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Contents

Federal Register

Vol. 74, No. 111

Thursday, June 11, 2009

Agriculture Department
See Commodity Credit Corporation
See Forest Service

Air Force Department
NOTICES
Intent to Grant an Exclusive Patent License, 27779

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Draft Guideline:
Prevention of Catheter-Associated Urinary Tract Infections 2008; Correction, 27804–27805
Meetings:
Board of Scientific Counselors, Coordinating Center for Health Promotion, 27805

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27801–27803

Commerce Department
See Foreign–Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27772–27773

Commodity Credit Corporation
NOTICES
Funds Availability:
Collection, Harvest, Storage, and Transportation of Eligible Material, 27767–27772

Defense Department
See Air Force Department
See Navy Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27798–27800

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27779–27781
Final Priorities, Requirements, Definitions, and Selection Criteria:
Striving Readers, 27892–27897
New Awards for Fiscal Year 2009:
Striving Readers, 27897–27902

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Approval and Promulgation of Implementation Plans:
Georgia; State Implementation Plan Revision, 27711–27714
Hawaii, 27708–27711
Approval and Promulgation of State Plans for Designated Facilities and Pollutants:
Davidson, Knox, and Memphis-Shelby Counties, TN, 27722–27723
Jefferson County, KY; and Forsyth County, NC; and Knox and Davidson Counties, TN, 27720–27722
Tennessee and Kentucky, 27718–27720
Revisions to the California State Implementation Plan:
Antelope Valley Air Quality Management District and South Coast Air Quality Management District, 27716–27718
Monterey Bay Unified Air Pollution Control District, Placer County Air Pollution Control District, 27714–27716
PROPOSED RULES
Approval and Promulgation of Air Quality Implementation Plans:
West Virginia; Clean Air Interstate Rule, 27731–27737
Approval and Promulgation of Implementation Plans:
Georgia; State Implementation Plan Revision, 27737–27738
Revisions to the California State Implementation Plan:
Antelope Valley Air Quality Management District and South Coast Air Quality Management District, 27738–27739
Monterey Bay Unified Air Pollution Control District, Placer County Air Pollution Control District, 27738
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27788–27789
Meetings:
Environmental Financial Advisory Board, 27789–27790
Proposed CERCLA Ability-To-Pay Settlement:
Crumb Trailer Park Superfund Site, Village of West Winfield, Herkimer County, NY, 27790
Proposed Consent Decree, Clean Air Act Citizen Suit, 27790–27792

Federal Aviation Administration
RULES
Airworthiness Directives:
ATR Model ATR42–200, ATR42–300, ATR42–320, ATR42 500, ATR72–101, ATR72–201, et al. Airplanes, 27695–27698
Boeing Model 737 300, 400, 500, 600, 700, 700C, 800, and 900 Series Airplanes, 27698–27702
Boeing Model 737–300, –400, and –500 Series Airplanes, 27691–27693
Boeing Model 747 Airplanes, 27693–27695
Boeing Model 757–200, –200CB, and –300 Series Airplanes, 27704–27706
Bombardier Model DHC 8 400 Series Airplanes, 27686–27689
Construcciones Aeronauticas, S.A. (CASA), Model C 212 CB, et al., Airplanes, 27702–27704
GROB–Werke Model G120A Airplanes, 27689–27691

Rolls-Royce Corporation AE 2100D2, AE 2100D2A, AE 2100D3, and AE 2100J Turboprop Engines, 27684–27686
PROPOSED RULES
Airworthiness Directives:
BAE Systems (Operations) Limited Model BAe 146 and Avro 146 RJ Airplanes, 27725–27727

Federal Deposit Insurance Corporation
RULES
Technical Amendments to Interest Rate Restrictions on Insured Depository Institutions That Are Not Well Capitalized:
Correction, 27679–27683
Withdrawal, 27683

Federal Energy Regulatory Commission
NOTICES
Applications:
Afton, Lincoln County, WY, 27783–27784
Cadeville Gas Storage LLC, 27781
Hamilton, OH, 27781–27782
Northwest Pipeline GP and Puget Sound Energy, Inc., 27782–27783
Authorization for Continued Project Operation:
Augusta Canal Authority, 27784
Combined Filings, 27784–27785
Environmental Assessment; Intent, etc.:
Transcontinental Gas Pipe Line Co., LLC, 27785–27787
Environmental Impact Statements; Availability, etc.:
South Feather Water and Power Agency, 27787–27788

Federal Maritime Commission
NOTICES
Agreements Filed, 27793–27794

Federal Railroad Administration
NOTICES
Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from the Requirements, 27860–27861

Federal Reserve System
NOTICES
Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 27792
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 27792–27793

Federal Trade Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27794–27798

Fiscal Service
RULES
Debt Collection Authorities under the Debt Collection Improvement Act (1996), 27707–27708
PROPOSED RULES
Offset of Tax Refund Payments to Collect Past-Due, Legally Enforceable Nontax Debt, 27730–27731

Food and Drug Administration
RULES
Oral Dosage Form New Animal Drugs:
Methimazole, 27706–27707
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27802
Draft Guidance for Industry:
Questions and Answers Regarding the Reportable Food Registry, etc., 27803–27804
Meetings:
Peripheral and Central Nervous System Drugs Advisory Committee, 27809–27810

Foreign–Trade Zones Board
NOTICES
Expansion of Foreign–Trade Zone 84:
Houston, TX, Area, 27777–27778

Forest Service
NOTICES
Meetings:
Oregon Coast Provincial Advisory Committee, 27772

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27798
Federal Acquisition Regulation (FAR):
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27798–27800

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Meetings:
Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives (for 2020), 27800–27801

Homeland Security Department
See U.S. Citizenship and Immigration Services

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27812–27822

Industry and Security Bureau
NOTICES
Action Affecting Export Privileges:
Ghassan Tabbaa, 27773–27774
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27774

Interior Department
See Land Management Bureau

Internal Revenue Service
RULES
Application of Separate Limitations to Dividends from Noncontrolled Section 902 Corporations, 27868–27890
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27862–27865

International Trade Administration
NOTICES
Antidumping:
Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 27775–27777
Certain Steel Nails from the People's Republic of China, 27777

International Trade Commission
NOTICES
Investigations:
Wire Decking from China, 27823–27824

Labor Department
See Labor Statistics Bureau
See Occupational Safety and Health Administration

Labor Statistics Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27824–27826

Land Management Bureau
NOTICES
Public Land Order:
Department of Energy Crescent Junction Uranium Mill Tailings Repository; Utah; Withdrawal and Transfer of Jurisdiction, 27822
Withdrawal of Public Lands to Protect Townsend's Big eared Bat Maternity Roosts; Colorado, 27823

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27798–27800

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 27827–27828
Meetings; Sunshine Act, 27828–27829

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 27806–27808
National Cancer Institute, 27806, 27808
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 27808
National Institute of Biomedical Imaging and Bioengineering, 27808–27809
National Institute of Dental and Craniofacial Research, 27806
National Institute of General Medical Sciences, 27805

National Oceanic and Atmospheric Administration
PROPOSED RULES
List of Fisheries for 2010, 27739–27766

National Science Foundation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27829–27830

Navy Department
NOTICES
Availability of Record of Decision:
Jacksonville Range Complex, 27778
Navy Cherry Point Range Complex, 27778–27779
Virginia Capes Range Complex, 27778

Nuclear Regulatory Commission
PROPOSED RULES
Enhancements to Emergency Preparedness Regulations, 27724–27725
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27830–27831
Demand for Information:
General Motors Corp., Detroit, MI, 27831
Issuance and Availability of Draft NUREG/CR:
Diversity Strategies for Nuclear Power Plant Instrumentation and Control Systems, 27831–27832
Order Modifying License:
Dairyland Power Cooperative, 27832–27837
R.E. Ginna Nuclear Power Plant, LLC, 27837–27842

Occupational Safety and Health Administration
NOTICES
National Advisory Committee on Occupational Safety and Health; Request for Nominations, 27826–27827

Personnel Management Office
NOTICES
Federal Employees Health Benefits Program:
Medically Underserved Areas (2010), 27842

Postal Regulatory Commission
NOTICES
Global Expedited Package Services 1 Contract, 27842–27843
Postal Service Price Changes, 27843–27845
Special Summer Postal Rate Program, 27845–27851

Public Debt Bureau
See Fiscal Service

Securities and Exchange Commission
NOTICES
Applications:
Nuveen Tax–Advantaged Total Return Strategy Fund, et al., 27851–27854
Meetings; Sunshine Act, 27854
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 27856–27858
New York Stock Exchange LLC, 27854–27856

Social Security Administration
PROPOSED RULES
Exclusion of Certain Military Pay from Deemed Income and Resources, 27727–27730

State Department
NOTICES
Meetings:
United States–Chile Environment Affairs Council and Joint Commission for Environmental Cooperation, 27858–27859

Surface Transportation Board
NOTICES
Abandonment Exemption:
CSX Transportation, Inc., Glynn County, GA, 27859–27860
Acquisition and Operation Exemption:
Grenada Railway, LLC et al. , 27860
Continuance in Control Exemption:
Kern W. Schumacher et al.; Correction, 27861

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Surface Transportation Board

NOTICES

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q), 27859

Treasury Department

See Fiscal Service

See Internal Revenue Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27861–27862

U.S. Citizenship and Immigration Services

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 27810–27812

Separate Parts In This Issue

Part II

Treasury Department, Internal Revenue Service, 27868–27890

Part III

Education Department, 27892–27902

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

10 CFR

Proposed Rules:

50 27724
52 27724

12 CFR

337 (2 documents) 27679, 27683

14 CFR

39 (9 documents) 27684, 27686, 27689, 27691, 27693, 27695, 27698, 27702, 27704

Proposed Rules:

39 27725

20 CFR

Proposed Rules:

416 27727

21 CFR

520 27706

26 CFR

1 27868
602 27868

31 CFR

285 27707

Proposed Rules:

285 27730

40 CFR

52 (4 documents) 27708, 27711, 27714, 27716
62 (3 documents) 27718, 27720, 27722

Proposed Rules:

52 (4 documents) 27731, 27737, 27738

50 CFR

Proposed Rules:

229 27739

Rules and Regulations

Federal Register

Vol. 74, No. 111

Thursday, June 11, 2009

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

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

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Interest Rate Restrictions on Insured Depository Institutions That Are Not Well Capitalized

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations relating to the interest rate restrictions that apply to insured depository institutions that are not well capitalized. Under the amended regulations, such insured depository institutions generally will be permitted to offer the ''national rate'' plus 75 basis points. The ''national rate'' will be defined, for deposits of similar size and maturity, as a simple average of rates paid by all insured depository institutions and branches for which data are available. For those cases in which the FDIC determines that the national rate as published on the FDIC's Web site does not represent the prevailing rate in a particular market, as indicated by available evidence, the depository institution will be permitted to offer the prevailing rate in that market plus 75 basis points. The purpose of this final rule is to clarify the interest rate restrictions for certain insured depository institutions and examiners.

DATES: The final rule is effective on January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Louis J. Bervid, Senior Examination Specialist, Division of Supervision and Consumer Protection, (202) 898–6896 or *lbervid@fdic.gov*; or Christopher L. Hencke, Counsel, Legal Division, (202) 898–8839 or *chencke@fdic.gov*, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Section 29 of the Act

Section 29 of the Federal Deposit Insurance Act (''FDI Act'') provides that an insured depository institution that is not well capitalized may not accept deposits by or through deposit brokers. *See* 12 U.S.C. 1831f(a). Notwithstanding this prohibition, section 29 also provides that an adequately capitalized institution may accept brokered deposits if it obtains a waiver from the FDIC. *See* 12 U.S.C. 1831f(c). In contrast, an undercapitalized institution may not accept brokered deposits under any circumstances. *See* 12 U.S.C. 1831f(a) and (c).

The purpose of section 29 generally is to limit the acceptance or solicitation of deposits by insured depository institutions that are not well capitalized. This purpose is promoted through two means: (1) The prohibition against the acceptance of brokered deposits by depository institutions that are less than well capitalized (as described above); and (2) certain restrictions on the interest rates that may be paid by such institutions. In enacting section 29, Congress added the interest rate restrictions to prevent institutions from avoiding the prohibition against the acceptance of brokered deposits by soliciting deposits internally through ''money desk operations.'' Congress viewed the gathering of deposits by weaker institutions through either third-party brokers or ''money desk operations'' as potentially an unsafe or unsound practice. *See* H.R. Conf. Rep. No. 101–222 at 402–403 (1989), reprinted in 1989 U.S.C.C.A.N. 432, 441–42.

Section 29 imposes different interest rate restrictions on different categories of insured depository institutions that are less than well capitalized. These categories are (1) adequately capitalized institutions with waivers to accept brokered deposits; (2) adequately capitalized institutions without waivers to accept brokered deposits; and (3) undercapitalized institutions. The statutory restrictions for each category are described in detail below.

Adequately capitalized institutions with waivers to accept brokered deposits. Institutions in this category may not pay a rate of interest on deposits that ''significantly exceeds'' the following: ''(1) The rate paid on deposits of similar maturity in such institution's normal market area for deposits accepted in the institution's normal market area; or (2) the national rate paid on deposits of comparable maturity, as established by the [FDIC], for deposits accepted outside the institution's normal market area.'' 12 U.S.C. 1831f(e).

In this category, an institution must adhere to (or not ''significantly exceed'') the prevailing rates in its own ''normal market area'' only with respect to deposits accepted from that market area. For other deposits, the institution is permitted to offer (but not ''significantly exceed'') the ''national rate'' established by the FDIC. Thus, an institution in this category is not permitted to outbid local institutions for local deposits but is permitted to compete with non-local institutions for non-local deposits.

Adequately capitalized institutions without waivers to accept brokered deposits. In this category, institutions may not offer rates that ''are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.'' 12 U.S.C. 1831f(g)(3). In other words, the institution must adhere to the prevailing rates in its own ''normal market area'' for all deposits (whether local or non-local). Thus, the institution will be unable to compete with non-local institutions for non-local deposits unless the rates in the institution's own ''normal market area'' are competitive with the non-local rates.

For institutions in this category, the statute restricts interest rates in an indirect manner. Rather than simply setting forth an interest rate restriction for adequately capitalized institutions without waivers, the statute defines the term ''deposit broker'' to include ''any insured depository institution that is not well capitalized * * * which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.'' 12 U.S.C. 1831f(g)(3). In other words, the depository institution itself is a ''deposit broker'' if it offers rates significantly higher than the prevailing rates in its own ''normal market area.'' Without a waiver, the institution cannot accept deposits from a ''deposit broker.'' Thus, the institution cannot accept these deposits from itself. In this indirect

manner, the statute prohibits institutions in this category from offering rates significantly higher than the prevailing rates in the institution's ''normal market area.''

Undercapitalized institutions. In this category, institutions may not offer rates ''that are significantly higher than the prevailing rates of interest on insured deposits (1) in such institution's normal market areas; or (2) in the market area in which such deposits would otherwise be accepted.'' 12 U.S.C. 1831f(h). Thus, for deposits in its own ''normal market area,'' an undercapitalized institution must offer rates that are not ''significantly higher'' than the local rates. For non-local deposits, the institution must offer rates that are not ''significantly higher'' than either (1) the institution's own local rates; or (2) the applicable non-local rates. In other words, the institution must adhere to the prevailing rates in its own ''normal market area'' for all deposits (whether local or non-local) and also must adhere to the prevailing rates in the non-local area for any non-local deposits. Thus, the institution will be unable to outbid non-local institutions for non-local deposits even if the non-local rates are lower than the rates in the institution's own ''normal market area.''

As described above, section 29 of the FDI Act imposes interest rate restrictions based on a depository institution's capital category (and whether the depository institution has obtained a waiver to accept brokered deposits). Also, section 29 authorizes the FDIC to ''impose, by regulation or order, such additional restrictions on the acceptance of brokered deposits by any institution as the [FDIC] may determine to be appropriate.'' 12 U.S.C. 1831f(f).

II. Section 337.6 of the FDIC's Regulations

The FDIC has implemented section 29 of the FDI Act through section 337.6 of the FDIC's regulations. *See* 12 CFR 337.6. Prior to its amendment through this final rule, section 337.6 added several significant definitions to the statutory rules. First, the ''national rate'' was defined. Second, the terms ''significantly exceeds'' and ''significantly higher'' were defined. Third, the term ''market area'' was defined. Each of these definitions, and the reasoning behind the definitions, are discussed in greater detail below.

The ''National Rate.'' In section 337.6, prior to the adoption of this final rule, the ''national rate'' was defined as follows: ''(1) 120 percent of the current yield on similar maturity U.S. Treasury obligations; or (2) in the case of any deposit at least half of which is uninsured, 130 percent of such applicable yield.'' 12 CFR 337.6(b)(2)(ii)(B). In defining the ''national rate'' in this manner, the FDIC relied upon the fact that such a definition is ''objective and simple to administer.'' 57 FR 23933, 23938 (June 5, 1992). By using percentages (120 percent or 130 percent of the yield on U.S. Treasury obligations) instead of a fixed number of basis points, the FDIC hoped to ''allow for greater flexibility should the spread to Treasury securities widen in a rising interest rate environment.'' Id. In deciding not to rely on published deposit rates, the FDIC offered the following explanation: ''The FDIC believes this approach would not be timely because data on market rates must be available on a substantially current basis to achieve the intended purpose of this provision and permit institutions to avoid violations. At this time, the FDIC has determined not to tie the national rate to a private publication. The FDIC has not been able to establish that such published rates sufficiently cover the markets for deposits of different sizes and maturities.'' Id. at 23939.

''Significantly Exceeds.'' Through section 337.6, the FDIC has provided that a rate of interest ''significantly exceeds'' another rate, or is ''significantly higher'' than another rate, if the first rate exceeds the second rate by more than 75 basis points. *See* 12 CFR 337.6(b)(2)(ii), (b)(3)(ii) and (b)(4). In adopting this standard, the FDIC offered the following explanation: ''Based upon the FDIC's experience with the brokered deposit prohibitions to date, it is believed that this number will allow insured depository institutions subject to the interest rate ceilings * * * to compete for funds within markets, and yet constrain their ability to attract funds by paying rates significantly higher than prevailing rates.'' 57 FR at 23939.

''Market Area.'' In section 337.6, the term ''market area'' is defined as follows: ''A market area is any readily defined geographical area in which the rates offered by any one insured depository institution soliciting deposits in that area may affect the rates offered by other insured depository institutions operating in the same area.'' 12 CFR 337.6(b)(4). In adopting this definition, the FDIC offered the following explanation: ''Under the final rule, the market area will be determined pragmatically, on a case-by-case basis, based on the evident or likely impact of a depository institution's solicitation of deposits in a particular area, taking into account the means and media used and volume and sources of deposits resulting from such solicitation.'' 57 FR at 23939.

These rules and definitions in section 337.6 have been difficult for insured depository institutions and examiners to apply. Prior to the adoption of this final rule, one issue was that section 337.6 defined ''market area'' but did not define ''normal market area.'' In the absence of a definition, institutions and examiners struggled to determine ''normal market areas.'' [1]

Another issue was that the definition of the ''national rate'' became outdated. As discussed above, prior to the adoption of this final rule, the ''national rate'' was defined as ''120 percent of the current yield on similar U.S. Treasury obligations'' (or 130 percent in the case of a deposit ''at least half of which is uninsured''). 12 CFR 337.6(b)(2)(ii)(B). For many years, this definition functioned well because rates on Treasury obligations tracked closely with rates on deposits. At present, however, the rates on certain Treasury obligations are low compared to deposit rates. Consequently, the ''national rate'' as defined in the FDIC's regulations has been artificially low. By setting a low rate, the FDIC's regulations required some insured depository institutions to offer unreasonably low rates on some deposits, thereby restricting access even to market-rate funding.

III. The Proposed Rule

In response to the issues discussed above, the FDIC sought public comments on a proposed rule. *See* 74 FR 5904 (February 3, 2009). Through the proposed rule, the FDIC addressed two basic problems: (1) The obsolescence of the FDIC's definition of the ''national rate''; and (2) the difficulty experienced by insured depository institutions and examiners in determining prevailing rates in ''normal market areas'' and other market areas.

In response to the first problem, the FDIC proposed to redefine the ''national rate'' as ''a simple average of rates paid by all insured depository institutions and branches for which data are available.'' In other words, the FDIC proposed to sever the connection between the national rate and the yield on U.S. Treasury obligations.

In response to the second problem, the FDIC proposed to create a presumption that the prevailing rate in any market would be the national rate

[1] Prior to 1992, the term ''normal market area'' was defined in a footnote in section 337.6. Under this definition, a depository institution's ''normal market area'' depended upon the institution's advertising practices in soliciting deposits. *See* 12 CFR 337.6(a)(1)(ii) (1992) (footnote 11).

(as defined above). An insured depository institution could rebut this presumption by presenting evidence to the FDIC that the prevailing rate in a particular market is higher than the national rate. If the FDIC agreed with this evidence, the institution would be permitted to pay as much as 75 basis points above the local prevailing rate.

IV. The Comments

In response to the publication of the proposed rule, the FDIC received twenty comments from insured depository institutions, banking associations and bank service providers. Some commenters urged the FDIC to adopt tougher interest rate restrictions on insured depository institutions that are not well capitalized. They expressed concern that such institutions, through high interest rates, are driving up costs for healthy banks. Most commenters, however, urged the FDIC to provide insured depository institutions with greater flexibility in offering interest rates.

The commenters did not dispute that the ''national rate'' has become outdated. Also, they generally supported the concept of allowing an insured depository institution to submit evidence that the national rate, in a particular market, does not represent the actual prevailing rate. In regard to determining the prevailing or applicable rate in a particular market, the commenters made various suggestions including the following:

- A bank should be free to choose any of the following rates as the applicable prevailing rate: (1) The national rate; (2) the State rate; (3) the ''metropolitan statistical area'' or ''MSA'' rate; or (4) the Internet rate (for Internet banks).
- The prevailing rate should be based upon the rates offered by insured depository institutions but also should be based upon the rates offered by credit unions (and perhaps other entities not insured by the FDIC).
- The prevailing rate should be based upon the highest rates in a market. The lowest rates should not be considered because banks offering low rates are not competing for deposits.
- Different rates should apply to different deposit products. For example, time deposits should not be compared to deposits without maturity dates. Further, deposits without maturity dates should be divided into smaller categories based on distinct features (for example, ''money market deposit accounts'' or ''MMDAs'' could be separated from ''negotiable order of withdrawal'' or ''NOW'' accounts).
- Certain types of deposit accounts (such as transaction accounts) should be exempt from any interest rate restrictions because such accounts represent core deposits.

V. The Final Rule

After considering the comments, the FDIC has decided to adopt certain amendments to section 337.6. Each of these amendments is discussed in turn below.

Paragraph (a)(5)(iii). Prior to the adoption of the final rule, this paragraph provided that the term ''deposit broker'' includes ''any insured depository institution that is not well capitalized, and any employee of any such insured depository institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.'' This provision in the regulations is based upon corresponding language in the statute itself. *See* 12 U.S.C. 1831f(g)(3). As previously discussed, the effect of this provision is to prohibit certain insured depository institutions (adequately capitalized institutions without waivers to accept brokered deposits) from offering rates of interest significantly higher than the prevailing rates in the institution's normal market area.

Through the proposed rule, the FDIC proposed adding the following sentence: ''For purposes of this paragraph, the prevailing rates of interest in such depository institution's normal market area shall be deemed to be the national rate as defined in paragraph (b)(2)(ii)(B) unless the FDIC determines, based on available evidence, that the prevailing rates differ from the national rate.'' Through the final rule, the FDIC has adopted the substance of this provision but the FDIC has decided not to add this sentence to paragraph (a)(5)(iii). Rather, the FDIC has moved this provision to new paragraph (e) (discussed below).

Paragraph (b)(2)(ii)(B). As amended by the final rule, this paragraph defines the ''national rate'' as follows: ''[T]he national rate shall be a simple average of rates paid by all insured depository institutions and branches for which data are available. This rate shall be determined by the FDIC.''

In adopting this definition, the FDIC does not mean to prevent insured depository institutions from offering evidence that the prevailing rate in a particular market differs from the national rate. On the contrary, the FDIC will allow insured depository institutions to submit such evidence under new paragraph (e) (discussed below). The purpose of this paragraph (b)(2)(ii)(B) is simply to provide insured depository institutions and examiners with a clear ''safe harbor'' that can be used in determining permissible rates. This ''safe harbor'' (*i.e.,* the rate published by the FDIC) will be based upon the rates offered by all insured depository institutions and branches.

The FDIC intends to publish or post the national rate on its Web site. In publishing the national rate, the FDIC would publish separate rates for deposits of different amounts and maturities. In addition, the FDIC might publish separate rates for different types of deposit products. For example, the FDIC might publish a rate for NOW accounts and a separate rate for MMDAs.

Some commenters suggested that the FDIC's definition of the ''national rate'' (based on all insured depository institutions and branches) is too strict. These commenters argued that the FDIC, in calculating a national average, should use no institutions or branches except those offering the highest rates.

For two reasons, the FDIC has not adopted this suggestion. First, the exclusion of the rates offered by some insured depository institutions and branches would result in a national rate that does not represent a true average national rate. On the contrary, the exclusion of low rates would produce a national rate that exceeds the true average. Such a rate would fail to serve as a meaningful restriction on insured depository institutions that are not well capitalized. Second, for cases in which the FDIC's published national rate does not represent the actual prevailing rate in a particular market, the FDIC believes that insured depository institutions will be given a fair opportunity to establish the prevailing rate through new paragraph (e) (discussed below).

Paragraph (b)(4). Prior to the adoption of the final rule, this paragraph defined ''market area.'' Also, this paragraph set forth a procedure (interpolation) for determining average or effective yields on time deposits with odd maturities in a particular market area. Through the final rule, the substance of these provisions has not been changed but the provisions have been moved to new paragraph (e) (discussed below).

By its own terms, paragraph (b)(4) applied solely to the interest rate restrictions applicable to (1) adequately capitalized insured depository institutions with waivers to accept brokered deposits (*see* paragraph (b)(2)(ii)(A)); and (2) undercapitalized insured depository institutions (*see* paragraph (b)(3)(ii)). It did not apply to

the interest rate restrictions applicable to adequately capitalized insured depository institutions without waivers to accept brokered deposits (*see* paragraph (a)(5)(iii)). This limitation on paragraph (b)(4) seemed out of place. For this reason, through the final rule, the FDIC has removed paragraph (b)(4) and moved its provisions to new paragraph (e). The latter paragraph is discussed below.

Paragraph (e). Under new paragraph (e), ''a presumption shall exist that the prevailing rate or effective yield in the relevant market is the national rate * * * unless the FDIC determines, based on available evidence, that the effective yield in that market differs from the national rate.'' Under this provision, an institution not choosing to avail itself of the national rate will be able to assert it is operating in a high-rate environment and provide evidence of such to the appropriate FDIC regional office. New paragraph (e) specifies that the FDIC, in evaluating such evidence, may consider segmented market rate information (for example, evidence by State, county or MSA). Also, the FDIC may consider evidence as to the rates offered by credit unions if the insured depository institution competes directly with the credit unions in the particular market. Finally, the FDIC may consider evidence that the rates on certain deposit products differ from the rates on other products. For example, in a particular market, the rates on NOW accounts might differ from the rates on MMDAs. NOW accounts might be distinguished from MMDAs because the two types of accounts are subject to different legal requirements. *See* 12 U.S.C. 1832 and 12 CFR 204.2(e)(2) (dealing with NOW accounts); 12 CFR 204.2(d)(2) (dealing with MMDAs).

The FDIC does not intend, however, to provide the insured depository institution (being less than well capitalized) with complete flexibility in determining the prevailing rates on various deposit products. For example, the FDIC will not consider alleged distinctions between the MMDAs offered by one insured depository institution and the MMDAs offered by other insured depository institutions in the same market. Such an approach would enable an insured depository institution, by adding special features to its deposit products, to avoid comparison to the interest rates offered by other insured depository institutions located in the same area. This result would be inconsistent with the purpose of section 29 of the FDI Act, which is meant to restrict the interest rates that can be offered by insured depository institutions that are not well capitalized.

Though the final rule revises the definition of the ''national rate'' and changes the methodology for determining prevailing rates in different markets, the final rule does not change the meaning of ''significantly exceeds'' or ''significantly higher.'' Under the amended regulations, an interest rate will continue to be ''significantly higher'' than a second rate if the first rate exceeds the second rate by more than 75 basis points. Most of the commenters did not object to this standard.

The final rule will not become effective until January 1, 2010, somewhat over six months after the date of publication in the **Federal Register**. The FDIC believes that a delayed effective date may be necessary to enable insured depository institutions to adjust to the new rules.[2] Notwithstanding this delayed effective date, the FDIC intends to post national average rates on its Web site immediately. These rates may assist insured depository institutions in complying with the current rules as well as the new rules. Indeed, under either set of rules, the staff believes that the national average rates may represent the prevailing rates in many market areas. For this reason, the FDIC would not object to the immediate use of the posted rates by an insured depository institution that is not well capitalized though such use will not be mandatory.

VI. Conclusion

The purpose of the final rule is to provide examiners and insured depository institutions that are not well capitalized with a clear method for determining the highest permissible interest rates. Under the amended regulations, an insured depository institution will be able to ascertain the ''national rate'' and the applicable rate cap by checking the FDIC's Web site. In those cases in which the depository institution believes that the average rate in a relevant market exceeds the national rate, the depository institution will be permitted to offer evidence of such higher rate. Assuming the evidence confirms the higher rate, the institution will be permitted to offer rates up to the higher rate cap.

[2] The delayed effective date also is consistent with the goals of section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994, which generally requires the Federal banking agencies to make new rules or rule changes that impose additional reporting, disclosure or other requirements effective on the first day of a calendar quarter. Public Law 103–325, 108 Stat. 2214–15.

Riegle Community Development and Regulatory Improvement Act

The final rule does not impose any new reporting or disclosure requirements on insured depository institutions under the Riegle Community Development and Regulatory Improvement Act.

Paperwork Reduction Act

The final rule does not involve any new collections of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information collection has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the FDIC certifies that the final rule will not have a significant impact on a substantial number of small entities. This conclusion is based upon the fact that the final rule merely clarifies the interest rate restrictions set forth in the Federal Deposit Insurance Act. The final rule does not impose any new restrictions. Indeed, under the final rule, the burden of determining compliance with the interest rate restrictions will be eased because insured depository institutions that are not well capitalized (including any small entities) can rely on the ''national rate'' determined by the FDIC. In those cases in which the insured depository institution believes that the rates in its ''normal market area'' exceed the ''national rate,'' the final rule permits the institution to offer evidence of the ''normal market area'' rates just as the former rules permitted institutions to offer evidence of ''normal market area'' rates.

Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). The final rule clarifies the interest rate restrictions set forth in the Federal Deposit Insurance Act. The final rule does not impose any new restrictions. On the contrary, through the final rule, the FDIC will ease the burden of complying with the statutory interest rate restrictions by allowing insured depository institutions that are not well capitalized to rely on the ''national rate'' determined by the FDIC. As required by law, the FDIC will file the appropriate reports with Congress and the General

Accounting Office so that the final rule may be reviewed.

Impact on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC requested comments on this issue but received none.

List of Subjects in 12 CFR Part 337

Banks, Banking, Reporting and recordkeeping requirements, Savings associations, Securities.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends part 337 of title 12 of the Code of Federal Regulations as follows:

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

■ 1. The authority citation for part 337 is revised to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1820(d)(10), 1821(f), 1828(j)(2), 1831, 1831f.

■ 2. In § 337.6:
■ a. Paragraph (b)(2)(ii)(B) is revised to read as set forth below.
■ b. Paragraph (b)(4) is removed.
■ c. Paragraph (e) is added to read as set forth below.

§ 337.6 Brokered deposits.

* * * * *

(b) * * *
(2) * * *
(ii) * * *

(B) The national rate paid on deposits of comparable size and maturity for deposits accepted outside the institution's normal market area. For purposes of this paragraph (b)(2)(ii)(B), the national rate shall be a simple average of rates paid by all insured depository institutions and branches for which data are available. This rate shall be determined by the FDIC.

* * * * *

(e) A market is any readily defined geographical area in which the rates offered by any one insured depository institution soliciting deposits in that area may affect the rates offered by other insured depository institutions operating in the same area. The effective yield on a deposit with an odd maturity shall be determined by interpolating between the yields offered by other insured depository institutions on deposits of the next longer and shorter maturities offered in the market. For purposes of this § 337.6, a presumption shall exist that the prevailing rate or effective yield in the relevant market is the national rate as defined in paragraph (b)(2)(ii)(B) of this section unless the FDIC determines, in its sole discretion based on available evidence, that the effective yield in that market differs from the national rate. Evidence of the effective yield in a particular market may include (but is not limited to) the following:

(1) Evidence as to the rates paid by other insured depository institutions in the same State, county or metropolitan statistical area (though the FDIC shall not be obligated to recognize each State, county or metropolitan statistical area as a separate market area);

(2) Evidence as to the rates paid by credit unions in the same market area if the FDIC determines that the insured depository institution competes directly with these credit unions; and

(3) Evidence as to the different rates paid on different deposit products in the same market area (though the FDIC shall not be obligated to recognize all alleged distinctions among various deposit products). (*Example:* For a particular market, evidence exists that the rates on money market deposit accounts (MMDAs) differ from the rates on negotiable order of withdrawal (NOW) accounts. MMDAs are distinguishable from NOW accounts in that the two types of accounts are subject to different legal requirements. Under these circumstances, for this market, the FDIC could recognize that the prevailing rate on MMDAs is different than the prevailing rate on NOW accounts.)

Dated at Washington, DC, this 29th day of May 2009.

Authorized to be published in the **Federal Register** by Order of the Board of Directors of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–13748 Filed 6–10–09; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Technical Amendments to Interest Rate Restrictions on Insured Depository Institutions That Are Not Well Capitalized; Withdrawal

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule; withdrawal.

SUMMARY: The Federal Deposit Insurance Corporation published in the **Federal Register** of June 3, 2009 (74 FR 26516), a final rule concerning Interest Rate Restrictions on Insured Depository Institutions That Are Not Well Capitalized. Inadvertently a draft version of the document was published instead of the version adopted by the FDIC Board of Directors. The Federal Deposit Insurance Corporation withdraws the rule published at 74 FR 26516. The correct version of the final rule is published elsewhere in this **Federal Register**.

DATES: Effective on June 11, 2009, the final rule amending 12 CFR part 337 published June 3, 2009 (74 FR 26516) is withdrawn.

FOR FURTHER INFORMATION CONTACT: Christopher L. Hencke, 202–898–8839; E-mail: *Chencke@fdic.gov.*

SUPPLEMENTARY INFORMATION: The Federal Deposit Insurance Corporation published in the **Federal Register** of June 3, 2009, a final rule concerning Interest Rate Restrictions on Insured Depository Institutions That Are Not Well Capitalized. Inadvertently a draft version of the document was published instead of the version adopted by the FDIC Board of Directors. This document is withdrawn and the correct version is published elsewhere in this **Federal Register**. Although the differences in the two versions are not extensive, the correct final rule is being published in its entirety to ensure clarity.

Dated: June 5, 2009.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–13749 Filed 6–10–09; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0082; Directorate Identifier 2008–NE–42–AD; Amendment 39–15914; AD 2009–11–04]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation AE 2100D2, AE 2100D2A, AE 2100D3, and AE 2100J Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce Corporation (RRC) AE 2100D2, AE 2100D2A, AE 2100D3, and AE 2100J turboprop engines with certain propeller gearbox (PGB) shaft-and-carrier assemblies installed. These engines are U.S. type-certificated but as of the effective date of this AD are only installed on military airplanes. This AD requires monitoring a certain population of PGB shaft-and-carrier assemblies for vibration during flight, and borescope-inspecting the PGB shaft for cracks if vibration is experienced. This AD would also require removing the affected population of PGB shaft-and-carrier assemblies from service and installing serviceable PGB shaft-and-carrier assemblies. This AD results from a report of a crack found in the forward cone of a PGB shaft in an RRC AE 2100D3 turboprop engine that was removed from service due to high vibration. We are issuing this AD to prevent separation of the propeller from the airplane, which could result in injury, and damage to the airplane.

DATES: This AD becomes effective June 26, 2009. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 26, 2009.

We must receive any comments on this AD by August 10, 2009.

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

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

FOR FURTHER INFORMATION CONTACT: Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 E. Devon Ave., Des Plaines, IL 60018; *e-mail: michael.downs@faa.gov;* telephone (847) 294–7870; fax (847) 294–7834.

Contact Rolls-Royce Corporation, P.O. Box 420, Indianapolis, IN 46206; telephone (317) 230–3774; fax (317) 230–6084; *e-mail: indy.pubs.services@rolls-royce.com* for the service information identified in this AD.

SUPPLEMENTARY INFORMATION: In March of 2007, the Chicago Aircraft Certification Office received a report of a crack found in the forward cone of a PGB shaft. The PGB shaft was installed in an RRC AE 2100D3 turboprop engine that was removed from service due to high vibration. RRC investigated and determined that a certain population of PGB shaft-and-carrier assemblies could fail due to cracks developing in the forward shaft cone. The affected population, manufactured before June 2005, could have a high stress concentration in the bottom of a certain drilled hole, due to improper surface finish. RRC issued alert service bulletins to borescope-inspect the affected population of PGB shafts for cracks. Based on the inspection results, we determined that AD action is necessary. These engines are U.S. type-certificated, but as of the effective date of this AD are only installed on military airplanes. Failure to inspect the PGB shaft forward cone for cracks could result in separation of the propeller from the airplane, which could result in injury, and damage to the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of RRC Service Bulletin (SB) No. AE 2100D2–A–72–073, Revision 1, dated February 18, 2008, RRC SB No. AE 2100D3–A–72–256, Revision 1, dated February 18, 2008, and RRC SB No. AE 2100J–A–72–071, Revision 1, dated February 18, 2008. Those SBs list the affected population of PGB shaft-and-carrier assemblies by serial number (SN).

FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these turboprop engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other engines of the same type design. We are issuing this AD to prevent separation of the propeller from the airplane, which could result in injury, and damage to the airplane. This AD requires:

- Monitoring the affected population of PGB shaft-and-carrier assemblies for vibration during flight;
- Borescope-inspecting the forward cone of the PGB shaft for cracking if vibration is experienced; and
- Removing the affected PGB shaft-and-carrier assembly at the next shop visit for PGB inspection or repair. Replacing the affected PGB shaft-and-carrier assembly with a shaft and carrier assembly that is eligible for installation, is terminating action for the vibration monitoring required by this AD.

You must use the service information described previously to determine SN applicability of PGB shaft-and-carrier assemblies.

FAA's Determination of the Effective Date

Since there are no domestic operators of these RRC AE 2100D2, AE 2100D2A, AE 2100D3, and AE 2100J turboprop engines as of the effective date of this AD, notice and opportunity for public comment before issuing this AD are unnecessary. A situation exists that allows the immediate adoption of this regulation.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2009–0082; Directorate Identifier 2008–NE–42–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor

union, etc.). You may review the DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–11–04 Rolls-Royce Corporation (formerly Allison Engine Company): Amendment 39–15914. Docket No. FAA–2009–0082; Directorate Identifier 2008–NE–42–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 26, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Corporation (RRC) AE 2100D2, AE 2100D2A, AE 2100D3, and AE 2100J turboprop engines with certain serial number (SN) propeller gearbox (PGB) shaft-and-carrier assemblies installed. These engines are U.S. type-certificated but as of the effective date of this AD are only installed on military airplanes. For the SNs affected, see the Effectivity section of the applicable service bulletin in Table 1 of this AD.

TABLE 1—APPLICABLE LISTS OF AFFECTED PGB SHAFT-AND-CARRIER ASSEMBLIES

For engine model:	Reference service bulletin:
AE 2100D2, AE 2100D2A	AE 2100D2–A–72–073, Revision 1, dated February 18, 2008.
AE 2100D3	AE 2100D3–A–72–256, Revision 1, dated February 18, 2008.
AE 2100J	AE 2100J–A–72–071, Revision 1, dated February 18, 2008.

These engines are U.S. type-certificated and are installed on, but not limited to, Lockheed Martin C130–J and Lockheed/Alenia C–27J military airplanes.

Unsafe Condition

(d) This AD results from a report of a crack found in the forward cone of a PGB shaft in an RRC AE 2100D3 turboprop engine that was removed from service due to high vibration. We are issuing this AD to prevent separation of the propeller from the airplane, which could result in injury, and damage to the airplane.

Compliance

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

Monitoring for PGB Vibration During Flight

(f) During flight, monitor affected engines for vibration in the PGB shaft and carrier assemblies, using the vibration monitoring system in the cockpit.

(g) Whenever a vibration message is displayed on the airplane's Advisory Caution and Warning System, borescope-inspect the PGB shaft-and-carrier assembly for cracks, before any additional flights.

(h) If any crack is found, remove the engine from service.

(i) Guidance on borescope-inspecting, vibration monitoring, and fault isolation procedures can be found in the applicable service bulletin listed in Table 2 of this AD.

TABLE 2—INFORMATION ON BORESCOPE-INSPECTING, VIBRATION MONITORING, AND FAULT ISOLATION PROCEDURES

For engine model:	Reference service bulletin:
AE 2100D2, AE 2100D2A	AE 2100D2–A–72–074, dated April 7, 2008.
AE 2100D3	AE 2100D3–A–72–258, dated April 7, 2008.

TABLE 2—INFORMATION ON BORESCOPE-INSPECTING, VIBRATION MONITORING, AND FAULT ISOLATION PROCEDURES—Continued

For engine model:	Reference service bulletin:
AE 2100J	AE 2100J–A–72–070, dated September 17, 2007. AE 2100J–A–72–073, dated October 11, 2007.

Terminating Action—Removal of Affected PGB Shaft-and-Carrier Assemblies

(j) At the next shop visit for PGB inspection or repair after the effective date of this AD, remove the affected PGB shaft-and-carrier assembly from service and install an eligible PGB shaft-and-carrier assembly.

(k) After the effective date of this AD, do not install any PGB shaft and carrier assembly in any aircraft if it was removed for cracks.

Definition

(l) For the purpose of this AD, a PGB shaft-and-carrier assembly is eligible for installation if it was manufactured after June 2005, or if it is P/N 23087076 or P/N 23087077.

Alternative Methods of Compliance

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

Related Information

(n) Contact Rolls-Royce Corporation, P.O. Box 420, Indianapolis, IN 46206; telephone: (317) 230–3774; fax (317) 230–6084; *e-mail: indy.pubs.services@rolls-royce.com*, for the service information identified in this AD.

(o) Contact Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 E. Devon Ave., Des Plaines, IL 60018; e-mail: *michael.downs@faa.gov*; telephone (847) 294–7870, fax (847) 294–7834, for more information about this AD.

(p) You must use the service information specified in Table 3 of this AD to determine the SNs of PGB shaft-and-carrier assemblies affected by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 3 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Rolls-Royce Corporation, P.O. Box 420, Indianapolis, IN 46206; telephone (317) 230–3774; fax (317) 230–6084; *e-mail: indy.pubs.services@rolls-royce.com* for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 3—INCORPORATION BY REFERENCE

Service bulletin no.	Page	Revision	Date
AE 2100D2–A–72–073, Total Pages: 5	All	1	February 18, 2008.
AE 2100D3–A–72–256, Total Pages: 16	All	1	February 18, 2008.
AE 2100J–A–72–071, Total Pages: 4	All	1	February 18, 2008.

Issued in Burlington, Massachusetts, on May 14, 2009.

Peter A. White,

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

[FR Doc. E9–11992 Filed 6–10–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0530; Directorate Identifier 2009–NM–079–AD; Amendment 39–15936; AD 2009–12–13]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series Airplanes

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

ACTION: Final rule; request for comments.

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

There has been one case reported of failure of a shaft (tailstock) on an elevator Power Control Unit (PCU), Part Number (P/N) 390600–1007. Continued actuation of the affected PCU caused damage to the surrounding structure. * * *

Each elevator surface has three PCUs, powered by separate independent hydraulic systems, and a single elevator PCU shaft failure may remain dormant. Such a dormant loss of redundancy, coupled with the potential for a failed shaft to produce collateral damage, including damage to hydraulic lines, could possibly affect the controllability of the aircraft.

* * * * *

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

DATES: This AD becomes effective June 26, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 26, 2009.

We must receive comments on this AD by July 13, 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for

the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–16, dated April 20, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There has been one case reported of failure of a shaft (tailstock) on an elevator Power Control Unit (PCU), Part Number (P/N) 390600–1007. Continued actuation of the affected PCU caused damage to the surrounding structure. Subsequent investigation determined that the failure was the result of a material defect and that the shafts installed on a total of 88 suspect PCUs * * * may contain a similar defect.
>
> Each elevator surface has three PCUs, powered by separate independent hydraulic systems, and a single elevator PCU shaft failure may remain dormant. Such a dormant loss of redundancy, coupled with the potential for a failed shaft to produce collateral damage, including damage to hydraulic lines, could possibly affect the controllability of the aircraft.
>
> This directive mandates an identification check for elevator PCU serial numbers, a daily check for correct operation of all suspect PCUs and, finally, replacement of all suspect PCUs.

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

Relevant Service Information

Bombardier has issued Service Bulletin 84–27–32, Revision A, dated January 18, 2008; and Q400 All Operator Message 217B, dated April 26, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the power control unit (PCU), part number P/N 390600–1007, has been identified as having a shaft (tailstock) failure. Each elevator on the affected model airplane contains three PCUs which are powered independently as a means of redundancy. Due to this built-in redundancy, a fracture to the elevator PCU shaft can remain undetected while decreasing airplane safety. Furthermore, the continual use of the failed shaft in the PCUs can result in damage to additional systems such as hydraulic lines, and could result in loss of controllability of the airplane. Since this is a dormant failure, it is necessary to identify and replace any defective units within 30 days after the effective date of this AD. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0530; Directorate Identifier 2009–NM–079–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–12–13 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–15936. Docket No. FAA–2009–0530; Directorate Identifier 2009–NM–079–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 26, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400, DHC–8–401, and DHC–8–402 airplanes, certificated in any category, serial numbers 4135 through 4149 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

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

There has been one case reported of failure of a shaft (tailstock) on an elevator Power Control Unit (PCU), Part Number (P/N) 390600–1007. Continued actuation of the affected PCU caused damage to the surrounding structure. Subsequent investigation determined that the failure was the result of a material defect and that the shafts installed on a total of 88 suspect PCUs * * * may contain a similar defect.

Each elevator surface has three PCUs, powered by separate independent hydraulic systems, and a single elevator PCU shaft failure may remain dormant. Such a dormant loss of redundancy, coupled with the potential for a failed shaft to produce collateral damage, including damage to hydraulic lines, could possibly affect the controllability of the aircraft.

This directive mandates an identification check for elevator PCU serial numbers, a daily check for correct operation of all suspect PCUs and, finally, replacement of all suspect PCUs.

Actions and Compliance

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

(1) Within 30 days after the effective date of this AD, inspect the serial number of each of the six installed elevator PCUs having P/N 390600–1007. If one or more of the six installed elevator PCUs, P/N 390600–1007, have any of the PCU serial numbers 238, 698, 783 through 788 inclusive, 790, 793, 795, 802, 806, 807, 810, 820 through 823 inclusive, 826 through 828 inclusive, 831, 835, 838, 840, 886 through 889 inclusive, or 898 through 955 inclusive; without a suffix ''A'' after the serial number: Within 30 days after the effective date of this AD, perform a check for the correct operation of all installed elevator PCUs in accordance with the procedures detailed in Appendix A, B, or C of Bombardier Q400 All Operator Message 217B, dated April 26, 2007. Repeat the check thereafter before the first flight of each day until the replacement specified in paragraph (f)(3) of this AD is done. The checks in Appendix A and B of Bombardier Q400 All Operator Message 217B, dated April 26, 2007, must be performed by the flight crew, while the check specified in Appendix C of the all operators message must be performed by certificated maintenance personnel.

Note 1: Suffix ''A'' after the serial number indicates that the PCU has already passed a magnetic particle inspection and is cleared for continued use.

(2) If incorrect operation of any elevator PCU is found during any check required by paragraph (f)(1) of this AD, before further flight, replace the elevator PCU with a PCU, P/N 390600–1007, having a serial number not specified in paragraph (f)(1) of this AD; or with a PCU, P/N 390600–1007, having the suffix ''A'' after the serial number; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–32, Revision A, dated January 18, 2008.

(3) Replacing all PCUs, P/N 390600–1007, having a serial number specified in paragraph (f)(1) of this AD, and not having suffix ''A'' after the serial number, with a PCU, P/N 390600–1007, having a serial number not specified in paragraph (f)(1) of this AD; or with a PCU, P/N 390600–1007, having the suffix ''A'' after the serial number; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–32, Revision A, dated January 18, 2008; terminates the requirements of paragraph (f)(1) of this AD.

(4) Actions accomplished before the effective date of this AD according to Bombardier Service Bulletin 84–27–32, dated May 1, 2007, are considered acceptable for compliance with the corresponding action specified in this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: Unlike the Canadian airworthiness directive CF–2009–16, dated April 20, 2009, this AD does not require the eventual replacement of all elevator PCUs identified in paragraph (f)(1) of this AD. The planned compliance times for those actions would allow enough time to provide notice and opportunity for prior public comment on the merits of those actions. Therefore, we are considering further rulemaking to address this issue.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Airframe and Propulsion Branch, ANE–171, 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: Cesar Gomez, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2009–16, dated April 20, 2009; Bombardier Service Bulletin 84–27–32, Revision A, dated January 18, 2008; and Bombardier Q400 All Operator Message 217B, dated April 26, 2007; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 84–27–32, Revision A, dated January 18, 2008, or Bombardier Q400 All Operator Message 217B, dated April 26, 2007 to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and

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

Issued in Renton, Washington, on June 3, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–13570 Filed 6–10–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0531; Directorate Identifier 2009–CE–030–AD; Amendment 39–15938; AD 2009–12–15]

RIN 2120–AA64

Airworthiness Directives; GROB–Werke Model G120A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments

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

The manufacturer has advised of receiving a report from a G 120A operator of an electrical fire caused by a chafed/scorched cable loom. It has been found that the RH main power distribution cable chafed on the instrument panel combing. It is likely that vibrations made the wiring to chafe. The chafing caused eventually electrical arcing and subsequently an in-flight fire that damaged partially the instrument panel cover.

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

DATES: This AD becomes effective July 1, 2009.

On July 1, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by July 13, 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.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2009–0107, dated May 8, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

The manufacturer has advised of receiving a report from a G 120A operator of an electrical fire caused by a chafed/scorched cable loom. It has been found that the RH main power distribution cable chafed on the instrument panel combing. It is likely that vibrations made the wiring to chafe. The chafing caused eventually electrical arcing and subsequently an in-flight fire that damaged partially the instrument panel cover.

For the reasons stated above, this new AD mandates inspection of all cable looms in the front of the instrument panel cover, repair as necessary and installation of a protective cover on the edge of the instrument panel combing.

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

Relevant Service Information

GROB Aircraft AG has issued Service Bulletin No. MSB1121–108, dated March 18, 2009, and Service Bulletin No. MSB1121–108/1, dated April 27, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

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

Differences Between This AD and the MCAI or Service Information

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

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because if left uncorrected, the power distribution cable could chafe leading to electrical arcing and an in-flight fire. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant

data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0531; Directorate Identifier 2009–CE–030–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–12–15 GROB–Werke: Amendment 39–15938; Docket No. FAA–2009–0531; Directorate Identifier 2009–CE–030–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 1, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model G120A airplanes, serial numbers 85001 through 85007 and 85026 through 85034, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 24: Electric Power.

Reason

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

''The manufacturer has advised of receiving a report from a G 120A operator of an electrical fire caused by a chafed/scorched cable loom. It has been found that the RH main power distribution cable chafed on the instrument panel combing. It is likely that vibrations made the wiring to chafe. The chafing caused eventually electrical arcing and subsequently an in-flight fire that damaged partially the instrument panel cover.

''For the reasons stated above, this new AD mandates inspection of all cable looms in the front of the instrument panel cover, repair as necessary and installation of a protective cover on the edge of the instrument panel combing.''

Actions and Compliance

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

(1) Before further flight after July 1, 2009 (the effective date of this AD), inspect the electrical cables for chafing and scorching marks in accordance with the accomplishment instructions of GROB Aircraft AG Service Bulletin No. MSB1121–108, dated March 18, 2009, or GROB Aircraft AG Service Bulletin No. MSB1121–108/1, dated April 27, 2009.

(2) If any chafe, burn, or scorch mark is found during the inspection required in paragraph (f)(1) of this AD, before further flight, replace the damaged cable(s) in accordance with the FAA Advisory Circular 43.13–1B Change 1, dated September 27, 2001, and install a protective cover on the attachment edge of the instrument panel combing in accordance with the accomplishment instructions of GROB Aircraft AG Service Bulletin No. MSB1121–108, dated March 18, 2009, or GROB Aircraft AG Service Bulletin No. MSB1121–108/1, dated April 27, 2009. You may get a copy of the FAA Advisory Circular on the Internet at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/Frameset?OpenPage.*

(3) If no chafe, burn, or scorch mark is found during the inspection required in paragraph (f)(1) of this AD, within the next 100 hours time-in-service (TIS) after July 1, 2009 (the effective date of this AD), install a protective cover on the attachment edge of the instrument panel combing in accordance with the accomplishment instructions of GROB Aircraft AG Service Bulletin No. MSB1121–108, dated March 18, 2009, or GROB Aircraft AG Service Bulletin No. MSB1121–108/1, dated April 27, 2009.

(4) Thereafter, at intervals not to exceed every 200 hours TIS, repeat the inspection of the electrical cables for chafing and scorching marks in accordance with the accomplishment instructions of GROB Aircraft AG Service Bulletin No. MSB1121–108/1, dated April 27, 2009.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the

provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2009–0107, dated May 8, 2009; GROB Aircraft AG Service Bulletin No. MSB1121–108, dated March 18, 2009; and GROB Aircraft AG Service Bulletin No. MSB1121–108/1, dated April 27, 2009, for related information.

Material Incorporated by Reference

(i) You must use GROB Aircraft AG Service Bulletin No. MSB1121–108, dated March 18, 2009; and GROB Aircraft AG Service Bulletin No. MSB1121–108/1, dated April 27, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact GROB Aircraft AG/Customer Service, 86874 Tussenhausen-Mattsies, Germany; telephone: +49 (0) 8268–998–105; fax: +49 (0) 8268–998–200; e-mail *productsupport@grob-aircraft.com;* Internet: *http://www.grob-aircraft.eu/service-and-support/g-120/documentation/service-bulletins.html.*

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

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

Issued in Kansas City, Missouri on June 4, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–13576 Filed 6–10–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1364; Directorate Identifier 2008–NM–103–AD; Amendment 39–15928; AD 2009–12–05]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–300, –400, and –500 series airplanes. This AD requires modifying the control power wiring of the normal supply fan and the low flow sensor for the equipment cooling system of the electronic flight instrument system (EFIS). This AD results from a report of loss of both the normal EFIS cooling supply and the indication of EFIS cooling loss due to a single failure of the battery bus, causing eventual power-down of the EFIS displays; the standby attitude indication is also powered by this battery bus. We are issuing this AD to prevent loss of all attitude indications from both the standby indicator and EFIS displays, which could decrease the ability of the flightcrew to maintain the safe flight and landing of the airplane.

DATES: This AD is effective July 16, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 16, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Suk Jang, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6511; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737–300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on January 12, 2009 (74 FR 1153). That NPRM proposed to require modifying the control power wiring of the normal supply fan and the low flow sensor for the equipment cooling system of the electronic flight instrument system (EFIS).

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Supportive Comments

Boeing and Continental Airlines support the actions in the NPRM.

Request To Add an Alternate Method of Compliance

Lufthansa German Airlines asks that we add a method acceptable for compliance with the corresponding requirements of the NPRM. Lufthansa notes that, as specified in paragraphs (f), (g)(1), and (g)(2) of the NPRM, actions done in accordance with Boeing Alert Service Bulletin 737–21A1156, Revision 1, dated October 23, 2007; or Boeing Alert Service Bulletin 737–21A1156, dated June 20, 2006; are acceptable for compliance. Lufthansa adds that these actions prevent loss of all attitude indications from both the standby indicator and EFIS displays in case of battery bus failure. (The following is a clarification of the commenter's description of acceptable sources of service information specified in this AD: Boeing Alert Service Bulletin 737–21A1156, Revision 2, dated December 11, 2008, is the source of service information referred to in the NPRM for accomplishing the specified actions. Actions done previously in accordance with Boeing Alert Service Bulletin 737–21A1156, Revision 1, dated October 23, 2007; or Boeing Alert Service Bulletin

737–21A1156, dated June 20, 2006 (for Groups 1 and 2 airplanes identified in Boeing Alert Service Bulletin 737–21A1156, Revision 1), are acceptable for compliance with the corresponding requirements of this AD.)

Lufthansa asks that we consider another method to address this unsafe condition, which is to append an abnormal procedure task to the flight crew operations manual in case of battery bus failure to specify setting the equipment cooling switch to alternate if the battery bus fails. This would allow the alternate supply fan to still cool the EFIS displays and prevent them from failing.

We disagree with the commenter's request to add this additional method of compliance to the AD requirements. The identified unsafe condition is loss of all attitude indications from both the standby indicator and EFIS displays, which could decrease the ability of the flightcrew to maintain the safe flight and landing of the airplane. Although we recognize the commenter's suggestion provides some safety mitigation for the unsafe condition, the inherently unsafe design of the EFIS cooling system must be corrected to ensure that flightcrews are equipped with attitude indications. Therefore, after the modification of the control power wiring of the EFIS cooling system is done, revising the flightcrew operations manual is not necessary and is not acceptable as an alternate method of compliance to this AD. We have made no change to the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect 263 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action/airplane group	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Groups 1 & 2 modification	3	$80	$0	$240	153	$36,720
Group 4 modification	2	$80	$0	$160	113	$18,080

Currently, there are no Group 3 airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, the required actions would take about 5 work hours, at an average labor rate of $80 per work hour. Based on these figures, we estimate the cost of this AD for Group 3 airplanes to be $400 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–12–05 Boeing: Amendment 39–15928. Docket No. FAA–2008–1364; Directorate Identifier 2008–NM–103–AD.

Effective Date

(a) This airworthiness directive (AD) is effective July 16, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–21A1156, Revision 2, dated December 11, 2008.

Unsafe Condition

(d) This AD results from a report of loss of both the normal electronic flight instrument system (EFIS) cooling supply and the indication of EFIS cooling loss due to a single failure of the battery bus, causing eventual power-down of the EFIS displays; the standby attitude indication is also powered by this battery bus. We are issuing this AD to prevent loss of all attitude indications from both the standby indicator and EFIS displays, which could decrease the ability of the flightcrew to maintain the safe flight and landing of the airplane.

Compliance

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

Modification

(f) Within 24 months after the effective date of this AD: Modify the control power

wiring of the normal supply fan and the low flow sensor for the equipment cooling system of the EFIS, by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–21A1156, Revision 2, dated December 11, 2008.

Credit for Actions Done Using Previous Service Information

(g)(1) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–21A1156, Revision 1, dated October 23, 2007, are acceptable for compliance with the corresponding requirements of this AD.

(2) For Groups 1 and 2 airplanes identified in Boeing Alert Service Bulletin 737–21A1156, Revision 1, dated October 23, 2007: Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–21A1156, dated June 20, 2006, are acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Suk Jang, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6511; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin 737–21A1156, Revision 2, dated December 11, 2008; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

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

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

Issued in Renton, Washington, on June 1, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–13304 Filed 6–10–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0612; Directorate Identifier 2008–NM–059–AD; Amendment 39–15931; AD 2009–12–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 747 airplanes. This AD requires inspecting for cracks in the left- and right-side Stringer 11 longeron adjacent to the horizontal stabilizer pivot bulkhead, and related investigative and corrective actions if necessary. This AD results from a report of a crack found in the right-side Stringer 11 longeron horizontal flange, adjacent to the horizontal stabilizer pivot bulkhead, during a routine maintenance inspection. We are issuing this AD to detect and correct fatigue cracking of the longeron, which can propagate and cause damage to the adjacent horizontal stabilizer pivot bulkhead. This damage could result in loss of structural integrity and consequent inability of the bulkhead to carry flight loads, which could adversely affect controllability of the airplane.

DATES: This AD becomes effective July 16, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 16, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 747 airplanes. That supplemental NPRM was published in the **Federal Register** on February 20, 2009 (74 FR 7834). That supplemental NPRM proposed to require inspecting for cracks in the left- and right-side Stringer 11 longeron adjacent to the horizontal stabilizer pivot bulkhead, and doing related investigative and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received. The commenter, Boeing, concurs with the supplemental NPRM.

Change to Supplemental NPRM

We have added new paragraph (j) to this final rule and re-identified subsequent paragraphs to give credit for inspections accomplished using the original issue of Boeing Service Bulletin 747–53A2703, dated February 14, 2008.

Conclusion

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

Costs of Compliance

We estimate that this AD affects 165 airplanes of U.S. registry. We also estimate that it takes 3 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $39,600, or $240 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–12–08 Boeing: Amendment 39–15931. Docket No. FAA–2008–0612; Directorate Identifier 2008–NM–059–AD.

Effective Date

(a) This AD becomes effective July 16, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Unsafe Condition

(e) This AD results from a report of a crack found in the right-side Stringer 11 longeron horizontal flange, adjacent to the horizontal stabilizer pivot bulkhead, during a routine maintenance inspection. We are issuing this AD to detect and correct fatigue cracking of the longeron, which can propagate and cause damage to the adjacent horizontal stabilizer pivot bulkhead. This damage could result in loss of structural integrity and consequent inability of the bulkhead to carry flight loads, which could adversely affect controllability of the airplane.

Compliance

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

Inspection/Related Investigative and Corrective Actions

(g) Except as provided by paragraph (h) of this AD: At the applicable times specified in paragraph 1.E. of Boeing Service Bulletin 747–53A2703, Revision 1, dated September 16, 2008, do a surface high frequency eddy current (HFEC) inspection for cracks in the left- and right-side Stringer 11 longeron exposed surfaces and edges between Station 2598 and 2607 adjacent to the horizontal stabilizer pivot bulkhead; and do all applicable related investigative and corrective actions before further flight, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2703, Revision 1, dated September 16, 2008, except as provided by paragraph (i) of this AD.

Exception to Compliance Times

(h) Where Boeing Service Bulletin 747–53A2703, Revision 1, dated September 16, 2008, specifies counting the compliance time from '' * * * the date on this service bulletin,'' this AD requires counting the compliance time from the effective date of this AD.

Exception to Corrective Actions

(i) If any crack is found during any inspection required by this AD, and Boeing Service Bulletin 747–53A2703, Revision 1, dated September 16, 2008, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

Actions Accomplished According to Previous Issue of Service Bulletin

(j) Inspections, related investigative actions, and corrective actions accomplished before the effective date of this AD according to Boeing Alert Service Bulletin 747–53A2703, dated February 14, 2008, are considered acceptable for compliance with the corresponding actions specified in paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590 has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair

required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(l) You must use Boeing Service Bulletin 747–53A2703, Revision 1, dated September 16, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

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

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

Issued in Renton, Washington, on June 2, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–13406 Filed 6–10–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1237; Directorate Identifier 2008–NM–125–AD; Amendment 39–15932; AD 2009–12–09]

RIN 2120–AA64

Airworthiness Directives; ATR Model ATR42–200, ATR42–300, ATR42–320, ATR42–500, ATR72–101, ATR72–201, ATR72–102, ATR72–202, ATR72–211, ATR72–212, and ATR72–212A Airplanes

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

ACTION: Final rule.

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

* * * * *

[C]hafed wirings were found in the rear baggage zone, closed [close] to the forward side of the aft pressure bulkhead, due to contact with an understructure securing screw. The concerned wiring harness includes rudder trim, pitch trim and stick pusher control wires. Damages on those wires might lead to the loss of fail safe criteria for those critical functions.

* * * * *

The unsafe condition is reduced controllability of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective July 16, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 16, 2009.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 26, 2008 (73 FR 71961). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

One ATR operator reported some spurious ''Pitch disconnect'' warning and ''AIL and R ELEV'' Anti-Ice Horn Fault caution annunciations which precluded the use of the autopilot.

During the investigation, chafed wirings were found in the rear baggage zone, closed [close] to the forward side of the aft pressure bulkhead, due to contact with an understructure securing screw. The concerned wiring harness includes rudder trim, pitch trim and stick pusher control wires. Damages on those wires might lead to the loss of fail safe criteria for those critical functions.

To address the identified unsafe condition, this AD mandates a one-time inspection and a routing modification of the electrical wires in the bulkhead area.

The unsafe condition is reduced controllability of the airplane. The corrective action also includes contacting ATR for repair instructions and doing the repair if any damage (chafing or contact between bundles of cables and the airframe structure) is found during the one-time inspection. You may obtain further information by examining the MCAI in the AD docket.

Explanation of Change to the NPRM

We have revised paragraph (c) of the AD to coincide with the effectivity of the European Aviation Safety Agency (EASA) AD.

Explanation of Revised Service Information

ATR has issued the service bulletins identified in the following table.

TABLE—REVISED SERVICE INFORMATION

ATR Service Bulletin—	Revision—	Dated—
ATR42–92–0015, including Accomplishment Report	01	February 11, 2009.
ATR42–92–0018, including Accomplishment Report	01	September 4, 2008.
ATR42–92–0018, including Accomplishment Report	02	February 13, 2009.
ATR72–92–1016, including Accomplishment Report	01	February 11, 2009.

TABLE—REVISED SERVICE INFORMATION—Continued

ATR Service Bulletin—	Revision—	Dated—
ATR72–92–1018, including Accomplishment Report	01	September 4, 2008.
ATR72–92–1018, including Accomplishment Report	02	February 13, 2009.

These service bulletins differ from the original issues of those service bulletins, all dated February 11, 2008 (which were referenced in the NPRM), by including clarifications and editorial changes that do not affect the technical content. This AD does not require the ''Additional Work'' described in ATR Service Bulletins ATR42–92–0018 and ATR72–92–1018, both Revision 01, both dated September 4, 2008.

We have changed paragraphs (f)(1), (f)(2), and (f)(3) of this AD to refer to the most recent revisions of the service bulletins identified in the previous table, and added paragraph (f)(4) of this AD to give credit for actions done according to the prior issues identified in the following table.

