, you must contact the NLRB within six months of the unlawful treatment. Employees should seek assistance from the nearest regional NLRB office, which can be found on the Agency's Web site: *http://www.nlrb.gov.*

''Click on the NLRB's page titled About Us, which contains a link, Locating Our Offices. You can also contact the NLRB by calling toll-free: 1–866–667–NLRB (6572) or (TTY) 1–866–315–NLRB (1–866–315–6572) for hearing impaired.

''This is an official Government Notice and must not be defaced by anyone.

''2. The contractor will comply with all provisions of the Secretary's Notice, and related rules, regulations, and orders of the Secretary of Labor.

''3. In the event that the contractor does not comply with any of the requirements set forth in paragraphs (1) or (2) above, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in or adopted pursuant to Executive Order 13496 of January 30, 2009. Such other sanctions or remedies may be imposed as are provided in Executive Order 13496 of January 30, 2009, or by rule, regulation, or order of the Secretary of Labor, or as are otherwise provided by law.

''4. The contractor will include the provisions of paragraphs (1) through (4) herein in every subcontract or purchase order entered into in connection with this contract (unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor. The contractor will take such action with respect to any such subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for non-compliance: Provided, however, if the contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.''

Appendix B to Subpart A of Part 471—Electronic Link Language

RIGHTS OF EMPLOYEES UNDER THE NATIONAL LABOR RELATIONS ACT

''It is the policy of the United States to encourage collective bargaining and protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid and protection.''

Subpart B—General Enforcement; Compliance Review and Complaint Procedures

§ 471.10 How will the Department determine whether a contractor is in compliance with Executive Order 13496 and this part?

(a) The Deputy Assistant Secretary for Federal Contract Compliance may conduct a compliance evaluation to determine whether a contractor holding a covered contract is in compliance with the requirements of this part. Such an evaluation may be limited to compliance with this part or may be included in a compliance evaluation conducted under other laws, Executive Orders, and/or regulations enforced by the Department.

(b) During such an evaluation, a determination will be made whether:

(1) The employee notice required by § 471.2(a) is posted in conspicuous places in and about each of the contractor's establishments and/or construction work sites, including all places where notices to employees are customarily posted both physically and electronically; and

(2) The provisions of the employee notice clause are included in government contracts, subcontracts or purchase orders entered into on or after [THE EFFECTIVE DATE OF FINAL RULE], or that the government contracts, subcontracts or purchase orders have been exempted under § 471.3(b).

(c) The results of the evaluation will be documented in the evaluation record, which will include findings regarding the contractor's compliance with the requirements of Executive Order 13496 and this part and, as applicable, conciliation efforts made, corrective action taken and/or enforcement recommended under § 471.13.

§ 471.11 What are the procedures for filing and processing a complaint?

(a) *Filing complaints.* An employee of a covered contractor may file a complaint alleging that the contractor has failed to post the employee notice as required by Executive Order 13496 and this part; and/or has failed to include the employee notice clause in subcontracts or purchase orders. Complaints may be filed with the Office of Labor-Management Standards (OLMS) or the Office of Federal Contract Compliance Programs (OFCCP) at 200 Constitution Avenue, NW., Washington, DC 20210, or with any OLMS or OFCCP field office.

(b) *Contents of complaints.* The complaint must be in writing and must include the name, address, and telephone number of the employee who filed the complaint (the complainant), the name and address of the contractor alleged to have violated Executive Order 13496 and this part, an identification of the alleged violation and the establishment or construction work site where it is alleged to have occurred, and any other pertinent information that will assist in the investigation and

resolution of the complaint. The complainant must sign the complaint.

(c) *Complaint investigations.* In investigating complaints filed with the Department under paragraph (a) of this section, the Deputy Assistant Secretary for Federal Contract Compliance will evaluate the allegations of the complaint and develop a case record. The record will include findings regarding the contractor's compliance with the requirements of Executive Order 13496 and this part, and, as applicable, a description of conciliation efforts made, corrective action taken, and/or enforcement recommended.

§ 471.12 What are the procedures to be followed when a violation is found during a complaint investigation or compliance evaluation?

(a) If any complaint investigation or compliance evaluation indicates a violation of Executive Order 13496 or this part, the Deputy Assistant Secretary for Federal Contract Compliance will make reasonable efforts to secure compliance through conciliation.

(b) The contractor must correct the violation found by the Department (for example, by posting the required employee notice, and/or by amending its subcontracts or purchase orders with subcontractors to include the employee notice clause), and must commit, in writing, not to repeat the violation, before the contractor may be found to be in compliance with Executive Order 13496 or this part.