TABLE—ACCEPTABLE SERVICE INFORMATION

ATR Service Bulletin—	Revision—	Dated—
ATR42–92–0015	Original	February 11, 2008.
ATR42–92–0018	Original	February 11, 2008.
ATR42–92–0018	01	September 4, 2008.
ATR72–92–1016	Original	February 11, 2008.
ATR72–92–1018	Original	February 11, 2008.
ATR72–92–1018	01	September 4, 2008.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 48 products of U.S. registry. We also estimate that it will take about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $131 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $25,488, or $531 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–12–09 ATR–GIE Avions De Transport Régional (Formerly Aerospatiale): Amendment 39–15932. Docket No. FAA–2008–1237; Directorate Identifier 2008–NM–125–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 16, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) ATR Model ATR42–200, ATR42–300, and ATR42–320 airplanes, all serial numbers, except serial numbers 1 through 107 inclusive, 110 through 112 inclusive, 114, and 115, and except airplanes on which ATR Service Bulletin ATR42–92–0018 has been incorporated.

(2) ATR Model ATR42–500 airplanes, all serial numbers, except serial numbers 667 and subsequent, and except airplanes on which ATR Service Bulletin ATR42–92–0018 has been incorporated.

(3) ATR Model ATR72–101, ATR72–201, ATR72–102, ATR72–202, ATR72–211, ATR72–212, and ATR72–212A airplanes, all serial numbers except serial numbers 756 and subsequent, and except airplanes on which ATR Service Bulletin ATR72–92–1018 has been incorporated.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Reason

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

''One ATR operator reported some spurious ''Pitch disconnect'' warning and ''AIL and R ELEV'' Anti-Ice Horn Fault caution annunciations which precluded the use of the autopilot.

''During the investigation, chafed wirings were found in the rear baggage zone, closed [close] to the forward side of the aft pressure bulkhead, due to contact with an understructure securing screw. The concerned wiring harness includes rudder trim, pitch trim and stick pusher control wires. Damages on those wires might lead to the loss of fail safe criteria for those critical functions.

''To address the identified unsafe condition, this AD mandates a one-time inspection and a routing modification of the electrical wires in the bulkhead area.''

The unsafe condition is reduced controllability of the airplane. The corrective action also includes contacting ATR for repair instructions and doing the repair if any damage (chafing or contact between bundles of cables and the airframe structure) is found during the one-time inspection.

Actions and Compliance

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

(1) Within 550 flight hours after the effective date of this AD, perform a one-time detailed inspection for damage of the electrical routing in the rear baggage zone, in accordance with the Accomplishment Instructions of ATR Service Bulletin ATR42–92–0015 or ATR72–92–1016, both Revision 01, both dated February 11, 2009, as applicable.

(2) If any damage is found during the inspection required by paragraph (f)(1) of this AD, do the actions in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD.

(i) Before further flight, contact ATR for repair instructions, and do the repair.

(ii) Before further flight, modify the electrical routing and protective sleeve in the rear cargo compartment at frame 44 in accordance with the Accomplishment Instructions of ATR Service Bulletin ATR42–92–0018 or ATR72–92–1018, both Revision 02, both dated February 13, 2009, as applicable.

(3) If no damage is found during the inspection required by paragraph (f)(1) of this AD: Within 5,000 flight hours after the effective date of this AD, modify the electrical routing and replace the protective sleeve in the rear cargo compartment at frame 44 in accordance with the Accomplishment Instructions of ATR Service Bulletin ATR42–92–0018 or ATR72–92–1018, both Revision 02, both dated February 13, 2009, as applicable.

(4) Actions done before the effective date of this AD in accordance with the service bulletins listed in Table 1 of this AD are acceptable for compliance with the corresponding requirements of this AD.

TABLE 1—ACCEPTABLE SERVICE INFORMATION

ATR Service Bulletin—	Revision—	Dated—
ATR42–92–0015	Original	February 11, 2008.
ATR42–92–0018	Original	February 11, 2008.
ATR42–92–0018	01	September 4, 2008.
ATR72–92–1016	Original	February 11, 2008.
ATR72–92–1018	Original	February 11, 2008.
ATR72–92–1018	01	September 4, 2008.

Note 1: This AD does not require the ''Additional Work'' described in ATR Service Bulletins ATR42–92–0018 and ATR72–92–1018, both Revision 01, both dated September 4, 2008.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

Although the MCAI or service information tells you to submit information to the manufacturer, such submittal is not required by this AD.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2008–0062, dated April 1, 2008,

and the ATR service bulletins contained in Table 2 of this AD, for related information.

TABLE 2—RELATED SERVICE INFORMATION

ATR Service Bulletin—	Revision—	Dated—
ATR42–92–0015, excluding Accomplishment Report	01	February 11, 2009.
ATR42–92–0018, excluding Accomplishment Report	02	February 13, 2009.
ATR72–92–1016, excluding Accomplishment Report	01	February 11, 2009.
ATR72–92–1018, excluding Accomplishment Report	02	February 13, 2009.

Material Incorporated by Reference

(i) You must use the service information contained in Table 3 of this AD to do the actions required by this AD, as applicable, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact ATR–GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; e-mail *continued.airworthiness@atr.fr;* Internet *http://www.aerochain.com.*

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

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

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

ATR Service Bulletin—	Revision—	Dated—
ATR42–92–0015, excluding Accomplishment Report	01	February 11, 2009.
ATR42–92–0018, excluding Accomplishment Report	02	February 13, 2009.
ATR72–92–1016, excluding Accomplishment Report	01	February 11, 2009.
ATR72–92–1018, excluding Accomplishment Report	02	February 13, 2009.

Issued in Renton, Washington, on June 2, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–13405 Filed 6–10–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0163; Directorate Identifier 2007–NM–046–AD; Amendment 39–15929; AD 2009–12–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, –500, –600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–300, –400, –500, –600, –700, –700C, –800, and –900 series airplanes. This AD requires installing a new circuit breaker, relays, and wiring to allow the flightcrew to turn off electrical power to the in-flight entertainment (IFE) systems and other non-essential electrical systems through a switch in the flight compartment, and doing other specified actions. This AD results from an IFE systems review. We are issuing this AD to ensure that the flightcrew is able to turn off electrical power to IFE systems and other non-essential electrical systems through a switch in the flight compartment. The flightcrew's inability to turn off power to IFE systems and other non-essential electrical systems during a non-normal or emergency situation could result in the inability to control smoke or fumes in the airplane flight deck or cabin.

DATES: This AD is effective July 16, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 16, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Joe Salameh, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–917–6454; fax 425–917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737–300, –400, –500, –600, –700, –700C, –800, and –900 series airplanes. That NPRM was published in the **Federal Register** on November 7, 2007 (72 FR 62802). That NPRM proposed to require installing a new circuit breaker, relays, and wiring to allow the flightcrew to turn off

electrical power to the in-flight entertainment (IFE) systems and other non-essential electrical systems through a switch in the flight compartment, and doing other specified actions.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the six commenters.

Request To Exclude Certain Airplanes From the Applicability

Mr. Ian S. Murton requests that we revise paragraph (c)(2) of the applicability of the NPRM to exclude Model 737–700 series airplanes having variable numbers (V/Ns) YB101 through YB114 inclusive. These airplanes are listed in the effectivity of Boeing Service Bulletin 737–24–1147, Revision 1, dated March 1, 2007, which is referenced in paragraph (c)(2) of the NPRM. As justification, the commenter states that the operator of these airplanes has owned the airplanes since delivery from Boeing, and that IFE systems are not installed on these airplanes. The commenter also states that the operator took possession of the airplane having V/N YB114 18 months after Boeing issued the original issue of Boeing Service Bulletin 737–24–1147, dated November 20, 2003, and that the operator decided not to accomplish the actions specified in that service bulletin. The commenter would like to know how the proposed requirements of the NPRM would affect this range of airplanes. The commenter also states that perhaps the applicability of the NPRM should be amended to include only airplanes that have the IFE systems installed.

We disagree with revising the applicability of this AD because we have determined that the unsafe condition exists on the airplanes identified in the Boeing service bulletins that are referenced in paragraph (c) of this AD. The effectivities of those service bulletins are based upon the delivered configuration of the airplanes. Boeing has confirmed that it installed IFE systems on airplanes having V/Ns YB101 through YB114 inclusive. If the IFE systems were either removed after delivery, or have never been installed contrary to the effectivity of Boeing Service Bulletin 737–24–1147, Revision 1, dated March 1, 2007, then under the provisions of paragraph (k) of this AD, we will consider requests for approval of an alternative method of compliance (AMOC) if sufficient data are submitted to substantiate that the design change is not necessary. We have not changed the AD in this regard.

Request To Exclude Certain Boeing Business Jets From the Applicability

Boeing Executive Flight Operations requests that we revise paragraph (c) of the applicability of the NPRM to exclude certain Boeing business jets (BBJs) equipped with a passenger entertainment switch (PES), certified under a Supplemental Type Certificate (STC). If these airplanes are not excluded from the applicability, then the commenter requests that the FAA provide additional detail on what specific interior systems or equipment need to have a means of disconnection, so that operators can accurately petition and apply for an AMOC. The commenter states that Boeing delivered these airplanes without an interior to a customized completion center, where they were modified to a custom interior specification and design that are certified by an STC.

According to the commenter, many of the BBJ interior installations incorporate either a PES, or load shed switching, that will remove power from the interior equipment and systems, as required by sections 25.1309, 25.1351, 25.1353, and 25.1355 of the Federal Aviation Regulations (14 CFR 25.1309, 14 CFR 25.1351, 14 CFR 25.1353, and 14 CFR 25.1355). The commenter also states that Boeing Service Bulletin 737–24–1147, Revision 1, dated March 1, 2007, does not consider the BBJ and BBJ2 configurations separate from commercial airline interior configurations and does not provide enough details as to what systems or equipment need to be isolated with the PES disconnects.

We disagree with revising the applicability of this AD because we have determined that the unsafe condition exists on the airplanes identified in the Boeing service bulletins that are referenced in paragraph (c) of this AD. The effectivities of those service bulletins are based upon the delivered configuration of the airplanes.

The ''load shed switching'' function is for an overload condition during normal operation where power will be removed from non-essential systems, such as galley, IFE systems, etc. This AD, however, has a different purpose, which is to independently remove power from the IFE systems and other non-essential equipment in case of emergency, according to FAA Policy Memorandum PS–ANM100–2000–00105, ''Interim Policy Guidance for Certification of In-Flight Entertainment Systems on Title 14 CFR Part 25 Aircraft,'' dated September 18, 2000. Policy Memorandum PS–ANM100–2000–00105 specifies that there should be a manual main shutoff switch within reach of flight or cabin crews to be used in case of emergency to shut off all non-essential power. FAA Policy Memorandum ANM–01–111–165, ''Policy Statement on Certification of Power Supply Systems for Portable Electronic Devices (PES) on Part 25 Airplanes,'' dated March 18, 2005, covers the PES power removal switch as well.

Under the provisions of paragraph (k) of this AD, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that an alternate design change would provide an acceptable level of safety. We have not changed the AD in this regard.

Requests To Allow Certain Service Bulletins as AMOCs

Aircraft Maintenance Engineering Services SARL requests that we consider the following service information as AMOCs to the proposed requirements of the NPRM:

- Lufthansa Technik Engineering Bulletin 737–EB24–0073, Revision 01, for addressing the unsafe condition on the Model 737–700 series airplane having serial number (S/N) 29972.
- Lufthansa Technik Engineering Bulletin 737–EB24–0088, Revision 01, for addressing the unsafe condition on the Model 737–800 series airplane having S/N 32438.
- Raytheon Service Bulletin 737IGW–24–1, dated August 11, 2000, for addressing the unsafe condition on the Model 737–700 series airplane having S/N 28976.

The commenter states that these bulletins address the intent of Boeing Service Bulletin 737–24–1147, Revision 1, dated March 1, 2007. The Lufthansa Technik engineering bulletins provide procedures for installing a cut-off switch in the P5 panel to interrupt electrical power to the IFE system. The Raytheon service bulletin provides procedures for installing a flight compartment switch for removing power from the IFE systems and other non-essential systems. The procedures in the Raytheon service bulletin were accomplished in accordance with STC ST09106AC–D, issued July 6, 2000.

We disagree because an AMOC can be granted only after an AD has been issued. In addition, we have not included the Lufthansa and Raytheon service bulletins as a method of compliance within this AD; we do not consider it appropriate to include various provisions in an AD applicable only to individual airplane serial

numbers or to a single operator's unique use of an affected airplane. Once we issue this AD, the commenter may request approval of an AMOC under the provisions of paragraph (k) of this AD. Sufficient data must be submitted to substantiate that the design change would provide an acceptable level of safety. We have not changed the AD in this regard.

Request To Revise Paragraph (f) of the NPRM

Boeing requests that we delete the last sentence of paragraph (f) of the NPRM, which states: ''Concurrently Modify P5–13 Module Assembly on Model 737–300 Series Airplanes.'' Boeing states that the sentence is redundant and confusing because the concurrent requirements are addressed by paragraph (h) of the NPRM, and that those requirements only apply to a certain group of airplanes.

We disagree because the phrase that the commenter refers to is not a sentence in paragraph (f) of the NPRM. That phrase is the heading for paragraph (g) of the NPRM, which gives the concurrent requirements. No change to the AD is necessary in this regard.

Request To Extend the Compliance Time

The Air Transport Association, on behalf of its member American Airlines, requests that we extend the compliance time from 60 to 72 months. American Airlines states that it is requesting this extension to align the compliance time with its heavy maintenance program and to avoid an unnecessary financial burden. American Airlines states that incorporating the modification requires extensive ''power off A/C time,'' and that this can be accommodated only at a heavy C check, which is scheduled by most in the industry at 72-month intervals. American Airlines also states that the proposed 60-month compliance time will have a substantial impact by requiring the unscheduled removal of its airplanes from service. American Airlines estimates that 14 of its affected airplanes will require special scheduling and out-of-service time, which equates to about 42 days for an additional cost impact of $600,000.

We disagree with extending the compliance time. In developing an appropriate compliance time for this action, we considered the safety implications, parts availability, and normal maintenance schedules for the timely accomplishment of the modification. In consideration of these items, we have determined that a 60-month compliance time will ensure an acceptable level of safety. However, according to the provisions of paragraph (k) of this AD, we might approve requests to adjust the compliance time if the request includes data that prove that the new compliance time would provide an acceptable level of safety. We have not changed the AD in this regard.

Change Made to Paragraph (i) of This AD

We have revised paragraph (i) of this AD to specify that the requirements of that paragraph apply to ''* * * Groups 3 through 139. * * *'' In the NPRM, we inadvertently specified that the proposed requirements would apply to Groups 1 through 139. This change agrees with paragraph 1.B. of Boeing Service Bulletin 737–24–1147, Revision 1, dated March 1, 2007.

Conclusion

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

Costs of Compliance

There are about 1,617 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this AD.

ESTIMATED COSTS

Model	Action	Work hours	Parts	Cost per airplane	Number of U.S. registered airplanes	Fleet cost
737–300, –400, and –500 series airplanes.	Installation of circuit breaker, relays, and wiring.	Up to 31	Up to $2,925	$5,405	1	$5,405
737–300 series airplanes	Concurrent modification of P5–13 module assembly.	1	$2,327	2,407	1	2,407
737–600, –700, –700C, –800, and –900 series airplanes.	Installation of circuit breaker, relays, and wiring.	Up to 52	Up to $10,968	15,128	586	8,865,008
	Concurrent modification of P5–13 module assembly.	4	$9,241	9,561	586	5,602,746
737–800 series airplanes	Installation of wiring for the No. 4 VDU.	12	$3,372	4,332	2	8,664

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a

substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–12–06 Boeing:

Amendment 39–15929. Docket No. FAA–2007–0163; Directorate Identifier 2007–NM–046–AD.

Effective Date

(a) This airworthiness directive (AD) is effective July 16, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Boeing airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model 737–300, –400, and –500 series airplanes, as identified in Boeing Service Bulletin 737–24–1145, dated March 4, 2004.

(2) Model 737–600, –700, –700C, –800, and –900 series airplanes, as identified in Boeing Service Bulletin 737–24–1147, Revision 1, dated March 1, 2007.

Unsafe Condition

(d) This AD results from an in-flight entertainment (IFE) systems review. We are issuing this AD to ensure that the flightcrew is able to turn off electrical power to IFE systems and other non-essential electrical systems through a switch in the flight compartment. The flightcrew's inability to turn off power to IFE systems and other non-essential electrical systems during a non-normal or emergency situation could result in the inability to control smoke or fumes in the airplane flight deck or cabin.

Compliance

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

Install Circuit Breaker, Relays, and Wiring on Model 737–300, –400, and –500 Series Airplanes

(f) For Model 737–300, –400, and –500 series airplanes: Within 60 months after the effective date of this AD, install a new circuit breaker, relays, and wiring to allow the flightcrew to turn off electrical power to the IFE systems through the IFE/galley switch and do all other specified actions as applicable, by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 737–24–1145, dated March 4, 2004.

Concurrently Modify P5–13 Module Assembly on Model 737–300 Series Airplanes

(g) For Model 737–300 series airplanes identified as Group 6 airplanes in Boeing Service Bulletin 737–24–1145, dated March 4, 2004, and equipped with P5–13 module assembly part number (P/N) 69–37321–81: Prior to or concurrently with accomplishing the actions required by paragraph (f) of this AD, replace the lightplate assembly of the P5–13 module assembly with a new lightplate assembly and reidentify and test the modified P5–13 module assembly, in accordance with the Accomplishment Instructions of Boeing Component Service Bulletin 69–37321–31–03, dated August 21, 2003.

Install Circuit Breaker, Relays, and Wiring on Model 737–600, –700, –700C, –800, and –900 Series Airplanes

(h) For Model 737–600, –700, –700C, –800, and –900 series airplanes: Within 60 months after the effective date of this AD, install a new circuit breaker, relays, and wiring, as applicable, to allow the flightcrew to turn off electrical power to the IFE systems and other non-essential electrical systems through a utility switch in the flight compartment, by accomplishing all of the applicable actions specified in Parts 1, 2, or 3 of the Work Instructions of Boeing Service Bulletin 737–24–1147, Revision 1, dated March 1, 2007.

Concurrently Modify P5–13 Module Assembly on Model 737–600, –700, –700C, –800, and –900 Series Airplanes

(i) For Model 737–600, –700, –700C, –800, and –900 series airplanes identified as Groups 3 through 139 inclusive in Boeing Service Bulletin 737–24–1147, Revision 1, dated March 1, 2007, and equipped with P5–13 module assembly P/N 285A1840–3 or –4: Prior to or concurrently with accomplishing the actions required by paragraph (h) of this AD, modify the P5–13 module assembly, in accordance with the Accomplishment Instructions of Boeing Component Service Bulletin 285A1840–24–02, dated August 28, 2003.

Wiring Installation for the Video Display Unit (VDU)

(j) For Model 737–800 series airplanes identified in paragraph 1.A.1. of Boeing Service Bulletin 737–23–1189, dated June 27, 2002: Prior to or concurrently with accomplishing the actions required by paragraph (h) of this AD, install wiring for the No. 4 VDU cluster, an INOP marker, and stow clip at the P6–1 circuit breaker panel; reroute certain wiring for the No. 4 VDU cluster between stations 685 and 767; and do a continuity test of the newly installed and rerouted wiring; in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–23–1189, dated June 27, 2002.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Joe Salameh, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–917–6454; fax 425–917–6590. Or, e-mail information to *9–ANM–Seattle–ACO–AMOC–Requests@faa.gov.*

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(l) You must use the applicable service information contained in Table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Service information	Revision level	Date
Boeing Component Service Bulletin 69–37321–31–03	Original	August 21, 2003.

TABLE 1—MATERIAL INCORPORATED BY REFERENCE—Continued

Service information	Revision level	Date
Boeing Component Service Bulletin 285A1840–24–02	Original	August 28, 2003.
Boeing Service Bulletin 737–23–1189	Original	June 27, 2002.
Boeing Service Bulletin 737–24–1145	Original	March 4, 2004.
Boeing Service Bulletin 737–24–1147	1	March 1, 2007.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on June 1, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–13305 Filed 6–10–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0005; Directorate Identifier 2008–NM–164–AD; Amendment 39–15927; AD 2009–12–04]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model C–212–CB, C–212–CC, C–212–CD, C–212–CE, C–212–CF, and C–212–DE Airplanes

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

ACTION: Final rule.

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

Incidents have been reported on Britten-Norman BN–2 aircraft, where cracks were found in the inner shell of the pitot/static pressure heads. The investigation concluded that these pitot tubes, supplied by Thales Optronics, could be operated outside their voltage specification. On December 15th, 2005, CAA [Civil Aviation Authority] United Kingdom issued AD G–2005–0034 (EASA approval number 2005–6447), later superseded by EASA AD 2006–0143, to require inspections and leak tests on Britten-Norman aircraft. Subsequently, it has been discovered that the same tubes are supplied to EADS–CASA for installation on C–212 aircraft, one for the pilot side and one for the co-pilot side. So far, EADS–CASA has not received any report of cracked pitot tubes from C–212 operators.

This condition, if not corrected, could result in incorrect readings on the pressure instrumentation, e.g., altimeters, vertical speed indicators (rate of climb) and airspeed indicators, potentially leading to navigational errors.

* * * * *

The unsafe condition could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective July 16, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 16, 2009.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 23, 2009 (74 FR 8043). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Incidents have been reported on Britten-Norman BN–2 aircraft, where cracks were found in the inner shell of the pitot/static pressure heads. The investigation concluded that these pitot tubes, supplied by Thales Optronics, could be operated outside their voltage specification. On December 15th, 2005, CAA [Civil Aviation Authority] United Kingdom issued AD G–2005–0034 (EASA approval number 2005–6447), later superseded by EASA AD 2006–0143, to require inspections and leak tests on Britten-Norman aircraft. Subsequently, it has been discovered that the same tubes are supplied to EADS–CASA for installation on C–212 aircraft, one for the pilot side and one for the co-pilot side. So far, EADS–CASA has not received any report of cracked pitot tubes from C–212 operators.

This condition, if not corrected, could result in incorrect readings on the pressure instrumentation, e.g., altimeters, vertical speed indicators (rate of climb) and airspeed indicators, potentially leading to navigational errors.

For the reasons described above, this EASA AD requires the inspection of the affected pitot tubes, and, if cracks are found, replacement of those tubes with the new P/N [part number] 212–A0150–0001 and 212–A0150–0002 pitot tubes.

The unsafe condition could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 32 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $2,560, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–12–04 Construcciones Aeronauticas, S.A. (CASA): Amendment 39–15927. Docket No. FAA–2009–0005; Directorate Identifier 2008–NM–164–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 16, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to CASA Model C–212–CB, C–212–CC, C–212–CD, C–212–CE, C–212–CF, and C–212–DE airplanes, all serial numbers; certificated in any category; on which pitot tubes having part number 212–61105.1 or 212–61105.2 are installed.

Subject

(d) Air Transport Association (ATA) of America Code 34: Navigation.

Reason

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

''Incidents have been reported on Britten-Norman BN–2 aircraft, where cracks were found in the inner shell of the pitot/static pressure heads. The investigation concluded that these pitot tubes, supplied by Thales Optronics, could be operated outside their voltage specification. On December 15th, 2005, CAA [Civil Aviation Authority] United Kingdom issued AD G–2005–0034 (EASA approval number 2005–6447), later superseded by EASA AD 2006–0143, to require inspections and leak tests on Britten-Norman aircraft. Subsequently, it has been discovered that the same tubes are supplied to EADS–CASA for installation on C–212 aircraft, one for the pilot side and one for the co-pilot side. So far, EADS–CASA has not received any report of cracked pitot tubes from C–212 operators.

''This condition, if not corrected, could result in incorrect readings on the pressure instrumentation, e.g., altimeters, vertical speed indicators (rate of climb) and airspeed indicators, potentially leading to navigational errors.

''For the reasons described above, this EASA AD requires the inspection of the affected pitot tubes, and, if cracks are found, replacement of those tubes with the new P/N [part number] 212–A0150–0001 and 212–A0150–0002 pitot tubes.

The unsafe condition could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane.

Actions and Compliance

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

(1) Within 1 month or 300 flight hours after the effective date of this AD, whichever occurs first: Perform a detailed inspection of the affected pitot tubes and static inlets for radial cracking around the top lip of the dynamic port, in accordance with the instructions of Chapter 5 of the CASA C–212 Series 100/200 Maintenance Manual, Revision 2, dated June 11, 2002. Repeat the inspection thereafter at intervals not to exceed 300 flight hours.

(2) If any crack is found during any inspection required by paragraph (f)(1) of this AD, before further flight, replace the pitot tube with a new pitot tube having P/N 212–A0150–0001 or 212–A0150–0002 in accordance with the instructions of CASA Service Bulletin SB–212–34–11, Revision 1, dated February 27, 2008. Replacement of both pitot tubes having part number 212–61105.1 and 212–61105.2 with new tubes terminates the repetitive inspections required by paragraph (f)(1) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International

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

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0155, dated August 11, 2008; Chapter 5 of the CASA C–212 Series 100/200 Maintenance Manual, Revision 2, dated June 11, 2002; and CASA Service Bulletin SB–212–34–11, Revision 1, dated February 27, 2008; for related information.

Material Incorporated by Reference

(i) You must use Chapter 5 of the CASA C–212 Series 100/200 Maintenance Manual, Revision 2, dated June 11, 2002; and CASA Service Bulletin SB–212–34–11, Revision 1, dated February 27, 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. The CASA C–212 Series 100/200 Maintenance Manual, Revision 2, dated June 11, 2002, contains the following effective pages:

LIST OF EFFECTIVE PAGES

Page title/description	Page number(s)	Revision number	Date shown on page(s)
Title Page	None shown	2	June 11, 2002.
Record of Revisions	None shown	2	June 11, 2002.
Chapter 5: List of Effectivity Pages	1	None shown*	June 11, 2002.
Chapter 5: Table of Contents	1–4	None shown*	May 25, 1988.
Section 5–00–00	1–6	None shown*	May 25, 1988.
Section 5–10–00	1–4	None shown*	May 25, 1988.
	5–7, 9, 10	None shown*	June 11, 2002.
	8, 11–15	None shown*	July 22, 1993.
Section 5–20–00	1–4	None shown*	May 25, 1988.
	5–13, 16, 19–31, 34–45, 47–62, 64, 66–90.	None shown*	July 22, 1993.
	14, 15, 17, 18, 32, 33, 46, 63, 65.	None shown*	June 11, 2002.
Section 5–50–10	1–10	None shown*	May 25, 1988.
Section 5–50–20	1, 2	None shown*	May 25, 1988.

(*Only the title page and Record of Revisions for the CASA C–212–100/200 Maintenance Manual specify the revision level of the document.)

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

(2) For service information identified in this AD, contact EADS–CASA, Military Transport Aircraft Division (MTAD), Integrated Customer Services (ICS), Technical Services, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 05; e-mail *MTA.TechnicalService@casa.eads.net*; Internet *http://www.eads.net*.

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

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

Issued in Renton, Washington, on June 1, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–13138 Filed 6–10–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29067; Directorate Identifier 2007–NM–148–AD; Amendment 39–15926; AD 2009–12–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200CB, and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 757–200, –200CB, and –300 series airplanes. This AD requires a detailed inspection for damage of the wire bundle of the right recirculation fan, and repair if necessary. This AD also requires re-routing the wire bundle of the right recirculation fan. This AD results from a report indicating that, during landing of a Model 757 airplane, an overheat warning and smoke occurred in the main cabin, and the right recirculation fan stopped operating. We are issuing this AD to prevent damage of the wiring bundle of the right recirculation fan. Such damage could result in a short circuit and possible fire in the mix bay or smoke in the main cabin.

DATES: This AD is effective July 16, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 16, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail

me.boecom@boeing.com; Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT:

Philip Sheridan, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 757–200, –200CB, and –300 series airplanes. That NPRM was published in the **Federal Register** on August 31, 2007 (72 FR 50290). That NPRM proposed to require a detailed inspection for damage of the wire bundle of the right recirculation fan, and repair if necessary. That NPRM also proposed to require re-routing the wire bundle of the right recirculation fan.

Actions Since the NPRM Was Issued

The NPRM referred to Boeing Service Bulletin 757–21–0109, dated December 15, 2006, as the appropriate source of service information for the proposed actions. Boeing has since revised that service bulletin. Boeing Service Bulletin 757–21–0109, Revision 1, dated October 30, 2008, clarifies certain procedures but otherwise adds no new actions. We have revised paragraphs (c) and (f) in this final rule to refer to Revision 1 of the service bulletin. We have added a new paragraph (g) to this final rule to provide credit for actions done before the effective date of the AD in accordance with the original service bulletin. We have renumbered subsequent paragraphs accordingly.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the two commenters.

Support for the NPRM

Boeing concurs with the contents of the NPRM.

Request To Clarify Procedures

Continental Airlines asks for clarification or instructions regarding the filler material between the e-clip, part number 411A4902–7, and the wire and the clip in the depiction in Boeing Service Bulletin 757–21–0109, dated December 15, 2006.

We agree that further clarification is needed on this point. Boeing Service Bulletin 757–21–0109, Revision 1, dated October 30, 2008, provides a filler rod part number and corrects the reference in note (b) for Figure 3 and Figure 4 of that service bulletin. As stated previously, we have changed the final rule to refer to Revision 1 of the service bulletin as the appropriate source of service information for this final rule.

Request To Include Instructions for Modified Airplanes

Continental Airlines requests that we revise the NPRM to provide instructions for airplanes that are not in the pre-modification state depicted by Boeing Service Bulletin 757–21–0109, dated December 15, 2006.

We find that clarification is necessary. Boeing Service Bulletin 757–21–0109, Revision 1, dated October 30, 2008, is now referenced in the final rule. It addresses six new wire configurations which take into account the known preexisting configurations. We have not changed the final rule regarding this issue.

Request To Revise NPRM To Require Different Method of Compliance

Continental Airlines suggests using a heat shrinkable sleeve in place of the ''heat shrinkable'' sleeve TFE–2X, which the commenter states is in fact not heat shrinkable. The commenter states that in its experience tying the lacing tape around the sleeve is extremely difficult, and it does not believe that the sleeve will stay on much more than a year at best.

We infer that the commenter is requesting a different method of compliance. We disagree. Boeing Service Bulletin 757–21–0109, Revision 1, dated October 30, 2008, specifies to use a sleeve with part number 65C38488–2. We have not changed the final rule regarding this issue. However, under the provisions of paragraph (h) of this AD, we may approve a request for different compliance methods if the request includes data that prove that the new method provides an acceptable level of safety.

Explanation of Change to Final Rule

We have clarified paragraph (h) of this AD to more accurately identify the information for requesting approval of an alternative method of compliance (AMOC).

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are about 920 airplanes of the affected design in the worldwide fleet. This AD affects about 560 airplanes of U.S. registry. The actions take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Required parts cost about $81 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $134,960, or $241 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–12–03 Boeing: Amendment 39–15926. Docket No. FAA–2007–29067; Directorate Identifier 2007–NM–148–AD.

Effective Date

(a) This airworthiness directive (AD) is effective July 16, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200CB, and –300 series airplanes; certificated in any category; as identified in Boeing Service Bulletin 757–21–0109, Revision 1, dated October 30, 2008.

Unsafe Condition

(d) This AD results from a report indicating that, during landing of a Model 757 airplane, an overheat warning and smoke occurred in the main cabin, and the right recirculation fan stopped operating. We are issuing this AD to prevent damage of the wiring bundle of the right recirculation fan. Such damage could result in a short circuit and possible fire in the mix bay or smoke in the main cabin.

Compliance

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

Inspection and Corrective Actions

(f) Within 24 months after the effective date of this AD, do the actions required by paragraphs (f)(1) and (f)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–21–0109, Revision 1, dated October 30, 2008.

(1) Do a detailed inspection for damage of the wire bundle of the right recirculation fan, and repair any damage before further flight.

(2) Re-route the wire bundle and re-orient the electrical connector of the right recirculation fan.

Credit for Actions Done According to Previous Issue of Service Bulletin

(g) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 757–21–0109, dated December 15, 2006, are acceptable for compliance with the requirements of paragraphs (f)(1) and (f)(2) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Philip Sheridan, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6441; fax (425) 917–6590. Or, e-mail information to *9–ANM–Seattle-ACO–AMOC–Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(i) You must use Boeing Service Bulletin 757–21–0109, Revision 1, dated October 30, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

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

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

Issued in Renton, Washington, on June 1, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–13137 Filed 6–10–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2009–N–0665]

Oral Dosage Form New Animal Drugs; Methimazole

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the original approval of a new animal drug application (NADA) filed by Dechra, Ltd. The NADA provides for the veterinary prescription use of methimazole tablets in cats for treatment of hyperthyroidism.

DATES: This rule is effective June 11, 2009.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8337, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Dechra, Ltd., Dechra House, Jamage Industrial Estate, Talke Pits, Stoke-on-Trent, Staffordshire, ST7 1XW, United Kingdom, filed NADA 141–292 that provides for veterinary prescription use of FELIMAZOLE (methimazole) Coated Tablets in cats for the treatment of hyperthyroidism. The NADA is approved as of May 27, 2009, and the regulations are amended in 21 CFR part 520 to reflect the approval.

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.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning on the date of approval.

FDA has determined under 21 CFR 25.33 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 in 21 CFR Part 520

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 part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

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

■ 2. Add § 520.1372 to read as follows:

§ 520.1372 Methimazole.

(a) *Specifications*. Each tablet contains 2.5 or 5 milligrams (mg) methimazole.

(b) *Sponsor*. See No. 043264 in § 510.600 of this chapter.

(c) *Conditions of use in cats*—(1) *Amount*. The starting dose is 2.5 mg every 12 hours. Following 3 weeks of treatment, the dose should be titrated to effect based on individual serum total T4 levels and clinical response.

(2) *Indications for use*. For the treatment of hyperthyroidism.

(3) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 5, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E9–13685 Filed 6–10–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510–AB19

Debt Collection Authorities Under the Debt Collection Improvement Act of 1996

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim final rule.

SUMMARY: The Department of the Treasury, Financial Management Service, is amending its regulation governing the centralized offset of federal payments to collect nontax debts owed to the United States. The amendment removes the time limitation on the collection of nontax debts by centralized offset, consistent with a change in the statute on which it is based. The statutory change, enacted as part of the Food, Conservation and Energy Act of 2008, allows for the use of centralized offset of federal payments, including federal salary payments, to collect nontax debts owed to the United States irrespective of the amount of time the debt has been outstanding.

DATES: This interim final rule is effective June 11, 2009. Comments must be received by August 10, 2009.

ADDRESSES: The Financial Management Service (FMS) participates in the U.S. government's eRulemaking Initiative by publishing rulemaking information on *http://www.regulations.gov.* Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

Comments on this rule, identified by docket FISCAL–FMS–2008–0002, should only be submitted using the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions on the Web site for submitting comments.

Mail: Tom Dungan, Policy Analyst, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

The fax and e-mail methods of submitting comments on rules to FMS have been retired.

Instructions: All submissions received must include the agency name (''Financial Management Service'') and docket number FISCAL–FMS–2008–0002 for this rulemaking. In general, comments will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may also inspect and copy this proposed rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Thomas Dungan, Policy Analyst, at (202) 874–6660, or Tricia Long, Senior Attorney, at (202) 874–6680.

SUPPLEMENTARY INFORMATION:

I. Background

The Food, Conservation and Energy Act of 2008, Public Law 110–334, Section 14219, 22 Stat. 923 (2008) (''the Act'') amended the Debt Collection Act of 1982 (as amended by the Debt Collection Improvement Act of 1996) to remove a restriction on the collection of debt by administrative offset, i.e., offset of payments pursuant to 31 U.S.C. 3716. Prior to this change, administrative offset to collect debt was only available if the debt was delinquent for a period of less than ten years. The amendment to the law allows for the collection of debt by administrative offset without any time limitation and applies to any debt outstanding on or after the date of the enactment of the Act.

The changes to this rule conform to the statutory language by removing the ten-year time limitation on the collection of nontax debt by administrative offset, including centralized salary offset, by explicitly stating that no time limitation shall apply, and by explaining that by removing the time limitation, all debts, including debts that were ineligible for collection by offset prior to the removal of the time limitation, may now be collected by administrative offset and centralized salary offset. To avoid any undue hardship, we have added a requirement applicable to debts that were previously ineligible for collection by offset because they had been outstanding for more than ten years. For these debts, creditor agencies must certify to FMS that the notice of intent to offset was sent to the debtor after the debt became ten years delinquent. This is intended to alert the debtor that his debt may now be collected by offset and allows the debtor additional

opportunities to dispute the debt, enter into a repayment agreement or otherwise avoid offset. This requirement applies even in a case where notice was sent prior to the debt becoming ten years delinquent. This requirement applies only with respect to debts that were previously ineligible for collection by offset because of the time limitation. This requirement does not apply to debts, such as Department of Education student loan debts, that could be collected by offset without regard to any time limitation prior to this statutory change.

II. Procedural Analyses

Administrative Procedures Act

This rule is being issued without prior public notice and comment because the changes to the rule are being made to conform to statutory requirements. Under 5 U.S.C. 553(b) and (d)(3), good cause exists to determine that notice and comment rulemaking is unnecessary and contrary to the public interest. The amendments made by this rule merely mirror amendments already enacted into law. Further delay in making these amendments would create an inconsistency between the law and the regulations and would cause confusion.

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rules are clear; or (3) whether there is something else we could do to make these rules easier to understand.

Regulatory Planning and Review

The final rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

Because no notice of rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) do not apply.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Child support, Child welfare, Claims, Credits, Debts, Disability benefits, Federal employees, Garnishment of wages, Hearing and appeal procedures, Loan programs, Privacy, Railroad retirement, Railroad unemployment insurance, Salaries, Social Security benefits, Supplemental Security Income (SSI), Taxes, Veteran's benefits, Wages.

■ For the reasons set forth in the preamble, we are amending 31 CFR part 285 as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

■ 1. The authority citation for part 285 continues to read as follows:

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719, 3720A, 3720B, 3720D; 42 U.S.C. 664; E.O. 13019, 61 FR 51763, 3 CFR, 1996 Comp., p. 216.

■ 2. In § 285.5:

■ a. Remove paragraph (d)(3)(i)(C);

■ b. Redesignate paragraphs (d)(3)(i)(D) and (d)(3)(i)(E) as paragraphs (d)(3)(i)(C) and (d)(3)(i)(D) respectively.

■ c. Redesignate paragraphs (d)(6)(iii), (d)(6)(iv) and (d)(6)(v) as paragraphs (d)(6)(iv), (d)(6)(v) and (d)(6)(vi) respectively.

■ d. Add paragraphs (d)(3)(v) and (d)(6)(iii) as follows:

§ 285.5 Centralized offset of Federal payments to collect nontax debt owed to the United States.

* * * * *

(d) * * *

(3) * * *

(v) Creditor agencies may submit nontax debts to FMS for collection by centralized offset irrespective of the amount of time the debt has been outstanding. Accordingly, all nontax debts, including debts that were outstanding for ten years or longer prior to June 11, 2009 may be collected by centralized offset.

* * * * *

(6) * * *

(iii) For debts outstanding more than ten years on or before June 11, 2009, the notice of intent to offset described in paragraph (d)(6)(ii)(A) of this section was sent to the debtor after the debt was outstanding for more than ten years, and that the debtor was afforded the rights described in paragraphs (d)(6)(ii)(B) through (E). This requirement will apply even in a case where notice was also sent prior to the debt being outstanding for ten years but does not apply to any debt that could be collected by offset without regard to any time limitation prior to June 11, 2009.

■ 3. In § 285.7:

■ a. Remove paragraph (d)(3)(ii);

■ b. Redesignate paragraphs (d)(3)(iii) through (d)(3)(iv) as paragraphs (d)(3)(ii) through (d)(3)(iii) respectively .

■ c. In paragraph (d)(4), revise all references to ''paragraph (d)(3)(iv)'' to read ''paragraph (d)(3)(iii)''.

■ d. Add paragraphs (d)(6) and (d)(7) as follows:

§ 285.7 Salary offset.

* * * * *

(d) * * *

(6) Creditor agencies may submit nontax debts to FMS for collection by centralized salary offset irrespective of the amount of time the debt has been outstanding. Accordingly, all nontax debts, including debts that were outstanding for ten years or longer prior to June 11, 2009, may be collected by centralized salary offset.

(7) For debts that were outstanding more than ten years on or before June 11, 2009, creditor agencies must certify to FMS that the notice described in paragraph (d)(3)(ii) of this section was sent to the debtor after the debt was outstanding for ten years. This requirement will apply even in a case where notice was also sent prior to the debt being outstanding for ten years but does not apply to any debt that could be collected by offset without regard to any time limitation prior to June 11, 2009.

* * * * *

Dated: May 29, 2009.

Gary Grippo,

Acting Fiscal Assistant Secretary.

[FR Doc. E9–13617 Filed 6–10–09; 8:45 am]

BILLING CODE 4810–35–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0323; FRL–8915–8]

Approval and Promulgation of Implementation Plans; Hawaii

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: Under the Clean Air Act, EPA is completing the process begun in 2005 to revise the format of the ''identification of plan'' section for the Hawaii State Implementation Plan (SIP). Specifically, EPA is adding the non-regulatory provisions and quasi-regulatory measures to the revised ''identification of plan'' section. The non-regulatory provisions and quasi-regulatory measures affected by this format revision have been previously

submitted by the State of Hawaii and approved by EPA.

DATES: *Effective Date:* This rule is effective on June 11, 2009.

ADDRESSES: Non-regulatory and quasi-regulatory SIP materials are available for inspection at Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 and online at EPA Region IX's Web site.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 942–3964, *vagendas@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Background
II. Public Comments
III. Statutory and Executive Order Reviews

I. Background

Under the Clean Air Act (CAA or ''Act''), each state is required to have a state implementation plan (SIP) which contains the control measures and strategies which will be used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms. The control measures and strategies must be formally adopted by each state after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

The SIP is a living document that can be revised by the state as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions which may contain new and/or revised regulations as being part of the SIP. On May 31, 1972 (37 FR 10842), EPA approved, with certain exceptions, the initial SIPs for 50 states, four territories and the District of Columbia. Since 1972, each state and territory has submitted numerous SIP revisions, either on their own initiative, or because they were required to as a result of various amendments to the CAA. EPA codifies its approvals and disapprovals of SIPs and SIP revisions in 40 CFR part 52 (''Approval and promulgation of implementation plans'').

Within 40 CFR part 52, there are 58 subparts (subparts A through FFF). Subpart A contains general requirements applicable to all states and territories, while subparts B through DDD and FFF contain requirements that are specific to a given state or territory. Subpart EEE contains historical information pertaining to EPA action on SIP material originally submitted by states to the National Air Pollution Control Administration, Department of Health Education and Welfare in 1970.

Until 1997, the first or second section of each subpart within 40 CFR part 52 (other than subparts A and EEE) was called ''identification of plan.'' On May 22, 1997 (62 FR 27968), EPA established a new format for the ''identification of plan'' sections assigned to each subpart in 40 CFR part 52 (except A and EEE). With the new format, revised ''identification of plan'' sections contain five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA approved regulations, (d) EPA approved source specific permits, and (e) EPA approved nonregulatory provisions and quasi-regulatory measures. ''Nonregulatory provisions and quasi-regulatory measures'' refers to such items as transportation control measures, certain statutory provisions, control strategies, and monitoring networks. In our May 1997 rule, we indicated that EPA would begin to phase-in the new format on a state-by-state basis. Please see our May 1997 rule for more information concerning the revised format for SIPs.

The Hawaii SIP is identified in subpart M (''Hawaii'') of part 52. As with other State SIPs, EPA has taken a number of actions since 1972 with respect to the Hawaii SIP. In 2005, we revised the format of the ''identification of plan'' section in subpart M in accordance with the revised format described above. See 70 FR 44852 (August 4, 2005). In our 2005 final rule, we did not complete the process of revising the format for the ''identification of plan'' section in that we did not list the nonregulatory provisions and quasi-regulatory measures portion of the Hawaii SIP, but we are doing so in today's action.

II. Public Comments

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) that, upon finding ''good cause,'' authorizes agencies to dispense with public participation; and section 553(d)(3), which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply revises the codification of provisions that are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary'' and ''contrary to the public interest'' since the codification only reflects existing law. Immediate notice in the CFR benefits the public by clearly identifying the current nonregulatory provisions and quasi-regulatory measures of the Hawaii SIP.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 or 204 of UMRA.

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 rule also is not subject to Executive Order 13045,''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not an economically

significant regulatory action based on health or safety risks.

This rule does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). 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.*). EPA's compliance with these statutes and Executive Orders for the underlying measures is discussed in previous actions taken on the State's measures.

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's action simply reformats the codification of provisions that are already in effect as a matter of law in Federal and approved State programs. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of *June 11, 2009.* EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

EPA has also determined that the provision of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Hawaii SIP compilation had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need to reopen the 60-day period for filing such petitions for judicial review for this reformatting of portions of the ''Identification of plan'' section of 40 CFR 52.620 for Hawaii.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 28, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

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

Subpart M—Hawaii

■ 2. Section 52.620 is amended by adding paragraph (e) to read as follows:

§ 52.620 Identification of plan.

* * * * *

(e) EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures.

EPA APPROVED HAWAII NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
State of Hawaii Air Pollution Control Strategy Plan				
Section I—Introduction	State-wide	01/28/72	05/31/72, 37 FR 10842.	
Section III—Legal Authority:				
Section III—Legal Authority	State-wide	01/28/72	05/31/72, 37 FR 10842.	Excluding Air Pollution Control Law, Hawaii Revised Statutes, Chapter 322, Part V, Sections 322–64(5) and 322–66 [see 39 FR 34533 (September 26, 1974)] and Section 322–68 [see 74 FR 11037 (March 16, 2009)].
Letter from the Governor concerning legal authority and enclosure (Act 100, Relating to Ecology Environment and Recreation, approved by the Governor on May 22, 1972).	State-wide	06/15/72	11/08/73, 38 FR 30876.	Excluding Section 7—Variances of Act 100. See 74 FR 11037 (March 16, 2009).
Sections V and VI:				
Section V—Air Quality Data Summary.	State-wide	08/15/73	06/25/74, 39 FR 22946.	
Section VI—Emission Inventory Summary.	State-wide	08/15/73	06/25/74, 39 FR 22946.	
Section VII—Control Strategy Development:				
Subsection 1. Particulate Matter.	State-wide	04/25/74	03/02/76, 41 FR 8956.	Excluding subsection entitled, ''Control Strategy to Meet State Standards.'' See State submittals dated May 8, 1972 and May 22, 1972, approved at 37 FR 15080 (July 27, 1972), and 40 CFR 52.623.
PM_{10} Control Measures/NSR Procedures.	State-wide	09/14/88	07/09/04, 69 FR 41431.	

EPA APPROVED HAWAII NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
Subsection 2. Sulfur Oxides ...	State-wide	01/28/72	05/31/72, 37 FR 10842.	Excluding subsection entitled, "Control Strategy to Meet State Standards." See State submittals dated May 8, 1972 and May 22, 1972, approved at 37 FR 15080 (July 27, 1972), and 40 CFR 52.623.
Subsection 3. Carbon Monoxide.	State-wide	01/28/72	05/31/72, 37 FR 10842.	Excluding subsection entitled, "Control Strategy to Meet State Standards." See State submittals dated May 8, 1972 and May 22, 1972, approved at 37 FR 15080 (July 27, 1972), and 40 CFR 52.623.
Subsection 4. Nitrogen Dioxide.	State-wide	01/28/72	05/31/72, 37 FR 10842.	Excluding subsection entitled, "Control Strategy to Meet State Standards." See State submittals dated May 8, 1972 and May 22, 1972, approved at 37 FR 15080 (July 27, 1972), and 40 CFR 52.623.
Subsection 5. Photochemical Oxidants.	State-wide	01/28/72	05/31/72, 37 FR 10842.	Excluding subsection entitled, "Control Strategy to Meet State Standards." See State submittals dated May 8, 1972 and May 22, 1972, approved at 37 FR 15080 (July 27, 1972), and 40 CFR 52.623.
Sections VIII through XI:.				
Section VIII—Prevention of Emergency Episodes.	State-wide	01/28/72	05/31/72, 37 FR 10842.	Excluding subsection entitled, "State Plan." See State submittals dated May 8, 1972 and May 22, 1972, approved at 37 FR 15080 (July 27, 1972), and 40 CFR 52.623.
Section IX—Compliance Schedule.	State-wide	01/28/72	05/31/72, 37 FR 10842.	
Section X—Source Surveillance System.	State-wide	01/28/72	05/31/72, 37 FR 10842.	
Section XI—Permit and Registration System.	State-wide	01/28/72	05/31/72, 37 FR 10842.	
Section XII—Air Quality Surveillance Network:				
Section XII—Air Quality Surveillance Network.	State-wide	08/21/80	08/10/81, 46 FR 40512.	
Air Quality Surveillance Network, SIP Amendment—PM_{10}.	State-wide	09/14/88	07/09/04, 69 FR 41431.	
Sections XIII and XIV:				
Section XIII—Intergovernmental Cooperation.	State-wide	01/28/72	05/31/72, 37 FR 10842.	
Section XIV—Resources	State-wide	01/28/72	05/31/72, 37 FR 10842.	
State of Hawaii Air Pollution Control Implementation Plan for Lead				
State of Hawaii Air Pollution Control Implementation Plan for Lead.	State-wide	10/29/82	08/18/83, 48 FR 37402.	Excluding section II ("Notice of Public Hearing"); Hawaii Statute on Environmental Quality, Chapter 342, Hawaii Revised Statutes, section 342–7 [see 74 FR 11037 (March 16, 2009)]; and section IV ("Control Regulations").

[FR Doc. E9–13590 Filed 6–10–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2008–0831–200825(a); FRL–8915–7]

Approval and Promulgation of Implementation Plans Georgia: State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the State Implementation Plan (SIP) revision submitted by the Georgia Department of Natural Resources (DNR), through the Georgia Environmental Protection Division (EPD), on June 25, 2008. The revisions include modifications to Georgia's Air Quality Rules found at Chapters 391–3–1–.01, and 391–3–1–.02, pertaining to ''Definitions,'' and ''Emission Limitations and Standards,'' respectively. This action is being taken

pursuant to section 110 of the Clean Air Act (CAA).

DATES: This direct final rule is effective August 10, 2009 without further notice, unless EPA receives adverse comment by July 13, 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 No. EPA–R04–OAR–2008–0831, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: harder.stacy@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2008–0831,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2008–0831.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. EPA's Action
II. Analysis of the State's Submittal
III. Final Action
IV. Statutory and Executive Order Reviews

I. EPA's Action

EPA is approving a SIP revision submitted by the DNR through EPD on June 25, 2008. The revisions include changes to Georgia's Air Quality Rules, found at Chapters 391–3–1–.01, and 391–3–1–.02, pertaining to ''Definitions,'' and ''Emission Limitations and Standards,'' respectively. These revisions became State effective on June 8, 2008.

II. Analysis of State's Submittal

Georgia is revising rule 391–3–1–.01, ''Definitions,'' subparagraph (nnnn), pertaining to ''Procedures for Testing and Monitoring Sources of Air Pollutants.'' The revised language updates the rule to reference the most current version of the procedures which is dated January 1, 2008.

Additionally, Georgia is revising rule 391–3–1–.02(2), ''Emission Limitations and Standards,'' subparagraph (a) relating to ''General Provisions.'' Georgia is amending subparagraph (a)(6), ''VOC Emissions Standards, Exemptions, Area Designations, Compliance Schedules and Compliance Determinations,'' to provide clarification and consistency with rules referenced in the general provisions. Specifically, the revision removes language to subparagraphs 6(i)(II) and (III) to clarify the rules that the subparagraphs are referencing. The revision also removes a specific compliance schedule under subparagraph 6(ii)(II) that is no longer applicable, and was implemented by 1994.

III. Final Action

EPA is taking direct final action to approve the aforementioned revisions, specifically, Chapters 391–3–1–.01(nnnn) and 391–3–1–.02(2), into the Georgia SIP. These revisions were submitted by GA EPD on June 25, 2008. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 10, 2009 without further notice unless the Agency receives adverse comments by July 13, 2009.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 10, 2009 and no further action will be taken on the proposed rule. Please note that if we

receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. 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 this **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 may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 1, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart L—Georgia

■ 2. Section 52.570(c) is amended by revising the entries for ''391–3–1–.01, and 391–3–1–.02'' to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
391–3–1–.01	Definitions	6/8/2008	6/11/2009 [Insert citation of publication]	
391–3–1–.02	Provisions	6/8/2008	6/11/2009 [Insert citation of publication]	
*	*	*	*	*

* * * * *

[FR Doc. E9–13591 Filed 6–10–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0230; FRL–8900–8]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District, Placer County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and Placer County Air Pollution Control District (PCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from storage tanks and the operation of steam drive crude oil production wells. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 10, 2009 without further notice, unless EPA receives adverse comments by July 13, 2009. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0230, by one of the following methods:

1. *Federal eRulemaking Portal*: *www.regulations.gov.* Follow the on-line instructions.
2. *E-mail*: *steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *Law.Nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rule revisions?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. EPA Recommendations to Further Improve the Rules
D. Public Comment and Final Action
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
MBUAPCD	427	Steam Drive Crude Oil Production Wells	10/17/07	03/07/08
PCAPCD	212	Storage of Organic Liquids	06/19/97	07/18/08

On April 17, 2008 and August 22, 2008, these rule submittals were found to meet the completeness criteria in 40 CFR Part 51, Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved versions of MBUAPCD Rule 427 and PCAPCD Rule 212 into the SIP on August 22, 2002 (*see* 67 FR 54349) and May 6, 1996 (see 61 FR 20145). There have been no subsequent submittals of these rules.

C. What is the purpose of the submitted rule revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. PCAPCD Rule 212 limits emissions of VOCs from storage tanks. The June 19, 2008 amendments to Rule 212 are mostly administrative changes to improve on the formatting and clarity of the rule. MBUAPCD Rule 427 limits emissions of VOCs from the operation of steam drive crude oil production wells. The majority of the October 17, 2007 amendments to Rule 427 were editorial in nature, and the major changes made narrowed an exemption and required documentation to claim exemption. EPA's technical support documents (TSD) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document

as well as each major source in nonattainment areas (see section 182(a)(2)), and must not relax existing requirements (see sections 110(l) and 193). The PCAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 212 must fulfill RACT. MBUAPCD has been in attainment for ozone since 1997. At that time, EPA determined that MBUAPCD was implementing RACT as required and that subsequent upgrades to RACT were not required so long as the area continued to maintain the standard.

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks,'' EPA–450/2–77–036, December 1977.
5. ''Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks,'' EPA–450/2–78–047, February 1978.
6. ''Alternative Control Techniques Document: Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks,'' EPA–453/R–94–001, January 1994.
7. ''Assessment of VOC Emissions From Well Vents Associated with Thermally Enhanced Oil Recovery,'' EPA–0–0/0–81–003, September 1981.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSD for PCAPCD Rule 212 describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by July 13, 2009, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 10, 2009. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 10, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. 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 may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 3, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(354)(i)(D) and (359)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(354) * * *

(i) * * *

(D) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 427, ''Steam Drive Crude Oil Production Wells,'' adopted on January 16, 1980 and amended on October 17, 2007.

* * * * *

(359) * * *

(i) * * *

(C) Placer County Air Pollution Control District.

(*1*) Rule 212, ''Storage of Organic Liquids,'' adopted on May 24, 1977 and amended on June 19, 1997.

* * * * *

[FR Doc. E9–13481 Filed 6–10–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0142; FRL–8902–1]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern particulate matter (PM–10) emissions from open outdoor fires and from wood burning devices. We are approving local rules under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 10, 2009 without further notice, unless EPA receives adverse comments by July 13, 2009. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0142, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions.
- *E-mail: steckel.andrew@epa.gov.*
- *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *Http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Alfred Petersen, EPA Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal
- A. What rules did the State submit?
- B. Are there other versions of these rules?
- C. What are the purposes of the submitted new rule and rule revisions?

II. EPA's Evaluation and Action
- A. How is EPA evaluating the rules?
- B. Do the rules meet the evaluation criteria?
- C. EPA recommendation to further improve a rule
- D. Public comment and final action

III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that the rules were amended by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended or adopted	Submitted
AVAQMD	444	Open Outdoor Fires	02/19/08 Amended	07/18/08
SCAQMD	445	Wood Burning Devices	03/07/08 Adopted	07/18/08

On August 22, 2008, the submittal of AVAQMD Rule 444 and SCAQMD Rule 445 were determined to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

A version of AVAQMD Rule 444 was approved into the SIP on July 6, 1982 (47 FR 29231).

There is no version of SCAQMD Rule 445 in the SIP.

C. What are the purposes of the submitted new rule and rule revisions?

Section 110(a) of the Clean Air Act (CAA) requires States to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of local air districts' programs to control these pollutants.

The purposes of the submitted AVAQMD Rule 444 revisions relative to the SIP rule are as follows:

- *444(A):* The rule is revised to apply the District Smoke Management Program to open burning while minimizing smoke impacts to the public.
- *444(B)(13):* An ''Approved Burn Plan'' is replaced with a ''Smoke Management Plan.''
- *444(C)(1):* The requirement is added for all burn projects that are greater than 10 acres or that are estimated to produce more than one ton of particulate matter shall be conducted in accordance with the Smoke Management Program.
- *444(C)(2):* A list added of materials prohibited from open burning.
- *444(C)(3):* The permission is added to burn during adverse meteorological conditions in a case where there would be an imminent and substantial economic loss, providing a special permit is obtained from the District and not from a local fire agency.
- *444(C)(4):* The provision is added for a prescribed burn permittee to obtain from CARB up to 48 hours in advance of the burn day a permissive-burn, marginal-burn, or no-burn forecast.
- *444(C)(6):* The requirements are added for ignition, stacking, drying, and time of day for open burning with the exception of prescribed burning.
- *444(C)(7):* The list is added for burning applications that require a permit, such as (a) empty containers used for explosives, (b) right-of-way clearance for a public entity or utility, or (c) wood waste.
- *444(C)(9):* The requirement is added for a Smoke Management Plan for prescribed burning in (a) forest management, (b) range improvement, and (c) wildland vegetation management.
- *444(D)(1):* Exemptions are deleted for (a) open fires in agricultural operations at over 3,000 feet elevation and (b) open fires in agricultural burning at over 6,000 feet elevation.

The primary purpose of SCAQMD Rule 445 is to reduce the emission of particulate matter from wood burning devices. The rule contains the following requirements:

- *445(d)(1):* No person shall install a woodburning device in a new development unless it is (A) an EPA Phase II-certified woodburning heater, (B) a pellet-fueled heater, (C) a masonry heater, (D) a woodburning device that meets emission standards in 40 CFR part 60, subpart AAA, or (E) a dedicated gaseous-fueled fireplace.
- *445(d)(3):* No person shall burn fuel not intended for a woodburning device.
- *445(d)(4):* A commercial firewood facility shall sell seasoned wood only from July 1 through the end of February but may sell both seasoned and unseasoned wood the balance of the year.
- *445(e):* No person shall burn wood indoors or outdoors when a mandatory woodburning curtailment day is forecast.
- *445(f):* Devices exempt from requirements of the rule are (1) cookstoves, (2) devices with no gas infrastructure near new developments, (3) permanently-installed devices upon property sale, (4) properties registered as a historic site, and (5) manufactured firelogs.
- *445(f)(6):* Circumstances exempt from requirements of the rule are (A) sole source of heat, (B) low income household, (C) no gas infrastructure available, (D) elevation over 3,000 ft, and (E) ceremonial fires.

EPA's technical support document (TSD) has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). SIP rules in serious PM–10 nonattainment areas must require for significant sources best available control measures (BACM), including best available control technology (BACT) (see section 189(b)). AVAQMD and SCAQMD regulate serious PM–10 nonattainment areas (see 40 CFR part 81), so AVAQMD Rule 444 and SCAQMD Rule 445 must fulfill the requirements of BACM/BACT.

Guidance and policy documents that we used to help evaluate rules consistently include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *PM–10 Guideline Document* (EPA–452/R–93–008).
- *Technical Information Document for Residential Wood Combustion Best Available Control Measures,* (EPA–450/2–92–002).
- *Minimum BACM/RACM Control Measures for Residential Wood Combustion Rules,* EPA Region IX (September 16, 2008).

B. Do the rules meet the evaluation criteria?

We believe that AVAQMD Rule 444 and SCAQMD Rule 445 are consistent with the relevant policy and guidance regarding enforceability, BACM/BACT, and SIP relaxations and should be given full approval. The TSD has more information on our evaluation.

C. EPA recommendation to further improve a rule

The TSD describes an additional rule revision that does not affect EPA's current action but is recommended for the next time the local agency modifies SCAQMD Rule 445.

D. Public comment and final action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register,** we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by July 13, 2009, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 10, 2009. This will incorporate the rule into the Federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that

are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. 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 SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the 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 *August 10, 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. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 3, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(359)(i)(B)(2) and (D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(359) * * *

(i) * * *

(B) * * *

(*2*) Rule 445, ''Wood Burning Devices,'' adopted on March 7, 2008.

* * * * *

(D) Antelope Valley Air Quality Management District.

(*1*) Rule 444, ''Open Outdoor Fires,'' adopted on October 8, 1976 and revised on February 19, 2008.

* * * * *

[FR Doc. E9–13483 Filed 6–10–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–RO4–OAR–2008–0160; FRL–8912–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; State of Tennessee and Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, notice of administrative change.

SUMMARY: EPA is notifying the public that it has received negative declarations for Hospital/Medical/Infectious Waste Incinerator (HMIWI) units from the State of Tennessee and the Commonwealth of Kentucky. These negative declarations certify that HMIWI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist in areas covered by the air pollution control programs of Tennessee Division of Air Pollution Control and Kentucky Division for Air Quality.

DATES: This final action is effective July 13, 2009 without further notice.

ADDRESSES: *Docket:* All documents in the electronic docket are listed in the *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 *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Egide Louis, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9240. Dr. Louis can also be reached via electronic mail at *louis.egide@epa.gov.*

SUPPLEMENTARY INFORMATION: Sections 111(d) and 129 of the CAA require submittal of plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(d) for new sources of the same type, and EPA has established emission guidelines for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources.

Standards of performance for all existing HMIWI units (designated facilities) constructed on or before June 20, 1996, have been established by EPA, and emission guidelines for HMIWI units were promulgated on September 15, 1997 (62 FR 48348). The emission guidelines are codified at 40 CFR part 60, subpart Ce. Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants at designated facilities. Subpart A of 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located under the jurisdiction of a state, or local agency, the state or local agency must then develop and submit a plan for their respective jurisdiction for the control of the designated pollutants. However, 40 CFR 62.06 provides that if there are no existing sources of the designated pollutants within the state or local agency's jurisdiction, the state or local agency may submit a letter of certification to that effect or negative declaration, in lieu of a plan. The negative declaration exempts the state or local agency from the requirements to submit a plan for that designated pollutant.

Final Action

The State of Tennessee and the Commonwealth of Kentucky have determined there are no existing HMIWI units in their jurisdictions. Consequently, the State of Tennessee and the Commonwealth of Kentucky have submitted letters of negative declaration certifying this fact. Pursuant to 40 CFR part 60, subpart Ce, EPA is providing the public with notice of these negative declarations. Notice of these negative declarations will appear at 40 CFR part 62.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely notifies the public of negative declarations for HMIWI units received by EPA from state or local agencies. This action imposes no requirements. Accordingly, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action is only a notice 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 action 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 notifies the public of EPA's receipt of negative declarations for HMIWI units from state or local agencies and does not alter the distribution of power and responsibilities established in the Clean Air Act. This action also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

With regard to negative declarations for HMIWI units received by EPA from states or local agencies, EPA's role is only to notify the public of the receipt of such negative declarations. 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 approve or disapprove a CAA section 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a CAA section 111(d)/129 plan submission, to use VCS in place of a CAA section 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 action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.SC. 3501 *et seq*).

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

This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 10, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

■ 40 CFR part 62 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 S—[Kentucky]

■ 2. Part 62 is amended by adding a new undesignated center heading to subpart S and a new § 62.4374 to read as follows:

Air Emissions From Existing Hospital/Medical/Infectious Waste Incinerators (HMIWI)—SECTION 111(d)/129 Plan

§ 62.4374 Identification of plan—negative declaration.

Letter from Kentucky Division of Air Quality submitted on Dec. 1, 2000, certifying that there are no Hospital/Medical/Infectious Waste Incinerator units subject to 40 CFR part 60, subpart Ce in its jurisdiction.

Subpart RR—[Tennessee]

■ 4. Part 62 is amended by adding a new undesignated center heading to subpart RR and a new § 62.10633 to read as follows:

Air Emissions From Existing Hospital/Medical/Infectious Waste Incinerators (HMIWI)—SECTION 111(d)/129 Plan

§ 62.10633 Identification of plan—negative declaration.

Letter from Tennessee Division of Air Pollution Control submitted on December 15, 2001, certifying that there are no Hospital/Medical/Infectious Waste Incinerator units subject to 40 CFR parts 60, subpart Ce in its jurisdiction.

[FR Doc. E9–13599 Filed 6–10–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–RO4–OAR–2008–0158; FRL–8912–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Jefferson County, KY; and Forsyth County, NC; and Knox and Davidson Counties, TN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, notice of administrative change.

SUMMARY: EPA is notifying the public that it has received negative declarations for Hospital/Medical/Infectious Waste Incinerator (HMIWI) units from Jefferson County Air Pollution Control District, Kentucky; Forsyth County Environmental Affairs Department, North Carolina; Knox County Department of Air Quality Management, and Nashville/Davidson County Metropolitan Health Department, Tennessee. These negative declarations certify that HMIWI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist in areas covered by the local air pollution control programs of Jefferson County, Kentucky; Forsyth County, North Carolina; Knox County, and Nashville/Davidson County, Tennessee.

DATES: This final action is effective July 13, 2009 without further notice.

ADDRESSES: *Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Egide Louis, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9240. Dr. Louis can also be reached via electronic mail at *louis.egide@epa.gov.*

SUPPLEMENTARY INFORMATION: Sections 111(d) and 129 of the CAA require submittal of plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(d) for new sources of the same type, and EPA has established emission guidelines for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources.

Standards of performance for all existing HMIWI units (designated facilities) constructed on or before June 20, 1996, have been established by EPA, and emission guidelines for HMIWI units were promulgated on September 15, 1997 (62 FR 48348). The emission guidelines are codified at 40 CFR part 60, subpart Ce. Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of State plans for controlling designated pollutants at designated facilities. Subpart A of 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located under the jurisdiction of a State, or local agency, the State or local agency must then develop and submit a plan for their respective jurisdiction for the control of the designated pollutants. However, 40 CFR 62.06 provides that if there are no existing sources of the designated pollutants within the State or local agency's jurisdiction, the State or local agency may submit a letter of certification to that effect or negative declaration, in lieu of a plan. The negative declaration exempts the State or local agency from the requirements to submit a plan for that designated pollutant.

Final Action

The Jefferson County Air Pollution Control District, KY; Forsyth County Environmental Affairs Department, NC;

Knox County Department of Air Quality Management, and Nashville/Davidson County Metropolitan Health Department, TN, have determined there are no existing sources in their respective jurisdictions subject to the HMIWI units emission guidelines. Consequently, Jefferson County, Forsyth County, Knox County and Nashville/Davidson County have submitted letters of negative declaration certifying this fact. Pursuant to 40 CFR part 60, subpart Ce, EPA is providing the public with notice of these negative declarations. Notice of these negative declarations will appear at 40 CFR part 62.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action,'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely notifies the public of negative declarations for HMIWI units received by EPA from State or local agencies. This action imposes no requirements. Accordingly, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action is only a notice 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 action 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 notifies the public of EPA's receipt of negative declarations for HMIWI units from States or local agencies and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This action also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

With regard to negative declarations for HMIWI units received by EPA from States or local agencies, EPA's role is only to notify the public of the receipt of such negative declarations. 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 approve or disapprove a CAA section 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a CAA section 111(d)/129 plan submission, to use VCS in place of a CAA section 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 action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.SC. 3501 *et seq*).

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

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 10, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

■ 40 CFR part 62 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 S—[Kentucky]

■ 2. Part 62 is amended by adding a new undesignated center heading to subpart S and a new § 62.4373 to read as follows:

Air Emissions From Existing Hospital/Medical/Infectious Waste Incinerators (HMIWI)—Section 111(d)/129 Plan

§ 62.4373 Identification of plan—negative declaration.

Letter from Jefferson County Air Pollution Control District, KY, submitted on September 29, 1998, certifying that there are no Hospital/Medical/Infectious Waste Incinerator units subject to 40 CFR part 60, subpart Ce in its jurisdiction.

Subpart II—[North Carolina]

■ 3. Part 62 is amended by adding a new undesignated center heading to subpart II and a new § 62.8356 to read as follows:

Air Emissions From Existing Hospital/Medical/Infectious Waste Incinerators (HMIWI)—Section 111(d)/129 Plan

§ 62.8356 Identification of plan—negative declaration.

Letter from Forsyth County Environmental Affairs Department, NC, submitted on June 2, 1999, certifying that there are no Hospital/Medical/Infectious Waste Incinerator units subject to 40 CFR part 60, subpart Ce in its jurisdictions.

Subpart RR—[Tennessee]

■ 4. Part 62 is amended by adding a new undesignated center heading to subpart RR and a new § 62.10631 to read as follows:

Air Emissions From Existing Hospital/Medical/Infectious Waste Incinerators (HMIWI)—Section 111(d)/129 Plan

§ 62.10631 Identification of plan—negative declarations.

Letters from Knox County Department of Air Quality Management and Nashville/Davidson County Metropolitan Health Department, TN, submitted on Dec. 16, 2002, and Jan. 21, 1998, respectively, certifying that there are no Hospital/Medical/Infectious Waste Incinerator units subject to 40

CFR part 60, subpart Ce in their jurisdictions.

[FR Doc. E9–13601 Filed 6–10–09; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–RO4–OAR–2008–0161; FRL–8912–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Davidson, Knox, and Memphis-Shelby Counties, TN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative changes.

SUMMARY: EPA is notifying the public that it has received negative declarations for large Municipal Waste Combustion (MWC) units from the Nashville/Davidson County Metropolitan Health Department, Knox County Department Air Quality Management, and Memphis-Shelby County Health Department in Tennessee. These negative declarations certify that large MWC units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist in areas covered by the local air pollution control programs of Nashville/Davidson County, Knox County, and Memphis-Shelby County, Tennessee.

DATES: This final action is effective July 13, 2009 without further notice.

ADDRESSES: *Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 3030–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Egide Louis, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9240. Dr. Louis can also be reached via electronic mail at *louis.egide@epa.gov.*

SUPPLEMENTARY INFORMATION:

Sections 111(d) of the CAA requires submittal of plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(d) for new sources of the same type, and EPA has established emission guidelines for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources.

Standards of performance for large MWC units have been established by EPA and the emission guidelines for large MWC units were promulgated on December 19, 1995. The emission guidelines are codified at 40 CFR part 60, subpart Cb (*see* 60 FR 65387). On August 25, 1997, EPA amended subpart Cb to apply only to MWC units with an individual capacity to combust more than 250 tons per day of municipal solid waste (*see* 62 FR 45116). Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Subpart A, of 40 CFR part 62 provides the procedural framework for the submission of these plans. When designated facilities are located under the jurisdiction of a State or local agency, the State or local agency must then develop and submit a plan for the control of the designated pollutants. However, 40 CFR 62.06 provides that if there are no existing sources of the designated pollutants within the State or local agency's jurisdiction, the State or local agency may submit a letter of certification to that effect or negative declaration) in lieu of a plan. The negative declaration exempts the state or local agency from the requirements to submit a plan for that designated pollutant.

Final Action

The Nashville/Davidson County Metropolitan Health Department, Knox County Department of Air Quality Department, and Memphis-Shelby County Health Department in Tennessee have determined that there are no designated facilities subject to the large MWC emission guidelines in their respective jurisdictions. Consequently, Nashville/Davidson County, Knox County, and Memphis-Shelby County, Tennessee have submitted letters of negative declaration certifying this fact. Pursuant to 40 CFR part 60, subpart Cb EPA is providing the public with notice of these negative declarations. Notice of these negative declarations will appear at 40 CFR part 62.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely notifies the public of negative declarations for large MWC units received by EPA from state or local agencies. This action imposes no requirements. Accordingly, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action is only a notice 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 action 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 notifies the public of EPA's receipt of negative declarations for large MWC units from state and local agencies and

does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This action also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

With regard to negative declarations for large MWC units received by EPA from States or local agencies, EPA's role is only to notify the public of the receipt of such negative declarations. 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 approve or disapprove a CAA section 111(d)/129 negative declaration submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it receives a CAA section 111(d)/129 negative declaration, to use VCS in place of a CAA section 111(d)/129 negative declaration that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

List of Subjects in 40 CFR Part 62

Environmental protection; Administrative practice and procedure; Air pollution control; Intergovernmental relations; Reporting and recordkeeping requirements.

Dated: April 10, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

■ 40 CFR part 62 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 RR—(Tennessee)

■ 2. Part 62 is amended by adding a new undesignated center heading to subpart RR and a new § 62.10634 to read as follows:

Air Emissions From Existing Large Municipal Waste Combustors (MWC)—SECTION 111(d)/129 Plan

§ 62.10634 Identification of plan—negative declarations.

Letters from Nashville/Davidson County Metropolitan Health Department, Knox County Department Air Quality Management, and Memphis-Shelby County Health Department, Tennessee submitted on August 16, 2004, March 25, 2008, and February 20, 2008, certifying that there are no large MWC units subject to 40 CFR part 60, subpart Cb in their respective jurisdictions.

[FR Doc. E9–13602 Filed 6–10–09; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 74, No. 111

Thursday, June 11, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 52

[NRC–2008–0122]

RIN 3150–AI10

Enhancements to Emergency Preparedness Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On May 18, 2009 (74 FR 23254), the Nuclear Regulatory Commission (NRC) published for public comment a proposed rule that would amend certain emergency preparedness (EP) requirements in its regulations that govern domestic licensing of production and utilization facilities. A conforming provision would also be added in the regulations that govern licenses, certifications, and approvals for new nuclear power plants. The proposed amendments would codify certain voluntary protective measures contained in NRC Bulletin 2005–02, ''Emergency Preparedness and Response Actions for Security-Based Events,'' and other generically applicable requirements similar to those previously imposed by Commission orders. They would also amend other licensee emergency plan requirements based on a comprehensive review of the NRC's EP regulations and guidance. The proposed requirements would enhance the ability of licensees in preparing to take and taking certain emergency preparedness and protective measures in the event of a radiological emergency; address, in part, security issues identified after the terrorist events of September 11, 2001; clarify regulations to effect consistent emergency plan implementation among licensees; and modify certain EP requirements to be more effective and efficient. Also, the NRC published for public comment three guidance documents related to the EP proposed rule: DG–1237, ''Guidance on Making Changes to Emergency Response Plans for Nuclear Power Reactors'' (74 FR 23220); ''NUREG/CR–XXXX, Criteria for Development of Evacuation Time Estimate Studies'' (74 FR 23219); and Interim Staff Guidance (ISG) NSIR/DPR–ISG–01, ''Emergency Planning for Nuclear Power Plants'' (74 FR 23221). A 75-day comment period was provided for the proposed rule and guidance documents, set to expire on August 3, 2009. Comments specific to the information collection aspects of the proposed rule were due on June 17, 2009.

The proposed rule and related guidance documents comment submittal deadline is extended from the original August 3, 2009, deadline to October 19, 2009, and the information collections analysis deadline is extended from the original June 17, 2009, deadline to August 17, 2009.

DATES: The comment period for the proposed rule and related guidance documents has been extended and now expires on October 19, 2009. The comment period for the information collection aspects of this proposed rulemaking has been extended by 60 days and now expires on August 17, 2009. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any one of the following methods. Comments submitted in writing or in electronic form will be made available for public inspection. 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.

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2008–0122]. Address questions about NRC dockets to Carol Gallagher, telephone (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.

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 492–3446.

You can access publicly available documents related to this document 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–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

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 1–800–397–4209, or (301) 415–4737, or by e-mail to *PDR.Resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Lauren Quiñones, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2007, e-mail *Lauren.Quinones@nrc.gov;* or Don Tailleart, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2966, e-mail *Don.Tailleart@nrc.gov*.

SUPPLEMENTARY INFORMATION: During the period of May 18–May 29, 2009, the NRC received seven letters from nuclear power industry representatives and various state agencies requesting that the comment period for the proposed rulemaking be extended. Five of the requests asked for an extension of 75 days for a total of 150 days, and two of the requests asked for an extension of 105 days for a total of 180 days. Nuclear power industry representatives and state agencies stated various reasons to support their request (listed below):

(1) This is a substantive amendment to the NRC EP requirements;

(2) The proposed amendments and guidance documents cover many significant legal, regulatory, and policy

issues that will require extensive review;

(3) Additional time is needed to discuss possible consequences of proposed changes with affected State and/or local jurisdictions; and

(4) Extending the public comment period will allow for a more comprehensive review and result in more meaningful comments.

In view of the NRC's desire to receive high quality comments from external stakeholders, and recognizing the quantity of information to be analyzed and the coordination efforts needed by and among stakeholders, the comment period for the proposed rulemaking and related guidance documents will be extended for an additional 75 days. The comment period for the information collection aspects of this proposed rulemaking will be extended by 60 days. Based on feedback from stakeholders, the NRC believes that a 75-day extension will allow sufficient time for all stakeholders to develop and provide meaningful comments on the proposed rule and draft guidance.

The proposed rule and related guidance documents comment submittal deadline is extended from the original August 3, 2009, deadline to October 19, 2009, and the information collections analysis deadline is extended from the original June 17, 2009, deadline to August 17, 2009.

Dated at Rockville, Maryland, this 5th day of June 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E9–13713 Filed 6–10–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0532; Directorate Identifier 2008–NM–024–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

The airbrake upper crossbeam on an airplane failed in-flight. The crossbeam failure caused damage to the rudder control system, resulting in loss of rudder control. Loss of rudder control will cause handling difficulties particularly during take-off, approach, and landing phases in cross winds.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by July 13, 2009.

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

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

For service information identified in this proposed AD, contact BAE Systems Regional Aircraft, 13850 McLearen Road, Herndon, Virginia 20171; telephone 703–736–1080; e-mail *raebusiness@baesystems.com*; Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0532; Directorate Identifier 2008–NM–024–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0307, dated December 17, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

The airbrake upper crossbeam on an airplane failed in-flight. The crossbeam failure caused damage to the rudder control system, resulting in loss of rudder control. Loss of rudder control will cause handling difficulties particularly during take-off, approach, and landing phases in cross winds.

BAE Systems (Operations) Ltd has published Inspection Service Bulletin (ISB) 53–200 that revises and supersedes the inspection requirements, which are defined in the Maintenance Review Board Report (MRBR) SSI Task 53–40–125, Supplemental Structural Inspections Document (SSID) Tasks 53–40–125.1 and 53–40–125.2 (included in the Airworthiness Limitations Section of Aircraft Maintenance Manual Chapter 5 that is currently mandated as part of EASA AD 2007–0271 [which corresponds to an FAA NPRM, Directorate Identifier 2007–NM–363–AD]) and in Maintenance Planning Document (MPD) Task Reference 534025–DVI–10000–1. These revised inspection requirements and reduced inspection periods are to ensure that any fatigue damage is detected before it causes upper airbrake crossbeam failure. MRBR, SSID and MPD will be amended in due course to reflect these revised inspection periods.

For the reasons stated above, this Airworthiness Directive (AD) requires a [high frequency eddy current and low frequency phase analysis eddy current] inspection [for cracking, discrete surface damage, and discontinuity (corrosion and mechanical damage)] and, as necessary, repair of the airbrake upper crossbeam.

The required actions include replacing the three rivets with Hi-lok pins. For cracking, damage, or discontinuity that is outside certain limits defined in the service bulletin, the repair includes contacting BAE Systems (Operations) Limited for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin ISB.53–200, Revision 1, dated March 13, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 1 product of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $480 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2009–0532; Directorate Identifier 2008–NM–024–AD.

Comments Due Date

(a) We must receive comments by July 13, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

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

The airbrake upper crossbeam on an airplane failed in-flight. The crossbeam failure caused damage to the rudder control system, resulting in loss of rudder control. Loss of rudder control will cause handling difficulties particularly during take-off, approach, and landing phases in cross winds.

BAE Systems (Operations) Ltd has published Inspection Service Bulletin (ISB) 53–200 that revises and supersedes the inspection requirements, which are defined in the Maintenance Review Board Report (MRBR) SSI Task 53–40–125, Supplemental Structural Inspections Document (SSID) Tasks 53–40–125.1 and 53–40–125.2 (included in the Airworthiness Limitations Section of Aircraft Maintenance Manual Chapter 5 that is currently mandated as part of EASA AD 2007–0271 [which corresponds to an FAA NPRM, Directorate Identifier 2007–NM–363–AD]) and in Maintenance Planning Document (MPD) Task Reference 534025–DVI–10000–1. These revised inspection requirements and reduced inspection periods are to ensure that any fatigue damage is detected before it causes upper airbrake crossbeam failure. MRBR, SSID and MPD will be amended in due course to reflect these revised inspection periods.

For the reasons stated above, this Airworthiness Directive (AD) requires [a high frequency eddy current and a low frequency phase analysis eddy current] inspection [for cracking, discrete surface damage, and

discontinuity (corrosion and mechanical damage)] and, as necessary, repair of the airbrake upper crossbeam.

The required actions include replacing the three rivets with Hi-lok pins. For cracking, damage, or discontinuity that is outside certain limits defined in the service bulletin, the repair includes contacting BAE Systems (Operations) Limited for repair instructions and doing the repair.

Actions and Compliance

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

(1) At the applicable time specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, inspect for cracking, damage, and discontinuity of the airbrake upper crossbeam fastener positions and lightening holes; and replace the three rivets with Hi-lok pins; in accordance with paragraphs 2.B., 2.C., and 2.D. of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–200, Revision 1, dated March 13, 2007. If any crack, damage, or discontinuity is found: Before further flight, repair as required by paragraph (f)(3) of this AD.

(i) For airplanes that have not been inspected in accordance with BAE Systems (Operations) Limited MRBR SSI Task No. 53–40–125 (MPD Reference 534025–DVI–10000–1) as of the effective date of this AD, do the inspection prior to accumulating 20,000 total flight cycles or 500 flight cycles after the effective date of this AD, whichever occurs later.

(ii) For airplanes subject to MRBR and SSID requirements that have been inspected in accordance with BAE Systems (Operations) Limited MRBR SSI Task No. 53–40–125 (MPD Reference 534025–DVI–10000–1) as of the effective date of this AD, do the inspection at the latest of the times in paragraphs (f)(1)(ii)(A), (f)(1)(ii)(B), or (f)(1)(ii)(C) of this AD.

(A) Before the accumulation of 4,000 flight cycles since last inspection.

(B) Within 2,500 flight cycles (for MRBR airplanes), or within 1,000 flight cycles (for SSID airplanes) after the effective date of this AD; but not exceeding 8,000 flight cycles since the last inspection.

(C) Within 500 flight cycles after the effective date of this AD.

(2) Repeat the inspection required by paragraph (f)(1) of this AD thereafter at the applicable time specified in paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this AD. If any crack, damage, or discontinuity is found: Before further flight, repair as required by paragraph (f)(3) of this AD.

(i) Inspect fastener positions at the rivet locations at intervals not to exceed 4,000 flight cycles.

(ii) Inspect the holes at Hi-lok pin locations at intervals not to exceed 12,000 flight cycles.

(iii) Inspect the lightening holes at intervals not to exceed 12,000 flight cycles.

(3) If any crack, damage, or discontinuity is found during any inspection required by this AD: Before further flight, do the repair in accordance with paragraph 2.E. of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–200, Revision 1, dated March 13, 2007.

(4) Actions accomplished before the effective date of this AD in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–200, dated December 21, 2006, are considered acceptable for compliance with the corresponding action specified in this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2007–0307, dated December 17, 2007; and BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–200, Revision 1, dated March 13, 2007; for related information.

Issued in Renton, Washington, on June 4, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–13727 Filed 6–10–09; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA–2008–0051]

RIN 0960–AF97

Exclusion of Certain Military Pay From Deemed Income and Resources

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise our rules to clarify that, for Supplemental Security Income (SSI) purposes, we do not consider any combat-related military pay as income when we determine whether spouses and children of members of the uniformed services are eligible for SSI. The proposed rules also would clarify that we do not consider combat-related military pay as income when we determine the spouse's or child's proper payment amount. These proposed rules also would provide that, when we determine whether spouses and children are eligible for SSI, we do not consider retroactive payments of certain military pay as resources for 9 months following receipt. These proposed rules would protect spouses and children of members of the uniformed services from a reduction in, or loss of, benefits because their spouse or parent serves in a combat zone.

DATES: To be sure that we consider your comments, we must receive them no later than August 10, 2009.

ADDRESSES: You may submit comments by any one of four methods—Internet, facsimile, regular mail, or hand-delivery. Commenters should not submit the same comments multiple times or by more than one method. Regardless of which of the following methods you choose, please state that your comments refer to Docket No. SSA–2008–0051 to ensure that we can associate your comments with the correct regulation:

1. Federal eRulemaking Portal at *http://www.regulations.gov.* (This is the most expedient method for submitting your comments, and we strongly urge you to use it.) In the ''Search Documents'' section of the Web page, type ''SSA–2008–0051,'' select ''Go,'' and then click ''Send a Comment or Submission.'' The Federal eRulemaking Portal issues you a tracking number when you submit a comment.

2. Telefax to (410) 966–2830.

3. Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703.

4. Deliver your comments to the Office of Regulations, Social Security

Administration, 922 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days.

All comments are posted on the Federal eRulemaking portal, although they may not appear for several days after receipt of the comment. You may also inspect the comments on regular business days by making arrangements with the contact person shown in this preamble.

Caution: All comments we receive from members of the public are available for public viewing on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, you should be careful to include in your comments only information that you wish to make publicly available on the Internet. We strongly urge you not to include any personal information, such as your Social Security number or medical information, in your comments.

FOR FURTHER INFORMATION CONTACT: Eric Skidmore, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 597–1833, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Background

The SSI program provides a minimum income level for aged, blind, and disabled persons who do not have income or resources above levels specified in the Social Security Act (the Act). The Act generally requires that when we determine a person's eligibility for, and amount of, SSI benefits, we must consider the income and resources of an ineligible spouse living in the same household and, in the case of a child under the age of 18, an ineligible parent living in the same household (and the spouse of such a parent). Section 1614(f) of the Act, 42 U.S.C. 1382c(f). We use the term ''deeming'' to refer to the process of considering part of an ineligible spouse's or parent's income and resources to be the person's own income and resources.

Although a member of the uniformed services on active duty is unlikely to apply or be eligible for SSI benefits, some members of the uniformed services have spouses or children who receive or may apply for SSI benefits. For purposes of deeming, the Act provides that a spouse or parent who is absent from the household solely because of a duty assignment as a member of the Armed Forces generally will be treated as if he or she were living in the household. Section 1614(f)(4) of the Act, 42 U.S.C. 1382c(f)(4). Therefore, we generally deem income and resources of the member of the uniformed services to his spouse or child when determining the spouse's or child's eligibility for, and amount of, SSI benefits. Because we consider the member of the uniformed services as part of the household, we do not treat his military pay as unearned income from a source outside of the household.

Although we generally deem income of a member of the uniformed services to his spouse or child, the Act excludes from income certain kinds of pay that members of the uniformed services may receive. Section 1612(b)(20) of the Act, 42 U.S.C. 1382a(b)(20). In particular, we exclude from income special pay received pursuant to 37 U.S.C. 310. Members of the uniformed services are eligible for special pay during months in which they are subject to hostile fire or certain other dangerous conditions specified in 37 U.S.C. 310. Our current regulations implementing section 1612(b)(20) of the Act exclude ''hostile fire pay'' received under 37 U.S.C. 310 from income and from deeming to spouses and children. 20 CFR 416.1124(c)(19) and 416.1161(a)(23). We are proposing to replace the term ''hostile fire pay'' in these sections of our rules with the term ''special pay'' to clarify that we exclude from income all special pay that a member of the uniformed services received pursuant to 37 U.S.C. 310.

We are also proposing to add a new paragraph to our rules on deeming of income to spouses and children that excludes from deeming additional types of combat-related pay beyond special pay under 37 U.S.C. 310. The Act allows us to waive the deeming of income and resources to a spouse or child when we determine that deeming would be inequitable. Section 1614(f) of the Act, 42 U.S.C. 1382c(f). Effective October 1, 2002, we issued instructions under this statutory authority to exclude from a spouse's or child's deemed income any additional pay that members of the uniformed services received because they were deployed to or served in a combat zone. We determined that it would be inequitable to deem that pay as income and reduce a family member's benefits or potentially render the family member ineligible for SSI. We are now proposing to incorporate this exclusion and the definition of the term ''combat zone'' in our SSI rules.

We are also proposing to revise our rules on deeming of resources to spouses and children to exclude retroactive payments of certain kinds of military pay for 9 months following receipt. Congress has retroactively and permanently increased the amount of special pay under 37 U.S.C. 310 and the family separation allowance under 37 U.S.C. 427. Pursuant to section 1614(f) of the Act, we issued instructions excluding retroactive payments of the increase in special pay received after September 2002 from a spouse's or child's deemed resources for a period of 9 months following the month of receipt. Our instructions similarly excluded retroactive payments of the family separation allowance that a member of the uniformed services received as a result of deployment to or service in a combat zone. We determined that it would be inequitable to apply the usual resource deeming rules to these retroactive payments in recognition of the hardships experienced and sacrifices made by members of the uniformed services and their families. We are now proposing to revise our SSI rules to incorporate these exclusions.

Finally, we are proposing to revise the punctuation at the conclusion of § 416.1161(a)(25), (a)(26), and (a)(27). We are also proposing to clarify some of the language in § 416.1202(a) and (b)(1) and to reorganize portions of § 416.1202(b)(1) to make that section easier to understand. We are proposing these changes solely to improve the clarity of these rules, and these changes would have no substantive effect on our policies or procedures.

Explanation of Proposed Changes

We propose to amend the regulations in 20 CFR, part 416, subparts K and L, to reflect the changes discussed above. In summary, we propose to:

1. Revise § 416.1124(c)(19) and § 416.1161(a)(23) to replace the term ''hostile fire pay'' with the term ''special pay.'' We propose this technical clarification to conform the regulatory language to the statutory language in section 1612(b)(20) of the Act.

2. Amend § 416.1160(d) to add a definition of the term ''combat zone.''

3. Amend § 416.1161 by adding new paragraph (a)(28) to exclude from income deemed from an ineligible spouse or parent any additional increment in pay, other than any

increase in basic pay (*e.g.,* annual pay raises, promotions), if:

- The spouse or parent received the additional pay as a result of deployment to or service in a combat zone; and
- The spouse or parent was not receiving the additional pay immediately prior to deployment to or service in a combat zone.

4. Revise the punctuation at the conclusion of paragraphs (a)(25), (a)(26), and (a)(27) of § 416.1161.

5. Revise paragraphs (a) and (b)(1) of § 416.1202 to exclude from resources deemed from an ineligible spouse or parent (or spouse of a parent), for 9 months following the month of receipt, the unspent portion of any retroactive payment of:

- Special pay the ineligible spouse or parent received from one of the uniformed services pursuant to 37 U.S.C. 310; and
- Family separation allowance the ineligible spouse or parent received from one of the uniformed services pursuant to 37 U.S.C. 427 as a result of deployment to or service in a combat zone.

6. Clarify some language in paragraphs (a) and (b)(1) of § 416.1202, and reorganize portions of paragraph (b)(1).

Clarity of These Rules

Executive Order (E.O.) 12866, as amended, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the requirements for a significant regulatory action under Executive Order 12866, as amended. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities, because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules do not pose any public reporting requirements and are, therefore, not subject to the requirements of the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits; Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: June 3, 2009.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subparts K and L of part 416 of chapter III of title 20 Code of Federal Regulations as set forth below:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Public Law 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

2. Amend § 416.1124 by revising paragraph (c)(19) to read as follows:

§ 416.1124 Unearned income we do not count.

* * * * *

(c) * * *

(19) Special pay received from one of the uniformed services pursuant to 37 U.S.C. 310;

* * * * *

3. Amend § 416.1160 by adding the definition of ''Combat zone'' in paragraph (d) to read as follows:

§ 416.1160 What is deeming of income?

* * * * *

(d) * * *

Combat zone means

(i) Any area the President of the United States designates by Executive Order under 26 U.S.C. 112 as an area in which Armed Forces of the United States are or have engaged in combat;

(ii) A qualified hazardous duty area (QHDA) Congress designates be treated in the same manner as an area designated by the President under 26 U.S.C. 112, provided the member of the uniformed services serving in this area is entitled to special pay under 37 U.S.C. 310; or

(iii) An area where the Secretary of Defense or his designated representative has certified that Armed Forces members provide direct support for military operations in an area designated by the President under 26 U.S.C. 112 or a QHDA, provided the member of the uniformed services serving in the area certified by the Secretary of Defense or his designated representative is entitled to special pay under 37 U.S.C. 310.

* * * * *

4. Amend § 416.1161 as follows:

a. Amend paragraph (a)(23) by removing the words ''Hostile fire pay'' and adding the words ''Special pay'' in their place;

b. Remove the word ''and'' at the end of paragraph (a)(25);

c. Remove the period at the end of paragraph (a)(26) and add a semicolon in its place;

d. Remove the period at the end of paragraph (a)(27) and add ''; and'' in its place; and

e. Add paragraph (a)(28) to read as follows:

§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

* * * * *

(a) * * *

(28) Any additional increment in pay, other than any increase in basic pay, received while serving as a member of the uniformed services, if—

(i) Your ineligible spouse or parent received the pay as a result of deployment to or service in a combat zone; and

(ii) Your ineligible spouse or parent was not receiving the additional pay immediately prior to deployment to or service in a combat zone.

* * * * *

SUBPART L—[Amended]

5. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5),

1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Public Law 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

6. In § 416.1202:

a. Revise the second sentence and remove the third sentence of paragraph (a);

b. Add new paragraphs (a)(1), (a)(2), and (a)(3); and

c. Revise paragraph (b)(1).

The additions and revisions read as follows:

§ 416.1202 Deeming of resources.

(a) * * * In addition to the exclusions listed in § 416.1210, we also exclude the following items:

(1) Pension funds that the ineligible spouse may have. *Pension funds* are defined as funds held in individual retirement accounts (IRA), as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed persons, sometimes referred to as Keogh plans);

(2) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of special pay an ineligible spouse received from one of the uniformed services pursuant to 37 U.S.C. 310; and

(3) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of family separation allowance an ineligible spouse received from one of the uniformed services pursuant to 37 U.S.C. 427 as a result of deployment to or service in a combat zone (as defined in § 416.1160(d)).

(b) * * *

(1) *General.* In the case of a child (as defined in § 416.1856) who is under age 18, we will deem to that child any resources, not otherwise excluded under this subpart, of his ineligible parent who is living in the same household with him (as described in § 416.1851). We also will deem to the child the resources of his ineligible stepparent. As used in this section, the term ''parent'' means the natural or adoptive parent of a child, and the term ''stepparent'' means the spouse (as defined in § 416.1806) of such natural or adoptive parent who is living in the same household with the child and parent. We will deem to a child the resources of his parent and stepparent whether or not those resources are available to him. We will deem to a child the resources of his parent and stepparent only to the extent that those resources exceed the resource limits described in § 416.1205. (If the child is living with only one parent, we apply the resource limit for an individual. If the child is living with both parents, or the child is living with one parent and a stepparent, we apply the resource limit for an individual and spouse.) We will not deem to a child the resources of his parent or stepparent if the child is excepted from deeming under paragraph (b)(2) of this section. In addition to the exclusions listed in § 416.1210, we also exclude the following items:

(i) Pension funds of an ineligible parent (or stepparent). *Pension funds* are defined as funds held in IRAs, as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed persons, sometimes referred to as Keogh plans);

(ii) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of special pay an ineligible parent (or stepparent) received from one of the uniformed services pursuant to 37 U.S.C. 310; and

(iii) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of family separation allowance an ineligible parent (or stepparent) received from one of the uniformed services pursuant to 37 U.S.C. 427 as a result of deployment to or service in a combat zone (as defined in § 416.1160(d)).

* * * * *

[FR Doc. E9–13621 Filed 6–10–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510–AB20

Offset of Tax Refund Payments to Collect Past-Due, Legally Enforceable Nontax Debt

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department of the Treasury, Financial Management Service, is proposing to amend its regulation governing the offset of tax refund payments to collect nontax debts owed to the United States. We are proposing to remove the ten-year time limitation on the collection of debts by tax refund offset. This change will allow for the use of tax refund offset to collect nontax debts owed to the United States irrespective of the amount of time the debt has been outstanding.

DATES: Comments must be received by August 10, 2009.

ADDRESSES: The Financial Management Service (FMS) participates in the U.S. government's eRulemaking Initiative by publishing rulemaking information on www.regulations.gov. Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

Comments on this rule, identified by docket FISCAL–FMS–2008–0003, should only be submitted using the following methods:

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions on the Web site for submitting comments.

Mail: Tom Dungan, Debt Management Services, Financial Management Service, 401 14th Street SW., Washington, DC 20227.

The fax and e-mail methods of submitting comments on rules to FMS have been retired.

Instructions: All submissions received must include the agency name (''Financial Management Service'') and docket number FISCAL–FMS–2008–0003 for this rulemaking. In general, comments received will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may also inspect and copy this proposed rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Thomas Dungan, Policy Analyst, at (202) 874–6660, or Tricia Long, Senior Attorney, at (202) 874–6680.

SUPPLEMENTARY INFORMATION:

I. Background

The Food, Conservation and Energy Act of 2008, Public Law 110–234, Section 14219, 22 Stat. 923 (2008) (''the Act'') amended the Debt Collection Act of 1982 (as amended by the Debt Collection Improvement Act of 1996) to remove a restriction on the collection of debt by offset of nontax payments. Prior to this change, nontax payments could be offset to collect debt only if the debt

was delinquent for a period of less than ten years. The amendment to the law allows for the collection of debt by offsetting nontax payments without any time limitation and applies to any debt outstanding on or after the date of the enactment of the Act.

Although this statutory change does not directly apply to the offset of tax refund payments, we are nevertheless proposing to amend this regulation to mirror the statutory change because the regulatory time limitation contained in this regulation was intended to create uniformity in the way non-judicial offsets were conducted. Because there was no logical reason why the ten-year limitation applicable to the offset of nontax payments should not apply to non-judicial offsets under other statutes which did not contain their own limitations period, this regulation applied a ten-year limitation on the collection of debt by tax refund offset. However, now that the ten-year limitation has been eliminated for the offset of nontax payments, the rationale for including a ten-year limitation in this rule no longer applies.

The proposed changes to this rule remove the limitations period by explicitly stating that no time limitation shall apply, and explain that by removing the time limitation, all debts, including debts that were ineligible for collection by offset prior to the removal of the limitations period, may now be collected by tax refund offset. Additionally, to avoid any undue hardship, we are proposing the addition of a notice requirement applicable to debts that were previously ineligible for collection by offset because they had been outstanding for more than ten years. For these debts, creditor agencies must certify to FMS that a notice of intent to offset was sent to the debtor after the debt became ten years delinquent. This notice of intent to offset is intended to alert the debtor that his debt may now be collected by offset and allows the debtor additional opportunities to dispute the debt, enter into a repayment agreement or otherwise avoid offset. This requirement will apply even in a case where notice was sent prior to the debt becoming ten years old. This requirement applies only with respect to debts that were previously ineligible for collection by offset because of the time limitation and does not apply to debts, such as Department of Education student loan debts, that could be collected by offset without regard to any time limitation prior to this regulatory change.

II. Procedural Analyses

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rules are clear; or (3) whether there is something else we could do to make these rules easier to understand.

Regulatory Planning and Review

The proposed rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. This rule merely removes the ten-year time limitation on the collection of debts by tax refund offset. Moreover, the provisions contained in this proposed rule would primarily affect federal creditor agencies and impose no additional costs to small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Child support, Child welfare, Claims, Credits, Debts, Disability benefits, Federal employees, Garnishment of wages, Hearing and appeal procedures, Loan programs, Privacy, Railroad retirement, Railroad unemployment insurance, Salaries, Social Security benefits, Supplemental Security Income (SSI), Taxes, Veterans' benefits, Wages.

For the reasons set forth in the preamble, we propose to amend 31 CFR part 285 as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

1. The authority citation for part 285 continues to read as follows:

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719, 3720A, 3720B, 3720D; 42 U.S.C. 664; E.O. 13019, 61 FR 51763, 3 CFR, 1996 Comp., p. 216.

2. In § 285.2, remove paragraph (d)(1)(ii), redesignate paragraphs (d)(1)(iii) through (d)(1)(v) as paragraphs (d)(1)(ii) through (d)(1)(ii) through (d)(1)(iv) respectively, and add paragraph (d)(6) as follows:

§ 285.2 Offset of tax refund payments to collect past-due, legally enforceable nontax debt.

* * * * *

(d) * * *

(6)(i) Creditor agencies may submit debts to FMS for collection by tax refund offset irrespective of the amount of time the debt has been outstanding. Accordingly, all nontax debts, including debts that were delinquent for ten years or longer prior to [INSERT DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER] may be collected by tax refund offset.

(ii) For debts outstanding more than ten years on or before [INSERT DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], creditor agencies must certify to FMS that the notice of intent to offset described in paragraph (d)(1)(iii)(B) of this section was sent to the debtor after the debt became ten years delinquent. This requirement will apply even in a case where notice was also sent prior to the debt becoming ten years delinquent, but does not apply to any debt that could be collected by offset without regard to any time limitation prior to [INSERT DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

* * * * *

Dated: May 29, 2009.

Gary Grippo,

Acting Fiscal Assistant Secretary.

[FR Doc. E9–13604 Filed 6–10–09; 8:45 am]

BILLING CODE 4810–35–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2009–0033; FRL–8916–8]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the West Virginia State Implementation Plan (SIP). This revision addresses the requirements of

EPA's Clean Air Interstate Rule (CAIR), and recodifies and revises provisions pertaining to internal combustion engines and cement kilns that are subject to the nitrogen oxides (NO_X) SIP Call. Although the D.C. Circuit found CAIR to be flawed, the rule was remanded without vacatur and thus remains in place. Thus, EPA is continuing to take action on CAIR SIPs as appropriate. CAIR, as promulgated, requires States to reduce emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) that significantly contribute to, or interfere with maintenance of, the national ambient air quality standards (NAAQS) for fine particulates and/or ozone in any downwind state. CAIR establishes budgets for SO_2 and NO_X for States that contribute significantly to nonattainment in downwind States and requires the significantly contributing States to submit SIP revisions that implement these budgets. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participation in EPA-administered cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions. In the SIP revision that EPA is proposing to approve, West Virginia will meet CAIR requirements by participating in these cap-and-trade programs. EPA is proposing to approve the SIP revision, as interpreted and clarified herein, as fully implementing the CAIR requirements for West Virginia.

DATES: Written comments must be received on or before July 13, 2009.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2009–0033 by one of the following methods:

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

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2009–0033, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, 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–2009–0033. 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 Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action Is EPA Proposing?
II. What Is the Regulatory History of CAIR and the CAIR Federal Implementation Plans (FIPs)?
III. What Are the General Requirements of CAIR and the CAIR FIPs?
IV. What Are the Types of CAIR SIP Submittals?
V. Analysis of West Virginia's CAIR SIP Submittal
A. State Budgets for Allowance Allocations
B. CAIR Cap-and-Trade Programs
C. Applicability Provisions
D. NO_X Allowance Allocations
E. Allocation of NO_X Allowances from Compliance Supplement Pool
F. Individual Opt-in Units
G. Additional Interpretations
VI. Proposed Action
VI. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing?

EPA is proposing to approve the SIP revision submitted by West Virginia on April 22, 2008, as interpreted and clarified herein, as meeting the applicable CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered CAIR cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions. EPA is also proposing to approve recodification and revision of provisions that address NO_X ozone season emission reduction requirements for internal combustion engines and cement kilns, updated only to revise NO_X SIP Call references to CAIR references. These provisions for internal combustion engines and cement kilns were previously approved as part of West Virginia regulation 45CSR1. 45CSR1 set forth the requirements for both: non-EGUs that were part of the NO_X Budget Trading Program, and non-EGUs that were not part of the trading program but instead had specific emission requirements. EPA will no longer administer the NO_X Budget Trading program after 2008, therefore West Virginia chose to sunset its NO_X Budget Trading Program rules by repealing 45CSR1 and 45CSR26 (which applied to EGUs) in their entirety. The units that participated in the NO_X Budget Trading Program in 45CSR1 and 45CSR26 will now be subject to the requirements of the CAIR trading program, as proposed in this action. The provisions for internal combustion engines and cement kilns have been recodified into separate sections of 45CSR40 (sections 45–40–90 and 45–40–100, respectively).

II. What Is the Regulatory History of the CAIR and the CAIR FIPs?

EPA published CAIR on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the NAAQS for fine particles ($PM_{2.5}$) and/or

8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO_2, which is a precursor to $PM_{2.5}$ formation, and/or NO_X, which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual State-wide emission reduction requirements (*i.e.,* budgets) for SO_2 and annual State-wide emission reduction requirements for NO_X. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements or budgets for NO_X for the ozone season (May 1st to September 30th). Under CAIR, States may implement these reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR explains to subject States what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA made national findings, effective on May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and $PM_{2.5}$ NAAQS. These findings started a 2-year clock for EPA to promulgate a FIP to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. The CAIR FIPs require EGUs to participate in the EPA-administered CAIR SO_2, NO_X annual, and NO_X ozone season trading programs, as appropriate. The CAIR FIP SO_2, NO_X annual, and NO_X ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO_2, NO_X annual, and NO_X ozone season) in all States covered by the CAIR FIP or SIP trading program for that pollutant. Further, as provided in a rule published by EPA on November 7, 2007, a State's CAIR FIPs are automatically withdrawn when EPA approves a SIP revision, in its entirely and without any conditions, as fully meeting the requirements of CAIR. Where only portions of the SIP revision are approved, the corresponding portions of the FIPs are automatically withdrawn and the remaining portions of the FIP stay in place. Finally, the CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement certain CAIR FIP provisions (*e.g.,* the methodology for allocating NO_X allowances to sources in the State), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two additional CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for $PM_{2.5}$ and announced EPA's final decisions on reconsideration of five issues, without making any substantive changes to the CAIR requirements.

On October 19, 2007, EPA amended CAIR and the CAIR FIPs to clarify the definition of ''cogeneration unit'' and thus the applicability of the CAIR trading program to cogeneration units. There are no sources in West Virginia that are affected by the clarification of this definition, however, West Virginia must still revise their rules to address this clarification and submit the revised rule as a SIP revision.

EPA was sued by a number of parties on various aspects of CAIR, and on July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *North Carolina* v. *EPA,* 531 F.3d 836 (DC Cir. Jul. 11, 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. *North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. Dec. 23, 2008). The Court thereby left CAIR in place in order to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaces it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to ''remedy CAIR's flaws'' consistent with its July 11, 2008 opinion, but declined to impose a schedule on EPA for completing that action. *Id.* Therefore, CAIR and the CAIR FIP are currently in effect in West Virginia.

III. What Are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes State-wide emission budgets for SO_2 and NO_X and is to be implemented in two phases. The first phase of NO_X reductions starts in 2009 and continues through 2014, while the first phase of SO_2 reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_X and SO_2 starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs; or (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State SO_2 and NO_X budgets.

The May 12, 2005 and April 28, 2006 CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs.

With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their NO_X SIP Call trading programs in their CAIR NO_X ozone season trading programs.

IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most States will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (*e.g.,* the

NO_X allowance allocation methodology).

A State submitting a full SIP revision may either adopt regulations that are substantively identical to the model rules or incorporate by reference the model rules. CAIR provides that States may only make limited changes to the model rules if the States want to participate in the EPA-administered trading programs. A full SIP revision may change the model rules only by altering their applicability and allowance allocation provisions to:

1. Include all NO_X SIP Call trading sources that are not EGUs under CAIR in the CAIR NO_X ozone season trading program;

2. Provide for State allocation of NO_X annual or ozone season allowances using a methodology chosen by the State;

3. Provide for State allocation of NO_X annual allowances from the compliance supplement pool (CSP) using the State's choice of allowed, alternative methodologies; or

4. Allow units that are not otherwise CAIR units to opt individually into the CAIR SO_2, NO_X annual, or NO_X ozone season trading programs under the opt-in provisions in the model rules. An approved CAIR full SIP revision addressing EGUs' SO_2, NO_X annual, or NO_X ozone season emissions will replace the CAIR FIP for that State for the respective EGU emissions. As discussed above, EPA approval in full, without any conditions, of a CAIR full SIP revision causes the CAIR FIPs to be automatically withdrawn.

V. Analysis of West Virginia's CAIR SIP Submittal

A. State Budgets for Allowance Allocations

The CAIR NO_X annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 lb/mmBtu, for phase 1 and 0.125 lb/mmBtu, for phase 2, to obtain regional NO_X budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State NO_X annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors.

The CAIR State SO_2 budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under title IV of the CAA. Under CAIR, each allowance allocated in the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.5 ton of SO_2 emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of SO_2 emissions in the CAIR trading program.

In today's action, EPA is proposing to approve West Virginia's SIP revision that adopts the budgets established for the State in CAIR. These budgets are: 74,220 tons for NO_X annual emissions from 2009 through 2014 and 61,850 tons from 2015 and thereafter; 26,859 tons for NO_X ozone season emissions from 2009 through 2014 and 26,525 tons from 2015 and thereafter; and 215,881 tons for SO_2 annual emissions from 2009 through 2014 and 151,117 tons from 2015 and thereafter. Additionally, the CAIR NO_X ozone season budget would be increased annually by 2,184 tons to account for NO_X SIP Call trading sources that are not EGUs under CAIR, but are included in the CAIR NO_X ozone season trading program. West Virginia's SIP revision sets these budgets as the total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs.

EPA notes that, in *North Carolina, id.* at 916–21, the Court determined, among other things, that the State SO_2 and NO_X budgets established in CAIR were arbitrary and capricious.[1] However, as discussed above, the Court also decided to remand CAIR but to leave the rule in place in order to ''temporarily preserve the environmental values covered by CAIR'' pending EPA's development and promulgation of a replacement rule that remedies CAIR's flaws. *Id.* at 1178. EPA had indicated to the Court that development and promulgation of a replacement rule would take about two years. *Reply in Support of Petition for Rehearing or Rehearing en Banc* at 5 (filed Nov. 17, 2008 in *North Carolina* v. *EPA,* Case No. 05–1224, DC Cir.). The process at EPA of developing a proposal that will undergo notice and comment and result in a final replacement rule is ongoing. In the meantime, consistent with the Court's orders, EPA is implementing CAIR by approving State SIP revisions that are consistent with CAIR (such as the provisions setting State SO_2 and NO_X budgets for the CAIR trading programs) in order to ''temporarily preserve'' the environmental benefits achievable under the CAIR trading programs. *North Carolina,* 550 F.3d at 1178.

B. CAIR Cap-and-Trade Programs

The CAIR NO_X annual and ozone-season model trading rules both largely mirror the structure of the NO_X SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO_X annual and ozone-season model rules are similar, there are some differences. For example, the NO_X annual model rule (but not the NO_X ozone season model rule) provides for a CSP, which is discussed below, and under which allowances may be awarded for early reductions of NO_X annual emissions. As a further example, the NO_X ozone season model rule reflects the fact that the CAIR NO_X ozone season trading program replaces the NO_X SIP Call trading program after the 2008 ozone season and is coordinated with the NO_X SIP Call program. The NO_X ozone season model rule provides incentives for early emissions reductions by allowing banked, pre-2009 NO_X SIP Call allowances to be used for compliance in the CAIR NO_X ozone-season trading program. In addition, States have the option of continuing to meet their NO_X SIP Call requirement by participating in the CAIR NO_X ozone season trading program and including all their NO_X SIP Call trading sources in that program.

The provisions of the CAIR SO_2 model rule are also similar to the provisions of the NO_X annual and ozone season model rules. However, the SO_2 model rule is coordinated with the ongoing Acid Rain SO_2 cap-and-trade program under CAA title IV. The SO_2 model rule uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO_2 cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO_2 cap-and-trade program.

EPA also used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for Federal

[1] The Court also determined that the CAIR trading programs were unlawful (*id.* at 906–8) and that the treatment of title IV allowances in CAIR was unlawful (*id.* at 921–23). For the same reasons that EPA is proposing approval of the provisions of West Virginia's SIP revision that use the SO_2 and NO_X budgets set in CAIR, EPA is also proposing approval, as discussed below, of West Virginia's SIP revision to the extent the SIP revision adopts the CAIR trading programs, including the provisions addressing applicability, allowance allocations, and use of title IV allowances.

rather than State implementation. The CAIR model SO_2, NO_X annual, and NO_X ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO_2, NO_X annual, and NO_X ozone season trading programs.

In the SIP revision, West Virginia chooses to implement its CAIR budgets by requiring EGUs to participate in EPA-administered cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. West Virginia has adopted a full SIP revision that adopts, with certain allowed changes discussed below, the CAIR model cap-and-trade rules for SO_2, NO_X annual, and NO_X ozone season emissions.

C. Applicability Provisions

In general, the CAIR model trading rules apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale. Under the CAIR model trading rules, exemptions are provided for a unit otherwise covered by these general applicability criteria that is a cogeneration unit meeting a specified limit on its electricity sales or that is a solid waste incineration unit meeting a specified limit on combustion of fossil fuel. In the applicability section of each of West Virginia's CAIR trading rules, these exemptions are set forth in subsection 4.2, which begins with the phrase ''[w]ith limited exception'' and then goes on to state that units meeting the exemption criteria that are set forth are not CAIR units. EPA interprets this phrase to mean, in each of West Virginia's CAIR trading rules, that the provisions in subsection 4.2 that set forth the exemptions for cogeneration units and solid waste incineration units are the ''limited exceptions'' to the general applicability criteria in subsection 4.1 and that these provisions are not altered by the reference to ''limited exception'' and are intended to be the same as the exemptions set forth in the CAIR model trading rules. In other words, there are no exceptions to the general applicability criteria other than those listed in subsection 4.2, and all units meeting the exemption criteria in subsection 4.2 are not CAIR units. In a letter submitted to EPA on April 30, 2008, the West Virginia Department of Environmental Protection adopted this interpretation.

States have the option of bringing in, for the CAIR NO_X ozone season program only, those units in the State's NO_X SIP Call trading program that are not EGUs as defined under CAIR. EPA advises States exercising this option to add the applicability provisions in the State's NO_X SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR NO_X ozone season trading program all units required to be in the State's NO_X SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO_X ozone season program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (*i.e.* units serving a generator with a nameplate capacity of 25 MWe or less) that the State currently requires to be in the NO_X SIP Call trading program.

West Virginia has chosen to expand the applicability provisions of the CAIR NO_X ozone season trading program to include all non-EGUs in the State's NO_X SIP Call trading program, including the only unit (PPG Natrium Plant Unit 002) that opted into the State's NO_X SIP Call trading program. Under 40 CFR 51.123(aa)(2)(i), a State may include ''all non-EGUs subject to'' the State's NO_X SIP Call trading program. EPA believes that, although the unit voluntarily entered the State's NO_X SIP Call trading program, West Virginia properly included this unit in the CAIR NO_X ozone season trading program because the unit became subject to that trading program in 2003, installed emission controls for compliance with program requirements, and has continued to participate in the program through 2008. Consistent with the fact (discussed below) that West Virginia's SIP revision does not allow for opt-in units in the CAIR NO_X ozone season trading program, the SIP revision treats this unit like any other CAIR unit and does not give this unit the option of leaving the CAIR NO_X ozone season trading program.

Further, in connection with the inclusion, as CAIR units in the CAIR NO_X ozone season trading program, of non-EGUs in the State's NO_X SIP Call trading program, West Virginia's SIP revision includes (in subsection 2.37.b) a special definition of ''commence operation'' for such non-EGUs that become CAIR units after they have commenced operation. Section 45–2.37.b incorrectly references ''subsections 4.2 or 4.3,'' which were renumbered in the latest version of West Virginia's SIP revision as ''subsections 4.3 or 4.4.'' Because this appears to be a scrivener's error, EPA interprets the references to be to ''subsections 4.3 or 4.4.'' In a letter submitted to EPA on April 30, 2008, the West Virginia Department of Environmental Protection adopted this interpretation.

D. NO_X Allowance Allocations

Under the NO_X allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_X annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

States may establish in their SIP submissions a different NO_X allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_X allowance allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;
2. The frequency of allocations;
3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and
4. The use of allowance set-asides and, if used, their size.

West Virginia has chosen to distribute NO_X annual and NO_X ozone season allowances in a manner substantively identical to that in the Part 96 model rule. The State's NO_X ozone season allocation provisions have been modified only to the extent necessary to add requirements associated with West Virginia's option to bring its non-EGUs into the CAIR NO_X ozone season trading program.

E. Allocation of NO_X Allowances From Compliance Supplement Pool

The CAIR establishes a CSP to provide an incentive for early reductions in NO_X annual emissions. The CSP consists of 200,000 CAIR NO_X annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the projected magnitude of the emission reductions required by CAIR in that State. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_X reductions during 2007 or 2008

beyond what is required by any applicable State or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR annual NO_X model trading rule establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in the States.

West Virginia's compliance supplement pool is comprised of 4,898 allowances. West Virginia has chosen to modify the provisions of the CAIR NO_X annual model trading rule concerning the allocation of allowances from the CSP. West Virginia has chosen to distribute CSP allowances to any CAIR NO_X Annual unit in the State whose average annual NO_X emission rate for 2007 or 2008 is less than 0.25 lb/mmBtu and whose NO_X averaging plan (if the unit is included in an Acid Rain Program NO_X averaging plan under 40 CFR 76.11) for that year has an actual weighted average NO_X emission rate that is equal to or less than the actual weighted average NO_X emission rate for the year before the unit achieves NO_X emission reductions in 2007 or 2008.

F. Individual Opt-in Units

The opt-in provisions of the CAIR SIP model trading rules allow certain non-EGUs (*i.e.,* boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (*i.e.,* opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. States may adopt the CAIR opt-in provisions entirely or may adopt them but exclude one of the methodologies for allocating allowances. States may also decline to adopt the opt-in provisions at all. West Virginia has declined to adopt the opt-in provisions.

G. Additional Interpretations

1. References to NO_X Emitting Equipment in Section 45–40–9

West Virginia's SIP revision includes provisions (in sections 45–40–90 and 45–40–100) addressing NO_X ozone season emission reduction requirements for internal combustion engines and cement kilns, none of which sources are included in the CAIR NO_X ozone season trading program. The NO_X ozone season emission reduction requirements in these sections—which have been moved from the portion of West Virginia's rules addressing the NO_X SIP Call to the portion addressing CAIR—are identical to those previously approved in West Virginia's SIP for purposes of meeting requirements under the NO_X SIP Call, except that references to the NO_X SIP Call trading program are replaced by references to the CAIR NO_X ozone season trading program. EPA is therefore proposing to approve the recodification and revision of sections 45–40–90 and 45–40–100, as interpreted and clarified below.

Some of the language in section 45–40–90 could be interpreted as being inconsistent with the above-discussed CAIR trading program applicability provisions in section 45–40–4 in West Virginia's SIP revision. Specifically, subsections 90.1, 90.4.d, 90.4.g, and 90.4.i refer to stationary internal combustion engines and ''other significant NO_X emitting equipment'' located at facilities controlled by the same owner or operator. Section 90.1 states that both of these categories of equipment ''will not be * * * subject to the CAIR NO_X Ozone Season Trading Program requirements under sections 4 through 88.'' Subsections 90.4.g and 90.4.i include similar language stating the ''other significant NO_X emitting equipment'' will not be subject to trading program requirements; however, these sections clarify that the ''other significant NO_X emitting equipment'' that is not subject to the trading program requirements is only to equipment ''that is not a CAIR NO_X Ozone Season unit under section 4'' (*i.e.,* section 45–40–4). Subsections 90.1 and 90.4.d lack this clarifying language. Section 45–40–4 does not exempt from the CAIR NO_X ozone season trading program ''other significant NO_X emitting equipment'' covered by section 45–40–90. Therefore, if subsections 90.1 and 90.4.d. were interpreted to exempt ''other significant NO_X emitting equipment'' regardless of whether it is covered by the CAIR trading programs, these subsections would be inconsistent with section 45–40–4. In order for West Virginia to participate in the CAIR trading program as the State clearly intends, the applicability of the CAIR trading program to ''significant NO_X emitting equipment'' must be determined by section 45–40–4 (not section 45–40–90). EPA interprets all references to ''other significant NO_X emitting equipment'' in section 45–40–90 to be limited to such equipment that is not a CAIR NO_X Ozone Season unit under section 45–40–4. In a letter submitted to EPA on April 30, 2008, the West Virginia Department of Environmental Protection adopted this interpretation.

2. Treatment of CAIR Allowances Allocated to Opt-in Units

Having chosen not to allow units to opt into the CAIR trading programs, West Virginia properly removed from its CAIR trading rules most of the provisions that are in the CAIR model trading rules and address CAIR opt-in units. However, while, as discussed above, West Virginia has the option of participating in the CAIR trading programs with or without allowing units in its jurisdiction to opt into the trading programs, other States also have that option, and some States have chosen to allow units in their respective jurisdictions to opt in. Consequently, any CAIR SO_2 unit, including those in West Virginia, may obtain CAIR SO_2 allowances allocated to a CAIR opt-in unit and use them to comply with the allowance-holding requirements in the CAIR SO_2 trading program. Under the CAIR SO_2 model trading rule, compliance with these requirements is determined in two steps: First, CAIR units that are also Acid Rain units must show compliance consistent with the Acid Rain Program allowance-holding requirement and so can use only title IV allowances; and second, all CAIR units must then show compliance with the CAIR trading program allowance-holding requirement using either title IV allowances or CAIR SO_2 allowances allocated to CAIR opt-in units. Language in the compliance provisions of the CAIR SO_2 model trading rule states explicitly when CAIR SO_2 allowances allocated to CAIR opt-in units can and cannot be used. West Virginia's SIP inadvertently omitted this language from section 45–41–54, apparently because the language refers to the CAIR

opt-in unit provisions. However, West Virginia's rule still requires compliance initially with the Acid Rain Program requirement set forth in sections 73.35 and 77.5 of the Acid Rain Program rules, which themselves require the use of only title IV allowances. Consequently, EPA interprets subsections 54.2.a.1 and 54.2.a.2 to allow only for the use of title IV allowances. Moreover, since West Virginia's rule defines ''CAIR SO_2 allowance'' as including allowances allocated to CAIR opt-in units, EPA interprets subsections 54.2.a.3, 54.2.b, 54.2.b.2, and 54.4.a to allow for the use of title IV allowances and allowances allocated to CAIR opt-in units. In a letter submitted to EPA on April 30, 2008, the West Virginia Department of Environmental Protection adopted this interpretation.

VI. Proposed Action

EPA is proposing to approve West Virginia's full CAIR SIP revision submitted on April 22, 2008, as interpreted and clarified herein. EPA is proposing to approve the recodification and revision of provisions (in sections 45–40–90 and 45–40–100) addressing NO_X ozone season emission reduction requirements for internal combustion engines and cement kilns, none of which are included in the CAIR trading programs. Under the SIP revision, West Virginia is choosing to participate in the EPA-administered CAIR cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. The SIP revision, as interpreted and clarified herein, meets the applicable requirements of CAIR, set forth in 40 CFR 51.123(o) and (aa), with regard to NO_X annual and NO_X ozone season emissions, and 40 CFR 51.124(o), with regard to SO_2 emissions. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VII. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed approval of West Virginia's SIP revision to meet the requirements of CAIR does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: May 29, 2009.

William C. Early,

Acting Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2008–0831–200825(b); FRL–8915–6]

Approval and Promulgation of Implementation Plans Georgia: State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the Georgia Department of Natural Resources, through the Georgia Environmental Protection Division, on June 25, 2008. The revisions include modifications to Georgia's Air Quality Rules found at Chapters 391–3–1–.01, and 391–3–1–.02, pertaining to ''Definitions,'' and ''Emission Limitations and Standards,'' respectively. This action is being taken pursuant to section 110 of the Clean Air Act.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before July 13, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2008–0831, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: harder.stacy@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2008–0831,'' Regulatory Development Section,

Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Stacy Harder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: June 1, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–13593 Filed 6–10–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0230; FRL–8900–7]

Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District, Placer County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) and Placer County Air Pollution Control District (PCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from storage tanks and the operation of steam drive crude oil production wells. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 13, 2009.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0230, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *Law.Nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: MBUAPQD 427 and PCAPQD 212. In the Rules and Regulations section of this **Federal Register,** we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 3, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–13479 Filed 6–10–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0142, FRL–8901–9]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD) and South Coast Air Quality Management District portions of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve local rules that address particulate matter (PM–10) emissions from open outdoor fires and from wood burning devices.

DATES: Any comments on this proposal must arrive by July 13, 2009.

ADDRESSES: Submit comments, identified by docket number EPA–R09–

OAR–2009–0142, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

• *E-mail: steckel.andrew@epa.gov.*

• *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Permits Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of AVAQMD Rule 444 and SCAQMD Rule 445. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 14, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–13482 Filed 6–10–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 090218194–9196–01]

RIN 0648–AX65

List of Fisheries for 2010

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its proposed List of Fisheries (LOF) for 2010, as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2010 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

DATES: Comments must be received by August 10, 2009.

ADDRESSES: Send comments by any one of the following methods.

(1) Electronic Submissions: Submit all electronic comments through the Federal eRulemaking portal: *http://www.regulations.gov* (follow instructions for submitting comments).

(2) Mail: Chief, Marine Mammal and Sea Turtle Conservation Division, Attn: List of Fisheries, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this proposed rule, should be submitted in writing to Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or to David Rostker, OMB, by fax to 202–395–7285 or by email to *David__Rostker@omb.eop.gov*.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

See **SUPPLEMENTARY INFORMATION** for a listing of all Regional Offices.

FOR FURTHER INFORMATION CONTACT: Melissa Andersen, Office of Protected Resources, 301–713–2322; David Gouveia, Northeast Region, 978–281–9280; Anne Ney, Southeast Region, 727–551–5758; Elizabeth Petras, Southwest Region, 562–980–3238; Brent Norberg, Northwest Region, 206–526–6733; Bridget Mansfield, Alaska Region, 907–586–7642; Lisa Van Atta, Pacific Islands Region, 808–944–2257. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of Published Materials

Information regarding the LOF and the Marine Mammal Authorization Program, including registration procedures and forms, current and past LOFs, observer requirements, and marine mammal injury/mortality reporting forms and submittal procedures, may be obtained at: *http://www.nmfs.noaa.gov/pr/interactions/lof/*, or from any NMFS Regional Office at the addresses listed below:

NMFS, Northeast Region, Fifty five Great Republic Drive, Gloucester, MA 01930–2298, Attn: Marcia Hobbs;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Teletha Mincey;

NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Lyle Enriquez;

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Bridget Mansfield; or

NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1100, Honolulu, HI 96814–4700, Attn: Lisa Van Atta.

What is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SAR) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(1)(C)).

How Does NMFS Determine in which Category a Fishery is Placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock, and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

Tier 1: If the total annual mortality and serious injury of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock would be placed in Category III (unless those fisheries interact with other stock(s) in which total annual mortality and serious injury is greater than 10 percent of PBR). Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2, Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level.

Tier 2, Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level.

Tier 2, Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level.

While Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock, Tier 2 considers fishery-specific mortality and serious injury for a particular stock. Additional details regarding how the categories were determined are provided in the preamble to the proposed rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Because fisheries are categorized on a per-stock basis, a fishery may qualify as one Category for one marine mammal stock and another Category for a different marine mammal stock. A fishery is typically categorized on the LOF at its highest level of classification (e.g., a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II).

Other Criteria That May Be Considered

In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury of mortality is ''occasional'' by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2). Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published.

How Does NMFS Determine which Species or Stocks are Included as Incidentally Killed or Injured in a Fishery?

The LOF includes a list of marine mammal species or stocks incidentally killed or injured in each commercial fishery. To determine which species or stocks are included as incidentally killed or injured in a fishery, NMFS annually reviews the information presented in the current SARs. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. NMFS also reviews other sources of new information, including observer data, stranding data, and fisher self-reports.

In the absence of reliable information on the level of mortality or injury of a marine mammal stock, or insufficient observer data, NMFS will determine whether a species or stock should be added to, or deleted from, the list by considering other factors such as: changes in gear used, increases or decreases in fishing effort, increases or decreases in the level of observer coverage, and/or changes in fishery management that are expected to lead to decreases in interactions with a given marine mammal stock (such as a fishery management plan (FMP) or a take reduction plan (TRP)). NMFS will provide case-specific justification in the LOF for changes to the list of species or stocks incidentally killed or injured.

How Does NMFS Determine the Level of Observer Coverage in a Fishery?

Data obtained from observers and the level of observer coverage are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. The best available information on the level of observer coverage, and the spatial and temporal distribution of observed marine mammal interactions, is presented in the SARs. Starting with the 2005 SARs, each SAR includes an appendix with detailed descriptions of each Category I and II fishery in the LOF, including observer coverage. The SARs generally do not provide detailed information on observer coverage in Category III fisheries because, under the

MMPA, Category III fisheries are not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine mammals. Information presented in the SARs' appendices includes: level of observer coverage, target species, levels of fishing effort, spatial and temporal distribution of fishing effort, characteristics of fishing gear and operations, management and regulations, and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resource's website at: *http://www.nmfs.noaa.gov/pr/sars/*. Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's website: *http://www.st.nmfs.gov/st4/nop/*.

How Do I Find Out if a Specific Fishery is in Category I, II, or III?

This proposed rule includes three tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the fisheries in the Pacific Ocean (including Alaska); Table 2 lists all of the fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; Table 3 lists all U.S.-authorized fisheries on the high seas. A fourth table, Table 4, lists all fisheries managed under applicable take reduction plans or teams.

Are High Seas Fisheries Included on the LOF?

Beginning with the 2009 LOF, NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Sea Fishing Compliance Act (HSFCA) permits in each fishery. As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. For the purposes of the LOF, the high seas fisheries are subdivided based on gear type (e.g., trawl, longline, purse seine, gillnet, troll, etc.) to provide more detail on composition of effort within these fisheries. Many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of a fishery operating within U.S. waters (listed in Table 1 or 2). NMFS designates those fisheries in Tables 1, 2, and 3 by a ''*'' after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters do not necessarily represent additional fishers that are not accounted for in Tables 1 and 2. Many fishers holding these permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Table 1 and 2.

HSFCA permits are valid for five years, during which time FMPs can change. Therefore, some fishers may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits displayed in Table 3 is likely higher than the actual U.S. fishing effort on the high seas. For more information on how NMFS classifies high seas fisheries on the LOF, see the preamble text in the final 2009 LOF (73 FR 73032; December 1, 2008).

Are Treaty Tribal Fisheries Included on the LOF?

In the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995) NMFS concluded that treaty tribal fisheries are conducted under the authority of the Indian treaties; therefore, the MMPA's requirements in section 118 do not apply to treaty Indian tribes. NMFS stated, '' the rights to fish and hunt are already secured separately for Northwest tribes pursuant to their treaties with the United States. NMFS reviewed the relationship of the Northwest Indian treaties to the MMPA and did not find clear evidence that Congress intended to abrogate treaty Indian rights. Section 14 of the Amendments to the MMPA (Pub. L. No. 103–238) states 'Nothing in this Act, including any amendments to the Marine Mammal Protection Act of 1972 made by this Act -- alters or is intended to alter any treaty between the United States and one or more Indian tribes.' This provision clarifies that existing treaty Indian fishing rights are not affected by the amendments to the MMPA. Therefore, tribal fisheries are conducted under the authority of the Indian treaties rather than the MMPA, and the MMPA's mandatory registration systems do not apply to treaty Indian fishers operating in their usual and accustomed fishing areas. Since inclusion of the treaty Indian fisheries in the LOF would also establish an obligation to obtain an MMPA registration under section 118, NMFS has deleted reference to tribal fisheries in the LOF. The registration requirements for Category I or II fisheries will not apply to treaty Indian tribes.'' (60 FR 45086, August 30, 1995.)