(c) If a violation cannot be resolved through conciliation efforts, the Deputy Assistant Secretary for Federal Contract Compliance will refer the matter to the Deputy Assistant Secretary for Labor-Management Programs, who may proceed in accordance with § 471.13.

(d) For reasonable cause shown, the Deputy Assistant Secretary for Labor-Management Programs may reconsider, or cause to be reconsidered, any matter on his or her own motion or pursuant to a request.

§ 471.13 Under what circumstances, and how, will enforcement proceedings under Executive Order 13496 be conducted?

(a) *General.* (1) Violations of Executive Order 13496 and this part may result in administrative proceedings to enforce the Order and the part. The bases for a finding of a violation may include, but are not limited to:

(i) The results of a compliance evaluation;

(ii) The results of a complaint investigation;

(iii) A contractor's refusal to allow a compliance evaluation or complaint investigation to be conducted; or

(iv) A contractor's refusal to cooperate with the compliance evaluation or complaint investigation, including failure to provide information sought during those procedures.

(v) A contractor's refusal to take such action with respect to a subcontract as is directed by the Deputy Assistant Secretary for Federal Contract Compliance or the Deputy Assistant Secretary for Labor-Management as a means of enforcing compliance with the provision of this part.

(vi) A subcontractor's refusal to adhere to the requirements of this part regarding employee notice or inclusion of the contract clause in its subcontracts.

(2) If a determination is made by the Deputy Assistant Secretary for Federal Contract Compliance that the Executive Order or the regulations in this part have been violated, and the violation has not been corrected through conciliation, he will refer the matter to the Deputy Assistant Secretary for Labor-Management Programs for enforcement consideration. The Deputy Assistant Secretary for Labor-Management Programs may refer the matter to the Solicitor of Labor for institution of administrative enforcement proceedings.

(b) *Administrative enforcement proceedings.* (1) Administrative enforcement proceedings will be conducted under the control and supervision of the Solicitor of Labor, under the hearing procedures set forth in 29 CFR part 18, Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges.

(2) The administrative law judge will certify his or her recommended decision issued pursuant to 29 CFR 18.57 to the Assistant Secretary. The decision will be served on all parties and amici.

(3) Within 25 days (10 days in the event that the proceeding is expedited) after receipt of the administrative law judge's recommended decision, either party may file exceptions to the decision. Exceptions may be responded to by the other parties within 25 days (7 days if the proceeding is expedited) after receipt. All exceptions and responses must be filed with the Assistant Secretary.

(4) After the expiration of time for filing exceptions, the Assistant Secretary may issue a final administrative order, or may make such other disposition of the matter as he or she finds appropriate. In an expedited proceeding, unless the Assistant Secretary issues a final administrative order within 30 days after the expiration of time for filing exceptions, the administrative law judge's recommended decision will become the final administrative order. If the Assistant Secretary determines that the contractor has violated Executive Order 13496 or the regulations in this part, the final administrative order will order the contractor to cease and desist from the violations, require the contractor to provide appropriate remedies, or, subject to the procedures in § 471.14, impose appropriate sanctions and penalties, or any combination thereof.

§ 471.14 What sanctions and penalties may be imposed for noncompliance, and what procedures will the Department follow in imposing such sanctions and penalties?

(a) After a final decision on the merits has been issued and before imposing the sanctions and penalties described in paragraph (d) of this section, the Assistant Secretary will consult with the affected contracting agencies, and provide the heads of those agencies the opportunity to respond and provide written objections.

(b) If the contracting agency provides written objections, those objections must include a complete statement of reasons for the objections, among which reasons must be a finding that, as applicable, the completion of the contract, or further contracts or extensions or modifications of existing contracts, is essential to the agency's mission.

(c) The sanctions and penalties described in this section, however, will not be imposed if:

(1) The head of the contracting agency, or his or her designee, continues to object to the imposition of such sanctions and penalties, or

(2) The contractor has not been afforded an opportunity for a hearing.

(d) In enforcing Executive Order 13496 and this part, the Assistant Secretary may:

(1) Direct a contracting agency to cancel, terminate, suspend, or cause to be canceled, terminated or suspended, any contract or any portions thereof, for failure of the contractor to comply with its contractual provisions as required by section 7(a) of Executive Order 13496 and the regulations in this part. Contracts may be canceled, terminated, or suspended absolutely, or continuance of contracts may be conditioned upon compliance.