During the public comment phase for the proposed 2009 LOF, NMFS received a comment requesting the LOF be amended to include tribal fisheries (73 FR 73039, December 1, 2008; comment/response 4). The commenter stated that because of the subsequent holding of the Ninth Circuit in *Anderson* v. *Evans*, 371 F.3d 475 (9th Cir. 2002) finding that the MMPA applies to the Makah application to the gray whale hunt, NMFS' 1995 conclusion exempting tribal fisheries from the LOF and the Section 118 authorization process may no longer be valid. NMFS responded in the final 2009 LOF that the Agency would consider the comment during the development of future proposed LOFs (73 FR 73039, December 1, 2008; comment/response 4).

NMFS is evaluating whether or not the 1995 conclusion to exempt tribal fisheries from the LOF should be changed due to *Anderson* v. *Evans*. At this time, NMFS is seeking public comment on whether or not to include treaty tribal fisheries on future LOFs during the public comment period for the proposed 2010 LOF.

Am I Required to Register Under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization to lawfully take a non-endangered and non-threatened marine mammal incidental to commercial fishing. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How Do I Register?

NMFS has integrated the MMPA registration process, the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and are not required to submit registration or renewal materials directly under the MMAP. In the Pacific Islands, Southwest, Northwest, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate; in the Northeast and Southeast Regions, NMFS will issue vessel or gear owners notification of registry and directions on obtaining an authorization certificate. The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or

for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries. Individuals fishing in Category I and II fisheries for which no state or Federal permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

How Do I Receive My Authorization Certificate and Injury/Mortality Reporting Forms?

All vessel or gear owners that participate in Pacific Islands, Southwest, Northwest, or Alaska regional fisheries will receive their authorization certificates and/or injury/mortality reporting forms via U.S. mail, or with their State or Federal license at the time of renewal. Vessel or gear owners participating in the Northeast and Southeast Regional Integrated Registration Program will receive their authorization certificates as follows:

1. Northeast Region vessel or gear owners participating in Category I or II fisheries for which a state or Federal permit is required may receive their authorization certificate and/or injury/mortality reporting form by contacting the Northeast Regional Office at 978–281–9328 or by visiting the Northeast Regional Office Web site (*http://www.nero.noaa.gov/prot__res/mmap/certificate.html*) and following instructions for printing the necessary documents.

2. Southeast Region vessel or gear owners participating in Category I or II fisheries for which a Federal permit is required, as well as fisheries permitted by the states of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas will receive notice of registry and may receive their authorization certificate and/or injury/mortality reporting form by contacting the Southeast Regional Office at 727–551–5758 or by visiting the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/pr/pr.htm*) and following instructions for printing the necessary documents.

How Do I Renew My Registration Under the MMPA?

Vessel or gear owners that participate in Pacific Islands, Southwest, or Alaska regional fisheries are automatically renewed and should receive an authorization certificate by January 1 of each new year. Vessel or gear owners in Washington and Oregon fisheries receive authorization with each renewed state fishing license, the timing of which varies based on target species. Vessel or gear owners who participate in these regions and have not received authorization certificates by January 1 or with renewed fishing licenses must contact the appropriate NMFS Regional Office (see **ADDRESSES**).

Vessel or gear owners participating in Southeast or Northeast regional fisheries may receive an authorization certificate by calling the relevant NMFS Regional Office or visiting the relevant NMFS Regional Office Web site (see How Do I Receive My Authorization Certificate and Injury/Mortality Reporting Forms).

Am I Required to Submit Reports When I Injure or Kill a Marine Mammal During the Course of Commercial Fishing Operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must report to NMFS all incidental injuries and mortalities of marine mammals that occur during commercial fishing operations. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported. Injury/mortality reporting forms and instructions for submitting forms to NMFS can be downloaded from: *http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap__reporting__form.pdf*. Reporting requirements and procedures can be found in 50 CFR 229.6.

Am I Required to Take an Observer Aboard My Vessel?

Fishers participating in a Category I or II fishery are required to accommodate an observer aboard vessel(s) upon request. MMPA Section 118 states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting vessels too small to accommodate an observer from this requirement. However, observer requirements will not be exempted for U.S. Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline vessels operating in special areas designated by the Pelagic Longline Take Reduction Plan implementing regulations (50 CFR 229.36(d)). Observer requirements can be found in 50 CFR 229.7.

Am I Required to Comply With Any Take Reduction Plan Regulations?

Fishers participating in a Category I or II fishery are required to comply with any applicable TRP regulations. Table 4 in this proposed rule provides a list of fisheries affected by take reduction teams and plans. Take reduction plan regulations can be found at 50 CFR 229.30 through 229.35.

Sources of Information Reviewed for the Proposed 2010 LOF

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the SARs for all observed fisheries to determine whether changes in fishery classification were warranted. The SARs are based on the best scientific information available at the time of preparation, including the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were created by the MMPA to review the science that informs the SARs, and to advise NMFS on marine mammal population status, trends, and stock structure, uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, fishery management plans, and ESA documents.

The proposed LOF for 2010 was based, among other things, on information provided in the NEPA and ESA documents analyzing authorized high seas fisheries, and the final SARs for 1996 (63 FR 60, January 2, 1998), 2001 (67 FR 10671, March 8, 2002), 2002 (68 FR 17920, April 14, 2003), 2003 (69 FR 54262, September 8, 2004), 2004 (70 FR 35397, June 20, 2005), 2005 (71 FR 26340, May 4, 2006), 2006 (72 FR 12774, March 19, 2007), 2007 (73 FR 21111, April 18, 2008), and 2008 (74 FR 19530, April 29, 2009). The SARs are available at: *http://www.nmfs.noaa.gov/pr/sars/*.

Fishery Descriptions

Beginning with the final 2008 LOF (72 FR 66048, November 27, 2007), NMFS describes each Category I and II fishery on the LOF. Below, NMFS describes the fisheries classified as Category I or II fisheries on the 2010 LOF that were not classified as such on a previous LOF (and therefore have not yet been defined on the LOF). Additional details for Category I and II fisheries operating in U.S. waters are included in the SARs, FMPs, and TRPs, or through state agencies. Additional details for Category I and II fisheries operating on the high seas are included in various FMPs, NEPA, or ESA documents.

American Samoa Longline Fishery

The Category II ''American Samoa longline'' fishery operates in waters around American Samoa targeting tuna (mainly albacore, also skipjack, yellowfin and bigeye). Wahoo, sharks, billfish, and other miscellaneous pelagic species are also caught, with most of the sharks and billfish released. In 2000, the ''American Samoa longline'' fishery began to expand rapidly with the influx of large (more than 50 ft (15.2 m) overall length) conventional monohull vessels, similar to the type used in the Hawaii-based longline fisheries. Vessels over 50 ft (15.2 m) may set 1,500 - 2,500 hooks and have a greater fishing range and capacity for storing fish (8 - 40 metric tons). The fleet reached a peak of 66 vessels in 2001, and set a peak of almost 7,000 sets in 2002.

The rapid expansion of longline fishing effort within the Exclusive Economic Zone (EEZ) waters around American Samoa prompted the Western Pacific Fishery Management Council (WPFMC) to develop a limited entry system for the fishery, implemented by NMFS in 2005. Under the limited access program, NMFS issued a total of 60 initial longline limited entry permits in 2005 to qualified candidates, spread among 4 vessel size classes (72 FR 10711, March 9, 2007): 22 permits issued in Class A (less than or equal to 40 ft (12.2 m) length); 5 in Class B (40–50 ft (12.2–15.2 m)); 12 in Class C (50–70 ft (15.2–21.3 m)); and 21 in Class D (more than 70 ft (21.3 m)). The limited entry program regulations cap the maximum number of permits to the 60 initial permits issued. Permits may be transferred, upgraded, and renewed. In 2008, the American Samoa longline fishery had 28 active vessels. Observers were first placed on American Samoa longline vessels in April 2006 to monitor protected species interactions, with observer coverage averaging approximately 6–8 percent each year.

Under the limited entry program, vessel operators must submit federal longline logbooks, vessels over 40 ft (12.2 m) must carry observers if requested by NMFS, and vessels over 50 ft (15.2 m) must have an operational vessel monitoring system. In addition, vessel owners and operators of vessels registered to an American Samoa longline limited entry permit must attend a protected species workshop annually, carry and use dip nets, line clippers, and bolt cutters, and follow handling, resuscitation, and release requirements for incidentally hooked or entangled sea turtles (70 FR 69282, November 15, 2005). There are existing regulations intended to mitigate sea turtle incidental hookings, and in 2009 the WPFMC recommended additional measures be implemented to minimize interactions with green sea turtles, including modifications to gear to place hooks below 100 m (328 ft) depth and to increase observer coverage (WPFMC 144th Meeting, March 23–26, 2009). Current regulations include a prohibition on U.S. vessels greater than 50 ft (15.2 m) in length overall from using longline gear within 50 nmi around the islands of American Samoa. American Samoa longline fishery regulations can be found at 50 CFR 665.36–38.

HI Shortline Fishery

The Category II ''HI shortline'' fishery is a small-scale system operating off the State of HI, and targeting bigeye tuna (*Thunnus obesus*) or the lustrous pomfret (*Eumigistes illustris*). This fishery was developed to target these fish species when they concentrate over the summit of Cross Seamount (290 km (180 mi) south of the State of HI). The gear style is designed specifically to target the aggregating fish species over seamount structures. The primary gear type used is a horizontal main line (monofilament) less than 1 nmi long, and includes two baskets of approximately 50 hooks each. The gear is set before dawn and has a short soak time, with the gear retrieved about two hours after it is set. This fishery has no seasonal component and may operate year-round. There are no specific fishing permits issued for this fishery. However, all persons with a State of Hawaii Commercial Marine License (CML) may participate in any fishery, including the ''HI shortline'' fishery. Of those persons possessing CMLs, shortline participation has changed from 5 to 11 vessels during 2003 - 2008. From 2003–2008, there was an average of 135,757 pounds (lbs) of fish landed each year. In 2008 alone, 104,152 lbs of fish were landed. Currently, there is no reporting system in place to document potential marine mammal interactions in this fishery. However, there are anecdotal reports of interactions off the north side of Maui, but the species and extent of interactions are unknown.

CA Spiny Lobster Trap Fishery

The Category II ''CA spiny lobster trap'' fishery operates in southern California, with the highest proportion of landings made into Santa Barbara. The fishery operates from the first Wednesday in October to the first Wednesday after March 15. The fishery tends to be most productive during the first two months, when gear is set close to shore in shallow water (15 fathoms or less). By the end of the season, traps are set in waters deeper than 50 fathoms. This is a limited access fishery with both transferable and non-transferable permits. An estimated 225 permits are in use each year. There is no restriction on the number of traps set, but most vessels set 100 to 500 traps per day. Traps are generally fished singularly and are required to have a buoy marker with the owner's license number, followed by the letter ''P'' to signify that it is a spiny lobster trap. This estimated number of vessels/participants in this fishery is 225.

Summary of Changes to the LOF for 2010

The following summarizes changes to the LOF for 2010 in fishery classification, fisheries listed in the LOF, the estimated number of vessels/participants in a particular fishery, and the species/stocks that are incidentally killed or seriously injured in a particular fishery. The classifications and definitions of U.S. commercial fisheries for 2010 are identical to those provided in the LOF for 2009 with the proposed changes discussed below. State abbreviations used in the following paragraphs include: AK (Alaska), CA (California), HI (Hawaii), MD (Maryland), NC (North Carolina), NJ (New Jersey), SC (South Carolina), and VA (Virginia).

Commercial Fisheries in the Pacific Ocean

Fishery Classification

NMFS proposed to elevate the ''American Samoa longline'' fishery from Category III to Category II based on analogy with other Category I and II longline fisheries in the tropical/sub-tropical latitudes of the Pacific. The fishing gear and methods used to fish in the ''American Samoa longline'' fishery are similar to the Category I ''HI deep-set (tuna target) longline/set line'' and

the Category II ''HI shallow-set (swordfish target) longline/set line'' fisheries, both fisheries which frequently or occasionally seriously injure or kill marine mammals. The ''American Samoa longline'' fishery, although a Category III, has been observed since 2006 with an average of 7.2 percent coverage. There were three interactions between the ''American Samoa longline'' fishery and marine mammals in 2008, two false killer whales (stock unknown), one of which was a mortality, and one rough-tooth dolphin (stock unknown). These interactions will be analyzed by the Southwest Fisheries Science Center (SWFSC) during the development of the 2010 SARs to determine whether or not the surviving animals were injured or seriously injured during these interactions. The analysis may also enable NMFS to determine whether or not the false killer whales interacting with this fishery are from the HI stock which interacts with the ''HI deep-set (tuna target) longline/set line'' fishery, or if the animals belong to a separate stock associated with American Samoa. Although the abundance estimate and the PBR for the false killer whales are unknown, the population around American Samoa may be a relatively small, island-associated population, as has been documented around other Pacific Islands. When completed, the results of these analyses will be reported and addressed in future LOFs.

NMFS proposes to reclassify the ''AK southeast salmon purse seine'' fishery from Category II to Category III. The current Category II classification is based on one permit holder self-report of an incidental mortality of a humpback whale (Central North Pacific) in this fishery in 1996. There are no further self-reports, known entanglements, or anecdotal information of any humpback whales or other marine mammals injured or killed in this fishery since 1996. Though entanglements of humpbacks occur annually in Southeast Alaska, gear found on such animals in Southeast Alaska has never been identified as purse seine gear. While the ''AK southeast salmon purse seine'' fishery has never been observed, NMFS reasons that some additional information on incidental takes would have come to light over the thirteen years since the first report if there were a level of serious injury and mortality of concern in this fishery, either through strandings/entanglement network data or permit holder self-reports.

NMFS stated in a response to public comments in the final 2009 LOF that the agency would review sperm whale (North Pacific) interactions in the Category III ''Gulf of Alaska sablefish longline'' fishery. The 2008 SAR reports three sperm whales were observed seriously injured in this fishery in 2006 (with 11.2 percent observer coverage), which extrapolates to 10 sperm whales from 2002–2006 (or an average annual serious injury or mortality level of two sperm whales/year). Analysis for more recent years' data is not complete, and there is no calculated PBR for this stock. Therefore, no change to this fishery's category is recommended at this time. NMFS will continue to review sperm whale interactions with this fishery and will revisit the classification of the fishery on future LOFs, if warranted, once the more recent years' data are analyzed and reported.

NMFS proposes to classify the ''CA spiny lobster trap'' fishery (proposed to be split from the Category III ''CA spiny lobster, coonstripe shrimp, rock crab, tanner crab pot or trap'' fishery, proposed to be renamed the ''CA coonstripe shrimp, rock crab, tanner crab pot or trap'' fishery, in this proposed rule) as Category II based on serious injuries to humpback whales (CA/OR/WA). The NMFS Large Whale Disentanglement Network (LWDN) reported four humpback whale entanglement events off CA resulting in serious injury, with various types of fishing gear, in 2007. (Details on humpback whale entanglements on the west coast prior to 2007 can be found in the 2009 proposed LOF (73 FR 33760; June 13, 2008.)) The gear involved in a July 2007 entanglement event that caused a serious injury to a humpback whale was identified as lobster trap gear. The total annual rate of mortality and serious injury (Tier 1 analysis) of humpback whales (CA/OR/WA) in all commercial fisheries from 2002 through 2006 exceeds 10 percent of the PBR level for this stock (final 2008 SAR). This single serious injury of a humpback whale in lobster trap gear results in an average mortality and serious injury rate of 0.2 humpback whales/year (when averaged over 5 years), or 8 percent of the PBR (2.5). Therefore, Category II classification is warranted. NMFS acknowledges that entanglements reported to the LWDN likely represent a minimum number of interactions. There is no observer coverage in this fishery.

NMFS proposes to reclassify the ''CA pelagic longline'' fishery from Category II to Category III. This fishery includes the shallow-set longline fishery that previous to 2004 operated on the high seas with most vessels landing in CA. In 2004, this fishery was prohibited inside the EEZ under a regulation promulgated under the ESA in order to protect loggerhead sea turtles. This fishery also includes a deep-set longline fishery that developed since 2005. The classification of this fishery as Category II was based upon analogy with other pelagic longline fisheries and an injury of a Risso's dolphins (CA/OR/WA) in 2003. In addition, one mortality of an unidentified dolphin was observed in this fishery in 2003. The total annual fishery mortality and serious injury of Risso's dolphins (CA/OR/WA) in all commercial fisheries (Tier 1 analysis) is less than10 percent of the stock's PBR (final 2008 SAR); therefore, Category III classification is warranted. NMFS has no information to indicate that the ''CA pelagic longline'' fishery interacts with other marine mammal species/stocks and observer coverage is high in this fishery (ranged from 12 percent to 50 percent from 2003–2005, and was 100 percent in 2006 and 2007).

Addition of Fisheries to the LOF

NMFS proposes to add the ''CA spiny lobster trap'' fishery Category II fishery (see the discussion in the previous section for details).

NMFS proposes to add the ''HI shortline'' fishery as Category II based on analogy with the Category I ''HI deep-set (tuna-target) longline/set line'' and Category II ''HI shallow-set (swordfish-target) longline/set line'' fisheries. NMFS recently became aware of the operation of this commercial fishery. NMFS proposes to classify the ''HI shortline'' fishery as Category II by analogy to the HI longline fisheries based on similarities between the gear used, areas fished, and species targeted in the three fisheries. NMFS has received anecdotal reports of interactions with marine mammals in this fishery; however, the species and extent of the interactions are unknown. For more information, see the description of this fishery in the ''Fishery Descriptions'' section of this proposed rule.

Fishery Name and Organizational Changes and Clarifications

NMFS proposes to rename the Category III ''CA spiny lobster, coonstripe shrimp, rock crab, tanner crab pot or trap'' fishery to the ''CA coonstripe shrimp, rock crab, tanner crab pot or trap'' fishery to more accurately reflect the target species of the fishery. As explained above, the spiny lobster portion of this fishery is proposed to be added to 2010 LOF as a separate Category II fishery. The estimated number of vessels/participants in the Category III ''CA

coonstripe shrimp, rock crab, tanner crab pot or trap'' fishery is 305.

List of Species That are Incidentally Killed or Injured

NMFS proposes to change the stock name for false killer whales incidentally killed/injured in the ''HI deep-set (tuna-target) longline/set line'' fishery from ''HI'' to ''HI pelagic.'' The 2008 SARs separates the ''HI'' stock into the ''HI insular'' and ''HI pelagic'' stocks, stating that all of the false killer whale injuries and mortalities due to interactions with longline fisheries are considered to be from the ''HI pelagic'' stock (74 FR 19530, April 29, 2009).

NMFS proposes to add pantropical spotted dolphin (stock unknown) to the list of species/stocks incidentally killed/injured in the Category I ''HI deep-set (tuna target) longline/set line'' fishery based on a documented mortality in 2008. While analysis of the 2008 observer data will not be finalized until publication of the 2010 SARs, NMFS proposes to add the species at this time because a mortality does not need to be analyzed to determine the severity (as is necessary for an animal released after an interaction). The average observer coverage over the past five years was 22.7 percent.

NMFS proposes to remove spinner dolphin (HI) from the list of species/stocks incidentally killed/injured in the Category I ''HI deep-set (tuna target) longline/set line'' fishery because there have been no observed interactions in the past five years. The average observer coverage over the past five years was 22.7 percent.

NMFS proposes to remove pantropical spotted dolphin (stock unknown) from the list of species/stocks incidentally killed/injured in the Category II ''HI shallow-set (swordfish target) longline/set line'' fishery. There have been no observed interactions in the past five years and observer coverage is 100 percent.

NMFS indicated in the final 2009 LOF (73 FR 73032, December 1, 2008; comment response 15) that the agency would reexamine 2008 observer data which reported an interaction between the Category II ''HI shallow-set (swordfish target) longline/set line'' fishery and a false killer whale. NMFS is not proposing to add false killer whales to the list of species/stocks incidentally killed/injured in the ''HI shallow-set (swordfish target) longline/set line'' fishery at this time. As stated in the final 2009 LOF (comment response 15), the data presented in the annual SARs have an average of a two-year time delay because of the time needed to properly analyze the data and complete the peer-review process. Therefore, this 2008 interaction will be analyzed by the SWFSC during the development of the 2010 SARs to determine whether or not the animal was injured or seriously injured during this interaction. If the SWFSC analysis reveals the animal was injured during the interaction, NMFS will add false killer whales to a future LOF at that time.

NMFS proposes to add false killer whale (stock unknown) to the list of species/stocks incidentally killed/injured in the ''American Samoa longline'' fishery (proposed to be elevated from Category III to Category II in this proposed rule) based on a mortality reported in 2008. As stated above during NMFS' justification for proposing to elevate this fishery to Category II, there were two reported interactions with false killer whales (stock unknown) (one interaction resulted in the animal's mortality and the other animal was released alive with the injury status not yet analyzed), and one with a rough-toothed dolphin (stock unknown) (also released alive with the injury status not yet analyzed). NMFS proposes to add false killer whale (stock unknown) to the list of species/stocks incidentally killed/injured because the mortality does not need to be analyzed further to determine the level of injury to the animal. However, NMFS is not proposing to add rough-toothed dolphin (stock unknown) to list of species/stocks incidentally killed/injured until after the SWFSC completes the analysis of the interaction and determines whether or not the animal was injured during the interaction. If the analysis reveals that the animal was injured during this interaction, NMFS will add rough-toothed dolphin (stock unknown) to a future LOF at that time.

NMFS proposes to remove humpback whales (Central North Pacific) from the list of species/stocks incidentally killed or injured in the ''AK southeast salmon purse seine'' fishery (proposed to be reclassified from Category II to Category III in this proposed rule). There are no self-reports, known entanglements, or anecdotal information of any humpback whales or other marine mammals injured or killed in this fishery since 1996. This fishery has never been observed, but stranding and entanglement networks are active in the area.

NMFS proposes to change the stock name for Northern fur seals on the list of species/stocks incidentally killed or injured in the Category II ''AK Bering Sea, Aleutian Islands flatfish trawl'' fishery from ''Eastern North Pacific'' to ''Eastern Pacific,'' to correct a typographical error. This stock has been referred to as the ''Eastern Pacific'' stock since the 1998 SARs.

NMFS proposes to remove short-finned pilot whales (CA/OR/WA) from the list of species/stocks incidentally killed or injured in the Category II ''CA squid purse seine'' fishery. NMFS has reviewed the available information on the distribution and abundance of short finned pilot whales, along with observer records, self-reports from the fishers, and the SWR stranding data base, and has concluded that the likelihood of interactions between this fishery and short-finned pilot whales (CA/OR/WA) is extremely remote. Short-finned pilot whales were once commonly seen off the coast of CA, but have become quite rare in recent years (Barlow and Forney 2007). Observer coverage in the ''CA squid purse seine'' fishery began in 2004 with less than 10 percent observer coverage. In 2005 and 2006, observer coverage was approximately 2.0 percent and 1.3 percent, respectively.

NMFS proposes to add a superscript ''1'' after long-beaked common dolphins (CA) in the list of species/stocks incidentally killed or injured in the Category II ''CA squid purse seine'' fishery. This fishery was classified as a Category II based on the level of serious injury and mortality of short-finned pilot whales (CA/OR/WA), which NMFS proposes to remove from the list of species/stocks incidentally killed or injured in this proposed rule (see preceding paragraph). The ''CA squid purse seine'' fishery will remain a Category II fishery due to a serious injury with a suspected long-beaked common dolphin. As described in the final 2009 LOF (73 FR 73032, December 1, 2008) an unidentified common dolphin was observed entangled and seriously injured during an interaction with the squid purse seine fishery in 2006 in an area where long-beaked common dolphins (CA) are known to occur. Given the area in which the interaction occurred, the unidentified common dolphin could have been a short-beaked common dolphin (CA) or a long-beaked common dolphin (CA). Due to the paucity of the information on the interaction and the low level of observer coverage in this fishery, NMFS cannot eliminate the possibility that a long-beaked common dolphin was seriously injured during this event. The level of serious injury of long-beaked common dolphin in this fishery, when extrapolated from the level of observer coverage, results in a mean annual mortality and serious injury of approximately 29 animals, which is 30 percent of the stock's PBR (95) and consistent with Category II

classification. Observer coverage in the ''CA squid purse seine'' fishery began in 2004 with less than 10 percent observer coverage. In 2005 and 2006, observer coverage was approximately 2.0 percent and 1.3 percent, respectively.

NMFS proposes to add humpback whale (CA/OR/WA) and gray whale (Eastern North Pacific) to the list of species/stocks incidentally killed or injured in the ''CA spiny lobster'' fishery (proposed to be classified as Category II in this proposed rule), with a superscript ''1'' after humpback whales, indicating that takes of this stock are driving the classification of the fishery. As described above, a humpback whale was reported seriously injured due to an entanglement in spiny lobster trap gear in July 2007, resulting in an average annual serious injury and mortality level of 8 percent of the stock's PBR. Gray whales (Eastern North Pacific) have also been reported incidentally killed or injured in this fishery. NMFS has received multiple reports of gray whales entangled in trap/pot gear off CA, including a report from April 2000 of a dead gray whale stranded on a beach in Santa Barbara County entangled in spiny lobster trap gear. Interactions with gray whales are not driving the Category II classification of this fishery. Currently, total commercial fishery-related annual mortality levels less than10 percent of the stock's PBR (final 2007 SAR); therefore, a Tier 2 evaluation is not necessary.

NMFS is requesting public comment and/or information on two large whale entanglement events in 2007. On May 10, 2007, a free-swimming humpback whale was reported seriously injured with pink monofilament gillnet draped on its body. The animal was first seen offshore of Dana Point and was seen again later the same day off Palos Verdes Bay Club, of Palos Verdes, CA. On April 2, 2007, a free-swimming gray whale was reported entangled in and seriously injured by small mesh blue/green monofilament gillnet. The animal was seen at Rocky Point, near Rancho Palos Verdes, CA. No other information is available on the sightings. Based upon the area and time of year that these animals were sighted, gear from either or both of the Category II ''CA halibut/white seabass and other species set gillnet (3.5 in mesh)'' or the ''CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in)'' fisheries could have caused the entanglement events. As described in the proposed 2009 LOF (73 FR 33760, December 1, 2005), NMFS must consider which fisheries operate in the same time and area as an observed entangled marine mammal. Both gillnet fisheries were active at the time and area when the humpback whale and gray whale were observed entangled in gillnet gear. The ''CA halibut/white seabass and other species set gillnet (>3.5 in mesh)'' fishery was observed only once between 2003 and 2007, with 17.8 percent coverage in 2007. The ''CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in)'' fishery was observed twice between 2003 and 2007, with 10.4 percent and 11.0 percent coverage in 2003 and 2004, respectively. NMFS is continuing to review the available information on the types of gear used in each fishery, and the distribution of each fishery and large whales during the time of the entanglement events. NMFS is also specifically requesting available information on the gear characteristics of each fishery or the entanglement events reported above. NMFS may propose to add humpback whales (CA/OR/WA) and gray whales (Eastern North Pacific) to the list of species/stocks incidentally killed or injured in the Category II ''CA halibut/white seabass and other species set gillnet (3.5 in mesh)'' and/or ''CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in)'' fisheries to the final 2010 LOF or a future LOF, if warranted.

NMFS proposes to remove CA sea lion (U.S.) from the list of species/stocks incidentally killed or injured in the ''CA pelagic longline'' fishery (proposed to be reclassified as Category III in this proposed rule). CA sea lions (U.S.) were included on the list of species/stocks incidentally killed or injured in this fishery based on logbook reports when the fishery was originally included on the LOF in 1996. There have been no reported interactions since that time. Observer coverage in this fishery ranged from 12 percent to 50 percent from 2003–2005, and was 100 percent in 2006 and 2007.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Name and Organizational Changes and Clarifications

NMFS proposes to replace the existing description of the Category I ''Mid-Atlantic gillnet fishery from the final 2008 LOF (72 FR 66048; November 27, 2007) and changes to the description outlined in the final 2007 LOF (73 FR 73032; December 1, 2008) with the following updated language, to reflect multiple amendments, including changes in state regulations, over the past several years: ''The Category I Mid-Atlantic gillnet fishery targets monkfish, spiny dogfish, smooth dogfish, bluefish, weakfish, menhaden, spot, croaker, striped bass, large and small coastal sharks, Spanish mackerel, king mackerel, American shad, black drum, skate spp., yellow perch, white perch, herring, scup, kingfish, spotted seatrout, and butterfish. The fishery uses drift and sink gillnets, including nets set in a sink, stab, set, strike, or drift fashion, with some unanchored drift or sink nets used to target specific species. The dominant material is monofilament twine with stretched mesh sizes from 2.5–12 in (6.4–30.5 cm), and string lengths from 150–8,400 ft. (46–2,560 m). This fishery operates year-round west of a line drawn at 72° 30′ W. long. south to 36° 33.03′ N. lat. (VA/NC border) and east to the eastern edge of the EEZ and north of the NC/SC border, not including waters where Category II and Category III inshore gillnet fisheries operate in bays, estuaries, and rivers. This fishery includes any residual large pelagic driftnet effort in the mid-Atlantic, any shark and dogfish gillnet effort in the mid-Atlantic, and those North Carolina small and large mesh beach-anchored gillnets formerly placed in the Category II Mid-Atlantic haul/beach seine fishery in the mid-Atlantic zone described. This NC component fishing effort is prosecuted right off the beach (6 ft [1.8 m]) or in nearshore coastal waters to offshore waters (250 ft [76 m]). Gear in this fishery is managed by several federal and interstate FMPs managed by the Atlantic States Marine Fisheries Commission (ASMFC), the Atlantic Large Whale Take Reduction Plan (ALWTRP), the Harbor Porpoise Take Reduction Plan (HPTRP), and the Bottlenose Dolphin Take Reduction Plan (BDTRP). Fisheries are primarily managed by total allowable catch limits; individual trip limits (quotas); effort caps (limited number of days at sea per vessel); time and area closures; and gear restrictions and modifications.''

NMFS proposes to replace the existing description of the Category II ''Mid-Atlantic haul/beach seine'' fishery from the final 2008 LOF (72 FR 66048; November 27, 2007) and changes to the description outlined in the final 2007 LOF (73 FR 73032; December 1, 2008) with the following updated language, to reflect multiple amendments, including changes in state regulations, over the past several years: ''The Category II Mid-Atlantic haul/beach seine fishery targets striped bass, mullet, spot, weakfish, sea trout, bluefish, kingfish, and harvestfish using seines with one end secured (e.g., swipe nets and long seines) and seines secured at both ends or those anchored to the beach and hauled up on the

beach. The beach seine system also uses a bunt and a wash net that are attached to the beach and extend into the surf. The fishery occurs in waters west of 72° 30′ W. long. and north of a line extending due east from the NC/SC border. The only haul/beach seine gear operating in NC included in this Category II fishery is the ''Atlantic Ocean striped bass beach seine fishery'' during the winter, as regulated by NC Marine Fisheries Commission rules (NCDMF) and NCDMF proclamations. NCDMF defines a beach seine operating under the Atlantic Ocean Striped Bass beach seine fishery as a ''swipe net constructed of multifilament, multifiber webbing fished from the ocean beach that is deployed from a vessel launched from the ocean beach where the fishing operation takes place, and one end of the beach seine is attached to the shore at all times during the operation.'' All other NC small and large mesh beach-anchored gillnets with webbing constructed of all monofilament material or a combination of monofilament and multifilament material were moved to the Category I Mid-Atlantic gillnet fishery in the final 2009 LOF because their construction and fishing technique were more similar to a gillnet than a traditional beach seine. A description of the gear and fishing practices for the haul/beach seine and small and large mesh beach-anchored gillnets operating in NC are found in the final 2008 LOF (72 FR 66048; November 27, 2007) and final 2009 LOF (73 FR 73032, December 1, 2008). In addition to the NC component as described above, the ''Mid-Atlantic haul/beach seine fishery also includes haul/beach seining in other areas of the mid-Atlantic, including NY through VA. Because the net materials and fishing practices of the Atlantic Ocean striped bass beach seine fishery in NC are different from haul seining in other areas, NMFS may consider splitting this fishery in the future. The Mid-Atlantic haul/beach seine fishery is managed under several state and Interstate FMPs and is an affected fishery under the BDTRP.''

Number of Vessels/Persons

In past LOFs, the number of state participants for several northeast and mid-Atlantic fisheries was unknown and therefore the estimations for the number of vessels/persons participating in these fisheries were based solely on available federal information. This year NMFS has included available state permit information as well as federal permit information for the following northeast and mid-Atlantic fishery estimates. In some cases the addition of the state dataset has caused the fishery participation estimates to increase significantly compared to past LOFs. It should be noted that this may provide an artificial representation of fishery participation trends and may only reflect the addition of the new state dataset, not actual increases in the number of fishery participants.

NMFS proposes to update the estimated number of vessels or persons in the Category I ''Mid-Atlantic gillnet'' fishery from >370 to 7,596.

NMFS proposes to update the estimated number of vessels or persons in the Category I ''Northeast sink gillnet'' fishery from 341 to >6,455.

NMFS proposes to update the estimated number of vessels or persons in the Category II ''Atlantic mixed species trap/pot'' fishery from unknown to >429.

NMFS proposes to update the estimated number of vessels or persons in the Category II ''Mid-Atlantic menhaden purse seine'' fishery from 22 to 34.

NMFS proposes to update the estimated number of vessels or persons in the Category II ''Mid-Atlantic haul/beach seine'' fishery from 25 to >221.

NMFS proposes to update the estimated number of vessels or persons in the Category II ''Mid Atlantic mid-water trawl'' fishery from 620 to 400.

NMFS proposes to update the estimated number of vessels or persons in the Category II ''Northeast bottom trawl'' fishery from 1052 to 1,600.

NMFS proposes to update the estimated number of vessels or persons in the Category II ''Northeast mid-water trawl'' fishery from 17 to 1,000.

NMFS proposes to update the estimated number of vessels or persons in the Category II ''VA pound net'' fishery from 187 to 62.

NMFS proposes to update the estimated number of vessels or persons in the Category III ''Gulf of Maine Atlantic herring purse seine'' fishery from 30 to <10.

List of Species That are Incidentally Killed or Injured

NMFS proposes to add the harbor porpoise (Gulf of Maine/Bay of Fundy (GME/BF)) to the list of marine mammal species/stocks incidentally killed or injured in the Category II ''Northeast bottom trawl fishery'' because of mortalities reported in the final 2008 SARs. NMFS removed this stock from the list of species/stocks incidentally killed or injured in this fishery on the final 2009 LOF (73 FR 73032; December 1, 2008) based on information from past LOFs indicating this listing represented a typographical error persisting since the final 2005 LOF (71 FR 247; January 4, 2006). New information reported in the final 2008 SAR indicates there have been several incidental mortalities of harbor porpoises (GME/BF) in the Northeast bottom trawl between 2003 and 2008. These observed takes have included one fresh dead harbor porpoise taken in 2003, four in 2005, and one in 2006. Estimates have not been generated or reported in the SARs for the percentage of the stock's PBR (PBR=610) seriously injured or killed in this fishery (final 2008 SARs). Based on this newly available data, NMFS proposes to relist the harbor porpoise (GME/BF) under species/stocks incidentally injured or killed in the ''Northeast bottom trawl'' fishery. Estimated observer coverage (measured in trips) for the ''Northeast bottom trawl'' fishery during the period 1994–2006 was 0.4, 1.1, 0.2, 0.2, 0.1, 0.3, 1, 1, 3, 4, 5, 12 and 6 percent, respectively (final 2008 SARs).

NMFS proposes to remove fin whales (Western North Atlantic (WNA)) from the list of species/stocks incidentally killed or injured in the Category I ''Northeast/Mid-Atlantic American lobster trap/pot'' fishery. Fin whales were added to the LOF in 1997 based on an animal that was thought to have been entangled in lobster gear. However, subsequent analysis revealed the interaction was with hagfish pot gear, but the LOF was never updated to reflect this analysis. A fin whale has never been reported incidentally killed or injured in Northeast/Mid-Atlantic American lobster trap/pot gear. Additionally, this fishery does not have observer coverage, although it should be noted that initial encounters between large whales and fishing gear are rarely observed.

NMFS proposes to remove the superscript ''1'' after humpback whale (Gulf of Maine) and minke whale (Canadian east coast) in the Category I ''Northeast/Mid-Atlantic American lobster trap/pot'' fishery because serious injury and mortality of these stocks are not driving the Category I classification of this fishery. Annual mortality and serious injury of humpback whales in all lobster fisheries is 0.2 animals (PBR 1.1), or 18 percent of the stock's PBR (final 2008 SAR). Annual mortality and serious injury of minke whales in all lobster fisheries is 0.4 animals (PBR=19), or 2 percent of the stock's PBR (final 2008 SAR). The level of annual mortality and serious injury of humpback and minke whales in the ''Northeast/Mid-Atlantic American lobster trap/pot'' fishery is unknown at this time, but is likely less than 50 percent of the stocks' PBRs. It is important to note that the date sighted

and location provided in the SAR is not necessarily when or where the large whale serious injury or mortality occurred. The NMFS Northeast Regional Office (NERO) is currently working on a review of large whale entanglement events where gear type was identified and the location where the gear was set was known, to support the ALWTRP and to update the LOF tables. Once this review is complete, NMFS may propose changes to a future LOF, if warranted. There is no observer coverage in this fishery.

NMFS proposes to leave the superscript ''1'' after North Atlantic right whale (WNA) in the Category I ''Northeast/Mid-Atlantic American lobster trap/pot'' fishery because annual mortality and serious injury of right whales in all lobster fisheries is 0.2 animals (PBR=0) which is greater than fifty percent of the stock's PBR (final 2008 SAR). The level of annual mortality and serious injury of right whales in the ''Northeast/Mid-Atlantic American lobster trap/pot'' fishery is unknown at this time, but is likely more than 50 percent of the stock's PBR. It is important to note that the date sighted and location provided in the SAR is not necessarily when or where the large whale serious injury or mortality occurred. The NMFS NERO is currently working on a review of large whale entanglement events where gear type was identified and the location where the gear was set was known, to support the ALWTRP and to update the LOF tables. Once this review is complete, NMFS may propose changes to a future LOF, if warranted. There is no observer coverage in this fishery.

NMFS proposes to remove the superscript ''1'' after minke whales (Canadian east coast), humpback whales (Gulf of Maine), and North Atlantic right whales (WNA) from the list of species/stocks incidentally killed/injured in the Category I ''Northeast sink gillnet'' fishery because serious injury and mortality of these species/stocks are not driving the Category I classification of this fishery. No serious injury or mortality of minke whales in gillnet fisheries were reported from 2001–2006 (final 2008 SARs). The annual mortality and serious injury for humpback whales (Gulf of Maine) in all gillnet fisheries is 0.2 animals (PBR of 1.1), or 18 percent of the stock's PBR (final 2008 SAR). The level of annual mortality and serious injury of humpback whales in the ''Northeast sink gillnet'' fishery is unknown at this time, but is likely less than 50 percent of the stock's PBR. It is important to note that the date sighted and location provided in the SAR is not necessarily when or where the large whale serious injury or mortality occurred. The final 2008 SARs report one mortality of a right whale in the most recent five years (2001–2006). This mortality of a right whale calf was the result of entanglement and injury to the whale by gillnet gear in the Southeast U.S. Restricted Area (as described under the ALWTRP, 50 CFR 229.32), where two gillnet fisheries traditionally operate: the Category II ''Southeast Atlantic gillnet'' fishery and the Category II ''Southeastern U.S. Atlantic shark gillnet'' fishery. However, NMFS was unable to determined which specific gillnet fishery was responsible for the interaction (for more information see comment/response 23 in the final 2006 LOF; 71 FR 48802, August 22, 2006). NMFS proposed to retain humpback whales, North Atlantic right whales, and minke whales on the list of species/stocks incidentally killed or injured given that they have been known to interact with or become entangled in gillnet gear, though not resulting in serious injury or mortality. The NMFS NERO is currently working on a review of large whale entanglement events where gear type was identified and the location where the gear was set was known, to support the ALWTRP and to update the LOF tables. Once this review is complete, NMFS may propose changes for this fishery in a future LOF, if warranted. Observer coverage in the ''Northeast sink gillnet'' fishery from 2001 to 2006 was between 2 percent and 7 percent (final 2008 SAR).

NMFS proposes to remove the superscript ''1'' after harbor porpoise (GME/BF) and humpback whale (Gulf of Maine) in the Category I ''Mid-Atlantic gillnet'' fishery because serious injury and mortality of these stocks are not driving the Category I classification of this fishery. Annual mortality and serious injury of harbor porpoises in this fishery is 299 animals (PBR=610), or 49 percent of the stock's PBR (final 2008 SAR). The annual mortality and serious injury of humpback whales in all gillnet fisheries is 0.2 animals (PBR of 1.1), or 18 percent of the stock's PBR (final 2008 SAR). The level of annual mortality and serious injury of humpback whales in the ''Mid-Atlantic gillnet'' fishery is unknown at this time, but is likely less than 50 percent of the stock's PBR. It is important to note that the date sighted and location provided in the SAR is not necessarily when or where the large whale serious injury or mortality occurred. The NMFS NERO is currently working on a review of large whale entanglement events where gear type was identified and the location where the gear was set was known, to support the ALWTRP and to update the LOF tables. Once this review is complete, NMFS may propose changes to a future LOF, if warranted. Observer coverage in this fishery between 2001 and 2006 was between 1 percent and 3 percent (final 2008 SAR).

NMFS proposes to remove pygmy sperm whales (WNA) from the list of species/stocks incidentally killed or injured in the Category I ''Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline'' fishery because there have been no injuries or mortalities reported in the last five years (final 2008 SARs). Observer coverage in this fishery from 2000–2006 was between 4 percent and 7 percent, with coverage often greater than 10 percent in some areas and seasons (final 2008 SARs).

Commercial Fisheries on the High Seas

Removal of Fisheries

As stated in the preamble under ''How Does NMFS Authorize U.S. Vessels to Participate in High Seas Fisheries?,'' HSFCA permits exist that were obtained prior to 2004 for fisheries that are no longer authorized by the HSFCA, but for which the 5–year permit is still valid. These are included on the LOF as ''unspecified'' and these fisheries will be removed from the LOF once those permits have expired. For the 2010 LOF, all unspecified fisheries for all gear types are removed, except for trawl gear. Four trawl gear permits remain for an unspecified fishery.

Number of HSFCA Permits

As stated in the preamble under ''How Does NMFS Authorize U.S. Vessels to Participate in High Seas Fisheries?,'' some fishers possess valid HSFCA permits for gear types that are no longer authorized for use (therefore, the fishers are unable to fish under the permit). For this reason, the number of HSFCA permits updated below and displayed in Table 3 of this proposed rule may not accurately represent actual fishing effort by U.S. vessels on the high seas.

NMFS proposes to update the estimated number of HSFCA permits in the High Seas Atlantic highly migratory species fishery for the following gear types: longline, from 75 to 72; trawl, from 3 to 2; handline/pole-and-line from 2 to 1; and troll, from 5 to 7.

NMFS proposes to update the estimated number of HSFCA permits in the High Seas Pacific highly migratory species fishery for the following gear types: drift gillnet, from 5 to 4; trawl, from 14 to 3; purse seine, from 5 to 8; pot, from 8 to 7; longline, from 56 to 62; handline/pole and line, from 18 to 22;

liners not elseware identified (NEI), from 3 to 1; multipurpose vessels, from 9 to 7; and troll, from 222 to 249.

NMFS proposes to update the estimated number of HSFCA permits in the High Seas South Pacific Albacore Troll fishery for the following gear types: trawl, from 5 to 2; longline, from 12 to 11; handline/pole and line, from 7 to 8; troll, from 45 to 53; multipurpose vessels, from 6 to 4.

NMFS proposes to update the estimated number of HSFCA permits in the High Seas South Pacific Tuna fishery for the following gear types: purse seine from 23 to 36; longline, from 2 to 3; troll, from 1 to 3.

NMFS proposes to update the estimated number of HSFCA permits in the High Seas Western Pacific Pelagic fishery for the following gear types: trawl, from 11 to 4; purse seine, from 4 to 3; pot, from 8 to 7; handline/pole and line, from 8 to 9; liners NEI, from 2 to 1; multipurpose vessels, from 7 to 5.

List of Species That are Incidentally Killed or Injured

NMFS proposes to change the stock name for false killer whales incidentally killed/injured in the ''High Seas Western Pacific Pelagic (Deep-set component)'' fishery from ''HI'' to ''HI pelagic.'' This fishery is an extension of the ''HI deep-set (tuna target) longline/set line'' fishery operating in U.S. waters. Since this fishery remains the same and many marine mammals species are found on either side of the EEZ boundary, the list of species/stocks incidentally killed or injured in the high seas component of the fishery is identical to the list of species/stocks killed or injured in the component operating in U.S. waters. The 2008 SARs separates the ''HI'' stock into the ''HI insular'' and ''HI pelagic'' stocks, stating that all of the false killer whale injuries and mortalities due to interactions with longline fisheries are considered to be from the ''HI pelagic'' stock (74 FR 19530, April 29, 2009).

NMFS proposes to add pantropical spotted dolphin (stock unknown) to the list of species/stocks incidentally killed/injured in the Category II ''High Seas Western Pacific Pelagic (Deep-set component)'' fishery. This fishery is an extension of the ''HI deep-set (tuna target) longline/set line'' fishery operating in U.S. waters. Since this fishery remains the same and many marine mammals species are found on either side of the EEZ boundary, the list of species/stocks incidentally killed or injured in the high seas component of the fishery is identical to the list of species/stocks killed or injured in the component operating in U.S. waters. There was one observed mortality of a pantropical spotted dolphin (stock unknown) in the ''HI deep-set (tuna target) longline/set line'' fishery in 2008 (as described above). The average observer coverage in the ''HI deep-set (tuna target) longline/set line'' fishery over the past five years was 22.7 percent.

NMFS proposes to remove spinner dolphin (HI) from the list of species/stocks incidentally killed/injured in the Category II ''High Seas Western Pacific Pelagic (Deep-set component)'' fishery. This fishery is an extension of the ''HI deep-set (tuna target) longline/set line'' fishery component operating in U.S. waters. Since this fishery remains the same and many marine mammals species found on either side of the EEZ boundary, the list of species/stocks incidentally killed or injured in the high seas component of the fishery is identical to the list of species/stocks killed or injured in the U.S. waters component. There have been no observed interactions with spinner dolphins (HI) in the ''HI deep-set (tuna target) longline/set line'' fishery over the past five years (as described above). The average observer coverage in the ''HI deep-set (tuna target) longline/set line'' fishery over the past five years was 22.7 percent.

NMFS proposes to remove pantropical spotted dolphin (stock unknown) from the list of species/stocks incidentally killed/injured in the Category II ''High Seas Western Pacific Pelagic (Shallow-set component)'' fishery. This fishery is an extension of the ''HI shallow-set (swordfish target) longline/set line'' fishery operating in U.S. waters. Since this fishery remains the same and many marine mammals species found on either side of the EEZ boundary, the list of species/stocks incidentally killed or injured in the high seas component of the fishery is identical to the list of species/stocks killed or injured in the component operating in U.S. waters. There have been no observed interactions with pantropical spotted dolphins (stock unknown) in the ''HI shallow-set (swordfish target) longline/set line'' fishery over the past five years (as described above), with observer coverage at 100 percent.

List of Fisheries

The following tables set forth the proposed list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. In Tables 1 and 2, the estimated number of vessels/participants in fisheries operating within U.S. waters is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the most recent LOF is used. For high seas fisheries, Table 3 lists the number of currently valid HSFCA permits held by fishers. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data at this time.

Tables 1, 2, and 3 also list the marine mammal species and stocks incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, disentanglement network data, and fisher reports. This list includes all species or stocks known to be injured or killed in a given fishery, but also includes species or stocks for which there are anecdotal records of an injury or mortality. Additionally, species identified by logbook entries may not be verified. NMFS has designated those stocks driving a fishery's classification (i.e., the fishery is classified based on serious injuries and mortalities of a marine mammal stock greater than 50 percent [Category I], or greater than 1 percent and less than 50 percent [Category II], of a stock's PBR) by a ''1''after the stock's name.

In Tables 1 and 2, there are several fisheries classified in Category II that have no recent documented injuries or mortalities of marine mammals, or that did not result in a serious injury or mortality rate greater than 1 percent of a stock's PBR level. NMFS has classified these fisheries by analogy to other gear types that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of a ''Category II fishery'' in 50 CFR 229.2. NMFS has designated those fisheries listed by analogy in Tables 1 and 2 by a ''2'' after the fishery's name.

There are several fisheries in Tables 1, 2, and 3 in which a portion of the fishing vessels cross the EEZ boundary, and therefore operate within U.S. waters and on the high seas. NMFS has designated those fisheries in each Table by a ''*'' after the fishery's name.

Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; Table 3 lists commercial fisheries on the High Seas; Table 4 lists

fisheries affected by Take Reduction Plans or Teams.

TABLE 1 — LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
CATEGORY I		
GILLNET FISHERIES:		
CA/OR thresher shark/swordfish drift gillnet (≥14 in mesh) *	85	California sea lion, U.S. Long-beaked common dolphin, CA Northern elephant seal, CA breeding Northern right-whale dolphin, CA/OR/WA Pacific white-sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA[1]
LONGLINE/SET LINE FISHERIES:		
HI deep-set (tuna target) longline/set line *	129	Blainville's beaked whale, HI Bottlenose dolphin, HI False killer whale, HI pelagic[1] Humpback whale, Central North Pacific Pantropical spotted dolphin, stock unknown Risso's dolphin, HI Short-finned pilot whale, HI Striped dolphin, HI
CATEGORY II		
GILLNET FISHERIES:		
CA halibut/white seabass and other species set gillnet (>3.5 in mesh)	58	California sea lion, U.S.[1] Harbor seal, CA[1] Long-beaked common dolphin, CA Northern elephant seal, CA breeding Sea otter, CA Short-beaked common dolphin, CA/OR/WA
CA yellowtail, barracuda, and white seabass drift gillnet fishery (mesh size ≥3.5 in and <14 in)	24	California sea lion, U.S. Long-beaked common dolphin, CA[1] Short-beaked common dolphin, CA/OR/WA
AK Bristol Bay salmon drift gillnet[2]	1,862	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Spotted seal, AK Steller sea lion, Western U.S.
AK Bristol Bay salmon set gillnet[2]	983	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Spotted seal, AK
AK Cook Inlet salmon set gillnet	738	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Humpback whale, Central North Pacific[1] Steller sea lion, Western U.S.

TABLE 1 — LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK Cook Inlet salmon drift gillnet	571	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA[1] Harbor seal, GOA Steller sea lion, Western U.S.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA[1] Harbor seal, GOA Sea otter, Southwest AK Steller sea lion, Western U.S.
AK Peninsula/Aleutian Islands salmon drift gillnet[2]	162	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific
AK Peninsula/Aleutian Islands salmon set gillnet[2]	115	Harbor porpoise, Bering Sea Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	537	Dall's porpoise, AK Harbor porpoise, GOA[1] Harbor seal, GOA Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Sea Otter, South Central AK Steller sea lion, Western U.S.[1]
AK Southeast salmon drift gillnet	476	Dall's porpoise, AK Harbor porpoise, Southeast AK Harbor seal, Southeast AK Humpback whale, Central North Pacific[1] Pacific white-sided dolphin, North Pacific Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet[2]	166	Gray whale, Eastern North Pacific Harbor seal, Southeast AK Humpback whale, Central North Pacific (Southeast AK)
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded)	210	Dall's porpoise, CA/OR/WA Harbor porpoise, inland WA[1] Harbor seal, WA inland
PURSE SEINE FISHERIES:		
AK Cook Inlet salmon purse seine	82	Humpback whale, Central North Pacific[1]
AK Kodiak salmon purse seine	370	Humpback whale, Central North Pacific[1]
CA anchovy, mackerel, sardine purse seine	63	Bottlenose dolphin, CA/OR/WA offshore[1] California sea lion, U.S. Harbor seal, CA
CA squid purse seine	64	Long-beaked common dolphin, CA[1] Short-beaked common dolphin, CA/OR/WA
CA tuna purse seine [2*]	10	None documented
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands flatfish trawl	34	Bearded seal, AK Harbor porpoise, Bering Sea Harbor seal, Bering Sea Killer whale, AK resident[1] Northern fur seal, Eastern Pacific Spotted seal, AK Steller sea lion, Western U.S.[1] Walrus, AK

TABLE 1 — LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK Bering Sea, Aleutian Islands pollock trawl	95	Dall's porpoise, AK Harbor seal, AK Humpback whale, Central North Pacific[1] Humpback whale, Western North Pacific[1] Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient[1] Minke whale, AK Ribbon seal, AK Spotted seal, AK Steller sea lion, Western U.S.[1]
LONGLINE/SET LINE FISHERIES:		
HI shallow-set (swordfish target) longline/ set line *	28	Bottlenose dolphin, stock unknown Bryde's whale, stock unknown Humpback whale, Central North Pacific[1] Risso's dolphin, stock unknown Sperm whale, stock unknown
American Samoa longline[2]	60	False killer whale, stock unknown
HI shortline[2]	11	None documented
AK Bering Sea, Aleutian Islands Pacific cod longline	54	Killer whale, AK resident[1] Ribbon seal, AK Steller sea lion, Western U.S.
POT, RING NET, AND TRAP FISHERIES:		
AK Bering Sea sablefish pot	6	Humpback whale, Central North Pacific[1] Humpback whale, Western North Pacific[1]
CA spot prawn pot	29	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA[1]
CA Dungeness crab pot[2]	625	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA
OR Dungeness crab pot	433	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA[1]
WA/OR/CA sablefish pot	155	Humpback whale, CA/OR/WA[1]
CA spiny lobster	225	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA[1]
CATEGORY III		
GILLNET FISHERIES:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	824	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	30	Harbor seal, GOA Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	986	None documented
CA set gillnet (mesh size <3.5 in)	304	None documented
HI inshore gillnet	5	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing)	24	Harbor seal, OR/WA coast
WA/OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet	913	None documented

TABLE 1 — LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
WA/OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		
AK Southeast salmon purse seine	415	None documented in recent years
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	0	None documented
AK octopus/squid purse seine	0	None documented
AK roe herring and food/bait herring beach seine	4	None documented
AK roe herring and food/bait herring purse seine	361	None documented
AK salmon beach seine	31	None documented
AK salmon purse seine (excluding salmon purse seine fisheries listed as Category II)	936	Harbor seal, GOA
WA/OR sardine purse seine	42	None documented
HI Kona crab loop net	42	None documented
HI opelu/akule net	12	None documented
HI inshore purse seine	23	None documented
HI throw net, cast net	14	None documented
WA (all species) beach seine or drag seine	235	None documented
WA/OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA/OR smelt, herring dip net	119	None documented
MARINE AQUACULTURE FISHERIES:		
CA marine shellfish aquaculture	unknown	None documented
CA salmon enhancement rearing pen	>1	None documented
CA white seabass enhancement net pens	13	California sea lion, U.S.
HI offshore pen culture	2	None documented
OR salmon ranch	1	None documented
WA/OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
TROLL FISHERIES:		
AK North Pacific halibut, AK bottom fish, WA/OR/CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries *	1,302 (102 AK)	None documented

TABLE 1 — LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK salmon troll	2,045	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	<50	None documented
CA/OR/WA salmon troll	4,300	None documented
Commonwealth of the Northern Mariana Islands tuna troll	88	None documented
Guam tuna troll	401	None documented
HI trolling, rod and reel	1,321	None documented
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands Greenland turbot longline	29	Killer whale, AK resident
AK Bering Sea, Aleutian Islands rockfish longline	0	None documented
AK Bering Sea, Aleutian Islands sablefish longline	28	None documented
AK Gulf of Alaska halibut longline	1,302	None documented
AK Gulf of Alaska Pacific cod longline	440	None documented
AK Gulf of Alaska rockfish longline	0	None documented
AK Gulf of Alaska sablefish longline	291	Sperm whale, North Pacific Steller sea lion, Eastern U.S.
AK halibut longline/set line (State and Federal waters)	2,521	Steller sea lion, Western U.S.
AK octopus/squid longline	2	None documented
AK State-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish)	1,448	None documented
WA/OR/CA groundfish, bottomfish longline/set line	367	None documented
WA/OR North Pacific halibut longline/set line	350	None documented
CA pelagic longline	6	Risso's dolphin, CA/OR/WA
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	9	Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	93	Harbor seal, Bering Sea Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands rockfish trawl	10	None documented
AK Gulf of Alaska flatfish trawl	41	None documented
AK Gulf of Alaska Pacific cod trawl	62	Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	62	Fin whale, Northeast Pacific Northern elephant seal, North Pacific Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	34	None documented
AK food/bait herring trawl	4	None documented
AK miscellaneous finfish otter or beam trawl	317	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	32	None documented
AK State-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl	2	None documented

TABLE 1 — LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
CA halibut bottom trawl	53	None documented
WA/OR/CA groundfish trawl	160–180	California sea lion, U.S. Dall's porpoise, CA/OR/WA Harbor seal, OR/WA coast Northern fur seal, Eastern Pacific Pacific white-sided dolphin, CA/OR/WA Steller sea lion, Eastern U.S.
WA/OR/CA shrimp trawl	300	None documented
POT, RING NET, AND TRAP FISHERIES:		
AK statewide miscellaneous finfish pot	293	None documented
AK Aleutian Islands sablefish pot	8	None documented
AK Bering Sea, Aleutian Islands Pacific cod pot	68	None documented
AK Bering Sea, Aleutian Islands crab pot	297	None documented
AK Gulf of Alaska crab pot	300	None documented
AK Gulf of Alaska Pacific cod pot	154	Harbor seal, GOA
AK Southeast Alaska crab pot	433	Humpback whale, Central North Pacific (Southeast AK)
AK Southeast Alaska shrimp pot	283	Humpback whale, Central North Pacific (Southeast AK)
AK shrimp pot, except Southeast	15	None documented
AK octopus/squid pot	27	None documented
AK snail pot	1	None documented
CA coonstripe shrimp, rock crab, tanner crab pot or trap	305	Gray whale, Eastern North Pacific Harbor seal, CA
OR/CA hagfish pot or trap	54	None documented
WA Dungeness crab pot	288	Gray whale, Eastern North Pacific
WA/OR shrimp pot/trap	254	None documented
HI crab trap	22	None documented
HI fish trap	19	None documented
HI lobster trap	0	Hawaiian monk seal
HI shrimp trap	5	None documented
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline/hand troll and mechanical jig	445	None documented
AK North Pacific halibut handline/hand troll and mechanical jig	228	None documented
AK octopus/squid handline	0	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	200	None documented
HI aku boat, pole, and line	4	None documented

TABLE 1 — LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
HI Main Hawaiian Islands, Northwestern Hawaiian Islands deep sea bottomfish	300	Hawaiian monk seal
HI inshore handline	307	None documented
HI tuna handline	298	None documented
WA groundfish, bottomfish jig	679	None documented
Western Pacific squid jig	6	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	30	None documented
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	415	None documented
AK Southeast herring roe/food/bait pound net	6	None documented
WA herring brush weir	1	None documented
BAIT PENS:		
WA/OR/CA bait pens	13	California sea lion, U.S.
DREDGE FISHERIES:		
Coastwide scallop dredge	108 (12 AK)	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	0	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK dungeness crab	2	None documented
AK herring spawn on kelp	266	None documented
AK urchin and other fish/shellfish	570	None documented
CA abalone	0	None documented
CA sea urchin	583	None documented
HI black coral diving	1	None documented
HI fish pond	N/A	None documented
HI handpick	37	None documented
HI lobster diving	19	None documented
HI squiding, spear	91	None documented
WA/CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection	637	None documented
WA shellfish aquaculture	684	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		

TABLE 1 — LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
AK/WA/OR/CA commercial passenger fishing vessel	>7,000 (2,702 AK)	Killer whale, stock unknown Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
HI charter vessel	114	None documented
LIVE FINFISH/SHELLFISH FISHERIES:		
CA nearshore finfish live trap/hook-and-line	93	None documented

List of Abbreviations and Symbols Used in Table 1: AK - Alaska; CA - California; GOA - Gulf of Alaska; HI - Hawaii; OR - Oregon; WA - Washington; [1] Fishery classified based on serious injuries and mortalities of this stock, which are greater than 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] Fishery classified by analogy; * Fishery has an associated high seas component listed in Table 3.

TABLE 2—LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
CATEGORY I		
GILLNET FISHERIES:		
Mid-Atlantic gillnet	7,596	Bottlenose dolphin, WNA coastal[1] Bottlenose dolphin, WNA offshore Common dolphin, WNA Gray seal, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Humpback whale, Gulf of Maine Long-finned pilot whale, WNA Minke whale, Canadian east coast Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast sink gillnet	>6,455	Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF[1] Harbor seal, WNA Harp seal, WNA Hooded seal, WNA Humpback whale, Gulf of Maine Minke whale, Canadian east coast North Atlantic right whale, WNA Risso's dolphin, WNA White-sided dolphin, WNA
LONGLINE FISHERIES:		

TABLE 2—LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline *	94	Atlantic spotted dolphin, Northern GMX Atlantic spotted dolphin, WNA Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, Northern GMX continental shelf Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Long-finned pilot whale, WNA[1] Mesoplodon beaked whale, WNA Northern bottlenose whale, WNA Pantropical spotted dolphin, Northern GMX Pantropical spotted dolphin, WNA Risso's dolphin, Northern GMX Risso's dolphin, WNA Short-finned pilot whale, Northern GMX Short-finned pilot whale, WNA[1]
TRAP/POT FISHERIES:		
Northeast/Mid-Atlantic American lobster trap/pot	13,000	Harbor seal, WNA Humpback whale, Gulf of Maine Minke whale, Canadian east coast North Atlantic right whale, WNA[1]
CATEGORY II		
GILLNET FISHERIES:		
Chesapeake Bay inshore gillnet[2]	45	None documented in recent years
Gulf of Mexico gillnet[2]	724	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, and estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
NC inshore gillnet	94	Bottlenose dolphin, WNA coastal[1]
Northeast anchored float gillnet[2]	133	Harbor seal, WNA Humpback whale, Gulf of Maine White-sided dolphin, WNA
Northeast drift gillnet[2]	unknown	None documented
Southeast Atlantic gillnet[2]	779	Bottlenose dolphin, WNA coastal
Southeastern U.S. Atlantic shark gillnet	30	Atlantic spotted dolphin, WNA Bottlenose dolphin, WNA coastal[1] North Atlantic right whale, WNA
TRAWL FISHERIES:		
Mid-Atlantic mid-water trawl (including pair trawl)	400	Bottlenose dolphin, WNA offshore Common dolphin, WNA Long-finned pilot whale, WNA Risso's dolphin, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA[1]
Mid-Atlantic bottom trawl	>1,000	Common dolphin, WNA[1] Long-finned pilot whale, WNA[1] Short-finned pilot whale, WNA[1] White-sided dolphin, WNA
Mid-Atlantic flynet[2]	21	None documented

TABLE 2—LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
Northeast mid-water trawl (including pair trawl)	1,000	Harbor seal, WNA Long-finned pilot whale, WNA[1] Short-finned pilot whale, WNA[1] White-sided dolphin, WNA
Northeast bottom trawl	1,600	Common dolphin, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA[1]
TRAP/POT FISHERIES:		
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal[1] West Indian manatee, FL[1]
Atlantic mixed species trap/pot[2]	>429	Fin whale, WNA Humpback whale, Gulf of Maine
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	40–42	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Northern GMX coastal[1] Bottlenose dolphin, Western GMX coastal[1]
Mid-Atlantic menhaden purse seine[2]	34	Bottlenose dolphin, WNA coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	>221	Bottlenose dolphin, WNA coastal[1]
NC long haul seine	33	Bottlenose dolphin, WNA coastal[1]
STOP NET FISHERIES:		
NC roe mullet stop net	13	Bottlenose dolphin, WNA coastal[1]
POUND NET FISHERIES:		
VA pound net	62	Bottlenose dolphin, WNA coastal[1]
CATEGORY III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
DE River inshore gillnet	60	None documented in recent years
Long Island Sound inshore gillnet	20	None documented in recent years
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet	32	None documented in recent years
Southeast Atlantic inshore gillnet	unknown	None documented
TRAWL FISHERIES:		
Atlantic shellfish bottom trawl	972	None documented

TABLE 2—LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, WNA coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine West Indian manatee, FL
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, Northern GMX continental shelf
Gulf of Mexico mixed species trawl	20	None documented
GA cannonball jellyfish trawl	1	None documented
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	<10	Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
FL West Coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
U.S. Atlantic tuna purse seine *	5	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
LONGLINE/HOOK-AND-LINE FISHERIES:		
Northeast/Mid-Atlantic bottom longline/hook-and-line	46	None documented in recent years
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	26,223	Humpback whale, Gulf of Maine
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line	<125	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX continental shelf
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon	1,446	None documented
U.S. Atlantic, Gulf of Mexico trotline	unknown	None documented
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
FL spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, WNA coastal
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine West Indian manatee, FL
Gulf of Mexico mixed species trap/pot	unknown	None documented
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented

TABLE 2—LIST OF FISHERIES -- COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/ injured
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	Bottlenose dolphin, WNA coastal
U.S. Mid-Atlantic eel trap/pot	>700	None documented
STOP SEINE/WEIR/POUND NET FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	Gray seal, Northwest North Atlantic Harbor porpoise, GME/BF Harbor seal, WNA Minke whale, Canadian East Coast White-sided dolphin, WNA
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net)	751	None documented
DREDGE FISHERIES:		
Gulf of Maine mussel	>50	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented
Southeastern U.S. Atlantic haul/beach seine	25	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net	unknown	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel	4,000	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, WNA coastal

List of Abbreviations and Symbols Used in Table 2: DE - Delaware; FL - Florida; GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; MA - Massachusetts; NC - North Carolina; VA - Virginia; WNA - Western North Atlantic; [1] Fishery classified based on serious injuries and mortalities of this stock, which are greater than 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] Fishery classified by analogy; * Fishery has an associated high seas component listed in Table 3.

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Table 3 - List of Fisheries -- Commercial Fisheries on the High Seas

Fishery Description	# of HSFCA permits	Marine mammal species and stocks incidentally killed/injured
Category I		
DRIFT GILLNET FISHERIES:		
Pacific Highly Migratory Species * ^	4	Long-beaked common dolphin, CA Northern right-whale dolphin, CA/OR/WA Pacific white-sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA
LONGLINE FISHERIES:		
Atlantic Highly Migratory Species * +	72	Atlantic spotted dolphin, WNA Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Long-finned pilot whale, WNA Mesoplodon beaked whale, WNA Pygmy sperm whale, WNA Risso's dolphin, WNA Short-finned pilot whale, WNA
Western Pacific Pelagic (Deep-set component) * ^	129	Blainville's beaked whale, HI Bottlenose dolphin, HI False killer whale, HI pelagic Humpback whale, Central North Pacific Pantropical spotted dolphin, stock unknown Risso's dolphin, HI Short-finned pilot whale, HI Striped dolphin, HI
Category II		
DRIFT GILLNET FISHERIES:		
Atlantic Highly Migratory Species	1	Undetermined
TRAWL FISHERIES:		
Atlantic Highly Migratory Species **	2	Undetermined
Pacific Highly Migratory Species **	3	Undetermined
CCAMLR	0	Antarctic fur seal
South Pacific Albacore Troll	2	Undetermined
Western Pacific Pelagic	4	Undetermined

Fishery Description	# of HSFCA permits	Marine mammal species and stocks incidentally killed/injured
Unspecified	4	Undetermined
PURSE SEINE FISHERIES:		
Pacific Highly Migratory Species * ^	8	None documented
South Pacific Tuna Fisheries	36	Undetermined
Western Pacific Pelagic	3	Undetermined
POT VESSEL FISHERIES:		
Pacific Highly Migratory Species **	7	Undetermined
South Pacific Albacore Troll	5	Undetermined
Western Pacific Pelagic	7	Undetermined
LONGLINE FISHERIES:		
CCAMLR	0	None documented
Pacific Highly Migratory Species * +	62	Risso's dolphin, CA/OR/WA
South Pacific Albacore Troll	11	Undetermined
South Pacific Tuna Fisheries **	3	Undetermined
Western Pacific Pelagic (Shallow-set component) * ^	28	Bottlenose dolphin, stock unknown Bryde's whale, stock unknown Humpback whale, Central North Pacific Risso's dolphin, stock unknown Sperm whale, stock unknown
HANDLINE/POLE AND LINE FISHERIES:		
Atlantic Highly Migratory Species	1	Undetermined
Pacific Highly Migratory Species	22	Undetermined
South Pacific Albacore Troll	8	Undetermined
Western Pacific Pelagic	9	Undetermined
TROLL FISHERIES:		
Atlantic Highly Migratory Species	7	Undetermined
South Pacific Albacore Troll	53	Undetermined
South Pacific Tuna Fisheries **	3	Undetermined
Western Pacific Pelagic	44	Undetermined

Fishery Description	# of HSFCA permits	Marine mammal species and stocks incidentally killed/injured
LINERS NEI FISHERIES:		
Pacific Highly Migratory Species **	1	Undetermined
South Pacific Albacore Troll	1	Undetermined
Western Pacific Pelagic	1	Undetermined
FACTORY MOTHERSHIP FISHERIES:		
Western Pacific Pelagic	1	Undetermined
MULTIPURPOSE VESSELS NEI FISHERIES:		
Atlantic Highly Migratory Species	1	Undetermined
Pacific Highly Migratory Species **	7	Undetermined
South Pacific Albacore Troll	4	Undetermined
Western Pacific Pelagic	5	Undetermined
Category III		
TROLL FISHERIES:		
Pacific Highly Migratory Species *	249	None documented

List of Terms, Abbreviations, and Symbols Used in Table 3:
GMX- Gulf of Mexico.
NEI - Not Elsewhere Identified.
Unspecified - Identifies the number of valid high seas permits for a fishery that, as of 2004, is no longer authorized under the HSFCA - High Seas Fishery Compliance Act. Once these permits expire (valid for 5 years), fishers will be required to obtain a permit for one of the seven currently authorized HSFCA fisheries to continue fishing on the high seas.
WNA - Western North Atlantic.
* Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery.
** These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for five years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type.
+ The marine mammal species or stock listed as killed/injured in this fishery has been observed taken by this fishery on the high seas.
^ The list of marine mammal species killed/injured in this fishery is identical to the list of marine mammal species killed/injured in U.S. waters component of the fishery, minus coastal stocks, because the marine mammal species are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the fisheries operating in U.S. waters.

Table 4 - Fisheries Affected by Take Reduction Teams and Plans

Take Reduction Plans	Affected Fisheries
Atlantic Large Whale Take Reduction Plan (ALWTRP) - 50 CFR 229.32	Category I Mid-Atlantic gillnet Northeast/Mid-Atlantic American lobster trap/pot Northeast sink gillnet Category II Atlantic blue crab trap/pot Atlantic mixed species trap/pot Northeast anchored float gillnet Northeast drift gillnet Southeast Atlantic gillnet Southeastern U.S. Atlantic shark gillnet*
Bottlenose Dolphin Take Reduction Plan (BDTRP) - 50 CFR 229.35	Category I Mid-Atlantic gillnet Category II Atlantic blue crab trap/pot Mid-Atlantic haul/beach seine NC inshore gillnet NC long haul seine NC roe mullet stop net Southeast Atlantic gillnet Southeastern U.S. Atlantic shark gillnet VA pound net
Harbor Porpoise Take Reduction Plan (HPTRP) - 50 CFR 229.33 (Gulf of Maine) and 229.34 (Mid-Atlantic)	Category I Mid-Atlantic gillnet Northeast sink gillnet
Pelagic Longline Take Reduction Plan (PLTRP) – 50 CFR 229.36	Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline
Pacific Offshore Cetacean Take Reduction Plan (POCTRP) - 50 CFR 229.31	Category I CA/OR thresher shark/swordfish drift gillnet (≥4 in mesh)
Take Reduction Teams	Affected Fisheries
Atlantic Trawl Gear Take Reduction Team (ATGTRT)	Category II Mid-Atlantic Bottom Trawl Mid-Atlantic Mid-Water Trawl (Including Pair Trawl) Northeast Bottom Trawl Northeast Mid-Water Trawl (Including Pair Trawl)

* Only applicable to the portion of the fishery operating in U.S. waters.

For a description of each Take Reduction Team and copies of Take Reduction Plans, access: http://www.nmfs.noaa.gov/pr/interactions/trt/

BILLING CODE 3510–22–S

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis leading to the certification is set forth below.

Under existing regulations, all fishers participating in Category I or II fisheries must register under the MMPA and obtain an Authorization Certificate. The Authorization Certificate authorizes the taking of marine mammals incidental to commercial fishing operations. Additionally, fishers may be subject to a Take Reduction Plan (TRP) and requested to carry an observer. NMFS has estimated that approximately 59,500 fishing vessels, most of which are small entities, operate in Category I or II fisheries, and therefore, are required to register with NMFS. The MMPA registration process is integrated with existing state and Federal licensing, permitting, and registration programs. Therefore, fishers who have a federal or state fishery permit or landing license, or who are authorized through another related federal or state fishery registration program, are currently not required to register separately under the MMPA or pay the $25 registration fee. Therefore, there are no direct costs to small entities under this proposed rule.

If a vessel is requested to carry an observer, fishers will not incur any direct economic costs associated with carrying that observer. Potential indirect costs to individual fishers required to take observers may include: lost space on deck for catch, lost bunk space, and lost fishing time due to time needed to process bycatch data. For effective monitoring, however, observers will rotate among a limited number of vessels in a fishery at any given time and each vessel within an observed fishery has an equal probability of being requested to accommodate an observer. Therefore, the potential indirect costs to individual fishers are expected to be minimal because observer coverage would only be required for a small percentage of an individual's total annual fishing time. In addition, section 118 of the MMPA states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting vessels too small to accommodate an observer from this requirement. As a result of this certification, an initial regulatory flexibility analysis is not required and was not prepared. In the event that reclassification of a fishery to Category I or II results in a TRP, economic analyses of the effects of that plan will be summarized in subsequent rulemaking actions.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.15 hours per report for new registrants and 0.09 hours per report for renewals). The requirement for reporting marine mammal injuries or mortalities has been approved by OMB under OMB control number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES** and **SUPPLEMENTARY INFORMATION**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA in June 1995. NMFS revised that EA relative to classifying U.S. commercial fisheries on the LOF in December 2005. Both the 1995 EA and the 2005 EA concluded that implementation of MMPA section 118 regulations would not have a significant impact on the human environment. This proposed rule would not make any significant change in the management of reclassified fisheries, and therefore, this proposed rule is not expected to change the analysis or conclusion of the 2005 EA. The Council of Environmental Quality (CEQ) recommends agencies review EAs every five years; therefore, NMFS reviewed the 2005 EA in 2009. NMFS concluded that, because there have been no changes to the process used to develop the LOF and implement section 118 of the MMPA (including no new alternatives and no additional or new impacts on the human environment), there is not a need to update the 2005 EA at this time. If NMFS takes a management action, for example, through the development of a TRP, NMFS will first prepare an environmental document, as required under NEPA, specific to that action.

This proposed rule will not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this proposed rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would conduct consultation under ESA section 7 for that action.

This proposed rule will have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

This proposed rule will not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

References

Barlow, J., and K.A. Forney. 2007. Abundance and population density of cetaceans in the California Current ecosystem. Fishery Bulletin 105:509–526.

Dated: June 4, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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Notices

Federal Register

Vol. 74, No. 111

Thursday, June 11, 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

Commodity Credit Corporation

RIN 0560–AH92

Notice of Funds Availability (NOFA) for the Collection, Harvest, Storage, and Transportation of Eligible Material

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

ACTION: Notice.

SUMMARY: This NOFA announces that funds are being made available beginning in 2009 for certain provisions of the Biomass Crop Assistance Program (BCAP) established by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), in order to provide matching payments to certain persons or entities for the collection, harvest, storage, and transportation (CHST) of eligible material delivered to qualified biomass conversion facilities.

DATES: We will consider comments on the information collection that we receive by August 10, 2009.

ADDRESSES: We invite you to submit comments on the NOFA and the related information collection that is described in the Paperwork Reduction Act section. In your comment, include the date, volume, and page number of this issue of the **Federal Register**. All comments will become a matter of public record.

You may submit comments by any of the following methods:

- *Mail:* Farm Service Agency (FSA), USDA, ATTN: Mike Linsenbigler, Acting Director, Conservation and Environmental Programs Division, STOP 0513, 1400 Independence Ave., SW., Washington, DC 20250.
- *E-mail:* Send comment to: *mike.linsenbigler@wdc.usda.gov.*
- *Fax:* (202) 720–4619.

For comments on the information collection, you may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mike Linsenbigler, (202) 720–6221.

SUPPLEMENTARY INFORMATION: Section 9001 of the 2008 Farm Bill (Pub. L. 110–246) amends Title IX of the Farm Security and Rural Investment Act of 2002 by adding section 9011 to authorize BCAP. The purpose of BCAP is to assist agricultural and forest land owners and operators with the collection, harvest, storage, and transportation of eligible material for use in a biomass conversion facility and to support the establishment and production of eligible crops for conversion to bioenergy in selected BCAP project areas.

On May 5, 2009, the President issued a Presidential Directive to Secretary of Agriculture Tomas R. Vilsack to aggressively accelerate the investment in and production of biofuels (published in the **Federal Register** on May 7, 2009 (74 FR 21531–21532)). Secretary Vilsack also announced that he will help lead an unprecedented interagency effort to increase America's energy independence and spur rural economic development.

The Presidential directive requests that Secretary Vilsack take steps to the extent permitted by law to expedite and increase production of and investment in biofuel development efforts by, among other things, making renewable energy financing opportunities from the 2008 Farm Bill available within 30 days, which includes guidance and support for collection, harvest, storage, and transportation assistance of eligible materials for use in biomass conversion facilities.

This NOFA represents the first in a multi-step process to implement BCAP and is published to provide guidance for interested parties on CHST pursuant to the Presidential Directive. In conjunction with this NOFA, FSA will be undertaking public meetings pursuant to the notice published on May 13, 2009, for the preparation of an Environmental Impact Statement (EIS) for BCAP (74 FR 22510–22511). FSA requested public comments and is holding six public meetings throughout the nation. Comments for consideration must be received by June 12, 2009. Comments may be e-mailed to *bcapeis@geo-marine.com* or faxed to (757) 873–3703. Mail comments to: BCAP EIS c/o Geo-Marine, Inc., 2713 Magruder Boulevard, Suite D, Hampton, Virginia 23566. CCC initially solicited comments on a proposed EIS in the **Federal Register** on October 1, 2008 (73 FR 57047–57048). FSA will be incorporating the public comments from the public meetings, other public comments previously submitted and those comments submitted in response to this NOFA into rulemaking for CHST later this year. Finally, the full EIS and all comments and lessons learned from three BCAP notices (including this NOFA) will be incorporated into the rulemaking for the entire BCAP program, which will include CHST.

General Discussion

This NOFA provides a general discussion of the provisions that will be used to administer payments for the collection, harvest, storage, and transportation of eligible material delivered to qualified biomass conversion facilities in advance of the rule on BCAP (including CHST). In particular it provides policies and processes for (1) providing payments for the collection, harvest, storage, and transportation of eligible material to qualified biomass conversion facilities and (2) qualifying CHST biomass conversion facilities. The CHST matching payment program as established in this NOFA will be implemented under the general direction and supervision of the Executive Vice President, CCC, and the Deputy Administrator for Farm Programs, FSA (Deputy Administrator). On an individual case basis, the Deputy Administrator may consider granting an exception to requirements of this NOFA if the exception is not inconsistent with the 2008 Farm Bill requirements or other applicable law and it will not adversely affect the CHST matching payments program. Section 9011 (d) and (f) provides authority to use such sums as necessary of CCC funds to carry out BCAP, including for CHST matching payments.

The purpose of the CHST matching payment program is to assist eligible persons or entities with the collection, harvest, storage, and transportation of eligible material delivered for use in a CHST-qualified biomass conversion facility in advance of full implementation of BCAP. Through the CHST matching payment program CCC

will provide payments at a rate of $1 for each $1 per dry ton paid by the CHST-qualified biomass conversion facility to the owner for delivery of eligible material to the facility in an amount not to exceed $45 per dry ton. This program will be available to eligible material owners for a period of two years. These matching payments may be made to persons delivering eligible material to a CHST qualified biomass conversion facility who possess the right to collect or harvest eligible material and are considered the owners of the eligible material.

Definitions

The following definitions will be used for CHST:

Arm's-length transaction means a transaction between ready, willing, and able disinterested parties who are not affiliated with or related to each other and have no security, monetary, or stockholder interest in each other, with the exception that members of either (1) an association of agricultural producers or (2) farmer cooperative organizations, or (3) a farmer cooperative, may deliver and sell at market rates eligible material to such associations, organizations or cooperatives they have a monetary or stockholder interest in and such transaction may be considered arm's-length transactions.

Bill of lading means a document issued by a carrier to a shipper, acknowledging that specified goods have been received on board as cargo for conveyance to a named place for delivery to the consignee who is usually identified (also known as a ''BOL'' or ''B/L'').

Biobased CHST product means a product, determined by the Deputy Administrator to be a commercial or industrial product (other than food or feed) that is:

(1) Composed in whole, or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials or

(2) An intermediate ingredient or feedstock.

Biobased product does not mean commercially produced timber, lumber, wood pulp or other finished wood products.

Biomass conversion facility means a facility that converts or proposes to convert eligible material into:

(1) Heat,

(2) Power,

(3) Biobased products, or

(4) Advanced biofuels.

CCC stands for the Commodity Credit Corporation.

CHST stands for collection, harvest, storage, and transportation activities or, some combination thereof, for eligible material.

CHST matching payments means those CCC payments provided at a rate of $1 for each $1 per dry ton paid by the CHST-qualified biomass conversion facility to the owner for delivery of eligible material to the facility in an amount not to exceed $45 per dry ton pursuant to this NOFA.

CHST matching payment program means the program established by this NOFA for the collection, harvest, storage, and transportation of eligible material delivered to a qualified biomass conversion facility.

CHST qualified biomass conversion facility means a biomass conversion facility that meets all the requirements for qualification outlined in this NOFA, for which the facility owners enters into a memorandum of understanding (MOU) for such facility qualification with the Deputy Administrator.

Deputy administrator refers to the FSA Deputy Administrator for Farm Programs, FSA, or a designee.

Eligible material is, for purposes of the CHST matching payment program, renewable biomass with the following exclusions:

(1) Harvested grains, fiber, or other commodities eligible to receive payments under Title I of the 2008 Farm Bill;

(2) Animal waste and animal waste-byproducts including fats, oils, greases, and manure;

(3) Food waste and yard waste; or

(4) Algae.

Eligible material owner, for purposes of the CHST matching payment program, means a person having the right to collect or harvest eligible material and that has delivered the eligible material to a CHST qualified biomass conversion facility and including:

(1) For eligible material collected from private lands, including cropland, the owner of the land, the operator or producer conducting farming operations on the land, or any other person designated by the owner of the land and

(2) For eligible material collected from public lands, those persons with the right to collect eligible material pursuant to a contract or permit with the Forest Service or other appropriate Federal agency, such as a timber sale contract, stewardship contract or agreement, service contract or permit, or related applicable Federal land permit or contract, and who have submitted the permit or contract authorizing such collection for reproduction by FSA.

EPA refers to the U.S. Environmental Protection Agency.

Farm cooperative means a farmer- or rancher-owned and controlled business from which benefits are derived and distributed equitably on the basis of use by each of the farmer or rancher owners.

Farmer cooperative organization means a cooperative organization or an entity, not chartered as a cooperative that operates as a cooperative in that it is owned and operated for the benefit of its members, including the manner in which it distributes its dividends and assets.

Food waste means a material composed primarily of food items, or originating from food items, or compounds from domestic, municipal, food service operations, or commercial sources, including food processing wastes, residues, or scraps.

FSA refers to the Farm Service Agency.

Indian Tribe has the same meaning as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Institution of higher education has the same meaning as in section 102(a) of the Higher Education Act of 1965 (20 U.S.C. 1002(a)).

Intermediate ingredient or feedstock means an ingredient or compound made in whole or in significant part from biological products, including renewable agricultural materials (including plant, animal, and marine materials), or forestry material that are subsequently used to make a more complex compound or product.

Renewable biomass is defined for purposes of the CHST matching payment program to include the following:

(1) Materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(a) Are byproducts of preventive treatments that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health;

(b) Would not otherwise be used for higher-value products; and

(c) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of section 102 (e)(2), (3), and (4) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512) and large-tree retention of subsection (f) or

(2) Any organic matter that is available on a renewable or recurring

basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including: Renewable plant material (including feed grains, other agricultural commodities, other plants and trees, algae), and waste material (including crop residue, other vegetative waste material (including wood waste and wood residues), animal waste and byproducts (including fats, oils, greases, and manure), food waste, and yard waste).

United States and Territories means any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Yard waste means material composed primarily of yard maintenance, cleanup materials, or debris removal items, originating from residential, municipal or commercial yards, lawns, landscaped areas, or related sites.

The CHST Matching Payment Program

Eligibility Requirements

Organic matter meets eligibility requirements to be considered renewable biomass when collected and harvested from:

(1) The National Forest System;

(a) Except from lands designated as components of the Wilderness Preservation System or the Wild and Scenic River System, or as a National Monument, or composed of inventoried roadless areas;

(b) Except for biomass collection, harvesting, and transport conducted by an Eligible Material Owner who has an existing contract or grant, issued by the USDA Forest Service for the sale or removal of the material; and

(c) Subject to all laws and regulations that apply to the Forest Service, including the Endangered Species Act and environmental analysis as required by the National Environmental Policy Act (NEPA). All required environmental analysis must be completed and approved by the responsible official. All renewable biomass collected or harvested from Federal lands must be conducted through a contract or permit;

(2) Tribal, State, and other government locally owned land where biomass collection and harvesting is done within applicable environmental requirements, and all applicable Tribal, State or local government ordinances and permits;

(3) Cropland where biomass collection and harvesting is consistent with conservation plans required for highly erodible land under the Food Security Act of 1985, as amended;

(4) Non-industrial private forest land where biomass collection and harvesting is done in accordance with a forest stewardship plan, described in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a), another practice plan approved by the State Forester, or a Forest Stewardship Plan developed by the State Forester, in those locations where such plans are available from State foresters for non-industrial private forest land owners at no expense to CCC; or

(5) Privately owned land, other than cropland, including pastureland, rangeland, other non-cropland, or non-industrial forest land where biomass collection and harvesting is done within applicable environmental requirements, and all applicable Tribal, State or local ordinances and permits.

CHST matching payments are not authorized for:

(1) Any eligible material delivery made before the publication of this NOFA;

(2) Any eligible material delivery made before the initial application for CHST matching payments is received and approved by FSA–COC; or

(3) Any scheme or device used to circumvent the provisions of this NOFA and related program requirements.

Applying To Be an Eligible Material Owner

A person who meets the definition of ''eligible material owner'' needs to apply to FSA; through the application, FSA will register the eligible material owner, make the determination that the person does meet the definition, and based on information provided in the application determine the amount of biomass for which the eligible material owner will be able to apply for CHST matching payments.

Eligible material owners may apply at the county FSA offices where their farm records are located. If farm records have not been established, the application must be filed with the county FSA office that is administratively responsible for the geographic location where the renewable biomass was harvested. (*See http://www.fsa.usda.gov/FSA/stateOffices?area=stoffice&subject=landing&topic=landing* for assistance in locating a county office).

Eligible material owners who deliver eligible material to multiple CHST qualified biomass conversion facilities must submit a separate application for each facility for which eligible material is delivered.

Ineligible or incomplete applications will be denied. If an application is determined to be ineligible for any reason, the Agency will inform the applicant, in writing, of the reasons and provide any applicable appeal rights.

Eligible material owners must submit applications using form AD–245, page 1, to the applicable FSA county office. The request must be submitted and approved by the FSA county office before the eligible material is delivered and any payment received by the facility for the eligible material.

Applications must include the following estimates based on amounts obtained from contracts, agreements, and or letters of intent required by this NOFA:

(1) An estimate of the total tons of eligible material expected to be sold to a certified biomass conversion facility;

(2) The type or types of eligible material that is expected to be sold;

(3) The name of the CHST qualified biomass conversion facility that will purchase the eligible material;

(4) The expected per ton price the owner plans to receive for the delivery of the eligible material; and

(5) The date or dates the eligible material is expected to be delivered to the facility.

Applying for CHST Matching Payments

After delivery, eligible material owners must submit AD–245, page 2, to notify the FSA Office at the County USDA Service Center and request the CHST matching payment. CHST matching payments will be disbursed only after delivery is verified by the FSA Office at the County USDA Service Center. All CHST matching payments will be issued by direct deposit unless other arrangements are made by the FSA Office at the County USDA Service Center and eligible material owner.

To receive CHST matching payments, eligible material owners must submit an application at the county FSA office and include:

(1) A copy of the original scale ticket (or tickets), clearly indicating the total actual tonnage delivered and signed by the manager or owner or of the CHST qualified biomass conversion facility, as well as a total dry-weight tonnage equivalent amount determined by the CHST qualified biomass conversion facility using accurate moisture measuring equipment;

(2) A copy of each invoice or paper check, reflecting the total payment received for delivery of the eligible material; each invoice or check must also be annotated and initialed by the

manager or owners of the CHST qualified biomass conversion facility clearly indicating the per-ton payment rate the facility paid the owner for the eligible material delivery;

(3) If applicable, a copy of each bill of lading issued by any third party carrier for delivery of the eligible material to the certified biomass conversion facility;

(4) Any other additional documents or records determined necessary by the Deputy Administrator to verify eligibility for matching payment.

CHST Matching Payment Provisions

The CHST matching payment program will operate under the following provisions:

(1) Under the CHST matching payment program, CCC may make a payment for the delivery of eligible material to CHST qualified biomass conversion facilities to a person with the right to collect or harvest eligible material.

(2) CHST matching payments may be available only for a period of two years and will be paid at a rate of $1 for each $1 per ton received from the CHST qualified biomass conversion facility for the commercial sale of eligible material in an amount equal to not more than $45 per ton. All CHST matching payments are subject to Federal claims, Federal taxes as established by the IRS, and all other Federal payment restrictions and laws.

(3) Any payment or portion thereof to any person will be made without regard to questions of title under State law and without regard to any claim or lien against the eligible material, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found in 7 CFR part 1403 will be applicable to the payments.

(4) Any participant who may be entitled to any payment under this program may assign the right to receive such payments, in whole or in part, as provided in 7 CFR part 1404.

(5) All policies and procedures used to administer the determinations and payments for the CHST matching payment program are subject to the provisions of this NOFA.

(6) CHST matching payments are available to an eligible material owner only for a 2-year duration. Only one owner will receive the CHST matching payment for any eligible material.

(7) Owners of eligible material will be allowed to request CHST matching payment for eligible material delivered to and purchased by a CHST qualified biomass conversion facility. Under the 2-year limit duration, the time period will begin immediately after form AD–245 is first approved by the FSA county office for the CHST matching payment and will end 24 months later. No payments or other direct benefits are authorized to be paid to the CHST-qualified biomass conversion facilities under this NOFA, except when the facility owners are also an owner of eligible material and deliver and sell it to another facility under an arms-length transaction.

(8) Not more than twenty percent of the funds utilized under this Notice will be for matching payments to eligible material owners for the collection, harvest, storage and transportation of crop residue from commodities eligible to receive payments under Title I of the 2008 Farm Bill.

CHST Qualified Biomass Conversion Facility Requirements

To be considered a CHST qualified biomass conversion facility, the biomass conversion facility must enter into a Memorandum of Understanding with CCC and meet all these requirements as determined by CCC:

(1) The facility must meet the definition of a biomass conversion facility;

(2) The facility must meet all applicable regulatory and permitting requirements by applicable Federal, State, or local authorities;

(3) The facility owners and managers must agree in writing to:

(a) Maintain accurate records of all eligible material purchases and related documents regardless of whether CHST matching payments will be sought and

(b) Make available at one place and at all reasonable times for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to the program that are within the control of the facility for not less than 3 years from the application date;

(4) The facility must agree that post-qualification, general information about the facility and its eligible material will be made public by USDA and other entities;

(5) The facility must be an entirely separate legal entity from owners of eligible material who conduct purchases of eligible material from the owners for biomass acquisition using arms-length transactions;

(6) The facility must agree to clearly indicate on the scale ticket the actual tonnage delivered, have the manager or owner of the facility sign the scale ticket, and provide it to the eligible biomass owner. The facility must also agree to provide a total dry-weight tonnage equivalent to the eligible biomass owner;

(7) The facility must have access to commercial freight scales that are certified for accuracy by applicable State or local authorities and accurate moisture measurement equipment to determine the dry ton weight equivalent of actual tonnage delivered; and

(8) When a biomass conversion facility meets these terms and enters into an MOU with CCC, FSA county offices will periodically inform the public including agricultural and forest land owners and operators that matching payments may be available for deliveries of eligible material to CHST qualified biomass conversion facilities. FSA county offices will also maintain a publicly available listing of CHST qualified biomass conversion facilities for general public access and distribution that may include general information about the facility and its eligible material needs to encourage the development of new and open markets for commercial eligible material sales transactions. This information will also be maintained on FSA's Internet site: *http://www.fsa.usda.gov/FSA/webapp?area=fsahome&subject=landing&topic=landing.*

Appeals

The administrative appeal regulations in 7 CFR parts 11 and 780 apply to this program.

Administrative Procedure Act Statement

This NOFA is being issued without advance rulemaking or public comment. The Administrative Procedure Act (''APA'', 5 U.S.C. 553), has several exemptions to rulemaking requirements. Among them is an exemption for matters relating to Federal benefits, but under the provisions of the ''Statement of Policy of the Secretary of Agriculture effective July 24, 1971,'' issued by Secretary Hardin in 1971 (36 FR 13804, the ''Hardin Memorandum''), the Department will normally engage in rulemaking related to Federal benefits despite that exemption. However, the Hardin Memorandum does not waive certain other APA-contained exemptions, in particular the ''good cause'' exemption found at 5 U.S.C. 553(b)(3)(B), which allows effective government action without rulemaking procedures where withholding the action would be ''impracticable, unnecessary, or contrary to the public interest.'' The Hardin memorandum specifically provides for the use of the ''good cause'' exemption, albeit sparingly, when a substantial basis for so doing exists, and where, as will be

described more fully below, that substantial basis is explained.

Such would be the case here, in that this NOFA provides guidance for the CHST matching payments program as part of a process that will include rulemaking later this year. Additionally, this NOFA simply makes funds available in accord with a statutory mandate. USDA has determined that making these funds available as soon as possible is in the public interest. Withholding this NOFA to provide for public notice and comment would unduly delay the provision of benefits associated with this program. Should the actual practice of the program produce reasons for program modifications, those modifications can be brought to the attention of the Department and changes made in the future rulemaking process. The CHST matching payment program provisions will be included, with potential modifications, in rulemaking later this year. Delay caused by normal rulemaking procedures under the APA would frustrate the accomplishment of the purposes of the statutory provisions and would not produce benefits for this fiscal year.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, through this notice, FSA is requesting comments from all interested individuals and organizations on a new information collection for CHST; this notice opens a 60-day comment period for the information collection requirements in this NOFA. While this notice requests comments on the information collection activities required for CHST, in order to meet the time frames mandated by the Presidential Memorandum discussed above, FSA submitted the following information collection request to the Office of Management and Budget (OMB) under the emergency procedure in accordance with the Paperwork Reduction Act of 1995. As discussed above in the APA section, there is good cause to forgo any delay associated with the opportunity for advance public comment. After OMB approval, the approved burden hours will be incorporated into the existing approval under OMB control number 0560–0082, which includes much of the same information for other conservation programs. CHST will provide financial assistance for CHST of eligible material for use in a biomass conversion facility in accordance with the 2008 Farm Bill.

Copies of all forms, regulations, and instructions referenced in this NOFA may be obtained from FSA. Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

Title: BCAP CHST.

OMB Control Number: 0560–NEW.

Type of Request: New.

Abstract: This information collection is needed to comply with section 9011 (b)(2) of Title IX of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101–8113), which was added by the 2008 Farm Bill.

FSA employees will enter the application information from completed paper forms into the electronic AD–245 Application for Cost-Share form, which is currently approved under OMB control number 0560–0082 for other conservation programs. The AD–245 form will collect information about the owners of eligible material and estimated and actual biomass material sold and delivered to a qualified biomass conversion facility in order to approve applications for CHST matching payments and to calculate matching payments after sale and delivery. CHST will also use the existing AD–1047 Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions form. The AD–1047 form will help ensure that only those owners and managers of qualified biomass conversion facilities and those owners of eligible material who have not been disbarred, suspended, or otherwise made ineligible for Federal transactions are not qualified or determined eligible for BCAP. The AD–1047 will require the owners to certify that they are in compliance and not subject to disbarment or suspension. The information collection activities for CHST will include the following:

(1) Applicants will request to be qualified as a CHST-qualified biomass conversion facility and

(2) Applicants will register as an eligible material owner and then, after delivery of eligible material, request CHST matching payments for the collection, harvest, storage, and transportation of eligible material for use in a biomass conversion facility.

Specific descriptions of the information requirements are discussed in this NOFA above under the application sections. Applicants will submit estimated to register as eligible material owners and actual delivery information to request CHST matching payments. If the Deputy Administrator determines that additional information is necessary from an eligible material owner, it will be related information required to determine eligibility, ensure the ability to make proper payments, or to otherwise legally provide benefits to an eligible material owner.

Estimate of Burden: Public reporting burden for the collection of information is estimated to average half an hour per response for applicants requesting (1) qualification as a CHST-qualified biomass conversion facility and (2) CHST matching payments for collection, harvest, storage, and transportation of eligible material for use in a biomass conversion facility. The estimate is based on estimated completion of applicable sections of a memorandum of understanding, preparation of an AD–1047, and attaching required copies of permits and related certifications. The average travel time, which is included in the total burden, is estimated to be 1 hour per respondent.

Respondents: Individuals, Indian Tribes, units of State or local government, partnerships, corporations, farm cooperatives, farmer cooperative organizations, associations of agricultural producers, national laboratories, institutions of higher education, rural electric cooperatives, public power entities, consortia of any of these entities, and any other legal entities.

Estimated Number of Respondents: 5,600.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 42,000.

We are requesting comments on all aspects of the information collection to help us to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Other Provisions

The CHST matching payments will be subject to environmental compliance including NEPA compliance for all eligible material removed from Federal lands pursuant to existing Forest Service procedures, Forest Stewardship

Plans for eligible material collected and harvested from private forest land, and Conservation plans and conservation compliance for eligible material collected or harvested from cropland.

Additionally, those lessons learned through operation of the CHST matching payment program will be combined with all comments, analysis, and other information and will be applied in rulemaking later this year.

Scheme or device: If it is determined by CCC that a person has employed a scheme or device to defeat the purposes of this program, any part of any program payment otherwise due or paid such person during the applicable period may be required to be refunded with interest as determined appropriate by CCC. Any eligibility determination of a biomass conversion facility that was based, in whole or part, on a scheme or device will be rescinded. A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of a payment, or obtaining a payment that otherwise would not be payable.

Filing of false documents: If it is determined by CCC that any participant has knowingly supplied false information or has knowingly filed a false claim for payment or facility certification, such participant will be ineligible for payments or certification with respect to BCAP and a refund of all prior payments issued under BCAP, including CHST, may be demanded. False information or false claims include, but are not limited to: Claims for payment for eligible material delivery that are filed with incorrect factual information or do not match actual eligible material deliveries and claims for certification intentionally filed with incorrect information or with false or otherwise inaccurate information. Any amounts paid under these circumstances must be refunded, together with interest as determined by CCC, and any amounts otherwise due such participant will be withheld. The remedies provided for in this NOFA are in addition to any and all other remedies, criminal or civil that may apply.

Federal Assistance Programs

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this NOFA applies is 10.087—Biomass Crop Assistance Program.

Signed in Washington, DC, on June 8, 2009.

Douglas J. Caruso,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E9–13724 Filed 6–8–09; 4:15 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Province Advisory Committee will meet at the Grand Ronde Tribal Office. The agenda includes: Stimulus Project Update, Secure Rural Schools Update, Travel Management Update, Spotted Owl Plan Update, Round Robin, WOPR Update and Public Comments.

DATES: The meeting will be held June 18, 2009, beginning at 9:30 a.m.

ADDRESSES: Adult Educational Building, 9615 Grand Ronde Road, Grand Ronde, OR 07347. Google Map will put you in the correct parking lot.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541–750–7075, or write to Siuslaw National Forest Supervisor, 4077 SW. Research Way, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council Discussion is limited to Forest Service/BLM staff and Council Members. Lunch will be on your own. A public input session will be at 2:45 p.m. for fifteen minutes. The meeting is expected to adjourn around 3 p.m.

Dated: June 3, 2009.

Joni Quarnstrom,

Public Affairs Specialist.

[FR Doc. E9–13583 Filed 6–10–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Designation of Fishery Management Council Members and Application for Reinstatement of State Authority.

OMB Control Number: 0648–0314.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 4,607.

Number of Respondents: 146.

Average Hours per Response: 58 hours average for a nomination package for one to three candidates; 16 hours for a nominee to provide background documentation, and 1 hour for application of State authority over a fishery.

Needs and Uses: The Magnuson-Stevens Fishery Conservation and Management Act, as amended in 1996, provides for members of Fishery Management Councils by State governors and Indian treaty tribes, for the designation of a principal state fishery official for the purposes of the Act, and for a request by a state for reinstatement of state authority over a managed fishery. The information submitted with these actions will be used to ensure that the requirements of the Act are being met.

Affected Public: Individuals or households; State, Local or Tribal Government.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

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: June 8, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–13700 Filed 6–10–09; 8:45 am]

BILLING CODE 3510–22–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: Northeast Multispecies Days-at-Sea Leasing Program.

OMB Control Number: 0648–0475.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 584.

Number of Respondents: 1,400.

Average Hours per Response: Applications for days-at-sea leasing, 5 minutes; and applications to downgrade days-at-sea leasing baseline, 1 hour.

Needs and Uses: The National Marine Fisheries Service (NMFS) is requesting a three-year renewal of this information collection in order to continue management of the days-at-sea (DAS) Leasing Program for the Northeast (NE) Multispecies Fishery Management Plan (FMP), developed under the authority of the Magnuson-Stevens Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* The reduction in the DAS allocated to permit holders through several management actions has limited the ability of some vessels to participate in the fishery, resulting in a loss of revenue and/or the ability to operate at a profit. The DAS Leasing Program was established in Amendment 13 to the NE Multispecies FMP (0648–AN17 (*69 FR 22906*)). The DAS Leasing Program has enabled vessels to increase their revenue either by leasing additional DAS from another vessel and using them to increase their participation in the fishery, or by leasing allocated DAS that they may not use to certain other vessels.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and one time only.

Respondent's Obligation: Required to obtain or retain benefits.

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: June 8, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–13701 Filed 6–10–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Ghassan Tabbaa

In the Matter of: Ghassan Tabbaa, 27861 Hacienda Blvd., East #219A, Bonita Springs, FL 34135.

Order Denying Export Privileges

On January 3, 2008, in the U.S. District Court for Southern District of Florida, Ghassan Tabbaa (''Tabbaa'') pled guilty to and was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). Tabbaa pled guilty to knowingly and willfully violating the embargo against Syria by attempting to export and re-export two Mercedes Benz automobiles from the United States to Syria via the Lebanese Republic, without the required license issued by the Department of Commerce. In addition, Tabbaa was also convicted of one false statement count. Tabbaa was sentenced to 4 days in prison (credit time served); two years of supervised release, including six months of home confinement; a $200 special assessment; and forfeiture of one Mercedes Benz.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the [Export Administration Act (''EAA'')], the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); see also Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); see also 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest at the time of his conviction.

I have received notice of Tabbaa's conviction for violating the IEEPA, and have provided notice and an opportunity for Tabbaa to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Tabbaa. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Tabbaa's export privileges under the Regulations for a period of five years from the date of Tabbaa's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Tabbaa had an interest at the time of his conviction.

Accordingly, it is hereby *ordered:*

I. Until January 3, 2013, Ghassan Tabbaa, currently at: 27861 Hacienda Blvd., East #219A, Bonita Springs, FL 34135, and when acting for or on behalf of Tabbaa, his representatives, assigns, agents, or employees, (collectively referred to hereinafter as the ''Denied Person'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2009). The Regulations issued pursuant to the EAA, which is currently codified at 50 U.S.C. app. §§ 2401–2420 (2000). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of July 23, 2008 (73 FR 43603, July 25, 2008), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)).

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Ghassan Tabbaa by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until January 3, 2013.

VI. In accordance with Part 756 of the Regulations, Tabbaa may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Tabbaa. This Order shall be published in the **Federal Register**.

Entered this 4th day of June 2009.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. E9–13689 Filed 6–10–09; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Reports of Sample Shipments of Chemical Weapon Precursors

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 10, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202)482–4895, *lhall@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is needed to monitor sample shipments of chemical weapon precursors. Monitoring is required to facilitate and enforce provisions of the Export Administration Regulations that permit limited exports of sample shipments without a validated export license. The required quarterly reports provide information on the chemical exported, quantity, name and address of recipient and the date shipped. The reports will be reviewed by the Bureau of Industry and Security to monitor quantities and patterns of shipments that might indicate circumvention of the regulations by entities seeking to acquire chemicals for chemical weapons purposes.

II. Method of Collection

The reports are paper form submitted via mail, fax, or e-mail.

III. Data

OMB Control Number: 0694–0086.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time per Response: 30 minutes for reports, and 5 minutes for recordkeeping.

Estimated Total Annual Burden Hours: 12.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 8, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–13702 Filed 6–10–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846]

Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 9, 2009, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products (hot-rolled steel) from Japan. *See Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Preliminary Results of Antidumping Duty,* 74 FR 10019 (March 9, 2009) (*Preliminary Results*). The administrative review covered JFE Steel Corporation (JFE), Nippon Steel Corporation (Nippon), and Kobe Steel, Ltd. (Kobe) for the period of review (POR) June 1, 2007 through May 31, 2008. We provided interested parties the opportunity to comment on the preliminary results of the review. Because no interested parties provided comments on the preliminary results, we have made no changes to the dumping margins set forth in the preliminary results of this administrative review. For the margins applicable to each respondent, see the ''Final Results of Review'' section of this notice.

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

FOR FURTHER INFORMATION CONTACT: Martha Douthit, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 2009, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on hot-rolled steel from Japan. *See Preliminary Results.* No interested parties filed comments in response to the Department's invitation to comment in the preliminary results.

Scope of the Order

The merchandise covered by this order consists of certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order. Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. Steel products to be included in the scope of this investigation, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.,* ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16% ...	0.70–0.90% ..	0.025% Max	0.006% Max	0.30–0.50% ..	0.50–0.70% ..	0.25% Max ...	0.20% Max ...	0.21% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V (wt.)	Cb
0.10–0.14%	1.30–1.80% ..	0.025% Max	0.005% Max	0.30–0.50% ..	0.50–0.70% ..	0.20–0.40% ..	0.20% Max ...	0.10% Max ...	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max ...	1.40% Max	0.025% Max	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max	0.005% Min	Treated	0.01–0.07%

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses 0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage 25 percent for thicknesses of 2 mm and above.

Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium. Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to this order is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00.

Certain hot-rolled flat-rolled carbon-quality steel covered by this order, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

Final Results of Review

In the Preliminary Results, the Department applied adverse facts available to JFE, Nippon, and Kobe. *See Preliminary Results,* 74 FR 10019. Neither petitioners nor respondents filed any comments on the Department's Preliminary Results. There is no new information on the record or evidence of a change in circumstances to warrant any changes to the antidumping margins determined in this *Preliminary Results.* As such, we have made no changes to the dumping margins applied to JFE, Nippon, and Kobe.

The following dumping margins exist for the period June 1, 2007 through May 31, 2008:

Manufacturer/exporter	Margin (percent)
JFE Steel Corporation	40.26
Nippon Steel Corporation	40.26
Kobe Steel Ltd.	40.26

Duty Assessment

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). We will direct CBP to assess the dumping rates listed above against all subject merchandise manufactured or exported by JFE, Nippon, and Kobe, that was entered or withdrawn from warehouse, for consumption during the POR. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirement

The following cash deposit rates will be effective with respect to all shipments of hot-rolled steel from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act: (1) For JFE, Nippon, and Kobe, the cash deposit rate shall be 40.26 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will continue to be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate shall be the all others rate established in the section 129 redetermination of the LTFV investigation, which is 22.92 percent. *See Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From*

Japan, 67 FR 71936 (December 3, 2002). These deposit rates, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

These final results of administrative review and this notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 2, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–13623 Filed 6–10–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–909]

Certain Steel Nails From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 11, 2009.

FOR FURTHER INFORMATION CONTACT: Tim Lord, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–7524.

Background

The notice announcing the antidumping duty order on certain steel nails from the People's Republic of China (''PRC'') was published in the **Federal Register** on August 1, 2008. *See Notice of Antidumping Duty Order: Certain Steel Nails From the People's Republic of China*, 73 FR 44961 (August 1, 2008) (''Antidumping Duty Order''). On February 25, 2009, we received a timely request for a new shipper review from Qingdao Denarius Manufacture Co., Ltd (''Qingdao Denarius'') in accordance with 19 CFR 351.214(c) and 351.214(d)(2). On March 20, 2009, the Department of Commerce (''Department'') published a notice of initiation of a new shipper review of certain steel nails from the People's Republic of China covering the period of January 23, 2008, through January 31, 2009. *See Certain Steel Nails From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 74 FR 11909, (March 20, 2009). The preliminary results are currently due no later than September 12, 2009.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''Act''), provides that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the day on which the review was initiated. *See also* 19 CFR 351.214 (i)(1). The Act further provides that the Department may extend that 180–day period to 300 days if it determines that the case is extraordinarily complicated. *See also* 19 CFR 351.214 (i)(2).

Extension of Time Limit of Preliminary Results

The Department determines that this new shipper review involves extraordinarily complicated methodological issues such as the examination of importer information and the evaluation of the *bona fide* nature of the company's sales. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for these preliminary results by 120 days, until no later than January 10, 2010. The final results continue to be due 90 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: June 5, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–13737 Filed 6–10–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1611]

Expansion of Foreign-Trade Zone 84, Houston, Texas, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Port of Houston Authority, grantee of Foreign-Trade Zone 84, submitted an application to the Board for authority to expand its zone to include six additional sites (Sites 17, 18, 19, 20, 21, & 22) in the Houston, Texas, area, adjacent to the Houston Customs and Border Protection port of entry (FTZ Docket 49–2008, filed 9/10/08);

Whereas, notice inviting public comment was given in the **Federal Register** (73 FR 54556, 9/22/08), and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 84 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, subject to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and further subject to a sunset provision that would terminate authority on May 31, 2014, for Sites 17, 18, 19, 20, 21, & 22, where no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this 24th day of April 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board/

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–13625 Filed 6–10–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Record of Decision for the Jacksonville Range Complex

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (Navy), after carefully weighing the operational and environmental consequences of the proposed action, announces its decision to support and conduct current, emerging, and future military readiness activities in the Jacksonville Range Complex as necessary to achieve and sustain Fleet readiness, including Navy training; Department of Defense or other Federal agency research, development, test, and evaluation activities; and investment in range resources and range infrastructure, all in furtherance of the Navy's statutory obligations under Title 10 of the United States Code governing the roles and responsibilities of the Navy.

The Navy considered applicable laws, regulations, and Executive Orders, including an analysis of the environmental effects of its actions outside the United States or its territories under the provisions of Executive Order (EO) 12114, Environmental Effects Abroad of Major Federal Actions, and the requirements of EO 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations. The proposed action will be accomplished as set out in Alternative 2, described in the Final Environmental Impact Statement (FEIS) as the preferred alternative. Implementation of the preferred alternative could begin immediately.

SUPPLEMENTARY INFORMATION: The Record of Decision (ROD) has been distributed to all those individuals who requested a copy of the FEIS and agencies and organizations that received a copy of the FEIS. The complete text of the Navy's ROD is available for public viewing on the project Web site at *http://www.jacksonvillerangecomplexeis.com* along with copies of the FEIS and supporting documents. Single copies of the ROD will be made available upon request by contacting the Naval Facilities Engineering Command, Atlantic Division; *Attention:* Code EV22KP (Jacksonville EIS/OEIS PM); 6506 Hampton Blvd, Norfolk, VA 23508–1278; *facsimile:* 757–322–4894.

Dated: June 8, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–13741 Filed 6–10–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Record of Decision for the Virginia Capes Range Complex

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (Navy), after carefully weighing the operational and environmental consequences of the proposed action, announces its decision to support and conduct current, emerging, and future military readiness activities in the Virginia Capes Range Complex as necessary to achieve and sustain Fleet readiness, including Navy training; Department of Defense or other Federal agency research, development, test, and evaluation activities; and investment in range resources and range infrastructure, all in furtherance of the Navy's statutory obligations under Title 10 of the United States Code governing the roles and responsibilities of the Navy.

The Navy considered applicable laws, regulations, and Executive Orders, including an analysis of the environmental effects of its actions outside the United States or its territories under the provisions of Executive Order (EO) 12114, Environmental Effects Abroad of Major Federal Actions, and the requirements of EO 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations. The proposed action will be accomplished as set out in Alternative 2, described in the Final Environmental Impact Statement (FEIS) as the preferred alternative. Implementation of the preferred alternative could begin immediately.

SUPPLEMENTARY INFORMATION: The Record of Decision (ROD) has been distributed to all those individuals who requested a copy of the FEIS and agencies and organizations that received a copy of the FEIS. The complete text of the Navy's ROD is available for public viewing on the project Web site at *http://www.vacapesrangecomplexeis.com* along with copies of the FEIS and supporting documents. Single copies of the ROD will be made available upon request by contacting the Naval Facilities Engineering Command, Atlantic Division; *Attention:* Code EV22CK (VACAPES EIS/OEIS PM); 6506 Hampton Blvd; Norfolk, VA 23508–1278; *facsimile:* 757–322–4894.

Dated: June 8, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–13742 Filed 6–10–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Record of Decision for the Navy Cherry Point Range Complex

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (Navy), after carefully weighing the operational and environmental consequences of the proposed action, announces its decision to support and conduct current, emerging, and future military readiness activities in the Navy Cherry Point Range Complex as necessary to achieve and sustain Fleet readiness, including Navy training; Department of Defense or other Federal agency research, development, test, and evaluation activities; and investment in range resources and range infrastructure, all in furtherance of the Navy's statutory obligations under Title 10 of the United States Code governing the roles and responsibilities of the Navy.

The Navy considered applicable laws, regulations, and Executive Orders, including an analysis of the environmental effects of its actions outside the United States or its territories under the provisions of Executive Order (EO) 12114, Environmental Effects Abroad of Major Federal Actions, and the requirements

of EO 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations. The proposed action will be accomplished as set out in Alternative 2, described in the Final Environmental Impact Statement (FEIS) as the preferred alternative. Implementation of the preferred alternative could begin immediately.

SUPPLEMENTARY INFORMATION: The Record of Decision (ROD) has been distributed to all those individuals who requested a copy of the FEIS and agencies and organizations that received a copy of the FEIS. The complete text of the Navy's ROD is available for public viewing on the project Web site at *http://www.navycherrypoint rangecomplexeis.com* along with copies of the FEIS and supporting documents. Single copies of the ROD will be made available upon request by contacting the Naval Facilities Engineering Command, Atlantic Division; *Attention:* Code EV22SL (Navy Cherry Point EIS/OEIS PM); 6506 Hampton Blvd.; Norfolk, VA 23508–1278; *facsimile:* 757–322–4894.

Dated: June 8, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–13743 Filed 6–10–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

SUMMARY: Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces its intention to grant an exclusive license in favor of NeXolve Corporation, a wholly-owned subsidiary of ManTech, having a place of business at 655 Discovery Drive, Cummings Research Park, Suite 200, Huntsville, AL 35806 in any right, title, and interest the Air Force has in the following patent and patent applications: U.S. Patent Application Serial No. 11/876081, filed on October 22, 2007, titled ''Triangular Rollable and Collapsible Boom,'' by Thomas W. Murphey *et al.*

FOR FURTHER INFORMATION CONTACT: For an objection to the prospective license to be considered, it must be submitted in writing and be received at the following address within fifteen (15) days from the date of publication of this Notice. Written objection should be sent to: James M. Skorich, Esq. 2251 Maxwell Street SE. 377th ABW/JAN, Kirtland AFB, NM 87117–5773. *Telephone:* (505) 846–1542.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E9–13688 Filed 6–10–09; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by June 26, 2009.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or e-mailed to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: June 5, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Impact Aid Discretionary Construction Program—ARRA Stimulus Grant.

Abstract: The Impact Aid Discretionary Construction Grant Program supplemental funding appropriated under the American Recovery and Reinvestment Act provides grants for emergency repairs and modernization of school facilities to certain eligible local educational agencies (LEAs) that were eligible to receive formula Impact Aid funds in Fiscal Year 2008.

Additional Information: In FY 2009, Congress passed the American Recovery and Investment Act (ARRA), which authorized a supplemental appropriation for school construction. This law provided that $60 million be made available for emergency school construction and modernization projects for certain eligible local education agencies (LEAs).

The Impact Aid ARRA Discretionary Construction Program provides grants to eligible Impact Aid school districts to assist in addressing their school facility emergency and modernization needs. The eligible Impact Aid school districts were eligible to receive Impact Aid

funds under either Section 8002 or Section 8003 for FY 2008. In addition, these LEAs have a total assessed value of real property of less than $100 million; or, have an average assessed value of real property per pupil less than the State average assessed value of real property. The Fiscal Year 2009 appropriation provides $60 million for this competitive construction grant program, available for obligation through FY 2009.

Frequency: Quarterly; ARRA Reporting.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 300.
Burden Hours: 2,100.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4036. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address ICDocketMgr@ed.gov or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–13663 Filed 6–10–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 13, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 5, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Fast Response Survey System (FRSS) 100–103—Arts Education in Public Elementary and Secondary Schools.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 9,286.
Burden Hours: 3,939.

Abstract: The National Center for Education Statistics (NCES), U.S. Department of Education, proposes to employ the Fast Response Survey System (FRSS) to conduct a set of seven surveys on arts education, as requested by Congress—Senate Report 110–107/House Bill report H16251. FRSS was used to conduct previous national surveys on arts education in 1999–2000 and 1994. The seven new FRSS surveys will be administered during the 2009–10 school year and will address topics in K–12 arts education at the elementary and secondary school- and teacher-levels. A different survey will be conducted for each of the following populations: Elementary school principals; Secondary school principals; Elementary general classroom teachers; Elementary visual arts specialists; Elementary music specialists; Secondary visual arts specialists; and Secondary music specialists. The surveys will allow for an examination of change in arts education from a decade ago, including topics such as the availability and characteristics of instructional programs in visual arts, music, dance, and drama/theatre; program staffing; funding sources; teachers' educational backgrounds (*e.g.,* degrees, certification, years of experience), participation in professional development activities; teaching load and practices; collaboration and integration of the arts into other areas of the curriculum; and involvement in arts-related activities outside of school. New in the 2009–10 data collection are two teacher surveys at the secondary school level, which will provide baseline data for secondary school music and visual arts specialists and will report on topics similar to the elementary music and visual arts specialist surveys, with some additional topics specific to the secondary level, such as Advanced Placement and International Baccalaureate classes, and visual arts classes taught outside regular school hours.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4006. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–13661 Filed 6–10–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–421–000]

Cadeville Gas Storage LLC; Notice of Application

June 4, 2009.

Take notice that on May 27, 2009, Cadeville Gas Storage (Petitioner), Three Riverway, Suite 1350, Houston, Texas 77056, filed with the Commission a petition for Exemption of Temporary Acts and Operations from Certificate Requirements, pursuant section 7(c)–(1)–(B) of the Natural Gas Act (NGA), and Rule 207–(a)–(5) of the Commission's Rules of Practice and Procedures. Petitioner requests an exemption for the temporary and limited purpose of undertaking test well drilling at a property they control in Ouachita Parish, Louisiana. This test well drilling is necessary to determine the technical, environmental and economic feasibility of developing an underground natural gas storage facility. The activities include the drilling of one reservoir test well to determine reservoir characteristics and the feasibility of developing the reservoir for natural gas. All as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding the petition should be directed to counsel for Cadeville Gas Storage LLC, J. Gordon Pennington, Attorney at Law, 2707 N. Kensington Street, Arlington, VA 22207 at (703) 533–7638, or at *Pennington5@verizon.net.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: 5 p.m. Eastern Time on June 18, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13670 Filed 6–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12667–018]

City of Hamilton, OH; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 4, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to change location of powerhouse.

b. *Project No.:* 12667–018.

c. *Date Filed:* January 6, 2009, and supplemented on January 9, 2009, and May 21, 2009.

d. *Applicant:* City of Hamilton, Ohio (Hamilton).

e. *Name of Project:* Meldahl Hydroelectric Project.

f. *Location:* When constructed, the project will be located at the U.S. Army Corps of Engineers' Captain Anthony Meldahl locks and dam on the Ohio River, near the City of Augusta, Bracken County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Debra Roby, Jennings, Strouss & Salmon, PLC, 1700 Pennsylvania Ave., NW., Suite 500, Washington, DC 20006–4725; telephone (202) 464–0539.

i. *FERC Contact:* Linda Stewart, telephone (202) 502–6680, and e-mail address *linda.stewart@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* July 6, 2009.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link. The Commission strongly encourages electronic filings.

All documents (original and eight copies) filed by paper should be sent to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12667–018) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Hamilton proposes to change the location of the powerhouse from the location authorized in the June 25, 2008 Order Issuing Original License (Major Project). Under Hamilton's proposal, the powerhouse location would be moved approximately 300 feet landward from the location authorized in the license. The centerline of the powerhouse would be located approximately 560 feet from the landward face of existing pier number 13, instead of approximately 250 feet from the landward face of pier number 13 as authorized in the license.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13672 Filed 6–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–422–000]

Northwest Pipeline GP and Puget Sound Energy, Inc; Notice of Application

June 4, 2009.

Take notice that on May 28, 2009, Northwest Pipeline GP (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed an application in Docket No. CP09–422–000, pursuant to section 7(b) of the Natural Gas Act and part 157 of the Commission's regulations, requesting permission and approval to abandon its certificate authority to lease and operate the Everett Delta Lateral and associated facilities, which consist of approximately 8.8 miles of 16-inch diameter pipeline, two delivery taps, and associated piping and appurtenances, and transfer the operation of Facilities to Puget Sound Energy, Inc (Puget). Additionally, Puget seeks a determination from the Commission that, following the abandonment and transfer of operation to Puget, the Facilities will be considered non-jurisdictional under section 1(b) of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Lynn Dahlberg, Manager Certificates, at 801–584–6851, Northwest Pipeline GP, 295 Chipeta Way, Salt Lake City, Utah 84108.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the

EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: June 25, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13671 Filed 6–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–13301–002]

Town of Afton; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

June 4, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor.

b. *Project No.:* P–13301–002.

c. *Date filed:* April 29, 2009.

d. *Applicant:* Town of Afton.

e. *Name of Project:* Culinary Water System Hydroelectric Project.

f. *Location:* On the culinary water supply system, in the Town of Afton, Lincoln County, Wyoming. The project would occupy 12.3 acres of land in the Bridger-Teton National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* James K. Sanderson, Town of Afton, 416 Washington St., P.O. Box 310, Afton, WY 83110.

i. *FERC Contact:* Ryan Hansen, 202–502–8074, *ryan.hansen@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''e-filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. *The project would consist of the following facilities:* (1) An intake at Periodic Springs; (2) an existing 97,000 gallon buried concrete surge tank; (3) an existing 16,775-foot-long, 18-inch-diameter iron ductile pipe; (4) a new approximately 95-foot-long, 2-foot-diameter ductile iron penstock conveying flows from the existing pipe to the new powerhouse; (5) a 20-foot-long by 20-foot-wide powerhouse containing a single Pelton turbine and generator with an installed capacity of 225 kilowatts; (6) an approximately 10-foot-long, 2.5-foot-diameter draft tube discharging flows from the powerhouse to an existing access hatchway at the top of the storage tank; and (7) appurtenant facilities. The power generated at the project would intertie with the existing 12.5-kilovolt distribution system at the culinary water treatment plant.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC

Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13673 Filed 6–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9988–000]

Augusta Canal Authority; Notice of Authorization for Continued Project Operation

June 4, 2009.

On May 30, 2007, Augusta Canal Authority, licensee for the King Mill Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The King Mill Hydroelectric Project is located on the Augusta Canal, adjacent to the Savannah River, in Richmond County, Augusta, GA.

The license for Project No. 9988 was issued for a period ending May 31, 2009. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 9988 is issued to the Augusta Canal Authority for a period effective June 1, 2009 through May 31, 2010, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before May 31, 2010, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise. If the project is not subject to section 15 of the FPA, notice is hereby given that the Augusta Canal Authority is authorized to continue operation of the King Mill Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13669 Filed 6–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

June 04, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–2341–014; ER07–277–006; ER06–1334–008.

Applicants: Invenergy Cannon Falls LLC, Spindle Hill Energy LLC, Hardee Power Partners Limited.

Description: Notification of Change in Facts Under Market-Based Rate Authority of Hardee Power Partners Limited, Spindle Hill Energy LLC and Invenergy Cannon Falls LLC.

Filed Date: 06/03/2009.

Accession Number: 20090603–5100.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 24, 2009.

Docket Numbers: ER04–374–012; ER05–717–011; ER05–721–011; ER06–230–008; ER07–810–006; ER08–1172–005; ER08–237–005; ER09–429–002; ER09–430–002.

Applicants: Forward Energy LLC, Sheldon Energy LLC, Spring Canyon Energy LLC, Grays Harbor Energy LLC, Grand Ridge Energy LLC, Willow Creek Energy LLC, Judith Gap Energy LLC, Invenergy TN LLC, Wolverine Creek Energy LLC.

Description: Notification of Change in Facts Under Market-Based Rate Authority of Spring Canyon Energy LLC, *et al.*

Filed Date: 06/03/2009.
Accession Number: 20090603–5110.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 24, 2009.

Docket Numbers: ER06–857–002.
Applicants: Energy Resource Management Corporation.
Description: Energy Resource Management Corporation submits for acceptance First Revised Sheet 1 *et al* to its FERC Electric Tariff, Original Volume 1.
Filed Date: 06/01/2009.
Accession Number: 20090604–0288.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER07–1174–005; OA07–74–005.
Applicants: MATL LLP.
Description: MATL LLP submits instant filing pursuant to the directive in March 3 Order requiring MATL to submit a further compliance filing w/in 90 days of the issuance of that Order.
Filed Date: 06/01/2009.
Accession Number: 20090603–0153.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER08–1106–003.
Applicants: MATL LLP.
Description: MATL LLP submits settlement agreement.
Filed Date: 06/03/2009.
Accession Number: 20090604–0491.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.
Reply Comment Date: 5 p.m. Eastern Time on Thursday, June 18, 2009.

Docket Numbers: ER09–749–001.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits First Revised Sheet 232 to its FERC Electric Tariff, Fourteenth Revised Volume 2.
Filed Date: 06/02/2009.
Accession Number: 20090604–0287.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 23, 2009.

Docket Numbers: ER09–1164–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits informational filing of its Annual Update of transmission service rates pursuant to the APS Open Access Transmission Tariff.
Filed Date: 05/15/2009.
Accession Number: 20090518–0317.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 09, 2009.

Docket Numbers: ER09–1180–001.
Applicants: Entergy Services Inc.
Description: Request for Deferred Effective Date.
Filed Date: 05/28/2009.
Accession Number: 20090528–5060.
Comment Date: 5 p.m. Eastern Time on Thursday, June 18, 2009.

Docket Numbers: ER09–1261–000.
Applicants: The Connecticut Light and Power Company.
Description: Northeast Utilities Service Company submits filing to cancel CL&P's FERC Electric Rate Schedule No 580 *et al.*
Filed Date: 06/01/2009.
Accession Number: 20090603–0154.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1262–000.
Applicants: Northeast Utilities Service Company.
Description: Northeast Utilities Service Company submits amendment to the Transmission and Ancillary Services Wholesale Revenue Allocation Agreement between CL&P, *et al.*
Filed Date: 06/01/2009.
Accession Number: 20090603–0155.
Comment Date: 5 p.m. Eastern Time on Monday, June 22, 2009.

Docket Numbers: ER09–1263–000.
Applicants: Virginia Electric and Power Company.
Description: Virginia Electric and Power Company submits revised rate schedule cover sheet to cancel an Interconnection Agreement between Dominion and PJM Group.
Filed Date: 06/03/2009.
Accession Number: 20090604–0118.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 24, 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, D.C. 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. E9–13695 Filed 6–10–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–417–000]

Transcontinental Gas Pipe Line Company, LLC.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Bayonne Delivery Lateral Project and Request for Comments on Environmental Issues

June 4, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Bayonne Delivery Lateral Project (Bayonne Lateral) involving construction and operation of facilities by Transcontinental Gas Pipe Line Company, LCC (Transco) in Newark, Essex County, New Jersey. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process we will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be

evaluated in the EA. Please note that the scoping period will close on July 4, 2009.

This notice is being sent to affected landowners; Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a Transco representative about survey permission and/or the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the natural gas company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Transco proposes to acquire and convert from Hess Corporation (Hess) approximately 5.41 miles of 14-inch diameter pipeline, which is currently an idle petroleum pipeline that would be converted to natural gas use. Transco would provide 325,000 dekatherms per day (dt/day) of natural gas from Transco's mainline to the planned Bayonne Energy Center, a nonjurisdictional electric generating plant that would provide power into the New York City market. In addition Transco is proposing to:

- Install about 0.83 miles of 20-inch diameter natural gas pipeline (at or near milepost 1816.72, in Newark, Essex County, New Jersey).
- Install minor aboveground facilities and modifications including a new pig launcher and pig receiver;
- Install a delivery point meter station at the Bayonne Energy Center site. Facilities would include two 10-inch ultrasonic meters and one 3-inch rotary meter, 12-inch yard piping, filter separator, flow control, and chromatograph and communication equipment;
- Install 0.04 miles of new 14-inch diameter pipeline to connect the meter station with the existing 14-inch pipeline to be acquired from Hess; and
- Install 0.03 miles of new 14-inch pipeline to connect the pig launcher assembly with the existing 14-inch pipeline to be acquired from Hess.

Prior to converting the 14-inch petroleum products pipeline for natural gas use, Transco proposes to conduct digs at 13 locations along this pipeline where smart pigging has identified potential anomalies in the pipe wall.

The general location of the project facilities is shown in Appendix 1.[1]

If approved, Transco proposes to commence construction of the proposed facilities on or about July 1, 2010.

Land Requirements for Construction

Construction and modifications of the pipeline would temporarily impact about 22.59 acres of land for use as construction workspace, access roads and pipe/contractor yards areas. A total of 2.28 acres would be temporarily disturbed by the construction of access roads. Transco states that because it would operate the pipeline under license/agreement with the existing landowners, no permanent right-of-way would be acquired as part of this project.

Transco is proposing to utilize existing access roads and existing right-of-way for the proposed project. Existing access roads would not require any improvements. Transco would also need to construct temporary access roads at numerous points throughout the project in order to construct anomaly digs.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[2] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species;
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

With this NOI, we are asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this NOI.

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Transco. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential impacts may occur to groundwater.
- Potential impacts to three historical architectural resources, and eleven cultural resources.
- Environmental site assessments for the project identified 4 sites along the pipeline that are considered recognized environmental concern sites which could contain soil contaminants.
- Mercer Park, located in Hudson County, would be crossed by a proposed workspace and access in the Park would be required.

Public Participation

You can make a difference by providing us with your specific comments or concerns about Bayonne Delivery Lateral Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before July 3, 2009.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances please reference the project docket number CP09–417–000 with your submission. The docket number can be found on the front of this notice. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up''* or *''eRegister.''* You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426. Label one copy of the comments for the attention of Gas Branch 2, PJ11.2.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor,'' which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13675 Filed 6–10–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2088–068]

South Feather Water and Power Agency, California; Notice of Availability of the Final Environmental Impact Statement for the South Feather Power Project

June 4, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the South Feather Water and Power Agency's 117-megawatt South Feather Power Project (Project No. 2088), located on the South Fork Feather River (SFFR), Lost Creek, and Slate Creek, in Butte, Yuba, and Plumas counties, California and has prepared a final Environmental Impact Statement (final EIS) for the project. The project occupies about 1,977 acres of federal lands administered by the Plumas National Forest and 11 acres of federal lands administered by the U.S. Bureau of Land Management.