(2) Issue an order of debarment under section 7(b) of Executive Order 13496 providing that one or more contracting agencies must refrain from entering into further contracts, or extensions or other modification of existing contracts, with any non-complying contractor.

(3) Issue an order of debarment under section 7(b) of Executive Order 13496

providing that no contracting agency may enter into a contract with any non-complying subcontractor.

(e) Whenever the Assistant Secretary has exercised his or her authority pursuant to paragraph (d) of this section, the contracting agency must report the actions it has taken to the Assistant Secretary within such time as the Assistant Secretary will specify.

(f) Periodically, the Assistant Secretary will publish and distribute, or cause to be published and distributed, to all executive agencies a list of the names of contractors and subcontractors that have, in the judgment of the Assistant Secretary under § 471.13(b)(4) of this part, failed to comply with the provisions of the Executive Order and this part, or of related rules, regulations, and orders of the Secretary of Labor, and as a result have been declared ineligible for future contracts or subcontracts under the Executive Order and the regulations in this part.

§ 471.15 Under what circumstances must a contractor be provided the opportunity for a hearing?

Before the Assistant Secretary takes the following action, a contractor or subcontractor must be given the opportunity for a hearing before the Assistant Secretary:

(a) Issues an order for cancellation, termination, or suspension of any contract or debarment of any contractor from further Government contracts under sections 7(a) or (b) of Executive Order 13496 and § 471.14(d)(1) or (2) of this part; or

(b) Includes the contractor on a published list of non-complying contractors under section 7(c) of Executive Order 13496 and § 471.14(f) of this part.

§ 471.16 Under what circumstances may a contractor be reinstated?

Any contractor or subcontractor debarred from or declared ineligible for further contracts or subcontracts under Executive Order 13496 and this part may request reinstatement in a letter to the Assistant Secretary. If the Assistant Secretary finds that the contractor or subcontractor has come into compliance with Executive Order 13496 and this part and has shown that it will carry out Executive Order 13496 and this part, the contractor or subcontractor may be reinstated.

Subpart C—Ancillary Matters

§ 471.20 What authority under this part or Executive Order 13496 may the Secretary delegate, and under what circumstances?

Section 11 of Executive Order 13496 grants the Secretary the right to delegate any of his/her functions or duties under the Order to any officer in the Department of Labor or to any other officer in the executive branch of the Government, with the consent of the head of the department or agency in which that officer serves.

§ 471.21 Who will make rulings and interpretations under Executive Order 13496 and this part?

Rulings under or interpretations of Executive Order 13496 or the regulations contained in this part will be made by the Assistant Secretary or his or her designee.

§ 471.22 What actions may the Assistant Secretary take in the case of intimidation and interference?

The sanctions and penalties contained in § 471.14 of this part may be exercised by the Assistant Secretary against any contractor or subcontractor who fails to take all necessary steps to ensure that no person intimidates, threatens, or coerces any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in a compliance evaluation, complaint investigation, hearing, or any other activity related to the administration or enforcement of Executive Order 13496 or this part.

§ 471.23 What other provisions apply to this part?

(a) The regulations in this part implement Executive Order 13496 only, and do not modify or affect the interpretation of any other Department of Labor regulations or policy.

(b) Consistent with section 9 of Executive Order 13496, each contracting department and agency must cooperate with the Assistant Secretary, the Deputy Assistant Secretary for Labor-Management Programs, and/or the Deputy Assistant Secretary for Federal Contract Compliance, and must provide such information and assistance as the Assistant Secretary or Deputy Assistant Secretary may require, in the performance of his or her functions under the Executive Order and the regulations in this part.

(c)(1) Consistent with section 15 of Executive Order 13496, nothing in this subpart shall be construed to impair or otherwise affect:

(i) Authority granted by law to a department, agency, or the head thereof; or

(ii) Functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(2) This subpart shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) Consistent with section 15 of Executive Order 13496, nothing contained in the Executive Order or this part, or promulgated pursuant to Executive Order 13496 or this part, is intended to create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Neither Executive Order 13496 nor this part creates any such right or benefit.

Signed in Washington, DC, July 20, 2009.

Shelby Hallmark,

Acting Assistant Secretary for Employment Standards.

John Lund,

Deputy Assistant Secretary, Office of Labor-Management Standards.

Lorenzo D. Harrison,

Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs.

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H.J. Res. 56/P.L. 111–42
Approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes. (July 28, 2009; 123 Stat. 1963)
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A new table will be published in the first issue of each month.

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