The final EIS contains staff's evaluations of the applicant's proposal and alternatives for relicensing the South Feather Power Project. The final

EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

Copies of the final EIS are available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The final EIS also may be viewed on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link. Enter the docket number (P–2088) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

CD versions of the final EIS have been mailed to everyone on the mailing list for the project. Copies of the CD, as well as a limited number of paper copies, are available from the Public Reference Room identified above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

For further information, contact John Mudre at (202) 502–8902 or at *john.mudre@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13674 Filed 6–10–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2006–0037, FRL–8917–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Exchange Network Grants Progress Report (Renewal); EPA ICR No. 2207.03, OMB Control No. 2025–0006

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 EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on 11/30/09. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Additional comments may be submitted on or before July 13, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OEI–2006–0037, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 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. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, 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 statue. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* 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 DC–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Wm. Terry Forrest, OEI/OIC/IESD, Mail Code 2823T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–566–0196; *fax number:* 202–566–1624; *e-mail address: forrest.terry@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OEI–2006–0037 which is available for online viewing at *www.regulations.gov*, or in person viewing at the OEI 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 OEI Docket is (202) 566–1752.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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:

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing you comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Docket ID No. EPA–HQ–OPEI–2006–0037

Affected entities: Entities potentially affected by this action are States, Tribal, and Territorial Environmental Offices receiving National Environmental Information Exchange Network (NEIEN) grants.

Title: Exchange Network Grants Progress Report (Renewal)

ICR numbers: EPA ICR No. 2207.03, OMB Control No. 2025–0006.

ICR Status: This ICR is scheduled to expire on November 30, 2009. 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 are 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: This notice announces the collection of information related to the U.S. EPA NEIEN Grant Program. The EPA Office of Environmental Information provides funding to EPA's Exchange Network partners (states, territories, and federally recognized Indian tribes) to support the development of the NEIEN. The NEIEN is an Internet and-standards-based, secure information system that supports the electronic collection, exchange, and integration of data among its partners. Funding for the Grant Program has been provided through annual congressional appropriations for the EPA.

To enhance the quality and overall public benefit of the Network, EPA proposes to collect information from the NEIEN grantees about how they intend to ensure quality in their projects and the environmental outcomes and outputs from their projects. The proposed Quality Assurance Reporting Form is intended to provide a simple means for grant recipients to describe how quality will be addressed throughout their projects. The Quality Assurance Reporting Form is derived from guidelines provided in the NEIEN 2006 grant solicitation notice. As a stipulation of their award, grant recipients are to submit the form within ninety days of grant award.

Grantees are currently required to submit semi-annual progress reports as a stipulation of their award. In these reports, grantees outline project goals, activities required to meet these goals, and outputs and outcomes of activities to date. At the request of numerous grantees, we are proposing to offer the Progress Reporting Form as a vehicle for collecting information. This form is easier to complete than an unstructured narrative; it can be used as the semi-annual and final report form and the information returned will be of higher quality and comparable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.5 hours for the Semi-Annual Report Form per response and 1 hour per Quality Assurance Form per response. 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 that 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: State, Tribal, and Territorial Environmental Offices receiving NEIEN grants.

Estimated Number of Respondents: 225.

Frequency of Response: Twice for the Semi-Annual Report Form; once for the Quality Assurance Form.

Estimated Total Annual Hour Burden: 733.

Estimated Total Annual Cost: $37,000 includes $0 annualized capital or O&M costs and $37,000 annual labor costs.

Are There Changes in the Estimates From the Last Approval?

Changes in the Estimates: There is an increase of 283 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This change is due to an increase in the estimate to complete the Semi-annual Progress Report Form and due to the additional of the Quality Assurance Form.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: June 5, 2009.

Connie Dwyer,

Director, Information Exchange & Services Division.

[FR Doc. E9–13732 Filed 6–10–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8917–4]

Notice of Open Meeting of the Environmental Financial Advisory Board (EFAB)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting on August 10–11, 2009. EFAB is an EPA advisory committee

chartered under the Federal Advisory Committee Act (FACA) to provide advice and recommendations to EPA on creative approaches to funding environmental programs, projects, and activities.

A meeting of the full board will be held to discuss progress with work products under EFAB's current Strategic Action Agenda and develop an action agenda to direct the Board's ongoing and new activities through FY 2010.

Environmental Finance topics expected to be discussed include: Financial Assurance Mechanisms (Commercial Insurance & Cost Estimation); Financial Assurance and CO2 Underground Injection Control/ Carbon Capture and Sequestration; Water Loss Reduction (''Leaky Pipes''); Innovative Financing Tools, and State Revolving Fund Investment Options.

This meeting is open to the public, however, seating is limited. All members of the public who wish to attend the meeting must register in advance, no later than Monday, July 27, 2009.

DATES: Full Board Meeting is scheduled for August 10, 2009 from 1 p.m.–5 p.m. and August 11, 2009 from 8:30 a.m.–5 p.m.

ADDRESSES: Omni San Francisco Hotel, 500 California Street, San Francisco, CA 94104.

Registration and Information Contact: To register for this meeting or get further information, please contact Sandra Keys, U.S. EPA, at (202) 564–4999 or *keys.sandra@epa.gov.* For information on access or services for individuals with disabilities, please contact Sandra Keys. To request accommodations for a disability, contact Sandra Keys at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: June 4, 2009.

Joshua Baylson,

Acting Deputy Chief Financial Officer, Office of the Chief Financial Officer.

[FR Doc. E9–13731 Filed 6–10–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8917–1]

Proposed CERCLA Section 122(h) Ability-to-Pay Settlement Relating to the Crumb Trailer Park Superfund Site, Village of West Winfield, Herkimer County, NY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region 2, of a proposed settlement agreement pursuant to Section 122(h) of CERCLA, 42 U.S.C. 9622(h), in accordance with EPA ''ability-to-pay'' policies, with Crumb's Trailer Park, LLC (the ''Settling Party''), a New York limited liability corporation which is a potentially responsible party, pursuant to CERCLA, for a removal response action conducted by EPA at the Crumb Trailer Park Superfund Site (''Site'') in the Village of West Winfield, Herkimer County, New York. The Site includes a 2.6-acre parcel of real property that had been occupied as a mobile home facility. The removal response action included the placement of a soil cover over contaminated soils at the Site, the imposition of institutional controls to prohibit residential use of the Site and the relocation, pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*), of the residents of the mobile home facility at the Site to an adjacent mobile home facility on property owned by the Settling Party. EPA has estimated the value of the settlement at $132,600. Pursuant to the settlement, the Settling Party will lease to the relocated residents at their existing rents for at least forty-two (42) months, will impose institutional controls at the Site property to prohibit residential use of that property and will perform specified post-removal Site controls. The settlement includes a covenant by EPA not to sue nor to take administrative action against the Settling Party pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, with regard to the Site. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region 2 offices, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before July 13, 2009.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region 2 offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Crumb Trailer Park Superfund Site, Village of West Winfield, Herkimer County, Index No. CERCLA–02–2009–2004. To request a copy of the proposed settlement agreement, please contact the EPA employee identified below.

FOR FURTHER INFORMATION CONTACT: Michael A. Mintzer, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York 10007–1866. *Telephone:* 212–637–3168.

Dated: May 27, 2009.

John E. LaPadula,

Acting Director, Emergency and Remedial Response, Division, Region 2.

[FR Doc. E9–13729 Filed 6–10–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8917–2]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (CAA or ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit filed by Association of Irritated Residents in the United States District Court for the Northern District of California: *Association of Irritated Residents* v. *EPA,* No. 08–cv–05650 CW (N.D. Cal.). Plaintiff filed a deadline suit to compel the Administrator to take action under section 110(k) of the Act on two specific revisions to the state implementation plan (SIP) submitted by the California Air Resources Board on behalf of the San Joaquin Valley Unified Air Pollution Control District (''District''). The two SIP revisions include Rule 3170, which provides for the payment of fees by certain sources when the District fails to attain certain air quality standards by a specified date and Rule 4570, which is intended to reduce emissions from volatile organic compounds on certain confined animal facilities located in the District. Under the terms of the proposed consent decree, the parties agree that the Rule

4570 claim is moot and warrants dismissal with prejudice in light of the state court ruling setting aside the District's adoption of Rule 4570. In addition, the proposed consent decree establishes deadlines for EPA to take action on Rule 3170.

DATES: Written comments on the proposed consent decree must be received by *July 13, 2009.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0376, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Jan Tierney, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* (202) 564–5598; fax number (202) 564–5603; *e-mail address: tierney.jan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit seeking to compel action by EPA under section 110(k) of the CAA on the following two SIP revisions submitted by the California Air Resources Board on behalf of the San Joaquin Valley Unified Air Pollution Control District (''District''). The two SIP revisions include Rule 3170, which provides for the payment of fees by certain sources when the District fails to attain certain air quality standards by a specified date and Rule 4570, which is intended to reduce emissions from volatile organic compounds on certain confined animal facilities located in the District. On January 22, 2009, the Superior Court of California, upon remand from the Court of Appeals for the State of California, in *Association of Irritated Residents* v. *San Joaquin Valley Unified Air Pollution Control District,* 168 Cal. App. 4th 535 (Cal. App. 5 Dist. 2008) entered a judgment and writ of mandate which was amended on March 12, 2009, declaring that the District failed to perform an adequate assessment of Rule 4570's impact on the public health before its adoption as required by California Health and Safety Code section 40724.6(e)(2). The court ordered the District to perform the public health assessment and to set aside the adoption of Rule 4750 pending that assessment. Under the terms of the proposed consent decree, the parties agree that the claim regarding Rule 4570 is moot and warrants dismissal with prejudice.

In addition, the proposed consent decree provides that EPA will sign for publication in the **Federal Register** notice of the Agency's proposed action pursuant to CAA section 110(k) on Rule 3170 by June 30, 2009. EPA will sign notice of the Agency's final action pursuant to CAA section 110(k) on Rule 3170 by November 13, 2009. If EPA fulfills its obligations, Plaintiff has agreed to dismiss this suit with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2009–0376) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: June 5, 2009.

Sara Schneeberg,

Acting Associate General Counsel.

[FR Doc. E9–13730 Filed 6–10–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 24, 2009.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Benjamin W. Lindsey, and Benjamin W. Lindsey, Jr., both of Lenox, Georgia; to acquire voting shares of Robinson Bancshares, Inc., and thereby indirectly acquire voting shares of Bank of Lenox, both of Lenox, Georgia.

B. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. The Dorothy F. Baggerly Grantor Retained Annuity Trust, Steve Baggerly as Trustee, both of Guymon, Oklahoma; to become part of the family group acting in concert to acquire voting shares of Panhandle Bancshares, Inc., and thereby indirectly acquire voting shares of Bank of the Panhandle, both in Guymon, Oklahoma.

Board of Governors of the Federal Reserve System, June 5, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–13610 Filed 6–10–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 26, 2009.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. H.J. Merritt, Ruth D. Merritt, and Melanie Williams, all of Colquitt, Georgia, and Marianne Melton, Damascus, Georgia; to retain voting shares of PeoplesSouth BancShares, Inc., and thereby indirectly acquire voting shares of PeoplesSouth Bank, both of Colquitt, Georgia.

Board of Governors of the Federal Reserve System, June 8, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–13740 Filed 6–10–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The 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 July 6, 2009.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Pacific International Bancorp, Seattle, Washington; to acquire up to 9.9 percent of the voting shares of Center Financial Corporation and thereby indirectly acquire voting shares of Center Bank, both of Los Angeles, California.

Board of Governors of the Federal Reserve System, June 8, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–13739 Filed 6–10–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The 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 July 6, 2009.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Tompkins Financial Corporation, Ithaca, New York; to acquire 6.85 percent of the voting shares of Darien Rowayton Bank, Darien, Connecticut.

B. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. CBM Florida Holding Company, Milan, New York; to become a bank holding company by acquiring 51 percent of the voting shares of Community Bank of Manatee, Bradenton, Florida.

Board of Governors of the Federal Reserve System, June 5, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–13611 Filed 6–10–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011275–027.

Title: Australia and New Zealand/United States Discussion Agreement.

Parties: ANL Singapore PTE LTD.; Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft KG; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add A.P. Moller-Maersk A/S trading under the name of Maersk Line as a party to the agreement.

Agreement No.: 011741–013.

Title: U.S. Pacific Coast-Oceania Agreement.

Parties: ANL Singapore PTE Ltd.; A.P. Moller-Maersk A/S; CMA CGM S.A.; Hamburg-Süd; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would permanently terminate the PSW–2 string from the agreement, revise allocations on the two remaining strings, and add language reflecting the payment of liquidated damages.

Agreement No.: 011794–010.

Title: COSCON/KL/YMUK/Hanjin/Senator Worldwide Slot Allocation & Sailing Agreement.

Parties: COSCO Container Lines Company, Limited; Kawasaki Kisen Kaisha, Ltd.; Yangming (UK) Ltd.; Hanjin Shipping Co., Ltd.; and Senator Lines GmbH.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 555 West Fifth Street, 46th Floor; Los Angeles, CA 90013.

Synopsis: The amendment would delete Senator Lines GmbH as a party to the agreement, update references to EU law, and delete obsolete terms in the agreement.

Agreement No.: 011942–003.

Title: CMA–CGM/CSCL Cross Space Charter, Sailing and Cooperative Working Agreement—Far East/US Gulf Loop, PEX2/PEX3/AAE2 Service.

Parties: CMA–CGM, S.A.; China Shipping Container Lines Co., Ltd.; and China Shipping Container Lines (Hong Kong) Co., Ltd.

Filing Party: Draughn B. Arbona, Esq.; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The amendment updates services provided under the agreement.

Agreement No.: 012069.

Title: CSCL/ELJSA Slot Exchange Agreement.

Parties: China Shipping Container Lines Co., Ltd.; China Shipping Container Lines (Hong Kong) Co. Ltd.; and Evergreen Line Joint Service Agreement.

Filing Party: Tara L. Leiter, Esq.; Blank Rome, LLP; Watergate; 600 New Hampshire Avenue, NW.; Washington, DC 20037.

Synopsis: The agreement authorizes the parties to exchange container slots in the trade between U.S. Pacific Coast ports and ports in China, Hong Kong, South Korea, and Taiwan.

Agreement No.: 012070.

Title: CSCL/ELJSA Vessel Sharing Agreement-Asia and Mexico, U.S. East Coast Service.

Parties: China Shipping Container Lines Co., Ltd.; China Shipping Container Lines (Hong Kong) Co., Ltd.; and Evergreen Lines Joint Service Agreement.

Filing Party: Tara L. Leiter, Esq.; Blank Rome, LLP; Watergate; 600 New Hampshire Avenue, NW.; Washington, DC 20037.

Synopsis: The agreement authorizes the parties to share vessel space between United States Atlantic Coast ports and ports in Asia and Mexico.

Agreement No.: 200163–003.

Title: Gulf Seaports Marine Terminal Conference.

Parties: Board of Commissioners of the Port of New Orleans; Lake Charles Harbor and Terminal District; Port of Greater Baton Rouge; Orange County Navigation and Port District; Mississippi State Port Authority; Port of Beaumont Navigation District of Jefferson County, Texas; Port of Houston Authority of Harris County, Texas; Board of Trustees of the Galveston Wharves; Alabama State Port Authority; Port of South Louisiana; Brownsville Navigation

District; Port of Port Arthur Navigation District of Jefferson County, Texas; Tampa Port Authority; Port of Corpus Christi Authority of Nueces County, Texas; Panama City Port Authority; Port of Pensacola; Port Freeport; Jackson County Port Authority; Manatee Port Authority; St. Bernard Port, Harbor and Terminal District; and Plaquemines Port, Harbor and Terminal District.

Filing Party: Allen Moeller, Chairman; Port of Pascagoula; 3033 Pascagoula Street; Pascagoula, MS 39567.

Synopsis: The amendment updates agreement language and membership list.

Agreement No.: 201202.

Title: Oakland MTO Agreement.

Parties: Eagle Marine Services, Ltd.; Seaside Transportation Service LLC; SSA Terminals (Oakland), LLC; Total Terminals International, LLC; Transbay Container Terminal, Inc.; and Trapac, Inc.

Filing Party: David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The agreement would authorize the parties to discuss, exchange information, and reach agreement regarding various matters pertaining to their operations at the Port of Oakland.

Dated: June 5, 2009.

By Order of the Federal Maritime Commission.

Tanga S. FitzGibbon,

Assistant Secretary.

[FR Doc. E9–13633 Filed 6–10–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to conduct two exploratory studies on consumer susceptibility to fraudulent and deceptive marketing. This research will be conducted to further the FTC's mission of protecting consumers from unfair and deceptive marketing. Before gathering this information, the FTC is seeking public comments on its proposed research. This notice seeks comments on the Fraud Susceptibility Experiment Study, one of the two studies. The Commission is also seeking comments on the other study in a separate **Federal Register** notice. Comments will be considered before the FTC submits a request for Office of Management and Budget (OMB) review under the Paperwork Reduction Act (PRA).

DATES: Comments must be submitted on or before August 10, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Fraud Susceptibility Experiment, FTC File No. P095501'' to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-fraudexperiment*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-fraudexperiment*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Fraud Susceptibility Experiment, FTC File No. P095501''reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Patrick McAlvanah, Economist, Bureau of Economics, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Mail Stop NJ-4136, Washington, DC 20580. Telephone: (202) 326-2974; e-mail: *fraudexperiment@ftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

As part of its consumer protection mission, the FTC has brought hundreds of cases targeting fraud, and has committed significant resources to educational initiatives designed to protect consumers. The Commission

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

hosted a Fraud Forum [2] on February 25-26, 2009 to examine fraud in the market place. The Commission has also conducted telephone surveys in 2003 and 2005 designed to measure the proportion of the U.S. adult population that has fallen victim to various consumer frauds.[3] Despite this, surprisingly little is known about what determines consumers' susceptibility to fraud. For example, the 2003 and 2005 FTC Consumer Fraud surveys found that education was not a significant predictor of fraud victimization. Understanding when and why people are vulnerable to fraud would better inform the FTC's substantial, ongoing efforts to fight fraud through law enforcement and consumer education. Any additional insights into how and why people fall victim to fraud could also help improve any future fraud surveys the Commission may undertake. The study announced in this notice is a preliminary and exploratory step toward facilitating those efforts. The study is not intended to lead to enforcement actions; rather, study results may aid the FTC's efforts to better target its enforcement actions and consumer education initiatives, and improve future fraud surveys.

Economic and psychological experiments have identified several decision-making biases, such as impulsivity, over-confidence, over-optimism, and loss aversion, that can cause inaccurate assessments of the risks, costs, and benefits of various choices. FTC staff proposes to conduct an economic laboratory experiment to study whether these types of decision biases are related to consumer susceptibility to fraudulent or deceptive marketing claims. Staff intends to study consumers' assessment of potentially deceptive advertisements, in addition to their assessment of non-deceptive advertisements. Staff seeks to understand which characteristics of individuals and advertisements predict consumers' ability to differentiate between apparently fraudulent materials and apparently legitimate materials.

II. Paperwork Reduction Act

As required by Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3501-21, the FTC is providing this opportunity for public comment before requesting that OMB approve the study. Under the PRA, federal agencies must obtain OMB approval for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c).

Specifically, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting information on those who 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. All comments should be filed as prescribed in the **ADDRESS** section above, and must be received on or before August 10, 2009.

A. Description of the Collection of Information and Proposed Use

The FTC proposes to conduct an experiment in a university's economics laboratory with 250 subjects drawn from the campus community.[4] A sampling of 250 persons enables random assignment of subjects into different experimental conditions of sufficient size for analytic power. The sample is not intended to be nationally representative, but will still provide useful insights into consumer susceptibility to fraud.

The study will gauge consumer attitudes towards legitimate and potentially fraudulent or deceptive advertisements. Staff plans to ask subjects to examine advertisements or other descriptions of fraudulent products and report their opinion about the credibility of product claims. Staff also plans to ask participants to rate the credibility of advertisements for apparently legitimate products to gauge how participants distinguish between apparently fraudulent product claims and legitimate product claims. Staff plans to measure consumer knowledge, risk attitudes, impulsivity, and skepticism using existing methods from economics and psychology research. Staff may measure consumer knowledge using consumer literacy and financial literacy surveys [5] in order to test subjects' marketplace understanding and sophistication. Staff seeks to determine if people with such knowledge deem fraudulent advertisements to be less credible than legitimate advertisements. Staff plans to measure subjects' risk attitudes through a series of choices between smaller certain amounts of money or larger risky amounts.[6] Staff may describe the product to some subjects as creating benefits, while presenting to other subjects nearly identical information depicted as a reduction in harm. Staff would then test whether risk-averse and loss-averse subjects are particularly susceptible to fraudulent claims framed as opportunities to escape losses.[7] Staff may measure subjects' impulsivity through a series of choices between smaller monetary amounts received sooner or larger amounts but received later.[8] Staff would then test to see if impulsive subjects are more susceptible to fraudulent claims. Staff plans to elicit measures of optimism [9] and skepticism [10] to determine their roles in deeming advertisements, both of fraudulent and legitimate products, as credible. In addition, staff anticipates collecting demographic information from the surveyed subjects. The FTC has contracted with the faculty of a university-run experimental economics

[2] Information on the Fraud Forum is available at: (*http://www.ftc.gov/bcp/workshops/fraudforum/index.shtm*).

[3] The Commission has published two staff reports describing the results of these surveys — *Consumer Fraud in the United States: An FTC Survey* (published August 2004 and available at (*http://www.ftc.gov/reports/consumerfraud/040805confraudrpt.pdf*)) and *Consumer Fraud in the United States: The Second FTC Survey* (published in October 2007 and available at (*http://www.ftc.gov/opa/2007/10/fraud.pdf*).

[4] Staff has contracted with a faculty member of George Mason University who will recruit the study subjects and oversee and administer the experiment.

[5] *See* Annamaria Lusardi, *Financial Literacy: An Essential Tool for Informed Consumer Choice?*, Working Paper, Joint Center for Housing Studies, Harvard University (2008), for examples of financial literacy questions similar to those the FTC is considering.

[6] Staff anticipates using standard risk aversion measurement methodologies akin to those in Charles Holt and Susan Laury, *Risk Aversion and Incentive Effects*, *American Economic Review*, December 2002, 1644-1655.

[7] Several academic articles report that people are more willing to take identical risks over monetary gambles if the risk is presented as an opportunity to escape losses rather than as a chance to gain. Our ''framing'' methodologies may emulate those in Amos Tversky and Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice*, Science, Vol. 211, No. 4481 (Jan. 30, 1981), 453-458.

[8] Staff anticipates using methodology similar to that in Stephan Meier and Charles Sprenger, *Impatience and Credit Behavior: Evidence from a Field Experiment*, Working Papers 07-3, Federal Reserve Bank of Boston (2007).

[9] Staff plans to use standard questions similar to those in Manju Puri and David Robinson, *Optimism and Economic Choice*, *Journal of Financial Economics*, 2007, Vol. 86, 71-99.

[10] Staff may use the scale developed in Carl Obermiller and Eric Spangenberg, *Development of a Scale to Measure Consumer Skepticism toward Advertising*, *Journal of Consumer Psychology*, Vol. 7, No. 2, 1998, 159-186.

laboratory to locate and recruit subjects and conduct the experiments.

Staff will pre-test the experimental procedures with 9 subjects to ensure that the instructions provided to participants are clear and comprehensible, and that the experimental procedures are workable. Pre-test subjects will be drawn from FTC staff not involved with the study.

B. Estimated Hours Burden

The FTC plans to seek information from up to 250 respondents for approximately 90 minutes each; thus, approximately 375 hours in total. Pre-testing hours are not included in the estimated burden because the pre-test subjects will be FTC employees.

C. Estimated Costs Burden

The cost per respondent should be negligible. Participation will not require start-up, capital, or labor expenditures by respondents. The above-noted contractor will recruit the student and community member subjects to participate in this study; subjects will be asked to respond to an initial recruitment email to participate voluntarily. Staff will compensate all subjects for their participation in the 90-minute study. Subjects will receive approximately $8 as a show-up fee; in addition, they will be compensated according to their choices for some of the tasks. Staff expects subjects to earn on average $22 for these tasks, with a range of approximately $12-$32, based on expectations of possible experimental outcomes. As such, subjects will receive approximately $20-$40 for the 90-minute study.

By direction of the Commission.

Donald S. Clark,

Secretary

[FR Doc. E9–13642 Filed 6–10–09: 8:45 am]

[BILLING CODE 6750–01–S]

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to conduct two exploratory studies on consumer susceptibility to fraudulent and deceptive marketing. This research will be conducted to further the FTC's mission of protecting consumers from unfair and deceptive marketing. Before gathering this information, the FTC is seeking public comments on its proposed research. This notice seeks comments on the Fraud Susceptibility Internet Panel Study, one of the two studies. The Commission is also seeking comments on the other study in a separate **Federal Register** notice. Comments will be considered before the FTC submits a request for Office of Management and Budget (OMB) review under the Paperwork Reduction Act (PRA).

DATES: Comments must be submitted on or before August 10, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Fraud Susceptibility Internet Panel Study, FTC File No. P095500'' to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-fraudinternetpanel*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-fraudinternetpanel*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the reference Fraud Susceptibility Internet Panel Study, FTC File No. P095500'' both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Keith B. Anderson, Economist, Bureau of Economics, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Mail Stop NJ-4136, Washington, DC 20580. Telephone: (202) 326-3428; e-mail: *fraudinternetpanel@ftc.gov*.

SUPPLEMENTARY INFORMATION:

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

I. Background

As part of its consumer protection mission, the FTC has brought hundreds of cases targeting fraud, and has committed significant resources to educational initiatives designed to protect consumers from fraud. The Commission hosted a Fraud Forum[2] on February 25-26, 2009 to examine fraud in the market place. The Commission also conducted telephone surveys in 2003 and 2005 designed to measure the proportion of the U.S. adult population that has fallen victim to various consumer frauds.[3] Despite this, surprisingly little is known about what determines consumers' susceptibility to fraud. For example, the 2003 and 2005 FTC Consumer Fraud surveys found that education was not a significant predictor of fraud victimization. Understanding when and why people are vulnerable to fraud would better inform the FTC's substantial, ongoing efforts to fight fraud through law enforcement and consumer education. Any additional insights into how and why people fall victim to fraud could also help improve any future fraud surveys the Commission may undertake. The study being announced in this notice is a preliminary and exploratory step toward facilitating those efforts. The study is not intended to lead to enforcement actions; rather, study results may aid the FTC's efforts to better target its enforcement actions and consumer education initiatives and improve future fraud surveys.

Economic and psychological experiments have identified several decision-making biases, such as impulsivity, over-confidence, over-optimism, and loss aversion, that can cause inaccurate assessments of the risks, costs, and benefits of various choices. In the study announced in this notice, FTC staff proposes to conduct a survey using an Internet survey protocol to examine whether susceptibility to consumer fraud is related to these types of decision biases. Study results also might shed light on whether consumers with certain behavioral traits are more or less likely to be skeptical about advertisements and whether there is a relationship between ad skepticism and the likelihood of having been a victim of fraud.

II. Paperwork Reduction Act

As required by Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3501-21, the FTC is providing this opportunity for public comment before requesting that OMB approve the study. Under the PRA, federal agencies must obtain OMB approval for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c).

Specifically, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting information on those who 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. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before August 10, 2009.

A. Description of the Collection of Information and Proposed Use

The FTC proposes to conduct a survey which will include approximately 5,000 interviews with individuals representing a large spectrum of the U.S. adult population. The survey will be conducted over the Internet, and participants will be drawn from an Internet survey panel maintained by a commercial survey firm that operates such panels. While the sample will not be nationally representative, it will still provide useful insights into consumer susceptibility to fraud.[4]

The study will examine whether participants have been the victim of certain forms of consumer fraud in the recent past. In addition, staff may attempt to measure consumer skepticism about advertisements, as well as consumer knowledge, risk attitudes, and impulsivity using existing methods from economics and psychological research. Staff may measure consumer knowledge using consumer literacy and financial literacy surveys[5] in order to test subjects' marketplace understanding and sophistication. Staff seeks to determine if the presence of such knowledge and behavioral characteristics affects the likelihood a person will have been a victim of fraud.

The study will measure subjects' risk attitudes through a series of choices between smaller certain amounts of money and larger risky amounts.[6] The study's design may describe the product to some subjects as creating benefits, while presenting to other subjects nearly identical information depicted as a reduction in harm. Staff would then test whether fraud victims tend to be less likely to be risk-averse and/or loss-averse than non-victims. Staff also may seek to determine whether risk-averse and/or loss-averse subjects are particularly susceptible to fraudulent claims framed as opportunities to escape losses.[7] The study may measure subjects' impulsivity through a series of choices between smaller monetary amounts received sooner and larger amounts received later.[8] Staff then would test to see if impulsive subjects are more likely to have been victims of fraud and/or are more susceptible to fraudulent claims. The study also may measure participants' optimism[9] and

[2] Information on the Fraud Forum is available at: (*http://www.ftc.gov/bcp/workshops/fraudforum/index.shtm*).

[3] The Commission has published two staff reports describing the results of these surveys—*Consumer Fraud in the United States: An FTC Survey* (published August 2004 and available at (*http://www.ftc.gov/reports/consumerfraud/040805confraudrpt.pdf*) and *Consumer Fraud in the United States: The Second FTC Survey* (published in October 2007 and available at (*http://www.ftc.gov/opa/2007/10/fraud.pdf*).

[4] The FTC recognizes, of course, that a sample drawn from an Internet panel does not represent a random sample of the U.S. population. However, the purpose of this study is to compare the experiences and attitudes of people with different characteristics rather than to estimate the percentage or number of U.S. consumers who have particular characteristics or experiences. As such, using an Internet panel should not pose significant problems.

[5] *See* Annamaria Lusardi, *Financial Literacy: An Essential Tool for Informed Consumer Choice?*, Working Paper, Joint Center for Housing Studies, Harvard University (2008), for examples of financial literacy questions similar to those the FTC is considering.

[6] Staff anticipates using standard risk aversion measurement methodologies akin to those in Charles Holt and Susan Laury, *Risk Aversion and Incentive Effects*, *American Economic Review*, December 2002, 1644-1655. Some changes may be made to the questions and question sequence since participants in this study will not receive actual cash payments reflecting the results of their decisions.

[7] Several academic articles report that people are more willing to take identical risks over monetary gambles if the risk is presented as an opportunity to escape losses rather than as a chance to gain. Our ''framing'' methodologies may emulate those in Amos Tversky and Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice*, Science, Vol. 211, No. 4481 (Jan. 30, 1981), 453-458.

[8] Staff anticipates using methodology similar to that in Stephan Meier and Charles Sprenger, *Impatience and Credit Behavior: Evidence from a Field Experiment*, Working Papers 07-3, Federal Reserve Bank of Boston (2007).

[9] Staff plans to use standard questions similar to those in Manju Puri and David Robinson, *Optimism*

Continued

skepticism [10] to determine how these characteristics affect the likelihood that someone becomes a victim of consumer fraud. In addition, staff anticipates collecting demographic information from the surveyed subjects.

B. Estimated Burden Hours

The FTC plans to seek information from approximately 5,000 respondents using a questionnaire that should take no more than 30 minutes to complete. Prior to that, a pre-test of up to 100 participants will be conducted. Allowing for an extra two minutes for questions unique to the pretest, the pretest should total no more than 32 minutes to complete. Accordingly, the information collection burden of the Internet Panel study should total no more than 2,553 hours. Finally, the cost per respondent should be negligible. Participants will be compensated for their participation in the study using the contractor's standard method of rewarding members of its Internet panel for survey participation. Participation is voluntary and will not require start-up, capital, or labor expenditures by respondents.

By direction of the Commission.

Donald S. Clark,

Secretary

[FR Doc. E9–13643 Filed 6–10–09: 8:45 am]

[BILLING CODE 6750–01–S]

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–00xx]

General Services Administration Acquisition Regulation; Submission for OMB Review; GSA Mentor-Protégé Program

AGENCIES: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice of request for a new information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection concerning the GSA Mentor-Protégé Program, General Services Administration Acquisition Manual (GSAM). A request for public comments was published in the **Federal Register** at 73 FR 32669, June 10, 2008. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary; 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 July 13, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this new information collection, including suggestions for reducing this burden to: General Services Administration (GSA) OMB Desk Officer, Room 10236, NEOB, Washington, DC 20503, and send a copy to the Regulatory Secretariat (VPR), 1800 F Street NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–00xx, GSA Mentor-Protégé Program, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Cundiff, Procurement Analyst, Contract Policy Division, GSA, (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA Mentor-Protégé Program is designed to encourage GSA prime contractors to assist small businesses, small disadvantaged businesses, women-owned small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, and HUBZone small businesses in enhancing their capabilities to perform GSA contracts and subcontracts, foster the establishment of long-term business relationships between these small business entities and GSA prime contractors, and increase the overall number of small business entities that receive GSA contract and subcontract awards.

B. Annual Reporting Burden

Respondents: 300.
Responses per Respondent: 4.
Annual Responses: 1200.
Hours per Response: 3.
Total Burden Hours: 3600.

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. 3090–00xx, GSA Mentor-Protégé Program, in all correspondence.

Dated: June 5, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–13738 Filed 6–10–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0069]

Federal Acquisition Regulation; Information Collection; Indirect Cost Rates

Agencies: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding a renewal 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) Regulatory 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 Indirect Cost Rates.

Public comments are particularly invited on: Whether this collection of information is necessary; 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 August 10, 2009.

and Economic Choice, Journal of Financial Economics, 2007, Vol. 86, 71-99.

[10] Staff may use the scale developed in Carl Obermiller and Eric Spangenberg, *Development of a Scale to Measure Consumer Skepticism toward Advertising, Journal of Consumer Psychology*, Vol. 7, No. 2, 1998, 159-186.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0069, Indirect Cost Rates, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Cromer, Procurement Analyst, Contract Policy Division, GSA, (202) 501–1448.

A. Purpose

The contractor's proposal of final indirect cost rates is necessary for the establishment of rates used to reimburse the contractor for the costs of performing under the contract. The supporting cost data are the cost accounting information normally prepared by organizations under sound management and accounting practices.

The proposal and supporting data is used by the contracting official and auditor to verify and analyze the indirect costs and to determine the final indirect cost rates or to prepare the Government negotiating position if negotiation of the rates is required under the contract terms.

B. Annual Reporting Burden

Respondents: 3,000.

Responses per Respondent: 1.

Annual Responses: 3,000.

Hours per Response: 2,188.

Total Burden Hours: 6,564,000.

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. 9000–0069, Indirect Cost Rates, in all correspondence.

Dated: June 5, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–13733 Filed 6–10–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0070]

Federal Acquisition Regulation; Information Collection; Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding the reinstatement of a previously 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) Regulatory 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 Payments.

Public comments are particularly invited on: Whether this collection of information is necessary; 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 August 10, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0070, Payments, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Chambers, Procurement Analyst, Contract Policy Division, GSA, (202) 501–3221.

A. Purpose

Firms performing under Federal contracts must provide adequate documentation to support requests for payment under these contracts. The documentation may range from a simple invoice to detailed cost data. The information is usually submitted once, at the end of the contract period or upon delivery of the supplies, but could be submitted more often depending on the payment schedule established under the contract (*see* FAR 52.232–1 through 52.232–11). The information is used to determine the proper amount of payments to Federal contractors.

B. Annual Reporting Burden

Respondents: 80,000.
Responses per Respondent: 120.
Annual Responses: 9,600,000.
Hours per Response: .025.
Total Burden Hours: 240,000.
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. 9000–0070, Payments, in all correspondence.

Dated: June 5, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–13735 Filed 6–10–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0108]

Federal Acquisition Regulation; Information Collection; Bankruptcy

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of reinstatement request for an information collection requirement regarding 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, Regulatory Secretariat (VPR) will be submitting to the Office of Management and Budget (OMB) a request to reinstate a previously approved information collection requirement concerning Bankruptcy.

Public comments are particularly invited on: Whether this collection of information is necessary; 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 August 10, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: General Services Administration Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0108, Bankruptcy, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Cromer, Procurement Analyst, Contract Policy Division, GSA, (202) 501–1448.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under statute, contractors may enter into bankruptcy which may have a significant impact on the contractor's ability to perform its Government contract. The Government often does not receive adequate and timely notice of this event. The clause at 52.242–13 requires contractors to notify the contracting officer within 5 days after the contractor enters into bankruptcy.

B. Annual Reporting Burden

Respondents: 1,000.

Responses per Respondent: 1.

Annual Responses: 1,000.

Hours per Response: 1.25.

Total Burden Hours: 1,250.

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. 9000–0108, Bankruptcy, in all correspondence.

Dated: June 5, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–13736 Filed 6–10–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0150]

Federal Acquisition Regulation; Information Collection; Small Disadvantaged Business Procurement Credit Programs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding a renewal 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) Regulatory 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 Small Disadvantaged Business Procurement Credit Programs.

Public comments are particularly invited on: Whether this collection of information is necessary; 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 August 10, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0150, Small Disadvantaged Business Procurement Credit Programs, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Cundiff, Procurement Analyst, Contract Policy Division, GSA, (202) 501–0044.

A. Purpose

This FAR requirement concerning Small Disadvantaged Business Procurement Credit Programs implements the Department of Justice proposal to reform affirmative action in Federal procurement, which was designed to ensure compliance with the constitutional standards established by the Supreme Court. The credits include price evaluation factor targets and certifications.

B. Annual Reporting Burden

Number of Respondents: 7,900.

Responses Per Respondent: 9.11.

Total Responses: 72,000.

Average Burden Hours Per Response: 2.32.

Total Burden Hours: 167,370.

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. 9000–0150, Small Disadvantaged Business Procurement Credit Programs, in all correspondence.

Dated: June 5, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–13734 Filed 6–10–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Disease Prevention and Health Promotion.

ACTION: Notice of meeting.

Authority: 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The Committee is governed by the provision of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The U.S. Department of Health and Human Services (HHS) announces the next Federal advisory committee meeting regarding the national health promotion and disease prevention objectives for 2020. This meeting will be open to the public and will be held online via WebEx software.

The Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020 will address efforts to develop the nation's health promotion and disease prevention objectives and strategies to improve the health status and reduce health risks for Americans by the year 2020. The Committee will provide to the Secretary of Health and Human Services advice and consultation for developing and implementing the next iteration of national health promotion and disease prevention goals and objectives and provide recommendations for initiatives to occur during the initial implementation phase of the goals and objectives. HHS will use the recommendations to inform the development of the national health promotion and disease prevention objectives for 2020 and the process for implementing the objectives. The intent is to develop and launch objectives designed to improve the health status and reduce health risks for Americans by the year 2020.

DATES: The Committee will meet on July 10, 2009 from 2 p.m. to 4 p.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held online, via WebEx software. For detailed instructions about how to make sure that your windows computer and browser is set up for WebEx, please visit the ''Secretary's Advisory Committee'' Web page of the Healthy People Web site at: *http://www.healthypeople.gov/hp2020/advisory/default.asp*

FOR FURTHER INFORMATION CONTACT: Emmeline Ochiai, Designated Federal Officer, Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020, U.S. Department of Health and Human Services, Office of Public Health and Science, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Room LL–100, Rockville, MD 20852, (240) 453–8259 (telephone), (240) 453–8281 (fax). Additional information is available on the Internet at *http://www.healthypeople.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: Every 10 years, through the Healthy People initiative, HHS leverages scientific insights and lessons from the past decade, along with the new knowledge of current data, trends, and innovations to develop the next iteration of national health promotion and disease prevention objectives. Healthy People provides science-based, 10-year national objectives for promoting health and preventing disease. Since 1979, Healthy People has set and monitored national health objectives to meet a broad range of health needs, encourage collaborations across sectors, guide individuals toward making informed health decisions, and measure the impact of our prevention and health promotion activities. Healthy People 2020 will reflect assessments of major risks to health and wellness, changing public health priorities, and emerging issues related to our nation's health preparedness and prevention.

Public Participation at Meeting: Members of the public are invited to listen to the online Committee meeting. There will be no opportunity for oral public comments during the online Committee meeting. Written comments, however, are welcome throughout the development process of the national health promotion and disease prevention objectives for 2020. They can be submitted through the Healthy People Web site at: *http://www.healthypeople.gov/hp2020/comments/* or they can be e-mailed to *HP2020@hhs.gov.* Please note that the public comment Web site will be updated throughout the Healthy People development process, so people should return to the site frequently and provide their input.

To listen to the Committee meeting, individuals must pre-register to attend at the Healthy People Web site located at *http://www.healthypeople.gov.* Participation in the meeting is limited. Registrations will be accepted until maximum WebEx capacity is reached and must be completed by 9 a.m. EDT on July 10, 2009. A waiting list will be maintained should registrations exceed WebEx capacity. Individuals on the waiting list will be contacted as additional space for the meeting becomes available.

Registration questions may be directed to Hilary Scherer at *HP2020@norc.org* (e-mail), (301) 634–9374 (phone) or (301) 634–9301 (fax).

Dated: June 5, 2009.

Penelope Slade-Sawyer,

RADM, USPHS, Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).

[FR Doc. E9–13635 Filed 6–10–09; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Native Employment Works (NEW) Program Plan Guidance and Report Requirements.

OMB No.: 0970–0174.

Description: The Native Employment Works (NEW) program plan is the application for NEW program funding. As approved by the Department of Health and Human Services (HHS), it documents how the grantee will carry out its NEW program. The NEW program plan guidance provides instructions for preparing a NEW program plan and explains the process for plan submission every third year. The NEW program report provides information on the activities and accomplishments of grantees' NEW programs. The NEW program report and instructions specify the program data that NEW grantees report annually.

Respondents: Federally recognized Indian Tribes and Tribal organizations that are NEW program grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
NEW program plan guidance	26	1	29	754
NEW program report	48	1	15	720

Estimated Total Annual Burden Hours: 1,474.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing

to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 8, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–13684 Filed 6–10–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0572]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Implementation of the Animal Generic Drug User Fee Act of 2008; User Fee Cover Sheet Form FDA 3728

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by July 13, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0632. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Implementation of the Animal Generic Drug User Fee Act of 2008; User Fee Cover Sheet Form FDA 3728—21 U.S.C. 379j-21 (OMB Control Number 0910–0632)—Extension

This collection of information is currently approved under the emergency processing provisions of the PRA for 180 days. FDA is now seeking a 3-year clearance.

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. Because the submission of user fees concurrently with applications is required, the review of an application cannot begin until the fee is submitted. Form FDA 3728, the Animal Generic Drug User Fee Cover Sheet, is designed to provide the minimum necessary information in order to do the following: (1) Determine whether a fee is required for review of an application, (2) determine the amount of fee required, and (3) account for and track user fees.

In the **Federal Register** of March 11, 2009 (74 FR 10596), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 U.S.C. 379j-21	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Form FDA 3728	20	2	40	.08	3.2

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Respondents to this collection of information are generic animal drug applicants. Based on FDA's database system, there are an estimated 20 sponsors of new animal drugs potentially subject to the Animal Generic Drug User Fee Act of 2008.

Dated: June 3, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–13716 Filed 6–10–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Performance Progress Report.

OMB No.: 0970–0334.

Description: The Performance Progress Report (SF–PPR) is a set of uniform reporting formats used for standard reporting on performance under grants and cooperative agreements.

In addition to allowing for uniformity of information collection, these formats will support systematic electronic collection and submission of information. These formats will provide interim and final performance progress information as required by OMB Circulars A–102 and 2 CFR part 215.

The SF–PPR consists of a cover page and six optional formats. The cover page contains identifying data elements and a section for a performance narrative. Use of the cover page is required, and programs may require their respondents to submit only this page and/or attach a performance narrative. Alternatively, programs may opt to require the cover page and one or more of the six optional formats: Performance Measures, Program Indicators, Benchmark Evaluations, Table of Activity Results, Activity-Based Expenditures, and Program/Project Management

The SF–PPR has been successfully piloted at the Administration for Children and Families (ACF). All discretionary programs (starting with FY09 awards) are to submit the SF–PPR to the ACF Office of Grants Management. Program offices with expiring data collections are required to migrate to the SF–PPR format. Additionally, a number of program offices have voluntarily migrated their collections to the SF–PPR format in anticipation of government-wide standardization. ACF, with its Online Data Collection tool (OLDC), has provided program offices with the capability to collect SF–PPR data electronically.

ACF and the Grants Center of Excellence (CoE) is sponsoring this collection on behalf of the Grants Policy Committee, other Federal grant-making agencies, and the CoE partners.

CoE Partners are defined as:

Corporation for National and Community Service,
Denali Commission,
Department of State,
DHHS/Administration on Aging,
DHHS/Centers for Medicare Services,
DHHS/Health Research and Services Administration,
DHHS/Indian Health Services,
DHHS/Office of Public Health Services,
DOT/Federal Air Administration,
DOT/Federal Highway Administration,
DOT/Federal Motor Carrier Safety Administration,
DOT/Federal Railroad Administration,
DOT/Federal Transport Administration,
DOT/Pipeline and Hazardous Materials Safety Administration,
Environmental Protection Agency,
Institute of Museum and Library Services,
Social Security Administration,
Department of Treasury,
USDA/Food Safety and Inspection Service,
Veterans Administration.

The revised burden estimates are based on grant projects and awards for ACF and its CoE partners for FY2008 as reported by internal ACF reporting systems and *USASpending.gov*.

Respondents: Federal government grantees

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Performance Progress Report (SF–PPR)	131,281	1	0.42	55,138.02
Cover Page Continuation (SF–PPR–2)	86	1	0.33	28.38
Performance Measures (SF–PPR–A)	430	1	0.75	322.50
Program Indicators (SF–PPR–B)	8,961	1	3	26,883
Benchmark Evaluations (SF–PPR–C)	248	1	1.50	372
Table of Activity Results (SF–PPR–D)	4,238	1	0.75	3,178.50
Activity Based Expenditures (SF–PPR–E)	2,616	1	0.33	863.28
Program/Project Management (SF–PPR–F)	45	1	0.50	22.50

Estimated Total Annual Burden Hours: 86,808.18

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov*.

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7245, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: June 8, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–13728 Filed 6–10–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0260]

Draft Guidance for Industry: Questions and Answers Regarding the Reportable Food Registry as Established by the Food and Drug Administration Amendments Act of 2007; Availability; Announcement of Further Delay in Implementation of the Food and Drug Administration Amendments Act of 2007

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: Questions and

Answers Regarding the Reportable Food Registry as Established by the Food and Drug Administration Amendments Act of 2007.'' The draft guidance, when finalized, will assist the industry in complying with the Reportable Food Registry requirements prescribed by the Food and Drug Administration Amendments Act of 2007 (FDAAA). FDA is also announcing a further delay in the implementation of the Reportable Food Registry (the Registry) of FDAAA until September 8, 2009, to consider any comments received on the draft guidance and through the agency's planned outreach initiatives, and to allow for further testing of the electronic portal for reportable foods.

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 the draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by July 27, 2009.

ADDRESSES: 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 on the draft guidance to *http://www.regulations.gov*. Submit written requests for single copies of the draft guidance to the Office of Food Defense, Communication and Emergency Response, Center for Food Safety and Applied Nutrition (HFS–005), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Faye Feldstein, Center for Food Safety and Applied Nutrition (HFS–005), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2428.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled ''Guidance for Industry: Questions and Answers Regarding the Reportable Food Registry as Established by the Food and Drug Administration Amendments Act of 2007.'' The draft guidance is intended to assist those parties responsible for complying with the Reportable Food Registry requirements prescribed by FDAAA.

FDA is issuing this draft guidance as a 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 this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Notice of Further Delay in Implementation

On September 27, 2007, the President signed FDAAA into law (Public Law 110–85). Section 1005 of FDAAA amends the Federal Food, Drug, and Cosmetic Act (the act) by creating a new section 417 (21 U.S.C. 350f), among other things. Section 417 of the act requires the Secretary of Health and Human Services to establish within FDA a Reportable Food Registry (the Registry); the Registry is to be established not later than 1 year after the date of enactment (i.e., by September 27, 2008).

To further the development of the Registry, section 417 of the act requires FDA to establish, also within 1 year after the date of enactment (i.e., by September 27, 2008), an electronic portal (the Reportable Food electronic portal) by which instances of reportable food must be submitted to FDA by responsible parties and may be submitted by public health officials.

FDA made the decision that the most efficient and cost effective means to implement the requirements of section 417 of the act relating to the Registry was to utilize the business enterprise system currently under development within the agency: the MedWatch^{Plus} Portal. This would permit the agency to establish an electronic portal through which instances of reportable food may be submitted to the agency. However, FDA recognized that the MedWatch^{Plus} Portal would not be implemented in time to meet the September 27, 2008, deadline for establishing the Reportable Food electronic portal and therefore announced that it was delaying its implementation until spring 2009 (73 FR 30405; May 27, 2008).

The agency now expects the system to be operational on September 8, 2009, and is therefore announcing that the implementation of the requirements of section 417 of the act will be further delayed until September 8, 2009.

In the interim, FDA strongly encourages persons to continue to report instances of adulterated food through existing mechanisms, such as notifying the relevant FDA District office, until such time as the Registry and its associated electronic portal are fully implemented.

III. Paperwork Reduction Act of 1995

This draft guidance document contains a collection of information that requires clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. FDA intends to submit the collection of information to OMB in the near future for emergency processing. At that time, the agency will publish a notice in the **Federal Register** soliciting comments on the collection of information.

The draft guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in question 28 of the guidance have been approved under OMB control no. 0910–0249.

IV. 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. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the draft guidance at *http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/default.htm* or *http://www.regulations.gov*.

Dated: June 5, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–13614 Filed 6–10–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guideline for Prevention of Catheter-Associated Urinary Tract Infections 2008 [Correction]

The notice ''*Draft Guideline for Prevention of Catheter-Associated Urinary Tract Infections 2008,*'' was published in the **Federal Register** on June 3rd, 2009, (Vol. 74 FR No. 105).

This notice is corrected as follows: On page 26704 first column, under **SUMMARY**, the Web site should read: *http://wwwn.cdc.gov/publiccomments/.*

Dated: June 4, 2009.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–13694 Filed 6–10–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences; Initial Review Group Minority Programs Review, Subcommittee B.

Date: July 9–10, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Rebecca H. Johnson, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892. 301–594–2771. *Johnsonrhnigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13757 Filed 6–10–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; MBRS SCORE.

Date: July 9, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN12, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Arthur L. Zachary, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13758 Filed 6–10–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Coordinating Center for Health Promotion (BSC, CCHP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Time and Date: 8:30 a.m.–5 p.m., July 1, 2009.

Place: CDC, 1825 Century Boulevard, NE., Room 1042, Atlanta, Georgia 30345.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: This BSC is charged with providing advice and guidance to the Secretary of Health and Human Services, the Director of CDC, and the Director of CCHP concerning strategies and goals for the programs and research within the National Center on Birth Defects and Developmental Disabilities and the National Center for Chronic Disease Prevention and Health Promotion.

Matters To Be Discussed: The agenda will include a review and discussion of charges to the BSC Work Groups. The Work Group projects include strategic planning and procedures for future external peer review of programs in the National Center on Birth Defects and Developmental Disabilities, and the National Center for Chronic Disease Prevention and Health Promotion. The BSC will also discuss results of its review of the National Center for Chronic Disease Prevention and Health Promotion as an organizational unit at CDC.

Providing Oral or Written Comments: It is the policy of the BSC, CCHP to provide a brief period for oral public comments. In general, each individual or group requesting to make an oral presentation will be limited to a total time of five minutes if time permits.

Contact Person for Additional Information: Karen Steinberg, PhD, Senior Science Officer, Coordinating Center for Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop E–70, Atlanta, Georgia 30341; telephone (404) 498–6700; fax (404) 498–6880; or via e-mail at *Karen.Steinberg@cdc.hhs.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 4, 2009.

Lorenzo Falgiano,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–13692 Filed 6–10–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review Recovery Act Limited Competition: RFA–OD–09–005, Supporting New Faculty Recruitment.

Date: July 10, 2009.

Time: 12:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, NIH 6701 Democracy Blvd, room 672, MSC 4878, Bethesda, MD 20892–4878, 301–594–4809, *mary_kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13676 Filed 6–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI–ARRA Competitive Revisions—Pre-Clinical, Drug Discovery & Imaging.

Date: July 22–23, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel & Conference Center, Bethesda, MD.

Contact Person: Michael B. Small, PhD, Scientific Review Officer, Division of Extramural Activities, National Cancer Institute, National Institutes Of Health, 6116 Executive Blvd., Room 8127, Bethesda, MD 20892–8328, 301–402–0996, *smallm@mail.nih.gov.*

(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; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: June 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13678 Filed 6–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, June 22, 2009, 8 a.m. to June 23, 2009, 6 p.m., Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD, 20814 which was published in the **Federal Register** on March 31, 2009, 74 FR 6014571.

This notice is amended to change this meeting from a two day to a one day meeting ending June 22, 2009 at 6 p.m. The meeting is closed to the public.

Dated: June 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13680 Filed 6–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biology of Development and Aging Integrated Review Group; International and Cooperative Projects—1 Study Section.

Date: June 25, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Manana Sukhareva, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–435–1116, *sukharem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Grant Applications: Immunology.

Date: June 29–30, 2009.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; BTSS Member Conflict.

Date: June 29, 2009.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Roberto J. Matus, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, (301) 435–2204, *matusr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Quick Trials on Imaging and Image-Guided Intervention.

Date: June 30, 2009.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Firrell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Discovery ARRA CR.

Date: June 30, 2009.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lawrence Ka-Yun Ng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–435–1719.

Name of Committee: Center for Scientific Review Special Emphasis Panel; OBT Member Applications.

Date: July 1, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nywana Sizemore, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cardiovascular Sciences Small Business Activities.

Date: July 6–7, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Mark Hopkins San Francisco, 888 Howard Street, San Francisco, CA 94103.

Contact Person: Lawrence E. Boerboom, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cognition, Language and Perception Fellowship Study Section.

Date: July 6, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Chicago, 151 East Wacker Drive, Chicago, IL 60601.

Contact Person: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Cell Death and Neurodegeneration.

Date: July 6–7, 2009.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander Yakovlev, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Shared Instrumentation—Electron Microscopy 2.

Date: July 7, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Steven Nothwehr, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5183, MSC 7840, Bethesda, MD 20892, 301–435–2492, *nothwehrs@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Health of the Population Fellowships.

Date: July 7, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Karin F. Helmers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 3166, MSC 7770, Bethesda, MD 20892, 301–435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Oncology 1—R03 Review.

Date: July 7–8, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Angela Y. Ng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804 (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Musculoskeletal, Oral, and Skin Systems.

Date: July 8, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Abdelouahab Aitouche, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2183, MSC 7818, Bethesda, MD 20892, 301–435–2365, *aitouchea@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; S10 Flow Cytometry Review.

*Date:*July 8–9, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Jonathan Arias, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Gene Regulation.

Date: July 8, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard A. Currie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1108, MSC 7890, Bethesda, MD 20892, 301–435–1219, *currieri@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Non-HIV Infectious Agent Detection/Diagnostics, Food Safety, Sterilization/Disinfection and Bioremediation.

Date: July 9–10, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

Contact Person: John C. Pugh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, 301–435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Biology AREA.

Date: July 9–10, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Eun Ah Cho, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–451–4467, *choe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, NMR Shared Instrumentation.

Date: July 9, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: James W. Mack, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, 301–435–2037, *mackj2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Hematology Small Business.

Date: July 10, 2009.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Delia Tang, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301–435–2506, *tangd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Predoctoral Fellowship to Promote Diversity in Health Related Research (DABP).

Date: July 10, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton Washington, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Gabriel B. Fosu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3215, MSC 7808, Bethesda, MD 20892, 301–435–3562, *fosug@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13682 Filed 6–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, NIAMS Competitive Revision Applications.

Date: June 24, 2009.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Michael L. Bloom, PhD, MBA, Scientific Review Administrator, EP Review Branch, NIH/NIAMS, One Democracy Plaza, Room 820, MSC 4872, 6701 Democracy Blvd., Bethesda, MD 20892–4872, 301–594–4953, *Michael_Bloom@nih.gov.*

Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13681 Filed 6–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel. NCI–ARRA Competitive Revisions-Epidemiology, Prevention and Population Science.

Date: July 22, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel and Conference Center, Bethesda, MD.

Contact Person: Ilda M. Mckenna, PhD, Scientific Review Administrator, Research Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8111, Bethesda, MD 20892. 301–496–7481. *mckennai@mail.nih.gov.*

(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; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: June 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13679 Filed 6–10–09; 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 Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Grant Opportunities (RC2) ARRA.

Date: July 15–16, 2009.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Hyatt Regency Hotel, Bethesda, MD.

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 960, Bethesda, MD 20892. 301–496–8775. *grossmanrs@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: June 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13677 Filed 6–10–09; 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 Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special ARRA Revisions Competing Supplements.

Date: July 16, 2009.

Time: 12:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Suite 920, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John K. Hayes, PhD, Scientific Review Officer, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, 301–451–3398, *hayesj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: June 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13668 Filed 6–10–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 11, 2009, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd, Silver Spring, MD. The hotel telephone number is 301–589–5200.

Contact Person: Diem-Kieu Ngo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *diem.ngo@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512543. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss a new drug application (NDA) for a radiopharmaceutical proposed for a special type of brain imaging in patients with movement disorders. NDA 22–454, Ioflupane I 123 Injection (proposed trade name DaTSCAN), GE HealthCare, is proposed for detecting loss of functional nigrostriatal dopaminergic neurons by single photon emission computed tomography (SPECT) imaging in patients presenting with symptoms or signs of dopaminergic neurodegeneration.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 28, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 20, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 21, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to

a disability, please contact Diem-Kieu Ngo at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 29, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–13767 Filed 6–10–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Forms I–600/I–600A, Extension of a Currently Approved Information Collection; Comment Request

ACTION: *60-Day Notice of Information Collection Under Review:* Forms I–600/I–600A, Petition To Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition; OMB Control No. 1615–0028.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until August 10, 2009.

During this 60-day period USCIS will be evaluating whether to revise the Form I–600/I–600A. Should USCIS decide to revise the Form I–600/I–600A it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–600/I–600A.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please add the OMB Control Number 1615–0028 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This information collection:

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Petition To Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–600/I–600A. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The Form I–600 is used by the U.S. Citizenship and Immigration Services (USCIS) to determine whether an alien is an eligible orphan. Form I–600A is used to streamline the procedure for advance processing of orphan petitions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 34,000 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17,000 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: June 8, 2009

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–13752 Filed 6–10–09; 8:45 am]

BILLING CODE9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–600K, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form N–600K, Application for Citizenship and Issuance of Certificate Under Section 322. OMB Control Number 1615–0087.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until August 10, 2009.

During this 60-day period USCIS will be evaluating whether to revise the Form N–600K. Should USCIS decide to revise the Form N–600K it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form N–600K.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please

add the OMB Control Number 1615–0087 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Citizenship and Issuance of Certificate under Section 322.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–600K, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This form provides an organized framework for establishing the authenticity of an applicant's eligibility and is essential for providing prompt, consistent and correct processing of such applications for citizenship under section 322 of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,500 responses at 1 hour and 35 minutes (1.583 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,374 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: June 8, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–13751 Filed 6–10–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–485 and Supplements A and E, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–485 and Supplements A and E, Application to Register Permanent Residence or Adjust Status; OMB Control Number 1615–0023.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until August 10, 2009.

During this 60-day period USCIS will be evaluating whether to revise the Form I–485 and Supplements A and E. Should USCIS decide to revise the Form I–485 and Supplements A and E it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–485 and Supplements A and E.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please add the OMB Control Number 1615–0023 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–485, and Supplements A and E. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The information collected is used to determine eligibility to adjust status under section 245 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–485—614,921 responses at 6 hours and 15 minutes (6.25) per response; Supplement A—3,888 responses at 13 minutes (.216) per response; Supplement E—31,000 responses at one hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,875,095 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: June 8, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–13750 Filed 6–10–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–751, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–751, Petition to Remove Conditions on Residence; OMB Control No. 1615–0038.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 10, 2009.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–751. Should USCIS decide to revise Form I–751 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–751.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please add the OMB Control Number 1615–0038 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Petition to Remove Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–751. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. This form is used by the USCIS to verify the petitioner's status and determine whether the conditional resident is eligible to have his or her status removed.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 118,008 responses at 3 hours and 20 minutes (3.333 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 393,321 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: June 8, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. E9–13753 Filed 6–10–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5297–N–04]

Notice of Proposed Information Collection: Comment Request; Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgages to the Secretary

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 10, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

FOR FURTHER INFORMATION CONTACT: Millicent Potts, Assistant General Counsel for Multifamily Mortgage Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 9230, Washington, DC 20410–0500, telephone (202) 708–4090 (this is not a toll-free number) for a copy of the instructions.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the

accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgage to the Secretary. Organizational and editorial changes are being made to these instructions. The revised instructions highlighting these changes (underlining for additions, and strikethrough for deletions is included) are attached to this notice.

OMB Control Number, if applicable: 2510–0006.

Description of the need for the information and proposed use: Mortgagees of HUD-insured mortgages may receive mortgage insurance benefits upon assignment of mortgages to HUD. In connection with the assignment, legal documents (*e.g.*, mortgage, mortgage note, security agreement, title insurance policy) must be submitted to the Department. The instructions describe the documents to be submitted and the procedures for submission.

Agency form numbers, if applicable: N/A.

Members of affected public: Mortgagees when applying for insurance benefits from HUD.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents	Burden hours	Frequency of response	Total burden hours
359	26	1	9,334

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 4, 2009.

Camille E. Acevedo,

Associate General Counsel, Legislation and Regulations.

BILLING CODE 4210–67–P

LEGAL INSTRUCTIONS CONCERNING APPLICATIONS FOR FULL INSURANCE BENEFITS - ASSIGNMENT OF MULTIFAMILY MORTGAGES TO THE SECRETARY

These instructions apply both to assignments of current mortgages under Section 221(g)(4) of the National Housing Act, 12 U.S.C. 1715l(g)(4) and to assignments of mortgages in default pursuant to 12 U.S.C. 1713(g). The time limitations and other requirements the mortgagee must meet in submitting a claim are set forth in 24 CFR § 207.258.

The initial package of legal documents should be sent to the attention of the Deputy Assistant General Counsel for Multifamily Mortgage Division. Subsequent documents should be sent to the attention of the staff attorney or paralegal handling the claim. All documents should be sent to the following address:

Multifamily Mortgage Division
Office of General Counsel
U. S. Department of Housing and Urban Development
451 7th Street, S. W. - Room 9230
Washington, D. C. 20410-0500

Part A - Documents to be Recorded

The mortgagee must file for record the following documents with the appropriate land records office:

1. Assignment of Mortgage. The assignment of mortgage must run to the "Secretary of Housing and Urban Development, of Washington, D. C., his/her successors and assigns" and must be in a form which meets the requirements of the laws of the jurisdiction in which the property is located. (Note: Do not use Form No. 289, Assignment, as the assignment of mortgage.) No insertions or deletions of any kind may be made to the model form of assignment, except (i) modifications necessary to insert the missing information in the appropriate spaces and (ii) modifications or additions required in order to comply with applicable state law, local law, or recording requirements. Please ensure that the property description is attached to the assignment. The assignment must include the following ~~warranty~~ requisite language:

> This Assignment is without recourse or warranty, except that the undersigned hereby warrants that no act or omission of the undersigned has impaired the validity or priority of said Mortgage. The undersigned also warrants that said Mortgage is prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such Mortgage regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of such Mortgage (except such liens or other matters as have been approved by the Assignee hereunder). The undersigned also warrants that, as of the execution of this Assignment, the sum of _____ _____ and ___/100 Dollars ($_____) (insert the unpaid principal

balance of the mortgage as of ~~that~~ the date of execution of the Assignment), together with the interest accruing at the rate of ____% per annum, as provided in the said Note and Mortgage, is actually due and owing under said Note and Mortgage, that there are no offsets or counterclaims thereto, and that the undersigned has a good right to assign the said Note and Mortgage.

2. UCC ~~Assignments.~~ Filings. The mortgagee must file a UCC financing statement ~~amendment~~ assignment, assigning the UCC -1 to the Secretary, for each place at which the UCC-1 was filed (i.e., County Recorder's Office, Secretary of State, etc.). Additional filings may be necessary to comply with ~~Revised Article 9. Please consult your counsel~~ revised Article 9 of the UCC. See Part B, Item 8, below. Mortgagees must consult with their own counsel to ensure that their UCC submissions comply with Revised Article 9 of the Uniform Commercial Code.

Part B - Submission of Legal Documents After Recordation of Assignment

The documents identified in this Part must be submitted within 45 days after the date that the assignment of mortgage is filed for record. ~~For cash claims only, the~~ The Office of the General Counsel may grant ~~a~~ one 15-day extension of the deadline ~~within which to submit these documents. An extension will be granted~~ for claims paid in cash, upon written or oral request, made prior to the expiration of the 45-day period. ~~Only one such extension will be granted.~~ If made orally, the request must be confirmed in writing, ~~but written confirmation does not have to be sent within~~ within five (5) calendar days after the 45-day ~~period.~~ deadline.

Please note, in the case of claims to be paid in cash, the mortgagee's failure to submit the documents within the deadline (or extended deadline) in a legally acceptable form, as determined by the Office of the General Counsel, shall result in the curtailment of interest on the claim, i.e., interest on the final insurance payment will accrue only through the last day of the deadline (or extended deadline). See 24 CFR § 207.259(b)(1)(iii).

Any extension granted or denied by the Office of the General Counsel is independent of extensions granted or denied by the Multifamily Financial Operations Division. Therefore, if necessary, the mortgagee must separately request and receive extensions from the Multifamily Financial Operations Division regarding the submission of fiscal documents.

~~In the case of claims to be paid in cash, the mortgagee's failure to submit the documents in a legally acceptable form within the deadline shall result in the curtailment of interest of the claim, i.e., interest on the final cash insurance payment will accrue only through the last day of the deadline, as extended. See 24 CFR § 207.259 (b) (1) (iii).~~

The following documents must be submitted within the period specified above:

1. The original Note, endorsed to the Secretary ~~as follows~~ the following requisite language:

For value received, all right, title and interest of the undersigned to the within note, the unpaid balance of which is $_____ (insert the unpaid balance as of the date of assignment), together with interest thereon, is hereby assigned to the Secretary of Housing and Urban Development, his

> successors and assigns, without recourse or warranty except as shown in that certain assignment of even date assigning to said Secretary the mortgage securing this note.

(**NOTE**: If dated, the foregoing endorsement must bear the date of the execution of the assignment of the mortgage. If sufficient space is available, the endorsement ~~should~~ must be typed on the back of the Note. The endorsement may be on an allonge only when sufficient space is not available on the Note.)

If the original Note is unavailable, the mortgagee must submit an Affidavit of Lost Note, in a form acceptable to HUD, and an Indemnification Agreement. The Indemnification Agreement must contain the following language and ~~otherwise~~ be in ~~a~~the form acceptable to HUD:

> [Insert name of the mortgagee] agrees to indemnify and hold harmless the Secretary of Housing and Urban Development and his/her successors and assigns against any loss, costs, or charges whatsoever, including attorney's fees, which may be sustained by the Secretary as a result of the loss of the original Note.

2. The original Mortgage or Deed of Trust, or a certified copy, certified by the recording official, and the originals or certified copies of all amendments and/or modifications. All certifications must be made by the recording official. If an amendment or modification was not recorded and the original is unavailable, a copy must be provided, along with an Indemnification Agreement that contains the following language and is otherwise acceptable to HUD:

> [Insert name of the mortgagee] agrees to hold the Secretary of Housing and Urban Development and his successors and assigns harmless from any losses or damages caused by the failure of the mortgagee to furnish an original copy of [insert description of document].

3. Original or copy certified by the recording official of the Assignment of Mortgage or Deed of Trust to the Secretary.

4. Original interim assignments, amendments, or modifications of the Mortgage or Deed of Trust, or ~~copies~~ certified copies, if recorded. All certifications must be made by the recording official. If an assignment, amendment, or modification was not recorded and the original is unavailable, a copy must be provided, along with an Indemnification Agreement that contains the language set forth in Part B, item 2 above and which is otherwise acceptable to HUD.

~~5. Assignment of Security Agreement. If a security agreement or chattel mortgage was recorded, the assignment of that document to the Secretary must also be recorded. The assignment must include the following warranty~~

> ~~"The Assignor hereby warrants that no act or omission of the Assignor has impaired the validity or priority of the first lien created by said [Security Agreement] [Chattel Mortgage] and that Assignor has a good right to assign said [Security Agreement] [Chattel Mortgage]."~~

~~6~~ 5. The original security agreement/chattel mortgage, or (if recorded) a copy certified by the recording official. If the security agreement/chattel mortgage was not recorded and the original document is unavailable, the mortgagee may satisfy this requirement by furnishing an Indemnification Agreement that contains the following language and is otherwise acceptable to HUD:

> [Insert name of the mortgagee] agrees to hold the Secretary of Housing and Urban Development and his successors and assigns harmless from any losses or damages caused by the failure of the mortgagee to furnish an original copy of [insert description of document].

6. Assignment of Security Agreement. If a security agreement or chattel mortgage was recorded, the assignment of that document to the Secretary must also be filed for record. The assignment must include the following requisite language:

> The Assignor hereby warrants that no act or omission of the Assignor has impaired the validity or priority of the first lien created by said [Security Agreement] [Chattel Mortgage] and that Assignor has a good right to assign said [Security Agreement] [Chattel Mortgage].

7. Original interim assignments of the ~~security agreement/chattel mortgage,~~ Security Agreement][Chattel Mortgage], or (if recorded) copies certified by the recording official. If the interim assignments are unrecorded and the original documents are unavailable, the mortgagee may satisfy this requirement by furnishing an Indemnification Agreement which contains the language set forth in Part B, item 5 above and which is otherwise acceptable to HUD.

~~8. If Uniform Commercial Code filings were executed and filed for record, the mortgagee must submit the following original documents:~~

~~(a) UCC-1 for each place of recordation;~~

~~(b) UCC assignments for each interim assignment of the financing statement;~~

~~(c) UCC financing statement amendments assigning each UCC-1 to the Secretary; and~~

~~(d) UCC continuation statements.~~

8. Uniform Commercial Code ("UCC") Financing Statements. NOTE: Several states have unique UCC filing requirements. Mortgagees must consult with their own counsel to ensure that their UCC submissions comply with Revised Article 9 of the Uniform Commercial Code. Mortgagees must provide evidence that the "Secretary of Housing and Urban Development of Washington, D. C., his/her successors and/or assigns ATIMA" holds a valid perfected first lien security interest in the collateral, either by assignment of existing UCC financing statements or by perfection/reperfection in both the applicable local jurisdiction for fixture filings and in the appropriate Secretary of State office.

• *If UCC Filings are Current*: The mortgagee must submit all original Uniform Commercial Code filings (items (a) through (e) below, as applicable) showing recording information (or tear sheet/acknowledgement sheet for UCC filings that were originally on carbon

set forms) ("UCC filings") in chronological sequence, sorted by filing jurisdiction (i.e., clip or bind the UCC filings that were filed in a Secretary of State's office separately from those filed in a city or county). If original UCC documents are unavailable, the mortgagee must submit copies certified by the recorder's office or copies accompanied by a UCC-11 Search ~~from a reputable search service acceptable to HUD. All such copies must legibly show recording/filing information.~~ Searches performed by title insurance companies or attorneys are not acceptable. Lapsed UCC filings should be provided, to the extent available.

~~The mortgagee must also submit a list of all UCC statements in chronological sequence. Lapsed filings need not be included in the list. The UCC statements must be arranged in an organized manner, e.g., stapled to sheets of paper in a chronological sequence for each recording office within the jurisdiction.~~

~~If UCCs~~

(a) UCC-1;

(b) UCC assignment for each interim assignment of a financing statement;

(c) UCC amendment(s), if applicable;

(d) UCC financing statement assignments, assigning each UCC-1 to the "Secretary of Housing and Urban Development of Washington, D. C., his/her successors and/or assigns ATIMA"; and

(e) UCC continuation statements.

- If UCC filings will expire within six (6) months after the assignment of mortgage, continuation statements must be prepared and filed for record by the mortgagee.

- *Lapsed UCC filings: Reperfecting the Security Interest in the Collateral*: If any UCC filing has lapsed, the mortgagee must prepare a new UCC-1 ~~listing the Secretary as the secured party~~ and file it for record in the appropriate filing office~~. If~~ to re-perfect the ~~mortgagor's signature is required,~~ security interest in the collateral ~~mortgagee must comply with the following:~~ This must be accomplished within the deadline or extended deadline as applicable.

~~A letter must be sent from the mortgagee to mortgagor requesting that the mortgagor execute new UCCs in connection with the Department's mortgage requirements. The letter must be sent "Registered Mail - Return Receipt Requested." The letter should state that if the executed UCCs are not returned to the mortgagee within seven business days of the mortgagor's receipt of the letter, the mortgagee will assume that the mortgagor has refused to execute the UCCs and will notify the Department of this fact. If executed, the UCCs must be assigned to the Secretary in accordance with the procedures set forth in these instructions. If the mortgagor refuses or fails to respond within seven business days, the mortgagee must send the Department a copy of its correspondence, and provide a copy of the Return Receipt. As provided below, the mortgagee must also send an Indemnification Agreement for the period the UCC lapsed. This must be accomplished within the 45-day period or the 60-day extended period.~~

~~NOTE: Whenever there has been a UCC lapse, the mortgagee must provide a UCC-11 Search as of the date that UCCs are assigned to the Department showing that the lien being assigned to the Department is a first lien, and that there are no intervening liens. If the lien being assigned to the Department is not a first lien, the prior lien must be removed, and the Department must be provided a first lien in accordance with these instructions.~~

~~HUD will return the signed~~ Reperfecting before the assignment of mortgage is recorded. The secured party named in the new UCC-1 ~~to~~ should be the mortgagee ~~for filing. In addition, the mortgagee must provide a title insurance policy~~ Secretary of Housing and Urban Development, of Washington, D.C., their successors and/or ~~endorsement expressly covering the chattels (in the case of fixtures) and must~~ assigns, ATIMA".

Indemnification Agreement. The mortgagee must also provide an Indemnification Agreement in a form which is otherwise acceptable to HUD and which contains language holding the Secretary of Housing and Urban Development and his/her successors and assigns harmless from any loss or damage caused by the lapse of the UCC filing or the failure to file a UCC financing statement.

- *UCC filing was never filed: Perfecting the Security Interest in the Collateral*: If a UCC filing was never made in a required jurisdiction, the mortgagee must prepare a new UCC-1 and file it for record in the appropriate filing office to perfect the security interest in the collateral, following the instructions set forth above under "Lapsed UCC Filings: Reperfecting the Security Interest in the Collateral" and pursuant to applicable law. This must be accomplished within the deadline or extended deadline, as applicable.

Indemnification Agreement. The mortgagee must provide an Indemnification Agreement in a form which is otherwise acceptable to HUD and which contains language holding the Secretary of Housing and Urban Development and his/her successors and assigns harmless from any loss or damage caused by the lapse of the UCC filing ~~and which is otherwise acceptable to HUD.~~or the failure to file a UCC financing statement.

~~If the mortgagee advises the Department that UCCs were never filed, the Department will require that the mortgagee submit a UCC-11 Search (conducted by the Secretary of State and the County Recorder) for each recording office within the jurisdiction.~~

~~If the UCCs were filed electronically in a particular jurisdiction, the mortgagee must provide copies of the filings together with evidence satisfactory to HUD that electronic filings are authorized by the applicable state law.~~

~~NOTE: Several states have unique UCC filing requirements. Mortgagees should consult with their own counsel to ensure that UCC filing requirements are met.~~

~~9.~~ **NOTE: UCC-11 LIEN SEARCH WHEN THERE HAS BEEN A UCC LAPSE OR NON-FILING**: Whenever there has been a UCC lapse or a UCC was not filed, the mortgagee must also provide a UCC-11 Search for each recording office as appropriate, pursuant to revised Article 9 of the UCC, dated as of the date that UCCs are assigned to the Secretary. The Search must demonstrate or evidence that the lien being assigned to the Secretary is a first lien, and that there are no intervening liens. If the lien being assigned to the Secretary is not a

first lien, the prior lien must be removed, and the Secretary must be provided a first lien in accordance with these instructions. Searches performed by title insurance companies or attorneys are not acceptable.

9. Form No. 289, Assignment. This form is intended to cover collateral documents, interests and funds required by the Departmental regulations to be assigned to the Secretary that affect the note or mortgage, or which may be necessary to enable the Secretary to enforce all rights of a mortgagee against the obligors. This instrument is not to be used as the assignment of mortgage and it need not be recorded.

10. The original of each hazard insurance policy covering the project, or evidence of property insurance, comprising property damage liability totaling at least eighty percent (80%) of the unpaid principal balance of the mortgage. The hazard insurance must be in effect at least through 11:59 p.m. on the date on which the assignment of mortgage is recorded. ~~The hazard insurance policy or evidence of property insurance is not acceptable if it contains the statement that it is for informational purposes only and does not confer rights upon the holder of the policy.~~ In addition, the mortgagee must submit an endorsement to each policy changing the mortgagee clause to show as the sole mortgagee/loss ~~payeethe "Secretary of Housing and Urban Development, of Washington, D.C., his successors and assigns." The effective date of this endorsement should be the date of the filing of the assignment of mortgage to the Secretary.~~

Secretary of Housing and Urban Development,
of Washington, D.C., his successors and assigns
451 Seventh Street, SW, Room 9230
Washington, D.C. 20410-0500

The effective date of this endorsement should be the date the assignment of mortgage to the Secretary is filed for record. The hazard insurance policy or evidence of property insurance is not acceptable if it contains any language to the effect that it is for informational purposes only and does not confer rights upon the holder of the policy. A Certificate of Insurance is not acceptable.

11. An assignment of the mortgagee's interest in the hazard insurance policy should state the following:

> The interest of _____, as the Mortgagee under Policy No. _____ issued by _____ is hereby assigned to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. Date: _____

12. Additional Assignments. If the assignment of mortgage occurs within two (2) years after the date of final endorsement of the project loan, the mortgagee must assign to the Secretary its rights under the Building Loan Agreement and all bonds or other agreements designed to assure completion. The balances of any undrawn letters of credit for escrow deposits held by the mortgagee at the time of default will be treated as cash in the settlement of the mortgagee's claim for insurance benefits.

13. A copy of the resolution of the mortgagee's board of directors or other appropriate evidence demonstrating the authority of the signatory of the assignment instruments to act on behalf of the mortgagee.

14. Title insurance coverage. The regulations (24 CFR § 207.258(b)(4)(ii)) require that the effective date of the original loan title insurance policy coverage be extended to include the date the mortgage is assigned to the Secretary. ~~In compliance therewith~~Therefore, the mortgagee must submit (in addition to the original loan title insurance policy and previous endorsements) a date down endorsement to the original loan title insurance policy, or a new loan title insurance policy (see below) in the amount of the outstanding principal balance of the mortgage, which (1) bears an effective date on or after the date ~~of~~ the assignment of mortgage is ~~filed for record~~recorded, (2) names "The Secretary of Housing and Urban Development, of Washington, D.C., his/her successors and assigns" as the sole insured party, and (3) contains only those exceptions as may have been approved by the Secretary~~. If the mortgagee intends to submit a new policy, it must obtain HUD's advance approval of the policy form being used. If a new title policy is submitted, the policy must conform with the 1992 ALTA format. In those states in which the 1992 ALTA title policy format has not been approved by the applicable state insurance board or commissioner for use in that jurisdiction, the policy submitted to HUD must conform with the 1970 ALTA or 1987 ALTA format. If either the 1987 or the 1992 format is submitted, the policy must include an ALTA Form 8.1 Environmental Endorsement. The following policy formats are not acceptable:~~

NOTE: ~~1970 ALTA Loan Policy Modified/Revised 1984~~
~~1984 ALTA Loan Policy~~
~~1990 ALTA Loan Policy~~ Exceptions to title insurance including liens, covenants or easements which the Secretary has not approved previously and which have priority over the assigned mortgage may not appear as exceptions to the loan title insurance policy unless such exceptions are approved by the Secretary during the mortgage assignment process.

Any liens, covenants or easements which appear as exceptions to the loan title insurance policy and have not been approved previously must be listed as subordinate to the assigned mortgage. If this cannot be done, the acceptability of the exceptions will be evaluated on a case-by-case basis. The mortgagee should be aware that if the problem cannot be resolved within the deadline for submitting the complete legal package, interest on the claim will be curtailed.

If the mortgagee intends to submit a new loan title insurance policy, the policy must conform with the 2006 ALTA format, and the applicable boxes in Schedule A, item 6 must be checked. In those states in which the 2006 ALTA loan title insurance policy format has not been approved by the applicable state insurance board or commissioner for use in that jurisdiction, the loan title insurance policy submitted to HUD must conform with the 1992 ALTA or 1987 ALTA format (except in California, Texas, or Louisiana, where the applicable state-approved forms are used instead of the ALTA forms). If either the 1992 or the 1987 format is submitted, the loan title insurance policy must include an ALTA Form 8.1 Environmental Endorsement. The following loan title insurance policy formats are **not** acceptable:

1970 ALTA Loan Policy Modified/Revised 1984
1984 ALTA Loan Policy
1990 ALTA Loan Policy

If the loan was not finally endorsed for mortgage insurance prior to the mortgagee's election to assign, a pro-forma or specimen loan title insurance policy must be submitted for prior approval. The mortgagee must also enclose a copy of any existing loan title insurance policy. **NOTE:** Any pro-forma or specimen loan title insurance policy must be approved and the original loan title insurance policy must be received within the legal submission deadline (45 days or 60 days, if an extension has been granted as set forth hereinabove).

15. Information indicating when the current year's taxes will become delinquent. This may be in the form of a notation on the loan title insurance policy endorsement, tax bills stating the date of delinquency, or a letter from the taxing authority. Taxes that become delinquent within 45 days after the ~~recordation of the~~ assignment of the mortgage to HUD has been filed for record may not appear as an exception on the loan title insurance policy. These taxes must be paid by the mortgagee and will be reimbursed by HUD pursuant to 24 CFR §§ 207.259(b)(1)(i) and 207.259(b)(1)(ii).

NOTE: HUD reserves the right to refuse to accept ~~an~~ any Indemnification Agreement, as described in ~~various items~~ the paragraphs above, if litigation has occurred which has affected or may affect the project or the mortgagee's interests. HUD's determination shall be made on a case-by-case basis.

[FR Doc. E9–13631 Filed 6–10–09; 8:45 am]
BILLING CODE 4210–67–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 80808]

Public Land Order No. 7734; Withdrawal and Transfer of Jurisdiction of Public Land for the Department of Energy Crescent Junction Uranium Mill Tailings Repository; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 936 acres of public land from the United States mining and mineral leasing laws and transfers jurisdiction to the Department of Energy for a period of 20 years for ancillary facilities at its Crescent Junction Uranium Mill Tailings Repository.

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

FOR FURTHER INFORMATION CONTACT: Mary von Koch, Realty Specialist, BLM Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532, 435–259–2128.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (2000)), and from leasing under the mineral leasing laws (30 U.S.C. 181 *et seq.* and 30 U.S.C. 351 *et seq.* (2000)), to protect the Department of Energy's ancillary facilities at its Crescent Junction Uranium Mill Tailings Repository:

Salt Lake Meridian

T. 21 S., R. 19 E.,

Sec. 22, S½, excluding SE¼SE¼SW¼, NE¼SW¼SE¼, S½SW¼SE¼, and SE¼SE¼;
Sec. 23, S½, excluding S½S½N½SW¼, S½SW¼, and W½SW¼SW¼SE¼;
Sec. 26, the land lying North of the railroad right-of-way, excluding W½W½NW¼NE¼, N½NW¼, N½SW¼NW¼, N½NE¼SE¼NW¼, and NW¼SE¼NW¼;
Sec. 27, the land lying North of the railroad right-of-way, excluding N½NE¼, SW¼NE¼, N½SE¼NE¼, SW¼SE¼NE¼, E½NE¼NW¼, and E½SE¼NW¼.

The area described contains approximately 936 acres in Grand County.

2. Subject to retention of valid existing claims, rights, and interests, by the Secretary of the Interior as stated in Paragraph 3, full jurisdiction over the above-described land is hereby transferred to the Secretary of Energy and vests in the Department of Energy full management, jurisdiction, authority, responsibility, and liability for such land and all activities conducted therein.

3. The authority to administer any existing claims, rights, and interests in the above-described land established before June 11, 2009 is reserved to the Secretary of the Interior.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f)(2000), the Secretary determines that the withdrawal shall be extended.

Dated: May 21, 2009.

Ken Salazar,

Secretary of the Interior.

[FR Doc. E9–13637 Filed 6–9–09; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–923–1430–ET; COC–70704]

Public Land Order No. 7735; Withdrawal of Public Lands To Protect Townsend's Big-eared Bat Maternity Roosts; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 22.36 acres of public lands from all forms of appropriation under the public land laws, including location under the United States mining laws, for a period of 20 years to protect three sites containing Townsend's Big-eared Bat maternity roosts. The lands have been and will remain open to mineral leasing but no surface occupancy will be permitted on the sites.

DATES: EFFECTIVE DATE: June 11, 2009.

FOR FURTHER INFORMATION CONTACT: Andy Senti, Realty Specialist, BLM Colorado State Office, 303–239–3713.

SUPPLEMENTARY INFORMATION: This withdrawal protects three Townsend's Big-eared Bat maternity roosts found in abandoned mine adits. The adits affected have been depleted of their mineral potential and were abandoned.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from all forms of appropriation under the public land laws, including location under the United States mining laws (30 U.S.C. Ch. 2 (2000)), but not from leasing under the minerals leasing laws, to protect sites containing maternity roosts of Townsend's Big-eared Bats:

New Mexico Principal Meridian;
UTM (Universal Transverse Mercator);
Coordinates Zone 12, E = Easting, N = Northing.

Cory Mine

T. 47 N., R. 17 W.,
Sec. 11, a metes and bounds parcel in the NW¼NW¼: Beginning at Corner No. 1 NE (E = 699073, N = 4246679: running east 593 feet to Corner No. 2 NE (E = 699255, N = 4246701): running south 1,401 feet to Corner No. 3 SE (E = 699250, N = 4246275): running west 530 feet to Corner No. 4 SW (E = 699091, N = 4246255): running north 1,388 feet back to Corner No. 1 NW;

The area described contains approximately 17.8 acres in Montrose County.

Pup Tent Mine

T. 49 N., R. 17 W.,
Sec. 4, a metes and bounds parcel within lot 1 and the NW¼NW¼: Beginning at Corner No. 1 NW (E = 694067, N = 4268314: running easterly 252 feet to Corner No. 2 NE (E = 694141, N = 4268296): running south 252 feet to Corner No. 3 SE (E = 694143, N = 4268220): running westerly 267 feet to Corner No. 4 SW (E= 694067, N = 4268251): running north 207 feet back To Corner No. 1 NW;

The area described contains approximately 1.31 acres in Mesa County.

Mother Bat Mine

T. 43 N., R. 18 W.
Sec. 15, a metes and bounds parcel within the SW¼SE¼: Beginning at Corner No. 1 NE (E = 689846, N = 4206148: running easterly 305 feet to Corner No. 2 NE (E = 689938, N = 4206144): running south 489 feet to Corner No. 3 SE (E = 689908, N = 4206000): running westerly 300 feet to Corner No. 4 SW (E = 689819, N = 4206006: running north 475 feet back to Corner No. 1 SW.

The area described contains approximately 3.25 acres in San Miguel County.

The total areas described aggregate approximately 22.36 acres in Mesa, Montrose, and San Miguel Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: May 26, 2009.

Ken Salazar,

Secretary of the Interior.

[FR Doc. E9–13638 Filed 6–9–09; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–466 and 731–TA–1162 (Preliminary)]

Wire Decking from China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–466 and 731–TA–1162 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of wire decking, provided for in subheading 9403.90.8040 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by July 20, 2009. The Commission's views are due at Commerce within five business days thereafter, or by July 27, 2009.

For further information concerning the conduct of these investigations 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 and B (19 CFR part 207).

DATES: *Effective Date:* June 5, 2009.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), 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 these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: *Background.*—These investigations are being instituted in response to a petition

filed on June 5, 2009, by AWP Industries, Inc., Frankfort, KY; ITC Manufacturing, Inc., Phoenix, AZ; J&L Wire Cloth, Inc., St. Paul, MN; and Nashville Wire Products Mfg. Co., Inc., Nashville, TN.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 26, 2009, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Christopher J. Cassise (202–708–5408) not later than June 24, 2009, to arrange for their appearance. Parties in support of the imposition of antidumping and countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 1, 2009, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, 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). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: June 8, 2009.

By order of the Commission.

William R. Bishop,

Secretary to the Commission.

[FR Doc. E9–13703 Filed 6–10–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''International Price Program—U.S. Import and Export Product Information.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before August 10, 2009.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, 202–691–7628 (this is not a toll free number). (*See* **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Import and Export Price Indexes, produced by the Bureau of Labor Statistics' International Price Program (IPP), measure price change over time for all categories of imported and exported products, as well as many services. The IPP has produced the U.S. Import Price Indexes continuously since 1973 and the U.S. Export Price Indexes continuously since 1971. The Office of Management and Budget has listed the Import and Export Price Indexes as a Principal Federal Economic Indicator since 1982. The indexes are widely used in both the public and private sectors. The primary public sector use is the deflation of the U.S. Trade Statistics and the Gross Domestic Product; the indexes also are used in formulating U.S. trade policy and in trade negotiations with other countries. In the private sector, uses of the Import Price Indexes include market analysis, inflation forecasting, contract escalation, and replacement cost accounting.

The IPP indexes are closely followed statistics, and are viewed as a sensitive indicator of the economic environment.

The U.S. Department of Commerce uses the monthly statistics to produce monthly and quarterly estimates of inflation-adjusted trade flows. Without continuation of data collection, it would be extremely difficult to construct accurate estimates of the U.S. Gross Domestic Product. In addition, Federal policymakers in the Department of Treasury, the Council of Economic Advisers, and the Federal Reserve Board utilize these statistics on a regular basis to improve these agencies' formulation and evaluation of monetary and fiscal policy and evaluation of the general business environment.

II. Current Action

Office of Management and Budget clearance is being sought for the U.S. Import and Export Price Indexes. The IPP continues to modernize data collection and processing to permit more timely release of its indexes, and to reduce reporter burden. Recently, the IPP implemented changes to its web repricing application to reduce burden on IPP reporters providing prices via the internet. Rather than requiring the respondent to type in the account number on the logon screen, the system now displays this information automatically when the respondent accesses the web repricing application by clicking the link in the 'time to reprice' e-mail. Also, the application now allows respondents to provide general comments which apply to all items (rather than directing them to retype the comment for all applicable items) and all e-mails sent to reporters using web repricing can now include a cc to one additional company contact. In addition, IPP completed a study aimed at reducing Out of Scope rates, which upon implementation of the various proposals will further reduce respondent burden.

The IPP has also expanded the use of its Web application, introduced in 2003 to allow respondents to update their data online. Through April 2009, 65 percent of IPP respondents were providing prices via the Web application or had agreed to start using this repricing method. Field Economists currently offer Web repricing to all new respondents and at initiation, it is the preferred method of collection offered to companies.

The collection of IPP data was previously collected under OMB Number 1220–0025 for Export Information and 1220–0026 for Import Information. Upon approval of this package information for both Export and Import information will be collected under OMB Number 1220–0025 and OMB Number 1220–0026 will be discontinued.

III. Desired Focus of Comments

The Bureau of Labor Statistics 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.
- 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.

Type of Review: Extension without change of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: International Price Program (IPP) U.S. Import and Export Price Indexes.

OMB Number: 1220–0025.

Affected Public: Private Sector, Business or other for-profits.

Form	Total respondents	Frequency	Total responses	Average time per response (hours)	Estimated total burden hours
Form 3008		Annually			
Imports	2000		2000	1.0	2000
Exports	1400		1400	1.0	1400
Total	3400		3400		3400
Form 3007D		Monthly			
Imports	3500	[1] 6.8	23800	[2] .7301	16734
Exports	2400	[1] 6.8	16320	[3] .6441	10512
Total	5900		40120		27246
Totals			43520		30646

[1] During initiation, the respondent determines how many months he/she will need to supply data in a given year based upon how often the company changes its pricing information. The average company is requested to supply information 6.8 months out of every year.

[2] Time to reprice is based upon 9 minutes of response time per item × 4.687 items = 42.183 minutes/60 = .7031 hours.

[3] Time to reprice is based upon 9 minutes of response time per item × 4.294 items = 38.646 minutes/60 = .6441 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

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 also will become a matter of public record.

Signed at Washington, DC, this 5th day of June 2009.

Kimberley D. Hill,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E9–13720 Filed 6–10–09; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0012]

National Advisory Committee on Occupational Safety and Health (NACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for nominations to serve on NACOSH.

SUMMARY: The Acting Assistant Secretary of Labor for Occupational Safety and Health requests nominations for membership on NACOSH.

DATES: Nominations for NACOSH must be submitted (postmarked, sent or received) by July 13, 2009.

ADDRESSES: You may submit nominations for NACOSH, identified by OSHA Docket No., OSHA–2009–0012, by any of the following methods:

Electronically: You may submit nominations, including attachments, electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions on-line for submitting nominations.

Facsimile: If your nomination, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, express delivery, hand delivery, messenger or courier service: Submit three copies of your nominations to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t..

Instructions: All nominations for NACOSH must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2009–0012). All submissions in response to this **Federal Register** notice, including personal information provided, will be posted without change at *http://www.regulations.gov.* Because of security-related procedures, submitting nominations by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office, at the address above, for information about security procedures for submitting nominations by hand delivery, express delivery, and messenger or courier service. For additional information on submitting nominations, see the **SUPPLEMENTARY INFORMATION** section below.

Docket: To read or download submissions, go to *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information (e.g., copyrighted material) is not publicly available to read or download through *http://www.regulations.gov.* All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: Deborah Crawford, OSHA, Directorate of Evaluation and Analysis, Room N–3641, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington,DC 20210; telephone (202) 693–1932; fax (202) 693–1641; e-mail address *crawford.deborah@dol.gov.*

SUPPLEMENTARY INFORMATION: The Acting Assistant Secretary of Labor for Occupational Safety and Health invites interested individuals to submit nominations for membership on NACOSH. The Committee is authorized by section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory body and operates in compliance with provisions in the OSH Act, the Federal Advisory Committee Act (5 U.S.C. App. 2), and regulations issued pursuant to those laws (29 CFR 1912a, 41 CFR part 101–6 and 102–3).

NACOSH is comprised of 12 members, all of whom the Secretary of Labor appoints, and nominations will be accepted for seven vacancies (29 CFR 1912a.2). The composition of the committee and categories of new members to be appointed are as follows:

- Four public representatives of whom two will be appointed;
- Two management representatives of whom one will be appointed;
- Two labor representatives of whom two will be appointed;
- Two occupational safety professional representatives of whom one will be appointed; and
- Two occupational health professional representatives of whom one will be appointed.

Pursuant to 29 CFR 1912a.2, the Secretary of Health and Human Services (HHS) will designate for appointment by the Secretary of Labor one of the public representatives and the representative from the occupational health professions. Therefore, OSHA will provide to HHS all nominations and supporting materials for those membership categories.

NACOSH members serve for staggered two-year terms, unless the member becomes unable to serve, resigns, ceases to be qualified to serve because he or she no longer meets the relevant representational requirements, or is removed by the Secretary of Labor. If a vacancy occurs before a term expires, the Secretary may appoint for the remainder of the unexpired term a new member who represents the same interest as the predecessor. The committee meets at least two times a year (29 CFR 1912a.4).

Any interested person or organization may nominate one or more qualified persons for membership. Nominations must include the nominee's name, occupation or current position, and contact information. The nomination also must identify the category that the candidate is qualified to represent, and include a résumé of the nominee's background, experience, and qualifications. In addition, the nomination must state that the nominee is aware of the nomination and is willing to serve on NACOSH for a two-year term.

NACOSH members will be selected upon the basis of their experience and competence in the field of occupational safety and health (29 CFR 1912a.2). The information received through this nomination process, in addition to other relevant sources of information, will assist the Secretary of Labor in appointing members to serve on NACOSH. In selecting NACOSH members, the Secretary of Labor will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals. OSHA will publish the new NACOSH membership list in the **Federal Register**.

Public Participation—Submission of Nominations and Access to Docket

You may submit nominations (1) electronically at *http://www.regulations.gov*, the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments and other material must identify the Agency name and docket number for this **Federal Register** notice (OSHA Docket No. OSHA–2009–0012). You may supplement electronic nominations by uploading document files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit three copies to the OSHA Docket Office (see **ADDRESSES** section). The additional materials must clearly identify your electronic nomination by name, date, and docket number so OSHA can attach them to your nomination.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of nominations. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birth dates. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through *http://www.regulations.gov.* All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's User Tips link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, will be available at OSHA's Web page at *http://www.osha.gov.*

Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), 29 CFR 1912a, and Secretary of Labor's Order No. 5–2007 (71 FR 31160).

Signed at Washington, DC this 8th day of June 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–13699 Filed 6–10–09; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* July 9, 2009.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for History I, submitted to the Office of Challenge Grants, at the May 5, 2009 deadline.

2. *Date:* July 14, 2009.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Colleges and Universities I, submitted to the Office of Challenge Grants, at the May 5, 2009 deadline.

3. *Date:* July 14, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for East Asian Studies in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

4. *Date:* July 14, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for South and Southeast Asian Studies in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

5. *Date:* July 15, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Medieval Studies in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

6. *Date:* July 16, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Philosophy I in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

7. *Date:* July 16, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Philosophy II in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

8. *Date:* July 16, 2009.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Colleges and Universities II, submitted to the Office of Challenge Grants, at the May 5, 2009 deadline.

9. *Date:* July 20, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for American Arts in

Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

10. *Date:* July 20, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Art History II in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

11. *Date:* July 21, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Political Science and Jurisprudence in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

12. *Date:* July 21, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for American Studies in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

13. *Date:* July 21, 2009.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Art & Anthropology, submitted to the Office of Challenge Grants, at the May 5, 2009 deadline.

14. *Date:* July 27, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Musicology in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

15. *Date:* July 27, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Art History I in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

16. *Date:* July 28, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Germanic and Slavic Studies in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

17. *Date:* July 28, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Comparative Literature and Literary Theory in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

18. *Date:* July 28, 2009.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Public Programming, submitted to the Office of Challenge Grants, at the May 5, 2009 deadline.

19. *Date:* July 29, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Advanced Social Science Research on Japan in Fellowships for Advanced Research on Japan, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

20. *Date:* July 29, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Anthropology and Archaeology in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

21. *Date:* July 30, 2009.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for History II, submitted to the Office of Challenge Grants, at the May 5, 2009 deadline.

22. *Date:* July 30, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Latin American Studies I in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

23. *Date:* July 30, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Latin American Studies II in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

Michael P. McDonald,
Advisory Committee Management Officer.

[FR Doc. E9–13664 Filed 6–10–09; 8:45 am]
BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services; Sunshine Act Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the agenda of the forthcoming meeting of the National Museum and Library Services Board. This notice also describes the function of the Board. Notice of the meeting is required under the Sunshine in Government Act.

TIME AND DATE: Tuesday, June 23, 2009 from 11:15 a.m. to 3:30 p.m.

AGENDA: Meeting of the Seventeenth National Museum and Library Service Board Meeting:

11:15 a.m.–12:45 p.m. Jury Meeting to consider the National Medals for Library Services.
(Closed to the Public)

2 p.m.–3:30 p.m. Jury Meeting to consider the National Medals for Museum Services.
(Closed to the Public)

PLACE: The meetings will be held in the Board room at the Institute of Museum and Library Services. 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

TIME AND DATE: Wednesday, June 24, 2009 from 9:15 a.m. to 1 p.m.

AGENDA: Seventeenth National Museum and Library Services Board Meeting:

9:15 a.m. 9:45 a.m. National Award Recommendations.
(Closed to Public)

10 a.m.–1 p.m. Seventeenth National Museum and Library Services Board Meeting:

I. Welcome
II. Approval of Minutes
III. Financial Update
IV. Legislative Update
V. Board Program
VI. Board Updates
VII. Adjournment

(Open to the Public)

PLACE: The meetings will be held in the Board room at the Institute of Museum and Library Services. 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Events and Board Liaison, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. *Telephone:* (202) 653–4676.

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is established under the Museum and Library Services Act, 20 U.S.C. Section 9101 *et seq.* The Board advises the Director of the Institute on general policies with respect to the duties, powers, and authorities related to Museum and Library Services.

The Jury Meetings to consider the National Medal for Museum and Library Services on Tuesday, June 23, 2009, and the National Award Recommendations on Wednesday, June 24, 2009 from 9:15 a.m. to 9:45 a.m. will be closed pursuant to subsections (c)(4) and (c)(9) of section 552b of Title 5, United States Code because the Board will consider information that may disclose: Trade

secrets and commercial or financial information obtained from a person and privileged or confidential; and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. The meeting from 10 a.m. until 1 p.m. on Wednesday, June 24, 2009 is open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1800 M Street, NW., 9th Fl., Washington, DC 20036. *Telephone:* (202) 653–4676; TDD (202) 653–4614 at least seven (7) days prior to the meeting date.

Dated June 3, 2009.

Kate Fernstrom,

Chief of Staff.

[FR Doc. E9–13626 Filed 6–10–09; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request establishment and clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by August 10, 2009 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Request for Clearance for Program Review of the Science and Technology Centers (STC): Integrative Partnership Program

Title of Collection: Program Review of the National Science Foundation's (NSF) Science and Technology Centers: Integrative Partnership Program.

OMB Control No.: 3145–(NEW).

Expiration Date of Approval: Not applicable.

Abstract

The National Science Foundation (NSF) requests a three-year clearance for research, evaluation and data collection (*e.g.,* surveys and interviews) from graduate student and postdoctoral participants in the Science and Technology Centers: Integrative Partnerships (STC) Program. Other STC stakeholders typically are limited to PhD scientists and engineers and faculty and administrators from universities and not-for-profit institutions and industrial/business partners, NSF employees and former NSF employees and intergovernmental personnel act (IPA) appointees.

The STC program provides multiyear (up to ten years) support to STCs as continuing awards that are among the largest (up to $4 million a year) awarded by the National Science Foundation (NSF). This support fuels innovation and builds intellectual and physical infrastructure within and among disciplines in the integrative conduct of research, education, and knowledge transfer. The STC program currently funds a total of 17 Centers—five beginning in 2000, six beginning in 2002, two beginning in 2005, and four beginning in 2006. STCs conduct world-class research through partnerships among academic institutions, national laboratories, industrial organizations, and/or other public/private entities, and via international collaborations, as appropriate. STCs enable and foster excellence in education, the integration of research and education, and the creation of bonds between learning and inquiry so that discovery and creativity more fully support the learning process. In addition, STCs capitalize on diversity through participation in Center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

Based on prior evaluations of the program, the National Science Board (NSB) approved the continuation of Science and Technology Centers through the establishment of new program solicitations and several new competitions. As part of the continuation, the NSB required the program to conduct a program evaluation of the outcomes and impact of the program seven years after the first new cohort of Centers were established (Memorandum to Members of the National Science Board, February 13, 1997).

A related data collection effort that consists of general grantee reporting is approved for program monitoring under OMB 3145–0194. To enable effective oversight of its investment, the NSF requires that each currently funded Center submit an annual progress report that describes all activities of the Center; each existing Center began submitting an annual report at the end of its first year. While a database of Centers' characteristics, activities, and outcomes has been created using data from these annual reports, supplemental information is required to fulfill the evaluative needs of the program.

NSF has planned a new program review of STC, and has contracted with Abt Associates Inc. to provide for analytic and technical support, to include data collection and analysis, for an expert peer review of the program. To help fulfill the evaluation needs of the program, NSF has planned to collect data that is designed to explore the structures and processes the STCs and their participating universities have in place for developing the human capital of program participants and for fostering a variety of career paths. The primary methods of data collection will include data gathering from open sources and from records at NSF and grantee centers and from surveys of program participants. There are a bounded (or limited) number of respondents within the general public who will be affected by this research, including former graduate student and postdoctoral fellow participants of the centers. NSF will use the STC program evaluation

data and analyses to provide members of an expert peer review panel with information about the program's role in the talent development and on the career paths taken by students who participated in STCs and were involved in particular STC activities.

Respondents: Individuals or households, Federal Government, and not-for-profit institutions.

Estimated Number of Respondents: 1700.

Burden on the Public: 850 hours.

Dated: June 5, 2009.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E9–13712 Filed 6–10–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2009–0186]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Policy Statement on Cooperation with States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities;

2. *Current OMB approval number:* 3150–0163;

3. *How often the collection is required:* On occasion, when a State wishes to observe NRC inspections or perform inspections for NRC;

4. *Who is required or asked to report:* Those States interested in observing or performing inspections;

5. *The number of annual respondents:* 56 (50 for nuclear facility licensees + 6 for materials security licensees);

6. *The number of hours needed annually to complete the requirement or request:* 800 hours (approximately 10 hours per response);

7. *Abstract:* States wishing to enter into an agreement with NRC to observe or participate in NRC inspections at nuclear power facilities or conduct materials security inspections against NRC Orders are requested to provide certain information to the NRC to ensure close cooperation and consistency with the NRC inspection program, as specified by the Commission's Policy of Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities and Section 274i of the Atomic Energy Act, as amended.

Submit, by August 10, 2009, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate 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 or other forms of information technology?

A copy of the draft 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, Maryland 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 submitted in writing or in electronic form will be made available for public inspection. 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. Comments submitted should reference Docket No. NRC–2009–0186. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2009–0186. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6874, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 4th day of June 2009.

For the Nuclear Regulatory Commission,

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–13704 Filed 6–10–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0042]

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 March 23, 2009.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 748, ''National Source Tracking Transaction Report.''

3. *Current OMB approval number:* 3150–0202.

4. *The form number if applicable:* NRC Form 748.

5. *How often the collection is required:* Initially, at completion of a transaction, and at inventory reconciliation.

6. *Who will be required or asked to report:* Licensees that manufacture, receive, transfer, disassemble, or dispose of nationally tracked sources.

7. *An estimate of the number of annual responses:* 1,350.

8. *The estimated number of annual respondents:* 1,350 (350 NRC Licensees + 1,000 Agreement State Licensees).

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 412.

10. *Abstract:* In 2006, The NRC amended its regulations to implement a

National Source Tracking System for certain sealed sources. The amendments require licensees to report certain transactions involving nationally tracked sources to the National Source Tracking System. These transactions include manufacture, transfer, receipt, disassembly, or disposal of the nationally tracked source. This information collection is mandatory and is used to populate the National Source Tracking System.

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, Maryland 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 July 13, 2009. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

NRC Desk Officer, Office of Information and Regulatory Affairs (3150–0202), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

The NRC Clearance Officer is Gregory Trussell, (301) 415–6445.

Dated at Rockville, Maryland, this 5th day of June 2009.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–13715 Filed 6–10–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0231; EA–09–131]

In the Matter of General Motors Corporation, Detroit, MI; Demand for Information

I

The Nuclear Regulatory Commission (NRC or Commission) is issuing this Demand for Information because it is our understanding that General Motors Corporation (GM) possesses radioactive material in the form of tritium in exit signs. Because GM possesses radioactive material in this form, it holds what is referred to as a ''general license'' to possess such material. In this case, GM's general license has been issued by the NRC pursuant to section 31.5 in Part 10 of the Code of Federal Regulations (10 CFR 31.5). This general license authorizes GM, the licensee, to receive, possess, use, or transfer, in accordance with the provisions of paragraphs (b), (c) and (d) of 10 CFR 31.5, radioactive material contained in devices designed and manufactured for the purpose of producing light.

II

On December 7, 2006, NRC issued Regulatory Issue Summary (RIS) 2006–25, ''Requirements for the Distribution and Possession of Tritium Exit Signs and the Requirements in 10 CFR 31.5 and 32.51a.'' This RIS was issued in part to remind general licensees of the requirements in 10 CFR 31.5 regarding transfer and disposal of tritium exit signs. It was NRC's intent that issuance of this RIS would minimize the chances of improper disposal of tritium exit signs.

Despite the publication of the RIS in 2006, NRC has reason to believe that certain general licensees may lack awareness of their responsibility to account for and properly dispose of tritium exit signs. Therefore, the NRC needs further information to determine whether we can have reasonable assurance that general licensees are complying with NRC regulations applying to the possession, transfer, and disposal of tritium exit signs.

III

Accordingly, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR 31.5, the NRC seeks information in order to determine whether additional regulatory action should be taken to ensure compliance with NRC requirements. Within 60 days of the date of this Demand for Information, GM must submit a written answer to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. GM's answer must be submitted under oath or affirmation, and it must provide the following information:

A. Explain how GM ensures compliance with the NRC requirements applying to the possession, transfer, and disposal of tritium exit signs GM has acquired. Identify and provide contact information for the individual GM has appointed who is responsible for ensuring day to day compliance with these requirements;

B. State the number of tritium exit signs GM currently possesses and the number of signs that, according to GM's records, should be in GM's possession.

C. Explain the reasons for any discrepancy between the number of tritium exit signs GM currently possesses and the number of signs that should be in GM's possession.

D. Describe any actions GM has taken or plans to take, to locate tritium exit signs that should be, but are not, in GM's possession.

E. Describe any actions GM has taken or plans to take, to prevent future losses of tritium exit signs.

After reviewing GM's response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause, such as a particularly large number of signs spread over multiple locations. If GM believes GM cannot report the results within the 60-day deadline, GM may forward a request to extend the deadline. Extensions will be granted if GM can reasonably demonstrate an inability to meet the deadline. Additionally, any other requirement can be relaxed or rescinded, as long as GM can reasonably demonstrate why that requirement should be relaxed or rescinded. Such requests may be emailed to *MSEA@nrc.gov* or faxed to Angela McIntosh at (301) 415–5955. Questions about this Demand for Information may be referred to Tritium Exit Sign Inventory Support at (301) 415–3340.

Send responses to: Director, Office of Federal and State Materials and Environmental Management Programs, *Attention:* Angela R. McIntosh, Mail Stop T8–E24, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated this 29 day of May 2009.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Director, Office of Enforcement.

[FR Doc. E9–13709 Filed 6–10–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0232]

Draft NUREG/CR: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft NUREG/CR, ''Diversity Strategies for Nuclear Power Plant Instrumentation and Control Systems.''

FOR FURTHER INFORMATION CONTACT: Michael E. Waterman, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* (301) 251–7451 or e-mail to *Michael.Waterman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft contractor report in the agency's ''NUREG/CR'' series. This series was developed to describe and make available to the public information such as the results of research conducted on behalf of the NRC regarding specific approaches for implementing safety systems in accordance with NRC regulations.

The draft contractor report (NUREG/CR), entitled, ''Diversity Strategies for Nuclear Power Plant Instrumentation and Control Systems,'' is temporarily identified as ''Diversity NUREG/CR'', which should be mentioned in all related correspondence.

This report presents the technical basis for establishing acceptable mitigating strategies that resolve diversity and defense-in-depth (D3) assessment findings and conform to NRC requirements. The research approach employed to establish appropriate diversity strategies involves investigation of available documentation on D3 methods and experience from nuclear power and nonnuclear industries, capture of expert knowledge and lessons learned, determination of commonalities in diversity approaches, and assessment of the nature of common-cause failures (CCFs) and compensating diversity attributes. Succinctly, the purpose of the research described in this report was to answer the question, ''If diversity is needed in a safety system to mitigate the consequences of potential CCFs, how much diversity is enough?''

The grouping of diversity criteria combinations establishes baseline diversity usage and facilitates a systematic organization of strategic approaches for coping with CCF vulnerabilities. These baseline sets of diversity criteria constitute appropriate CCF mitigating strategies for digital safety systems. The strategies represent guidance on acceptable diversity usage and can be applied directly to ensure that CCF vulnerabilities identified through a D3 assessment have been adequately resolved. Additionally, a framework has been generated for capturing practices regarding diversity usage. A metric has been developed for the systematic assessment of the comparative effect of proposed diversity strategies on the basis of these practices (*see* Appendix A).

II. Further Information

The NRC staff is soliciting comments on Diversity NUREG/CR. Comments may be accompanied by relevant information or supporting data and should mention ''Diversity NUREG/CR'' in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *E-mail comments to: nrcrep.resource@nrc.gov.*

3. *Fax comments to:* Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

Requests for technical information about Diversity NUREG/CR-xxxx may be directed to the NRC contact, Michael E. Waterman at (301) 251–7541 or e-mail to *Michael.Waterman@nrc.gov.*

Comments would be most helpful if received by July 10, 2009. Comments received after that 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. Although a time limit is given, comments and suggestions in connection with items for inclusion in the Diversity NUREG/CR currently being developed or improvements in the NUREG/CR are encouraged at any time.

Electronic copies of Diversity NUREG/CR are available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML090510113.

In addition, the draft Diversity NUREG/CR is available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

NUREG/CRs are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 3rd day of June 2009.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Deputy Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–13708 Filed 6–10–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0235; Docket No. 72–46; EA–09–118]

In the Matter of Dairyland Power Cooperative, La Crosse Boiling Water Reactor, Independent Spent Fuel Installation; Order Modifying License (Effective Immediately)

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Issuance of Order for Implementation of Additional Security Measures and Fingerprinting for Unescorted Access to Dairyland Power Cooperative.

FOR FURTHER INFORMATION CONTACT: L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. *Telephone:* (301) 492–3316; *fax number:* (301) 492–3348; *e-mail: Raynard.Wharton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, NRC (or the Commission) is providing notice, in the matter of La Crosse Boiling Water Reactor Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

Further Information

I

NRC has issued a general license to Dairyland Power Cooperative (DPC), authorizing the operation of an ISFSI, in accordance with the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72. This Order is being issued to DPC, which has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR Part 72. The Commission's

regulations at 10 CFR 72.212(b)(5), 10 CFR 50.54(p)(1), and 10 CFR 73.55(c)(5) require licensees to maintain safeguards contingency plan procedures to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage, in accordance with 10 CFR Part 73, Appendix C. Specific physical security requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

Inasmuch as an insider has an opportunity equal to, or greater than, any other person, to commit radiological sabotage, the Commission has determined these measures to be prudent. Comparable Orders have been issued to all licensees that currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs, to place the actions taken in response to the Advisories into the established regulatory framework and to implement additional security enhancements that emerged from NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has conducted a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures (ASMs) are required to address the current threat environment, in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachments 1 and 2 of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety, the environment, and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachments 1 and 2 to this Order, in response to previously issued advisories, or on their own. It also recognizes that some measures may not be possible nor necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at DPC's facility, to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the ASMs implemented by licensees in response to the Safeguards and Threat Advisories have been sufficient to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that these actions must be embodied in a legally binding order because the current threat environment continues to persist. Therefore, it is appropriate to require through this Order certain ASMs, consistent with the established regulatory framework.

To provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, licenses issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachments 1 and 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that, in light of the common defense and security circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 53, 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50, 72, and 73, *It is hereby ordered,* effective immediately, that your general license is modified as follows:

A. DPC shall comply with the requirements described in Attachments 1 and 2 to this Order, except to the extent that a more stringent requirement is set forth in the La Crosse Boiling Water Reactor's physical security plan. DPC shall immediately start implementation of the requirements in Attachments 1 and 2 to the Order and shall complete implementation no later than 180 days from the date of this Order, with the exception of the ASM B.4 of Attachment 1 [''Additional Security Measures (ASMs) for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs)''], which shall be implemented no later than 365 days from the date of this Order. In any event, DPC shall complete implementation of all ASMs before the first day that spent fuel is initially placed in the ISFSI.

B. 1. DPC shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in Attachments 1 and 2; (2) if compliance with any of the requirements is unnecessary, in its specific circumstances; or (3) if implementation of any of the requirements would cause DPC to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide DPC's justification for seeking relief from, or variation of, any specific requirement.

2. If DPC considers that implementation of any of the requirements described in Attachments 1 and 2 to this Order would adversely impact the safe storage of spent fuel, DPC must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the requirements set forth in Attachments 1 and 2 that are in question, or a schedule for modifying the facility, to address the adverse safety condition. If neither approach is appropriate, DPC must supplement its response, to Condition B.1 of this Order, to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required under Condition B.1.

C. 1. DPC shall, within twenty (20) days of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachments 1 and 2.

2. DPC shall report to the Commission when it has achieved full compliance with the requirements described in Attachments 1 and 2.

D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

DPC's response to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals and documents

produced by DPC as a result of this order, that contain Safeguards Information as defined by 10 CFR 73.22, shall be properly marked and handled, in accordance with 10 CFR 73.21 and 73.22.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions, for good cause.

IV

In accordance with 10 CFR 2.202, DPC must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of the Order. In addition, DPC and any other person adversely affected by this Order, may request a hearing on this Order within 20 days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which DPC relies and the reasons as to why the Order should not have been issued. If a person other than DPC requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including: (a) A request for hearing; (b) a petition for leave to intervene; (c) any motion or other document filed in the proceeding before the submission of a request for hearing or petition to intervene; and (d) documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which NRC promulgated in August 2007, 72 FR 49139 (August 28, 2007) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases, to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov,* or by calling (301) 415–1677, to request: (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding [even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate]. Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, he/she can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m., Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for, and receive digital ID certificates before hearing requests are filed so that they may obtain access to the documents via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact-Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MHSD.Resource@nrc.gov*.

Participants who believe that they have good cause for not submitting documents electronically must file motions, in accordance with 10 CFR 2.302(g), with their initial paper filings requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail, addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete, by first-class mail, as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers, in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair-Use application, Participants are requested not to include copyrighted materials in their works.

If a hearing is requested by DPC or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), DPC may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is

not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified in Section III shall be final twenty (20) days from the date of this Order, without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions, as specified in Section III, shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 3rd day of June 2009.

For the Nuclear Regulatory Commission.

Marc L. Dapas,

Acting Director, Office of Nuclear Material Safety and Safeguards.

Attachment 1—Additional Security Measures (ASMs) for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs) Contains Safeguards Information and Is Not Included in the *Federal Register* Notice

Attachment 2—Additional Security Measures for Access Authorization and Fingerprinting at Independent Spent Fuel Storage Installations, Dated December 19, 2007

A. General Basis Criteria

1. These additional security measures (ASMs) are established to delineate an independent spent fuel storage installation (ISFSI) licensee's responsibility to enhance security measures related to authorization for unescorted access to the protected area of an ISFSI in response to the current threat environment.

2. Licensees whose ISFSI is collocated with a power reactor may choose to comply with the NRC-approved reactor access authorization program for the associated reactor as an alternative means to satisfy the provisions of sections B through G below. Otherwise, licensees shall comply with the access authorization and fingerprinting requirements of section B through G of these ASMs.

3. Licensees shall clearly distinguish in their 20-day response which method they intend to use in order to comply with these ASMs.

B. Additional Security Measures for Access Authorization Program

1. The licensee shall develop, implement and maintain a program, or enhance their existing program, designed to ensure that persons granted unescorted access to the protected area of an ISFSI are trustworthy and reliable and do not constitute an unreasonable risk to the public health and safety or the common defense and security, including a potential to commit radiological sabotage.

a. To establish trustworthiness and reliability, the licensee shall develop, implement, and maintain procedures for conducting and completing background investigations, prior to granting access. The scope of background investigations must address at least the past three years and, as a minimum, must include:

i. Fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check (CHRC). Where an applicant for unescorted access has been previously fingerprinted with a favorably completed CHRC, (such as a CHRC pursuant to compliance with orders for access to safeguards information) the licensee may accept the results of that CHRC, and need not submit another set of fingerprints, provided the CHRC was completed not more than three years from the date of the application for unescorted access.

ii. Verification of employment with each previous employer for the most recent year from the date of application.

iii. Verification of employment with an employer of the longest duration during any calendar month for the remaining next most recent two years.

iv. A full credit history review.

v. An interview with not less than two character references, developed by the investigator.

vi. A review of official identification (e.g., driver's license, passport, government identification, state, province or country of birth issued certificate of birth) to allow comparison of personal information data provided by the applicant. The licensee shall maintain a photocopy of the identifying document(s) on file, in accordance with ''Protection of Information,'' Section G of these ASMs.

vii. Licensees shall confirm eligibility for employment through the regulations of the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), and shall verify and ensure to the extent possible, the accuracy of the provided social security number and alien registration number as applicable.

b. The procedures developed or enhanced shall include measures for confirming the term, duration, and character of military service, and academic enrollment and attendance in lieu of employment, for the past five years.

c. Licensees need not conduct an independent investigation for individuals employed at a facility who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government granted security clearance, i.e., Top Secret, Secret or Confidential.

d. A review of the applicant's criminal history, obtained from local criminal justice resources, may be included in addition to the FBI CHRC, and is encouraged if the results of the FBI CHRC, employment check, or credit check disclose derogatory information. The scope of the applicant's local criminal history check shall cover all residences of record for the past three years from the date of the application for unescorted access.

2. The licensee shall use any information obtained as part of a CHRC solely for the purpose of determining an individual's suitability for unescorted access to the protected area of an ISFSI.

3. The licensee shall document the basis for its determination for granting or denying access to the protected area of an ISFSI.

4. The licensee shall develop, implement, and maintain procedures for updating background investigations for persons who are applying for reinstatement of unescorted access. Licensees need not conduct an independent reinvestigation for individuals who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government granted security clearance, i.e., Top Secret, Secret or Confidential.

5. The licensee shall develop, implement, and maintain procedures for reinvestigations of persons granted unescorted access, at intervals not to exceed five years. Licensees need not conduct an independent reinvestigation for individuals employed at a facility who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government granted security clearance, i.e., Top Secret, Secret or Confidential.

6. The licensee shall develop, implement, and maintain procedures designed to ensure that persons who have been denied unescorted access authorization to the facility are not allowed access to the facility, even under escort.

7. The licensee shall develop, implement, and maintain an audit program for licensee and contractor/vendor access authorization programs that evaluate all program elements and include a person knowledgeable and practiced in access authorization program performance objectives to assist in the overall assessment of the site's program effectiveness.

C. Fingerprinting Program Requirements

1. In a letter to the NRC, the licensee must nominate an individual who will review the results of the FBI CHRCs to make trustworthiness and reliability determinations for unescorted access to an ISFSI. This individual, referred to as the ''reviewing official,'' must be someone who requires unescorted access to the ISFSI. The NRC will review the CHRC of any individual nominated to perform the reviewing official function. Based on the results of the CHRC, the NRC staff will determine whether this individual may have access. If the NRC determines that the nominee may not be granted such access, that individual will be prohibited from obtaining access.[1] Once the NRC approves a reviewing official, the reviewing official is the only individual permitted to make access determinations for other individuals who have been identified by the licensee as having the need for unescorted access to the ISFSI, and have been fingerprinted and have had a CHRC in accordance with these ASMs. The reviewing official can only make access determinations for other individuals, and therefore cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if the licensee wishes to have a new or additional reviewing official, the NRC must approve that individual before he or she can act in the capacity of a reviewing official.

2. No person may have access to SGI or unescorted access to any facility subject to NRC regulation if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and CHRC, that the person may not have access to SGI or unescorted access to any facility subject to NRC regulation.

3. All fingerprints obtained by the licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

4. The licensee shall notify each affected individual that the fingerprints will be used to conduct a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' in section F of these ASMs.

5. Fingerprints need not be taken if the employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, has a favorably adjudicated U.S. Government CHRC within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer who granted the federal security clearance or reviewed the CHRC must be provided to the licensee. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to the facility.

D. Prohibitions

1. A licensee shall not base a final determination to deny an individual unescorted access to the protected area of an ISFSI solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

2. A licensee shall not use information received from a CHRC obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

E. Procedures for Processing Fingerprint Checks

1. For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to an ISFSI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov.* Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

2. The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free resubmission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

3. Fees for processing fingerprint checks are due upon application. The licensee shall submit payment of the processing fees electronically. In order to be able to submit secure electronic payments, licensees will need to establish an account with Pay.Gov (*https://www.pay.gov*). To request an account, the licensee shall send an email to *det@nrc.gov.* The email must include the licensee's company name, address, point of contact (POC), POC e-mail address, and phone number. The NRC will forward the request to Pay.Gov; who will contact the licensee with a password and user lD. Once licensees have established an account and submitted payment to Pay.Gov, they shall obtain a receipt. The licensee shall submit the receipt from Pay.Gov to the NRC along with fingerprint cards. For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7739. Combined payment for multiple applications is acceptable. The application fee (currently $36) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

4. The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

F. Right To Correct and Complete Information

1. Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal history records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual

[1] The NRC's determination of this individual's unescorted access to the ISFSI, in accordance with the process, is an administrative determination that is outside the scope of the Order.

of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of notification.

2. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI CHRC after the record is made available for his/her review. The licensee may make a final access determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to an ISFSI, the licensee shall provide the individual its documented basis for denial. Access to an ISFSI shall not be granted to an individual during the review process.

G. Protection of Information

1. The licensee shall develop, implement, and maintain a system for personnel information management with appropriate procedures for the protection of personal, confidential information. This system shall be designed to prohibit unauthorized access to sensitive information and to prohibit modification of the information without authorization.

2. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

3. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining suitability for unescorted access to the protected area of an ISFSI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have the appropriate need-to-know.

4. The personal information obtained on an individual from a criminal history record check may be transferred to another licensee if the gaining licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

5. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

[FR Doc. E9–13707 Filed 6–10–09; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2009–0236; Docket No. 72–67; EA–09–119]

In the Matter of R.E. Ginna Nuclear Power Plant, LLC; R.E. Ginna Nuclear Power Plant Independent Spent Fuel Installation; Order Modifying License (Effective Immediately)

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Issuance of Order for Implementation of Additional Security Measures and Fingerprinting for Unescorted Access to R.E. Ginna Nuclear Power Plant, LLC.

FOR FURTHER INFORMATION CONTACT: L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. *Telephone:* (301) 492–3316; *fax number:* (301) 492–3348; *e-mail: Raynard.Wharton@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, NRC (or the Commission) is providing notice, in the matter of R.E. Ginna Nuclear Power Plant Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

II. Further Information

I

NRC has issued a general license to R.E. Ginna Nuclear Power Plant, LLC (Ginna LLC), authorizing the operation of an ISFSI, in accordance with the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72. This Order is being issued to Ginna, LLC, which has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. The Commission's regulations at 10 CFR 72.212(b)(5), 10 CFR 50.54(p)(1), and 10 CFR 73.55(c)(5) require licensees to maintain safeguards contingency plan procedures to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage, in accordance with 10 CFR part 73, Appendix C. Specific physical security requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

Inasmuch as an insider has an opportunity equal to, or greater than, any other person, to commit radiological sabotage, the Commission has determined these measures to be prudent. Comparable Orders have been issued to all licensees that currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs, to place the actions taken in response to the Advisories into the established regulatory framework and to implement additional security enhancements that emerged from NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate

the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has conducted a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures (ASMs) are required to address the current threat environment, in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachments 1 and 2 of this Order on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety, the environment, and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachments 1 and 2 to this Order, in response to previously issued advisories, or on their own. It also recognizes that some measures may not be possible nor necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at Ginna, LLC's facility, to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the ASMs implemented by licensees in response to the Safeguards and Threat Advisories have been sufficient to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that these actions must be embodied in a legally binding order because the current threat environment continues to persist. Therefore, it is appropriate to require through this Order certain ASMs, consistent with the established regulatory framework.

To provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, licenses issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachments 1 and 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that, in light of the common defense and security circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 53, 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72, and 73, *it is hereby ordered, effective immediately, that your general license is modified as follows:*

A. Ginna, LLC shall comply with the requirements described in Attachments 1 and 2 to this Order, except to the extent that a more stringent requirement is set forth in the R.E. Ginna Nuclear Power Plant's reactor physical security plan. Ginna, LLC shall immediately start implementation of the requirements in Attachments 1 and 2 to the Order and shall complete implementation no later than 180 days from the date of this Order, with the exception of the ASM B.4 of Attachment 1 [''Additional Security Measures (ASMs) for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs)''], which shall be implemented no later than 365 days from the date of this Order. In any event, Ginna, LLC shall complete implementation of all ASMs before the first day that spent fuel is initially placed in the ISFSI.

B. 1. Ginna, LLC shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in Attachments 1 and 2; (2) if compliance with any of the requirements is unnecessary, in its specific circumstances; or (3) if implementation of any of the requirements would cause Ginna, LLC to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide Ginna, LLC's justification for seeking relief from, or variation of, any specific requirement.

2. If Ginna, LLC considers that implementation of any of the requirements described in Attachments 1 and 2 to this Order would adversely impact the safe storage of spent fuel, Ginna, LLC must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the requirements set forth in Attachments 1 and 2 that are in question, or a schedule for modifying the facility, to address the adverse safety condition. If neither approach is appropriate, Ginna, LLC must supplement its response, to Condition B.1 of this Order, to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required under Condition B.1.

C. 1. Ginna, LLC shall, within twenty (20) days of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachments 1 and 2.

2. Ginna, LLC shall report to the Commission when it has achieved full compliance with the requirements described in Attachments 1 and 2.

D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Ginna, LLC's response to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals and documents produced by Ginna, LLC as a result of this order, that contain Safeguards Information as defined by 10 CFR 73.22, shall be properly marked and handled, in accordance with 10 CFR 73.21 and 73.22.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions, for good cause.

IV

In accordance with 10 CFR 2.202, Ginna, LLC must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of the Order. In addition, Ginna, LLC and any other person adversely affected by this Order, may request a hearing on this Order within 20 days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which Ginna, LLC relies and the reasons as to why the Order should not have been issued. If a person other than Ginna LLC requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including: (a) A request for hearing; (b) a petition for leave to intervene; (c) any motion or other document filed in the proceeding before the submission of a request for hearing or petition to intervene; and (d) documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which NRC promulgated in August 2007, 72 *FR* 49139 (August 28, 2007) and codified in pertinent part at 10 CFR part 2, subpart B. The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases, to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov*, or by calling (301) 415–1677, to request: (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding [even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate]. Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, he/she can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m., Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for, and receive digital ID certificates before a hearing requests are filed so that they may obtain access to the documents via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact-Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MHSD.Resource@nrc.gov*.

Participants who believe that they have good cause for not submitting documents electronically must file motions, in accordance with 10 CFR 2.302(g), with their initial paper filings requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail, addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete, by first-class mail, as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers, in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair-Use application, participants are requested not to include copyrighted materials in their works.

If a hearing is requested by Ginna, LLC or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Ginna, LLC may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified in Section III shall be final twenty (20) days from the date of this Order, without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions, as specified in Section III, shall be final when the extension expires, if a hearing request has not been received. An Answer or a Request for Hearing Shall Not Stay the Immediate Effectiveness of this Order.

Dated at Rockville, Maryland, this 3rd day of June 2009.

For the Nuclear Regulatory Commission.

Marc L. Dapas,

Acting Director, Office of Nuclear Material Safety and Safeguards.

Attachment 1—Additional Security Measures (ASMs) for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs) contains Safeguards Information and is not included in the **Federal Register** Notice.

Attachment 2—Additional Security Measures for Access Authorization and Fingerprinting at Independent Spent Fuel Storage Installations, dated December 19, 2007.

A. General Basis Criteria

1. These additional security measures (ASMs) are established to delineate an independent spent fuel storage installation (ISFSI) licensee's

responsibility to enhance security measures related to authorization for unescorted access to the protected area of an ISFSI in response to the current threat environment.

2. Licensees whose ISFSI is collocated with a power reactor may choose to comply with the NRC-approved reactor access authorization program for the associated reactor as an alternative means to satisfy the provisions of sections B through G below. Otherwise, licensees shall comply with the access authorization and fingerprinting requirements of section B through G of these ASMs.

3. Licensees shall clearly distinguish in their 20-day response which method they intend to use in order to comply with these ASMs.

B. Additional Security Measures for Access Authorization Program

1. The licensee shall develop, implement and maintain a program, or enhance their existing program, designed to ensure that persons granted unescorted access to the protected area of an ISFSI are trustworthy and reliable and do not constitute an unreasonable risk to the public health and safety or the common defense and security, including a potential to commit radiological sabotage.

a. To establish trustworthiness and reliability, the licensee shall develop, implement, and maintain procedures for conducting and completing background investigations, prior to granting access. The scope of background investigations must address at least the past three years and, as a minimum, must include:

i. Fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check (CHRC). Where an applicant for unescorted access has been previously fingerprinted with a favorably completed CHRC, (such as a CHRC pursuant to compliance with orders for access to safeguards information) the licensee may accept the results of that CHRC, and need not submit another set of fingerprints, provided the CHRC was completed not more than three years from the date of the application for unescorted access.

ii. Verification of employment with each previous employer for the most recent year from the date of application.

iii. Verification of employment with an employer of the longest duration during any calendar month for the remaining next most recent two years.

iv. A full credit history review.

v. An interview with not less than two character references, developed by the investigator.

vi. A review of official identification (*e.g.*, driver's license, passport, government identification, State, province or country of birth issued certificate of birth) to allow comparison of personal information data provided by the applicant. The licensee shall maintain a photocopy of the identifying document(s) on file, in accordance with ''Protection of Information,'' Section G of these ASMs.

vii. Licensees shall confirm eligibility for employment through the regulations of the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), and shall verify and ensure to the extent possible, the accuracy of the provided social security number and alien registration number as applicable.

b. The procedures developed or enhanced shall include measures for confirming the term, duration, and character of military service, and academic enrollment and attendance in lieu of employment, for the past five years.

c. Licensees need not conduct an independent investigation for individuals employed at a facility who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government granted security clearance, *i.e.*, Top Secret, Secret or Confidential.

d. A review of the applicant's criminal history, obtained from local criminal justice resources, may be included in addition to the FBI CHRC, and is encouraged if the results of the FBI CHRC, employment check, or credit check disclose derogatory information. The scope of the applicant's local criminal history check shall cover all residences of record for the past three years from the date of the application for unescorted access.

2. The licensee shall use any information obtained as part of a CHRC solely for the purpose of determining an individual's suitability for unescorted access to the protected area of an ISFSI.

3. The licensee shall document the basis for its determination for granting or denying access to the protected area of an ISFSI.

4. The licensee shall develop, implement, and maintain procedures for updating background investigations for persons who are applying for reinstatement of unescorted access. Licensees need not conduct an independent reinvestigation for individuals who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government granted security clearance, *i.e.*, Top Secret, Secret or Confidential.

5. The licensee shall develop, implement, and maintain procedures for reinvestigations of persons granted unescorted access, at intervals not to exceed five years. Licensees need not conduct an independent reinvestigation for individuals employed at a facility who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government granted security clearance, *i.e.*, Top Secret, Secret or Confidential.

6. The licensee shall develop, implement, and maintain procedures designed to ensure that persons who have been denied unescorted access authorization to the facility are not allowed access to the facility, even under escort.

7. The licensee shall develop, implement, and maintain an audit program for licensee and contractor/vendor access authorization programs that evaluate all program elements and include a person knowledgeable and practiced in access authorization program performance objectives to assist in the overall assessment of the site's program effectiveness.

C. Fingerprinting Program Requirements

1. In a letter to the NRC, the licensee must nominate an individual who will review the results of the FBI CHRCs to make trustworthiness and reliability determinations for unescorted access to an ISFSI. This individual, referred to as the ''reviewing official'' must be someone who requires unescorted access to the ISFSI. The NRC will review the CHRC of any individual nominated to perform the reviewing official function. Based on the results of the CHRC, the NRC staff will determine whether this individual may have access. If the NRC determines that the nominee may not be granted such access, that individual will be prohibited from obtaining access.[1] Once the NRC approves a reviewing official, the reviewing official is the only individual permitted to make access determinations for other individuals who have been identified by the licensee as having the need for unescorted access to the ISFSI, and have been fingerprinted and have had a CHRC in accordance with these ASMs. The reviewing official can only make access determinations for other individuals, and therefore cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if the licensee wishes to have a new or additional reviewing official, the NRC must approve that individual before he

[1] The NRC's determination of this individual's unescorted access to the ISFSI, in accordance with the process, is an administrative determination that is outside the scope of the order.

or she can act in the capacity of a reviewing official.

2. No person may have access to SGI or unescorted access to any facility subject to NRC regulation if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and CHRC, that the person may not have access to SGI or unescorted access to any facility subject to NRC regulation.

3. All fingerprints obtained by the licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

4. The licensee shall notify each affected individual that the fingerprints will be used to conduct a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' in section F of these ASMs.

5. Fingerprints need not be taken if the employed individual (*e.g.*, a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, has a favorably adjudicated U.S. Government CHRC within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer who granted the Federal security clearance or reviewed the CHRC must be provided to the licensee. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to the facility.

D. Prohibitions

1. A licensee shall not base a final determination to deny an individual unescorted access to the protected area of an ISFSI solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

2. A licensee shall not use information received from a CHRC obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

E. Procedures for Processing Fingerprint Checks

1. For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to an ISFSI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov*. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

2. The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free resubmission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

3. Fees for processing fingerprint checks are due upon application. The licensee shall submit payment of the processing fees electronically. In order to be able to submit secure electronic payments, licensees will need to establish an account with Pay.Gov (*https://www.pay.gov*). To request an account, the licensee shall send an e-mail to *det@nrc.gov*. The e-mail must include the licensee's company name, address, point of contact (POC), POC e-mail address, and phone number. The NRC will forward the request to Pay.Gov; who will contact the licensee with a password and user ID. Once licensees have established an account and submitted payment to Pay.Gov, they shall obtain a receipt. The licensee shall submit the receipt from Pay.Gov to the NRC along with fingerprint cards. For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7739. Combined payment for multiple applications is acceptable. The application fee (currently $36) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

4. The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

F. Right To Correct and Complete Information

1. Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal history records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of notification.

2. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (*i.e.*, law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of a FBI CHRC after the record is made available for his/her review. The licensee may make a final access determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record.

Upon a final adverse determination on access to an ISFSI, the licensee shall provide the individual its documented basis for denial. Access to an ISFSI shall not be granted to an individual during the review process.

G. Protection of Information

1. The licensee shall develop, implement, and maintain a system for personnel information management with appropriate procedures for the protection of personal, confidential information. This system shall be designed to prohibit unauthorized access to sensitive information and to prohibit modification of the information without authorization.

2. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures, for protecting the record and the personal information from unauthorized disclosure.

3. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining suitability for unescorted access to the protected area of an ISFSI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have the appropriate need-to-know.

4. The personal information obtained on an individual from a criminal history record check may be transferred to another licensee if the gaining licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

5. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

[FR Doc. E9–13705 Filed 6–10–09; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program: Medically Underserved Areas for 2010

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of Medically Underserved Areas for 2010.

SUMMARY: The U.S. Office of Personnel Management (OPM) has completed its annual determination of the States that qualify as Medically Underserved Areas under the Federal Employees Health Benefits (FEHB) Program for calendar year 2010. This is necessary to comply with a provision of the FEHB law that mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Accordingly, for calendar year 2010, the following states are Medically Underserved Areas under the FEHB Program: Alabama, Arizona, Idaho, Illinois, Kentucky, Louisiana, Mississippi, Missouri, Montana, New Mexico, North Dakota, South Carolina, South Dakota, and Wyoming. For the 2010 calendar year, no new States have been added.

DATES: *Effective Date:* January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Ingrid Burford, 202–606–0004.

SUPPLEMENTARY INFORMATION: FEHB law (5 U.S.C. 8902(m)(2)) requires special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. This section of the law requires that a State be designated as a Medically Underserved Area if 25 percent or more of the population lives in an area designated by the Department of Health and Human Services (HHS) as a primary medical-care manpower shortage area. Such States are designated as Medically Underserved Areas for purposes of the FEHB Program, and the law requires non-HMO FEHB plans to reimburse beneficiaries, subject to their contract terms, for covered services obtained from any licensed provider in these States.

FEHB regulations (5 CFR 890.701) require OPM to make an annual determination of the States that qualify as Medically Underserved Areas for the next calendar year by comparing the latest HHS State-by-State population counts on primary medical-care manpower shortage areas with U.S. Census figures on State resident populations.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9–13706 Filed 6–10–09; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2009–35; Order No. 221]

Global Expedited Package Services 1 Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add an additional Global Expedited Package Services 1 negotiated service agreement to the Competitive Product List. This notice addresses procedural steps associated with this filing.

DATES: Comments are due June 11, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 2009, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 1 (GEPS 1) contract.[1] GEPS 1 provides volume-based incentives for mailers that send large volumes of Express Mail International (EMI) and/or Priority Mail International (PMI). The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS contracts, and is supported by the Governors' Decision filed in Docket No. CP2008–5.[2] Notice at 1. It further notes that in Order No. 86, which established GEPS 1 as a product, the Commission held that additional contracts may be included as part of the GEPS 1 product if they meet the requirements of 39 U.S.C. 3633, and if they are functionally equivalent to the

[1] Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement, June 1, 2009 (Notice).

[2] *See* Docket No. CP2008–5, Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Expedited Package Services Contracts (Governors' Decision No. 08–7), May 6, 2008, and United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08–7, July 23, 2008.

initial GEPS 1 contract filed in Docket No. CP2008–5.[3] *Id.* at 1.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 86. It submitted the contract and supporting material under seal, and attached a redacted copy of the contract and certified statement required by 39 CFR 3015.5(c)(2) to the Notice as Attachments 1 and 2, respectively.[4] *Id.* at 1–2. On June 3, 2009, the Post revised information under seal to replace information originally filed under seal and an updated Certification of Compliance with 39 U.S.C. 3633.[5] The term of the contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received.

The Notice addresses reasons why the instant GEPS 1 contract fits within the Mail Classification Schedule language for GEPS 1. The Postal Service explains that the instant contract is functionally equivalent to the GEPS 1 contracts filed previously because it shares similar cost and market characteristics and, therefore, the contracts should be classified as a single product. *Id.* at 3. It states that in Governors' Decision No. 08–7, a pricing formula and classification system was established to ensure that each contract meets the statutory and regulatory requirements of 39 U.S.C. 3633. The Postal Service affirms that the instant contract demonstrates its functional equivalence with the previous GEPS 1 contracts because of several factors: The contract term of one year which applies to all GEPS 1 contracts, requirement of payment through permit imprint, and its total costs are volume variable as are the total costs associated with all GEPS 1 contracts. *Id.* at 4. It explains that even though prices may be different based on volume or postage commitments made by the customers, these differences do not affect the contracts' functional equivalency because the total costs associated with GEPS 1 contracts are volume variable.

The Postal Service also states the instant contract has minor differences reflected in the language of this agreement compared to other GEPS 1 contracts. *Id.* These differences include provisions which reflect differences between the mailers including: (1) Language which addresses the connection between completion of the regulatory review process and expiration of a previous or existing agreement, if applicable;[6] (2) terms which clarify that other Postal Service products are available to the customer subject to the same regulatory standards as other mailers in general; (3) exclusion of certain flat rate products from the mail qualifying for discounts; (4) requiring the mailer to provide notice of intent to mail and to conform with the acceptance times and scheduling procedures at the acceptance site; (5) specific liquidated damages terms negotiated with this mailer; (6) terms to explain the mailer's volume and revenue commitment calculation upon early termination of the contract; and (7) clarifying language for regulatory entity obligations related to the contract or revisions to update terms or references from a prior agreement. *Id.* at 4–6.

The Postal Service states that these differences related to particular mailers are ''incidental differences'' and do not change the conclusion that these agreements are functionally equivalent in a substantive aspect. *Id.* at 6.

The Postal Service requests that this contract be included within the GEPS 1 product. *Id.*

II. Notice of Filing

The Commission establishes Docket No. CP2009–35 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3622 or 3642. Comments are due no later than June 11, 2009. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned filings.

It is Ordered:

1. The Commission establishes Docket No. CP2009–35 for consideration of the matters raised in this docket.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than June 11, 2009.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–13745 Filed 6–10–09; 8:45 am]

BILLING CODE 7710–FW–P

[3] *See* PRC Order No. 86, Order Concerning Global Expedited Package Services Contracts, June 27, 2008, at 7 (Order No. 86).

[4] Attachment 1 to the Notice consists of a redacted version of the contract. Attachment 2 is a redacted Certification of Compliance with 39 U.S.C. 3633.

[5] Notice of United States Postal Service Filing (Under Seal) of Revised Information and Revised Certification, June 3, 2009.

[6] The Postal Service states that some of the contracts generally provide that if all applicable reviews have not been completed at the time an older contract expires, the mailer must pay published prices until some alternative becomes available. Because in the instant contract the mailer is a new customer, this provision is not included.

POSTAL REGULATORY COMMISSION

[Docket No. R2009–4; Order No. 220]

Postal Service Price Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is conducting a review of the Postal Service's planned price adjustment for Standard Mail High Density flat pieces. This document invites public comment.

DATES: Comments are due June 22, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

On June 1, 2009, the Postal Service filed with the Commission a notice announcing its intention to adjust prices for Standard Mail High Density flat pieces pursuant to 39 U.S.C. 3622 and 39 CFR Part 3010.[1] The proposed adjustment has a planned implementation date of July 19, 2009. The Postal Service submits that this proposal represents a way that it can take advantage of its greater pricing flexibility for market dominant products under the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3218 (2006), to ''respond quickly and flexibly to perceived needs in the mailing community.'' *Id.* at 3.

II. Postal Service Filing

Price adjustment. The proposed price adjustment reduces prices for the Standard Mail High Density flats price categories for both commercial and nonprofit mailpieces. *Id.* at 2. The

[1] United States Postal Service Notice of Market-Dominant Price Adjustment, June 1, 2009 (Notice).

adjustment decreases the minimum per-piece prices for commercial and nonprofit High Density flats by 0.1 cent, and decreases the pound price element for commercial and nonprofit High Density flats to match the Standard Mail Saturation flats pound price element. The per-piece price element for pound rated pieces increases by 0.7 cents per piece to ''ensure a smooth transition at the breakpoint,'' according to the Postal Service. *Id.* at 3. Dropship discounts for High Density flats do not change under this proposal.

In support of the proposal, the Postal Service explains that it has heard the concerns expressed by High Density flats mailers on the detrimental impact that the above-average price increases implemented on May 11, 2009 will have on their businesses. After taking this concern into consideration, the Postal Service determined that High Density flat prices that reflect an increase from the previous year similar to the average Standard Mail increase are more appropriate at this time. *Id.* at 2.

Conformance with 39 CFR Part 3010. The Postal Service's proposed schedule of prices appears in Appendix A as draft Mail Classification Schedule language, which is attached to the Notice. *Id.* at 1. It also represents, in conformance with the notice requirements of 39 CFR 3010.14(a)(3), that it will issue public notice of the price changes at least 45 days before the effective date via several additional means, including issuing notice of the price changes on the Postal Service's Web site (*http://www.usps.com*), the *Postal Explorer* Web site (*http://www.pe.usps.com*), the *DMM* [*Domestic Mail Manual*] *Advisory,* and the *P&C* [*Producers and Consumers*] *Weekly,* and a press release announcing the changes. The Postal Service identifies Joseph Moeller, Manager, Pricing, as the official available to provide prompt responses to requests for clarification from the Commission. *Id.* at 2.

Impact on the price cap. Because the proposed High Density flat price adjustments are decreases and not part of the annual CPI cap price change, the Postal Service considers this price adjustment to be outside the Commission's current rules. *Id.* at 3. The Postal Service ''proposes that the adjustments have no impact on price cap issues, but would welcome other views.'' *Id.* Accordingly, the Postal Service has made no calculation of cap or price changes described in Commission rule 3010.14(b)(1) through (4). The Postal Service ''is not claiming any new unused rate adjustment authority as a result of this price decrease.'' *Id.*[2]

Objectives and factors. The Postal Service lists and discusses what it considers the relevant objectives and factors of 39 U.S.C. 3622 as to their relationship to the proposed price adjustment. *Id.* at 4–8. It believes at most, the price reductions will cause only a modest decrease in Postal Service revenues, and could potentially avoid diversion of large volumes of mail currently paying High Density flats prices to non-postal delivery.

Workshare discounts. The Postal Service maintains its view that the price differences between the High Density categories and the Saturation and Carrier Route categories are not workshare discounts. It recognizes that the Commission has instituted Docket No. RM2009–3 to consider that issue. In this case, the Postal Service provides in Appendix B (and an associated Excel file) a table showing the cost and price differences, as well as passthroughs for Carrier Route, High Density, and Saturation flats (both commercial and nonprofit) following the adjustments to the prices of High Density flats. The Postal Service notes that none of the passthroughs exceeds 100 percent, so the limitations of section 3622(e) do not apply. It explains that all of the passthroughs for the High Density/Carrier Route relationship are slightly higher, and the passthroughs for the High Density/Saturation relationship are slightly lower than those reported in Docket No. R2009–2 due to the instant proposed High Density flats price reduction.

Preferred rates. The Postal Service explains that nonprofit High Density flats receive the same price reductions as commercial flats. Due to the fact that the proposed price changes apply to both commercial and nonprofit flats and due to the small volumes of High Density nonprofit flats, the Postal Service submits that the required 60 percent ratio, required under 39 U.S.C. 3626, between commercial and nonprofit prices is not altered as a result of the proposed price adjustment.

III. Commission Action

The Commission establishes Docket No. R2009–4 to consider all matters related to the Notice as required by 39 U.S.C. 3622.

Comments. The Commission's rules provide for a 20-day comment period starting from the date of the filing of the Notice. *See* 39 CFR 3010.13(a)(5). Interested persons may express views and offer comments on whether the planned changes are consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010. In particular, the Commission requests that interested parties (including the Postal Service) address the following topics:

1. This is the first Postal Service request for a permanent rate decrease in rates of general applicability. The Postal Service states that it ''proposes that the adjustments have no impact on price cap issues, but would welcome other views.'' *Id.* at 3. Title 39 U.S.C. 3622(d)(1)(A) states that the Commission's system of rate regulation must include regulations that include an annual limitation calculation from the last date that ''the Postal Service files its notice of its intention to *increase* rates.'' 39 U.S.C. 3622(d)(1)(A) (emphasis added). Does this provision suggest that permanent rate decreases in rates of general applicability do not require an analysis under section 3622(d)(1)(A)?

2. If the price cap under section 3622(d)(1)(A) does not apply to this case, is an analysis under section 3622(d)(2)(C) (relating to unused rate adjustment authority) also not required?

3. Notwithstanding the potential application of section 3622(d)(2)(C) to this case, can the Postal Service waive some or part of its unused rate adjustment authority? Can the Commission enforce such a waiver?

4. The Notice states that ''the Postal Service is not claiming any new unused rate adjustment authority as a result of this price decrease.'' *Id.* at 3. Should this statement be construed as an intention by the Postal Service to waive any resulting additional unused rate adjustment authority that may result due to the rate decreases from the instant rate adjustment?

Comments are due no later than June 22, 2009.

Public representative. The Commission appoints Kenneth E. Richardson to represent the interests of the general public in this proceeding. *See* 39 U.S.C. 505. Pursuant to rule 3010.13(c), the Commission will issue its determination in this proceeding by July 6, 2009.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2009–4 to consider matters raised by the Postal Service's June 1, 2009 filing.

2. Interested persons may submit comments on the planned price adjustments. Comments are due June 22, 2009.

[2] The Postal Service submits that the unused price adjustment authority for Standard Mail should remain at 0.081 percent. *Id.* at 3. *See* Order No. 191, Order Reviewing Postal Service Market Dominant Price Adjustment, May 16, 2009.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth E. Richardson to represent the interests of the general public in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this Notice in the **Federal Register**.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–13744 Filed 6–10–09; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. R2009–3; Order No. 219]

Special Summer Postal Rate Program

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Postal Service has prepared, and the Commission has approved, a special program offering reduced rates for Standard mailers this summer. This document addresses related issues and provides pertinent details.

DATES: Effective June 11, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 1, 2009, the Postal Service filed with the Commission a notice announcing its intention to adjust prices for Standard Mail letters and flats pursuant to 39 U.S.C. 3622 and 39 CFR part 3010.[1] The proposed adjustment is in the form of a ''Standard Mail Volume Incentive Pricing Program'' (Summer Sale program) with a planned implementation date of July 1, 2009 and a planned expiration date of September 30, 2009. The Summer Sale program represents a reasoned approach by the Postal Service to exercise its flexibility in market dominant pricing under the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3218 (2006).

In Order No. 209, the Commission established Docket No. R2009–3 to consider matters raised by the Postal Service's filing, appoint public representatives, and afford interested persons an opportunity to comment.[2] By this order, the Commission approves the proposed Standard Mail Volume Incentive Pricing Program.

The Commission finds the proposal to be a judicious exercise of the Postal Service's pricing flexibility under the PAEA. The Postal Service is to be commended for its response to current market conditions. Much can be learned from what, in essence, is a short-term pricing experiment. However, the program is not without risks. Thus, development and use of appropriate metrics in evaluating the program are critical in determining whether the program is successful, and also for assessing the long-term implications of such an approach.

II. Standard Mail Volume Incentive Pricing Program

A. Postal Service Filing

The Postal Service notes that the Summer Sale program is necessary to counteract the dramatic volume reduction due to the economy, support a struggling mailing industry, and increase volume during a typically low volume period in which there is excess capacity; and secondarily to improve customer relations, to fine tune future programs, to gather feedback from customers, and to gather data which may improve postal data systems. Notice at 2–3. The Postal Service's Notice provides a high level overview of the Summer Sale program, identifying its salient features as follows.[3]

Under the proposed Summer Sale program, eligible mailers will receive a 30 percent rebate of postage paid on the volume of Standard Mail letters and flats mailed from July 1, 2009 to September 30, 2009 that exceeds mailer-specific thresholds.[4] The rebate may be reduced for volumes shifted from October 2009 into the sales period.[5] Notice at 3–4.

Eligibility for the Summer Sale program is limited to mailers who are permit holders who have a demonstrable volume of at least 1 million Standard Mail letters and flats between October 1, 2007 and March 31, 2008 for one or more permit imprint advance deposit accounts, pre-canceled stamp permits, or postage meter permits. *Id.* at 4.

Mail service providers are excluded from the program to help ensure that the Summer Sale program generates new volumes, rather than shifts existing volumes. However, individual mailers who meet the above criteria but use a mail service provider may participate if they meet certain conditions. *Id.* at 4–5.

B. Chairman's Information Request No. 1 (CHIR No. 1)

CHIR No. 1 was designed to clarify the Postal Service's proposal. The responses substantially expand on the Postal Service initial filing and provide essential details regarding the scope of the program and its underlying basis. CHIR No. 1 sought information on metrics to measure the success of the Summer Sale program, including complete cost analyses and volume migration from other classes or time periods, the definition of short-run excess capacity, eligibility for the program, contribution level for Standard Mail flats, and documentation of cost and revenue estimates. *See* CHIR No. 1. The Commission expects the Postal Service to provide this level of detail in future initial filings.

The Postal Service defines the primary measure of success for the Summer Sale program as ''incremental revenue and volume growth over the threshold for the universe of eligible participants[.]'' *See* Response of the United States Postal Service to Chairman's Information Request No. 1, May 15, 2009, at 2 (Response to CHIR No. 1).[6] The Postal Service also anticipates monitoring customer feedback and the efficacy and efficiency of its administration of the program. *Id.*

The Postal Service does not believe the additional incentive of the Summer Sale program will induce any First-Class advertising mail to migrate to the program, due to different demand characteristics and the significant gap in price which already exists. *Id.* at 4. Further, the Postal Service does not believe that mailers have enough lead time to shift volume from June or earlier into the program. *Id.* In addition, the Postal Service cites precautions it has

[1] United States Postal Service Notice of Market-Dominant Price Adjustment, May 1, 2009 (Notice).

[2] PRC Order No. 209, Notice and Order Concerning Standard Mail Volume Incentive Pricing Program, May 4, 2009; *located at* 74 FR 21837 (May 11, 2009).

[3] Much of the justification for the proposal was submitted in response to Chairman's Information Request No. 1, May 8, 2009 (CHIR No. 1). Any such future proposals must be accompanied by the requisite financial (cost, revenue, and volume) data underlying them.

[4] The threshold is calculated by comparing average volumes over distinct periods to determine a trend in the mailer's volume. That trend is applied to the average expected mail volume over the Summer Sale program months, and any volume above the trend adjusted average is eligible for the discount.

[5] To quantify this possibility, the Postal Service will measure each mailer's October 2009 volumes using a trend analysis based on the mailer's prior years' volumes for that month. *Id.* at 4.

[6] The pages to the Postal Service's response to CHIR No. 1 are not numbered. For the convenience of the parties, the Commission has numbered the pages for purposes of citation. If the normal citation practice was followed (citing just the relevant question being answered), parties may have difficulty in finding the specific reference as some of the responses are lengthy.

taken, including mailer certification of volumes, to mitigate any attempt by mailers to shift volume among permits. *Id.* at 4–5.

The Postal Service's initial Notice references excess capacity only as it relates to delivery. Notice at 3. It makes no attempt to define or otherwise elaborate on the concept. In response to CHIR No. 1, the Postal Service indicates that excess capacity exists when ''capacity to handle volume is larger than the volume presented to it.'' Response to CHIR No. 1 at 6. It also discusses the secular, cyclical, and seasonal effects on mail volumes that, in turn, affect capacity. *Id.*[7]

To support its claim of excess capacity, the Postal Service appears to rely principally on a cyclical decline in volume due to the general economic conditions and seasonal variation associated with the fourth quarter. *Id.* at 6–8, 12. The Postal Service claims it is difficult, if not impossible, for it to reduce capacity at the same rate as volume has fallen when comparing year over year declines. *Id.* at 12–15. In addition, the Postal Service indicates that its inability to rapidly adjust work hours and building capacity contributes to seasonal excess capacity. *Id.* at 7–9.

The Postal Service asserts that short-run attributable costs for incremental pieces, during a period of excess capacity, are lower than the long-run attributable costs. *See id.* at 16–17. The Postal Service provides estimates of the attributable costs by product by breaking out each of the cost segments and examining where volume can be absorbed without incurring additional incremental cost. *Id.* at 17–24. As a result of this analysis, the Postal Service estimates that cost coverage for the incremental volume in each product included in the Summer Sale program will exceed 100 percent. *Id.* at 26.

The Postal Service identifies the administrative costs of the Summer Sale program as $977 thousand. *Id.* at 32. The Postal Service estimates that it may require up to six full-time employees for four months at $300 thousand, up to 10 part-time employees for four months at $250 thousand, and up to four contract analysts for up to four months at $400 thousand. *Id.* The Postal Service assigns $7 thousand to Web site development and $20 thousand to production of invitation letters to eligible customers. *Id.*

The Postal Service justifies the eligibility threshold principally on the grounds that the administrative costs (approximately $20 million) of including Standard Mail customers who mailed less than 1 million pieces during the relevant period would exceed the net revenues (approximately $17.2 million) attributed to such sales. *Id.* at 27–28. In addition, it estimates that the average small business would only save 42 dollars, which probably would not be worth the business's time and trouble. *Id.* at 28–29.

The Postal Service reiterates that the rationale for not including mail service providers (MSP) in the Summer Sale program is to protect it from MSPs shifting volumes to optimize the discount. *Id.* at 29. The Postal Service indicates that First-Class advertising mail was not considered for the program since it could not reasonably segregate First-Class advertising mail from other First-Class Mail. *Id.*

Finally, the Postal Service also believes including Standard Mail flats in the Summer Sale program, despite its low cost coverage, is justified since the program may help offset challenges to postal customers hit hardest by the challenging economic climate, and because the incremental volume will cover its costs. *Id.* at 30.

C. Chairman's Information Request No. 2 (CHIR No. 2)

CHIR No. 2[8] was designed to gather information on the Postal Service's initial estimates for the program, and to assist the Commission in determining measurement of the success of the program compared to those estimates. CHIR No. 2 was also designed to bring to light the Postal Service methodology for determining the volumes, revenues, and costs caused by the Summer Sale program, so that such measurements are straightforward at the completion of the program.

The Postal Service states that it developed the incremental volume estimates for the Summer Sale program by taking into account the demand models provided to the Commission on January 20, 2009, consulting Postal Service managers and executives, and corresponding with mailers. *See* Response of United States Postal Service to Chairman's Information Request No. 2, June 2, 2009, at Q.1 (Response to CHIR No. 2). The Postal Service states that it did not derive separate volume estimates for each Standard Mail product. *Id.*

The Postal Service plans to measure incremental volumes caused by the Summer Sale program based on the same trend calculations used to establish mailer threshold for program eligibility. *Id.* at Q.2. The Postal Service plans to measure actual short-run attributable costs resulting from the Summer Sale program volume by applying the same method it used to estimate those costs in response to CHIR No. 1. *Id.* To ensure the application of those costs is appropriate, the Postal Service will revisit the assumptions it made regarding excess capacity in its response to CHIR No. 1. *Id.*

III. Comments

The Postal Service's proposal has generated significant interest and support from the mailing community. The Commission received 23 formal comments: 20 support the Summer Sale program,[9] 2 request inclusion in it,[10] while 1 does not oppose it.[11] The Summer Sale program enjoys broad support and the majority of the commenters, citing the recession and its effect on the Postal Service and mailers, urge the Commission to approve it expeditiously. *See, e.g.,* MOAA Comments, BOA Comments, Pitney Bowes Comments, PostCom Comments, PSA Comments, Quad/Graphics

[7] The Postal Service states that secular volume changes reflect long-run trends and are considered permanent, whereas cyclical variations are caused by general economic conditions and are temporary. Seasonal volume fluctuations occur throughout the year and reflect seasonal variations in mailing patterns. *Id.*

[8] Chairman's Information Request No. 2, May 27, 2009.

[9] Comments of Mail Order Association of America to Postal Regulatory Commission Notice and Order Concerning Standard Mail Volume Incentive Pricing Program, May 12, 2009 (MOAA Comments); Comments of the Association for Postal Commerce in Response to Order No. 209 Concerning Standard Mail Volume Incentive Pricing Program, May 19, 2009 (PostCom Comments); Comments of Parcel Shippers Association to Postal Regulatory Commission Notice and Order Concerning Standard Mail Volume Incentive Pricing Program (PSA Comments); Comments of the American Catalog Mailers Association on the Standard Mail Volume Incentive Program (Summer Sale) (ACMA Comments); Comments of Quad/Graphics, Inc. in Response to Order No. 209 (Quad/Graphics Comments); Comments of Bank of America Corporation on the United States Postal Service Proposal for a Summer Sale Program (BOA Comments); Comments of Pitney Bowes Inc. on the United States Postal Service Proposal for a Summer Sale Program (Pitney Bowes Comments); Comments of the Direct Marketing Association on the United States Postal Service ''Summer Sale'' (DMA Comments); Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments Regarding Standard Mail Volume Incentive Pricing Program (Valpak Comments); and Comments of the Public Representatives (Public Representatives Comments); all filed on May 21, 2009; Comments of Discover Financial Services, May 22, 2009 (DFS Comments); and Comments of 7R Communications, June 2, 2009 (7R Comments).

[10] Comments of National Automotive Marketing, May 19, 2009; Comments of Planner Pads Co., May 21, 2009.

[11] Comments of National Newspaper Association on Volume Incentive Program Known as the ''Summer Sale'', May 21, 2009 (NNA Comments).

Comments, DMA Comments, and ACMA Comments.

While the majority of the commenters endorse the program without reservation, a few express concerns regarding the scope of the program and measurement of it. *See, e.g.,* Valpak Comments regarding measurement of the program success; *see also* NNA Comments regarding scope of the program. Specific comments are addressed below in section IV, Commission Analysis.

In addition, the Commission's Office of Public Affairs and Government Relations received nearly 300 letters, expressing nearly unanimous support for the program, and urging the Commission to approve it.[12] Several letters suggested that the Postal Service should lower the participation threshold.

Short-run marginal cost pricing. Valpak comments that the Postal Service's use of short-run marginal cost to justify pricing in the Summer Sale program raises methodological issues. Valpak Comments at 4. As such, Valpak suggests a proceeding, apart from the Commission's review of the Summer Sale program, which gives interested persons an opportunity to address those methodological issues. *Id.*

In its response to CHIR No. 1, the Postal Service cites secular, cyclical, and seasonal effects on mail volume to support its conclusion of excess capacity and to justify its use of short-run marginal cost pricing. In reviewing the Postal Service's claims of excess capacity, the Commission, for purposes of the Summer Sale program, relies on secular and cyclical effects on mail volume to support its conclusions.[13] The principal cause of the sharp volume reductions is the current serious economic recession, a cyclical occurrence. Thus, under the circumstances, the Postal Service's proposal represents a reasonable attempt to maintain volume-related efficiencies.[14]

The Commission agrees that the Postal Service's use of short-run marginal cost to justify a change in price raises methodological issues which may impact future pricing incentive programs and the Commission's Annual Compliance Determination. The methodological change has broad implications which warrant examination. This, however, is not the forum for that examination. The Summer Sale program is unique on several levels and can, for purposes of this proceeding, be addressed on the merits. After this program has been completed and its results analyzed, the Commission may better evaluate whether to initiate a proceeding to consider the methodological issues surrounding short-run marginal cost pricing.

IV. Commission Analysis

Faced with unprecedented historic volume and revenue declines, the Postal Service has put forth an integrated proposal designed to stem that trend and assist the mailing industry. *See* Notice at 2–8. Illustrative of the current challenges faced by the Postal Service, recently released data show a net loss for April of 2009 of $381 million, with a year-to-date loss of $2.7 billion.[15] Total volume decreased 14.8 percent over Same Period Last Year (SPLY), with Standard Mail down 17.8 percent. Total year-to-date volume has declined about 15.2 billion pieces or 12.3 percent. *Id.* Total revenues for the month are down 11.9 percent and year-to-date revenues are about $41.7 billion, or 8.8 percent less than SPLY. *Id.*

Impact on the price cap. The Postal Service proposes to treat the Summer Sale program, for purposes of its effect on the price cap, as if all the discounted incremental volume paid the applicable full postage. Notice at 8. This is analogous to the way Negotiated Service Agreement (NSA) volume is treated for purposes of the price cap. *Id.* The proposal, therefore, does not result in a net price decrease, which could be banked and applied to all mailers as a future rate increase, including those which could not participate in the Summer Sale program. *Id.*

DMA suggests that the Postal Service's proposal to treat incremental Summer Sale program volume as if it paid the full rate is justified, as it protects mailers who do not participate in the sale from future rate increases based on an increased banked amount in the cap. DMA Comments at 2–3. Valpak comments that since the Postal Service proposes to treat the program as an NSA, for purposes of the price cap, its results should be comprehensively evaluated in a similar fashion. Valpak Comments at 2–3. The Public Representatives do not oppose the Postal Service's proposal to treat the program as analogous to an NSA for purposes of calculating the price cap. Public Representatives Comments at 10.

The Postal Service's treatment of the Summer Sale program as an NSA for purposes of the price cap is reasonable. It shields mailers not eligible for the program from being charged higher rates based on the amount which otherwise would be banked from the program.

Objectives and factors, workshare discounts, and preferred rates. Pursuant to the Commission's rules, 39 CFR 3010.14(b)(7), the Postal Service addresses how the Summer Sale program helps achieve the objectives of 39 U.S.C. 3622(b) and takes into account the factors of 39 U.S.C. 3622(c). *See* Notice at 8–13. It asserts that the Summer Sale program does not substantially alter the degree to which Standard Mail prices address the objectives and factors, but further satisfies the objectives of pricing flexibility and financial stability. *Id.* at 8–9. The Postal Service also believes the ''program is a prime example of how the Postal Service can utilize the pricing flexibility provided under the PAEA in order to encourage increased mail volume[.]'' *Id.* at 12. It projects the program will not hinder Standard Mail's ability to cover cost and will help to alleviate the burden that the current economic conditions have placed on some mailers. *Id.* The Postal Service also claims that workshare discounts will remain in compliance, and the fixed discount ensures that the proper ratio for preferred rates remains unchanged. *Id.* at 13.

The Public Representatives do not dispute any of the Postal Service's claims that the Summer Sale program satisfies the objectives and factors, workshare discount requirements, and preferred rate requirements. *See* Public Representatives Comments at 10–12. The Public Representatives express concern regarding the cost coverage for Standard Mail flats. *Id.* at 11. However, upon review of the Response to CHIR No. 1, the Public Representatives conclude that the Postal Service has made an adequate demonstration that the factor requiring attributable cost coverage for each class of mail is satisfied. *Id.*

The Commission finds that the objectives and factors in 39 U.S.C. 3622 appear to be satisfied by explanations

[12] These letters are maintained in the Commission's ''Commenter File'' for Docket No. R2009–3. The file includes letters, e-mails, and faxes sent to the Commission, but not filed in the docket or stylized as comments. It is available for inspection at the Commission's Public Reading Room during normal business hours.

[13] While the secular effects do not appear to be applicable to Standard Mail, there is, nonetheless an effect on capacity.

[14] Seasonal effects on mail volume, though evident, are not unique to this year. This opinion does not evaluate whether a recurring seasonal effect may justify short-run marginal cost pricing. The Commission is sensitive to the combined effect of seasonal effects, with secular and cyclical effects, on the Postal Service's ability to shed capacity (and thus costs) to keep up with falling volume.

[15] *See* USPS Preliminary Financial Information (Unaudited), May 27, 2009.

and data in the Notice and Response to CHIR No. 1.

39 U.S.C. 3622(e) requires that workshare discounts given by the Postal Service do not exceed their avoided costs unless certain criteria are fulfilled. The Postal Service claims that workshare discounts will be made smaller by virtue of the 30 percent discount; and, therefore, the Summer Sale program moves those discounts which are out of compliance closer to compliance. *See* Notice at 13.

The Commission finds that given the expected mail mix, relatively small net impact of the volume induced by the Summer Sale program, and that the rebate applies at all workshare discount tiers, the program's effect on workshare discounts evaluated in Docket No. R2009–2 will be limited.

39 U.S.C. 3626 requires that nonprofit categories of products shall be set to yield 60 percent of the per-piece revenue of their commercial counterparts. The Postal Service expects that, given the Summer Sale program's flat 30 percent discount on incremental mail volume across nonprofit and commercial subclasses alike, the required 60 percent differential will be maintained. *Id.* Based on the Postal Service's estimate of the mail mix of the incremental volume, the Commission agrees that the required 60 percent differential will be maintained.

Eligibility threshold. The volume threshold for eligibility in the program raises two principal concerns: first, whether it is reasonable, and second whether it can be manipulated, *e.g.,* for mailers to earn discounts on mail that would have been sent without the discount.

Several commenter letters to the Commission request that the Postal Service include lower volume mailers in the Summer Sale program. NNA also comments that the Summer Sale program ''offers little to smaller mailers, with the possible exception of the system-wide benefits if a short-term infusion of revenues reaches USPS coffers[.]'' NNA Comments at 3.

The Commission is sensitive to the mailers who wish to participate but do not meet the volume minimums set out by the Postal Service for participation in the Summer Sale program. On review however, recognizing this is a first effort to test a ''sale'' price, the Postal Service has provided a reasonable rationale for the threshold. Issues arising from Postal Service calculation of usage by mailers, and whether adequate communication took place with appropriate mailer executives, also can be better resolved in future programs should they be developed.

The Postal Service provides calculations which demonstrate that, if the average expected incremental volume increase held for mailers of generally lower volume, the incremental volume generated would cover its short-run variable costs. However, such mail would not produce enough revenue to cover the increased administrative costs of the broadened program. *See* Response to CHIR No. 1 at 27–28. The Commission accepts the Postal Service's analysis that opening the program to all Standard Mail customers would create administrative costs which outstrip the net incremental revenue the program would generate. Also, the relatively small probable impact and limited, experimental nature of the program suggest that small mailers would neither significantly benefit from nor be disadvantaged by the program.

The Postal Service recognizes the possibility that the threshold may be effectively manipulated and has taken steps to guard against this happening. Because some participants may use MSPs for a portion of their mailings, the Commission is concerned about the possibility for discounts to be awarded for mail shifted from MSP permits to mailer owned permits, which would not be incremental volume. The Postal Service responds to these concerns by explaining that participants will be required to certify to the best of their knowledge that their threshold is based on an accurate representation of all Standard Mail sent by the mailer. *See id.* at 4–5.

In Response to CHIR No. 1, the Postal Service attached guidelines for mailers seeking to document their MSP volumes for participation in the Summer Sale program. The guidelines state that ''[t]here are two situations though that leave the Postal Service blind to a mailer's mailing history. The first is when no ghost permit is assigned to a mailing sent on an MSP permit. The second is when a mailer's mailing is part of a co-mail program run through an MSP permit.'' *See id.* at Attachment B.[16] The Commission expects that the Postal Service will develop and implement appropriate revenue protection mechanisms to verify that participants do not exploit these blind spots and receive discounts for non-incremental volume.

Data collection and program evaluation. Valpak comments that a plan for evaluation, ''including criteria against which success (or failure) will be assessed'' should be established immediately. Valpak Comments at 3. Valpak asserts that public availability of the plan and subsequent results are required under the PAEA for transparency and accountability. *Id.* Such transparency would foster understanding and help identify and avoid possible problems with any other similar program in the future. *Id.* Pitney Bowes notes the Postal Service's efforts to ensure qualifying volume in the program is actually new incremental volume rather than a result of volume shifting. Pitney Bowes Comments at 4.

Similarly, the Public Representatives express concern about the possibility of volume migration from First-Class advertising mail to Standard Mail as a result of the program, accuracy of the cost coverage projections, and volume migration from the months prior to the program. Public Representatives Comments at 13. The Public Representatives call for the Postal Service to issue a report on these issues at the conclusion of the program. *Id.* NNA comments that the Summer Sale program does not guard against the possibility of volume shifting from November and December into the sale period. NNA Comments at 3.

The Commission expects the Summer Sale program to yield data which will prove useful in assessing the merits of other pricing incentive programs. The Public Representatives' and Valpak's comments are well taken that evaluation criteria and a plan for data collection must be established prior to the implementation of the program. The Commission shall require data reporting from the Postal Service within 15 days after the Postal Service credits the rebates due to the Summer Sale program's participants.

In considering the data needed to evaluate the Summer Sale program fully, the Commission concludes that the following information is required. First, for each eligible Standard Mail user,[17] the Postal Service shall provide monthly volumes and revenues for all Standard Mail letters by product and flats by product, further broken out into commercial and nonprofit categories. The reporting period shall be from October of 2006 through October of 2009. The Postal Service shall also provide information on any rebate paid to each eligible user, with supporting calculations. The information provided pursuant to this paragraph shall be filed under seal, and the Postal Service may mask mailer identities by using a

[16] Business Mail Entry Unit clerks create ghost permit numbers to identify mail owners when no permit number is associated with mail owners' names in *PostalOne! See http://www.uspsoig.gov/FOIA_files/MS-MA-06-002.pdf* at 1–2.

[17] Eligible Standard Mail users meeting the qualifying conditions established for the Summer Sale program. *See* Notice at 4.

generic identification number. *See* Appendix A.

Second, the Postal Service shall publicly provide the monthly information requested in the preceding paragraph, but aggregating mailer data.

Third, for each eligible Standard Mail user, the Postal Service shall provide monthly permit volumes for First-Class presort letters, cards, and flats.[18] The information provided pursuant to this paragraph shall be filed under seal, and the Postal Service shall, if it masks mailer identities, use the same generic identification number used to report Standard Mail data.

Fourth, the Postal Service shall identify the actual short-run volume-variable cost by each Standard Mail letter and flat product. *See* Response to CHIR No. 1 at 18–24.

Fifth, the Postal Service shall identify the actual administrative costs of the program. *See id.* at 32.

The data requested should provide the Commission and public an opportunity to evaluate thoroughly the program's impact on Postal Service volumes, revenues, and costs. This information is likely to be instrumental in the design of future Postal Service programs of a similar nature.

Conclusion. The Postal Service proposes to implement a novel program, broadly supported by the mailing industry and commenters in this proceeding. The Commission is hopeful the program may offer one solution to cyclical and secular volume declines, and provide information useful for considering other potential pricing incentives. The Commission believes the reporting required by this order is an essential feature of the program. Without such metrics, the merits of the program cannot be fairly evaluated.

The Commission has reviewed the threshold volume, average revenue per piece, short-run attributable cost data submitted by the Postal Service, and conducted its own preliminary analysis using such data. The Postal Service estimates the volume response from the program as 2.0 to 5.15 percent over threshold levels. Based on these assumptions and other submitted data, the Commission estimates positive contribution for both the upper and lower bound volume figures. Separately, based on an analysis using demand elasticities from the latest set of Postal Service demand models and incorporating a First-Class Mail presort demand shift, the Commission finds a much lower, but still positive contribution. *See* PRC–LR–1 (Library Reference 1 to be filed with this order). Thus, based on these scenarios, the Commission concludes that a positive contribution from the program is likely. The Commission notes, however, that results are sensitive to the degree to which First-Class Mail migrates to Standard Mail, an aspect of the program that must be carefully evaluated in assessing its merits.

V. Ordering Paragraphs

A full review of the United States Postal Service Notice of Market-Dominant Price Adjustment, filed May 1, 2009, has been completed. With regard to the price adjustments contained therein, for the reasons set forth above, it is ordered:

1. The Commission approves the Standard Mail Volume Incentive Pricing Program.

2. The Commission directs the Postal Service to report on the Standard Mail Volume Incentive Pricing Program within 15 days after the Postal Service credits the rebates due to the Summer Sale program's participants as consistent with this order.

3. The Motion of Discover Financial Services for Late Acceptance of Comments, filed May 22, 2009, and the Motion of 7R Communications, LLC for Late Acceptance of Comments, filed June 2, 2009, are granted.

4. The Secretary of the Commission will arrange for publication of this order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

Appendix A

Summer Sale Data Collection Plan and Rebate Calculation Information

This appendix contains an outline of the Summer Sale Data Report contents as specified in Order No. 219. The template is presented to help clarify the disaggregation by product, commercial or nonprofit status, and time period as described in the order.

The specific format of the report may be tailored to fit the presentation format of the data generation programs of the Postal Service, but should be in a broadly available electronic format such as Microsoft Excel.

Workbook 1: Mailer Information contains the disaggregated Volume and Revenue information to be reported for each mailer eligible for the summer sale. This tab, and the summer sale rebate calculations contained therein, should be replicated for each eligible mailer.

Workbook 2: Aggregate Information contains the Volume and Revenue categories as they appear in tab 1. The Summer Sale Aggregate Incremental Volume and Aggregate Rebate should be a summation calculation linked to each mailer information tab so that each volume and revenue figure represents the total for all eligible mailers for the relevant month.

WORKBOOK 1—MAILER INFORMATION

Mailer-specific information	Month (for each month) October 2006 through October 2009 [1]
Volume	
Commercial	
Letters	
Flats	
Carrier Route Letters	
Carrier Route Flats	
High Density and Saturation Letters	
High Density and Saturation Flats	
First-Class Presort Letters and Cards	
First-Class Flats	
Nonprofit	
Letters	
Flats	
Carrier Route Letters	

[18] The Postal Service has not collected First-Class Mail permit data from the eligible mailers, but once such data are obtained, it can be used to evaluate the effect on First-Class Mail volumes due to the program. Given the finite universe of eligible mailers and the speed with which the Postal Service gathered Standard Mail permit volume information, the Commission does not expect the collection of First-Class Mail volumes for the same mailers to burden the Postal Service.

WORKBOOK 1—MAILER INFORMATION—Continued

Mailer-specific information	Month (for each month) October 2006 through October 2009 [1]
Carrier Route Flats	
High Density and Saturation Letters	
High Density and Saturation Flats	
Revenue	
Commercial	
Letters	
Flats	
Carrier Route Letters	
Carrier Route Flats	
High Density and Saturation Letters	
High Density and Saturation Flats	
First-Class Presort Letters and Cards	
First-Class Flats	
Nonprofit	
Letters	
Flats	
Carrier Route Letters	
Carrier Route Flats	
High Density and Saturation Letters	
High Density and Saturation Flats	

Rebate Calculation for each mailer	Formula	Calculation
Threshold		
Incremental Volume		
October 2009 Adjustment		
Eligible Volume		
Average Revenue Per Piece		
Rebate		

[1] Formulas used in the determination of Volume Threshold, Incremental Volume, October 2009 Adjustment, Average Revenue per Piece, and Summer Sale Rebate should be shown on each mailer page. Only mailer input data should be hardcoded.

WORKBOOK 2—AGGREGATE INFORMATION

Eligible mailer information	Month (for each month) October 2006 through October 2009 [1]
Volume	
Commercial	
Letters	
Flats	
Carrier Route Letters	
Carrier Route Flats	
High Density and Saturation Letters	
High Density and Saturation Flats	
First-Class Presort Letters and Cards	
First-Class Flats	
Nonprofit	
Letters	
Flats	
Carrier Route Letters	
Carrier Route Flats	
High Density and Saturation Letters	
High Density and Saturation Flats	
Revenue	
Commercial	
Letters	
Flats	
Carrier Route Letters	
Carrier Route Flats	
High Density and Saturation Letters	
High Density and Saturation Flats	
First-Class Presort Letters and Cards	
First-Class Flats	
Nonprofit	
Letters	
Flats	
Carrier Route Letters	
Carrier Route Flats	

WORKBOOK 2—AGGREGATE INFORMATION—Continued

Eligible mailer information	Month (for each month) October 2006 through October 2009 [1]	
High Density and Saturation Letters		
High Density and Saturation Flats		
Rebate Calculation for each mailer	**Formula**	**Calculation**
Incremental Volume		
Rebate		

[1] Formulas used in the determination of Volume Threshold, Incremental Volume, October 2009 Adjustment, Average Revenue per Piece, and Summer Sale Rebate should be shown on each mailer page. Only mailer input data should be hardcoded.

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BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28758; 812–13619]

Nuveen Tax-Advantaged Total Return Strategy Fund, et al.; Notice of Application

June 4, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 18(a)(1)(A) and (B) of the Act.

APPLICANTS: Nuveen Tax-Advantaged Total Return Strategy Fund, Nuveen Real Estate Income Fund, Nuveen Diversified Dividend and Income Fund, Nuveen Multi-Strategy Income and Growth Fund, Nuveen Multi-Strategy Income and Growth Fund 2, Nuveen Quality Preferred Income Fund, Nuveen Quality Preferred Income Fund 2, Nuveen Quality Preferred Income Fund 3, Nuveen Senior Income Fund, Nuveen Floating Rate Income Fund and Nuveen Floating Rate Income Opportunity Fund (each, a ''Fund'' and collectively, ''Funds'').

SUMMARY OF APPLICATION: Applicants request an order (''Order'') granting an exemption from sections 18(a)(1)(A) and (B) of the Act for a period from the date of the Order until October 31, 2010. The Order would permit each Fund to issue or incur debt subject to asset coverage of 200% that would be used to refinance all of the Fund's issued and outstanding auction rate preferred shares (''ARPS'') issued prior to February 1, 2008 that are outstanding at the time such post-order debt is issued or incurred. The Order also would permit each Fund to declare dividends or any other distributions on, or purchase, capital stock during the term of the Order, provided that such post-Order debt has asset coverage of at least 200% after deducting the amount of such transaction.

FILING DATES: The application was filed on December 29, 2008, and amended on March 27, 2009, and June 2, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 29, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: c/o Gifford R. Zimmerman, Managing Director, Assistant Secretary and Associate General Counsel, Nuveen Asset Management, 333 West Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each of the Funds is organized as a Massachusetts business trust and is a closed-end management investment company registered under the Act. Each Fund is advised by Nuveen Asset Management (''Nuveen'') and has issued and outstanding a class of common shares and a class of one or more series of ARPS.

2. Applicants state that the Funds issued their outstanding ARPS for purposes of investment leverage to augment the amount of investment capital available for use in the pursuit of their investment objectives. Applicants state that, through the use of leverage, the Funds seek to enhance the investment return available to the holders of their common shares by earning a rate of portfolio return (which includes the return obtained from securities purchased from the proceeds of ARPS offerings) that exceeds the dividend rate that the Funds pay to holders of the ARPS. Applicants represent that ARPS shareholders are entitled to receive a stated liquidation preference amount of $25,000 per share (plus any accumulated but unpaid dividends) in any liquidation, dissolution, or winding up of the relevant Fund before any distribution or payment to holders of the Fund's common shares. Applicants also state that dividends declared and payable on ARPS have a similar priority over dividends declared and payable on the Funds' common shares. In addition, applicants state that ARPS are ''perpetual'' securities and are not subject to mandatory redemption by a Fund (provided certain asset coverage tests are met). Further, applicants state that ARPS are redeemable at each Fund's option.

3. Applicants state that prior to February 2008, dividend rates on the ARPS for each dividend period were set at the market clearing rate determined through an auction process that brought together bidders, who sought to buy ARPS, and holders of ARPS, who sought

to sell their ARPS. Applicants explain that if an auction fails to clear (because of an imbalance of sell orders over bids), the dividend payment rate over the next dividend period is set at a specified maximum applicable rate (the ''Maximum Rate'') determined by reference to a short-term market interest rate. Applicants state that an unsuccessful auction is not a default; the relevant Fund continues to pay dividends to all holders of ARPS but at the specified Maximum Rate rather than a market clearing rate. Applicants state that they had experienced no unsuccessful auctions prior to February 2008.

4. Applicants state that the lead underwriter of the initial placement of a particular series of ARPS (each a ''Lead Manager'') would regularly place bid orders with its own capital in an auction to help ensure that there would be a sufficient number of bid orders relative to sell orders to permit an auction to clear. Applicants represent that the auction mechanism generally provided readily available liquidity to holders of ARPS for almost twenty years. Applicants believe that many holders of ARPS relied on them as part of a cash management vehicle, based in part on their expectation of ready liquidity.

5. Applicants state that leading up to February 2008, the Lead Managers began to experience financial pressures that led them to be unwilling to hold ARPS on their balance sheets and to cease entering supporting bids at ARPS auctions. Applicants state that beginning on February 12, 2008, all closed-end funds advised by Nuveen that had outstanding ARPS (including the Funds) experienced auction failures due to an imbalance between buy and sell orders. Applicants also state that they believe there is no established secondary market that would provide holders of ARPS with the liquidation preference of $25,000 per share. Applicants state that to date the Funds have redeemed approximately 81% of their outstanding ARPS with, in part, borrowings from (a) a commercial paper conduit facility, (b) a prime brokerage facility, and (c) a bank line of credit, but have been prohibited from replacing all of their outstanding ARPS because they would not have the 300% asset coverage required by section 18(a)(1) of the Act after a full redemption of the ARPS. As a result, applicants state that there is currently no reliable mechanism for holders of ARPS to obtain liquidity, and believe that, industry-wide, the current lack of liquidity is causing distress for a substantial number of ARPS shareholders and creating severe hardship for many investors.

6. Applicants seek relief for a period from the date of any Order until October 31, 2010 (''Exemption Period'') to facilitate temporary borrowings by the Funds that would enhance their ability to provide a liquidity solution to the holders of their ARPS in the near term[1] while they either pay down or seek a more permanent form of replacement leverage, such as a new type of preferred stock.[2] Because of the limited availability of debt financing in the current, severely constrained capital markets, the applicants believe that the negotiation, execution and closing of a borrowing transaction to replace the leverage currently represented by the Funds' outstanding ARPS, if it can be effected, might take several months following the issuance of the Order. Applicants further state that once the debt incurred in replacement of a Fund's outstanding ARPS is in place, it is uncertain whether and when the applicants will be able to issue VRDP Shares to replace the debt, or how quickly the securities and capital markets will return to conditions that would enable the applicants to achieve compliance with the asset coverage requirements that would apply in the absence of the Order. Given the continuing unsettled state of the securities and capital markets, the applicants believe that the Exemption Period is reasonable and appropriate. Each Fund's refinancing of ARPS would be subject to the Fund obtaining any necessary approval of changes to the Fund's fundamental investment policies and approval of the refinancing arrangements by the Fund's board of trustees (''Board'').

Applicants' Legal Analysis

1. Section 18(a)(1)(A) of the Act provides that it is unlawful for any registered closed-end investment company to issue any class of senior security representing indebtedness, or to sell such security of which it is the issuer, unless such class of senior security will have an asset coverage of at least 300% immediately after issuance or sale. Section 18(a)(2)(A) of the Act provides that it is unlawful for any registered closed-end investment company to issue any class of senior security that is a stock, or to sell any such security of which it is the issuer, unless such class of senior security will have an asset coverage of at least 200% immediately after such issuance or sale.[3]

2. Section 18(a)(1)(B) prohibits a closed-end fund from declaring a dividend or other distribution on, or purchasing, its own capital stock unless its outstanding indebtedness will have an asset coverage of at least 300% immediately after deducting the amount of such dividend, distribution or purchase price.[4] Section 18(a)(2)(B) prohibits a closed-end fund from declaring a dividend or other distribution on, or purchasing, its own common stock unless its outstanding preferred stock will have an asset coverage of at least 200% immediately after deducting the amount of such dividend, distribution or purchase price.

3. Section 6(c) of the Act provides, in relevant part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction from any provision of the Act if and to the extent necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request that the Commission issue an Order under section 6(c) of the Act to exempt each Fund from the 300% asset coverage requirements set forth in sections

[1] Each Fund notes that the cost of the replacement leverage is expected, over time, to be lower than the total cost of ARPS based on the Maximum Rates applicable to the ARPS of those Funds.

[2] Applicants state that certain closed-end municipal bond funds in the same group of investment companies as the applicants (but none of the applicants) have issued Variable Rate Demand Preferred Shares (''VRDP Shares''), a new type of preferred stock that supplements or replaces existing ARPS. Applicants further state that it is not certain that the Funds will be able to redeem all of their ARPS through the issuance of VRDP shares.

[3] Section 18(h) of the Act defines asset coverage of a senior security representing indebtedness of an issuer as the ratio which the value of the total assets of the issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of the issuer. The section defines asset coverage of the preferred stock of an issuer as the ratio which the value of the total assets of the issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of the issuer plus the amount the class of senior security would be entitled to on involuntary liquidation.

[4] An exception is made for the declaration of a dividend on a class of preferred stock if the senior security representing indebtedness has an asset coverage of at least 200% at the time of declaration after deduction of the amount of such dividend. *See* section 18(a)(1)(B) of the Act. Further, section 18(g) of the Act provides, among other things, that ''senior security,'' for purposes of section 18(a)(1)(B), does not include any promissory note or other evidence of indebtedness issued in consideration of any loan, extension or renewal thereof, made by a bank or other person and privately arranged, and not intended to be publicly distributed.

18(a)(1)(A) and (B) of the Act. Specifically, the Funds seek relief from the section 18 asset coverage requirements for senior securities representing indebtedness for the Exemption Period to permit the Funds to refinance any ARPS issued prior to February 1, 2008 that are outstanding at the time of the Order with debt subject to the 200% asset coverage requirement for stock, rather than the 300% asset coverage that would ordinarily apply under section 18 to senior securities representing indebtedness, (a) when they incur that debt, and (b) when they declare dividends or any other distributions on, or purchase, their capital stock, after deduction of the amount of such dividend, distribution or purchase price.[5] Applicants state that, except as permitted under the requested Order, if issued, the Funds would meet all of the asset coverage requirements of section 18(a) of the Act. In addition, applicants state that each Fund that borrows in reliance on the Order will either pay down or refinance the debt within the Exemption Period so that the Fund would, at the expiration of the Exemption Period, comply with the applicable asset coverage requirements (200% for stock or 300% for debt) under section 18 of the Act.

5. Applicants state that section 18 reflects congressional concerns regarding preferential treatment for certain classes of shareholders, complex capital structures, and the use of excessive leverage. Applicants submit that another concern was that senior securities gave the misleading impression of safety from risk. Applicants believe that the request for temporary relief is necessary, appropriate and in the public interest and that such relief is consistent with the protection of investors and the purposes intended by the policy and provisions of the Act.

6. Applicants note that the illiquidity of ARPS is a unique, exigent situation that is posing urgent, and in some cases, severe hardships on ARPS shareholders. Applicants represent that the proposed replacement of the ARPS with debt would provide liquidity for the Funds' ARPS shareholders while the Funds continue their efforts to obtain a more permanent form of financing (such as through the issuance of VRDP Shares) that fully complies with the asset coverage requirements of section 18.[6]

7. Applicants represent that the Order would help avoid the potential harm to common shareholders that could result if the Funds were to deleverage their portfolios in the current difficult market environment or that could result if a reduction in investment return reduced the market price of common shares. Applicants also state that the requested Order would permit the Funds to continue to provide their common shareholders with the enhanced returns that leverage may provide.

8. Applicants believe that the interests of both classes of the Funds' current investors would be well served by the requested order—the ARPS shareholders because they would achieve the liquidity that the market currently cannot provide (as well as full recovery of the liquidation value of their shares) and the common shareholders because the cost of the new form of leverage would, over time, be lower than that of the total cost of the ARPS based on their Maximum Rates and the adverse consequences of deleveraging would be avoided.

9. Applicants represent that the proposed borrowing would be obtained from banks, insurance companies or qualified institutional buyers (as defined in Rule 144(a)(1) under the Securities Act of 1933) who would be capable of assessing the risk associated with the transaction. Applicants also state that, to the extent the Act's asset coverage requirements were aimed at limiting leverage because of its potential to magnify losses as well as gains, they believe that the proposal would not unduly increase the speculative nature of the Funds' common shares because the relief is temporary and the Funds would be no more highly leveraged if they replace the existing ARPS with borrowing.[7] Applicants also state that the proposed liquidity solution would not make the Funds' capital structure more complex, opaque, or hard to understand or result in pyramiding or inequitable distribution of control.

10. Applicants state that the current state of the credit markets, which has affected the ARPS, is an historic event of unusual severity, which requires a creative and flexible response on the part of both the public and private sectors. Applicants believe that these issues have created an urgent need for tailored, rapid, thoughtful and responsive solutions. Applicants believe that the request meets the standards for exemption under section 6(c) of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each Fund that borrows subject to 200% asset coverage under the Order will do so only if such Fund's Board, including a majority of the trustees who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) (''Independent Trustees''), shall have determined that such borrowing is in the best interests of such Fund, its common shareholders, and its ARPS shareholders. Each Fund shall make and preserve for a period of not less than six years from the date of such determination, the first two years in an easily accessible place, minutes specifically describing the deliberations by the Board and the information and documents supporting those deliberations, the factors considered by the Board in connection with such determination, and the basis of such determination.

2. Upon expiration of the Exemption Period, each Fund will have asset coverage of at least 300% for each class of senior security representing indebtedness.

3. The Board of any Fund that has borrowed in reliance on the Order shall receive and review, no less frequently than quarterly during the Exemption Period, detailed progress reports prepared by management (or other parties selected by the Independent Trustees) regarding and assessing the efforts that the Fund has undertaken, and the progress that the Fund has made, towards achieving compliance with the appropriate asset coverage requirements under section 18 by the expiration of the Exemption Period. The Board, including a majority of the Independent Trustees, will make such adjustments as it deems necessary or appropriate to ensure that the Fund comes into compliance with section 18 of the Act within a reasonable period of time, not to exceed the expiration of the Exemption Period. Each Fund will make and preserve minutes describing these reports and the Board's review, including copies of such reports and all other information provided to or relied upon by the Board, for a period of not less than six years, the first two years in an easily accessible place.

[5] For purposes of the Order, ARPS refinancings refer to such post-Order borrowings and any refinancings of such post-Order borrowings until the expiration of the Order.

[6] *See supra* note 2.

[7] Applicants acknowledge that managing any portfolio that relies on borrowing for leverage entails the risk that, when the borrowing matures and must be repaid or refinanced, an economically attractive form of replacement leverage may not be available in the capital markets. For that reason, any portfolio that relies on borrowing for leverage is subject to the risk that it may have to deleverage, which could be disadvantageous to the portfolio's common shareholders. Applicants therefore state that they regard leveraging through borrowing as potentially a temporary, interim step, with the issuance of new preferred stock such as VRDP Shares as a possible longer-term replacement source of portfolio leverage.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13723 Filed 6–10–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Joint Hearing with the Department of Labor to examine target date funds and similar investment options on Thursday, June 18, 2009 beginning at 9 a.m.

The Joint Hearing will take place in the Auditorium of the Department of Labor's headquarters at 200 Constitution Avenue, NW., Washington, DC. The Joint Hearing will be open to the public with seating on a first-come, first-served basis. Visitors will be subject to security checks.

Discussion topics at the Joint Hearing will include issues related to how target date fund managers determine asset allocations and changes to asset allocations (including glide paths) over the course of a fund's operation; how they select and monitor underlying investments; how the foregoing and related risks are disclosed to investors; and the approaches or factors for comparing and evaluating target date funds. Joint Hearing participants will include representatives of plan participants and beneficiaries, plan sponsors, investor organizations, academia and the financial services industry.

For further information, please contact: The Office of the Secretary at (202) 551–5400.

Dated: June 5, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–13683 Filed 6–10–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60045; File No. SR–NYSE–2009–55]

Self-Regulatory Organizations; New York Stock Exchange LLC, Notice of Filing of a Proposed Rule Change Amending Rule 70.25 To Permit All Available Contra-side Liquidity To Trigger the Execution of a d-Quote

June 4, 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 June 2, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE. 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 amend Rule 70.25 to permit all available contra-side liquidity to trigger the execution of a d-Quote. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 70.25(c)(iii) to provide that all available contra-side liquidity within the possible execution range of a d-Quote will be considered when determining whether to activate a d-Quote.[3]

Background

Rule 70.25 governs the entry, validation, and execution of bids and offers represented by a Floor broker on the Floor of the Exchange via agency interest files (''e-Quotes'') that include discretionary instructions as to size and/or price (''d-Quotes''). The discretionary instructions that a Floor broker may include with an e-Quote can relate to the price at which the d-Quote may trade and the number of shares to which the discretionary price instruction applies.

Rule 70.25(c) provides that a Floor broker may designate the amount of his or her e-Quote to which discretionary pricing instructions apply. Floor brokers may also designate a minimum or maximum size of contra-side volume with which the Floor broker is willing to trade using discretionary pricing instructions. However, under current Rule 70.25(c)(iii), Exchange systems currently look only at the contra-side displayed interest on the Display Book® [4] (''Book'') to determine whether the contra-side volume is within the d-Quote's discretionary size range. Therefore, the displayed bid or offer must meet the minimum volume of the d-Quote before a d-Quote can be activated.

For example, assuming the Exchange Best Bid and Offer (''BBO'') is .05 bid for 1,000 shares and offering 1,000 shares at .08, a d-Quote bidding for .05 with four cents of price discretion and a minimum share volume subject to such discretionary pricing instructions of 4,000 shares would not be activated because the displayed offer of 1,000 shares is not sufficient to fill the discretionary size instructions. Accordingly, that d-Quote would not trade.

Similarly, the d-Quote would not be activated even if the Book has contra-side undisplayed interest that could meet both the discretionary pricing and volume instructions of the d-Quote. Taking the same example as above, if

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC. *See* SR-NYSEAmex-2009-24.

[4] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the Book, and provides a mechanism to execute and report transactions and publish results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

Exchange systems have 3,000 shares offered at .09, which is not part of the displayed offer but is both within the discretionary pricing and volume instructions of the d-Quote (1,000 shares at the displayed offer at .08 plus 3,000 shares of contra-side volume at .09 meets the 4,000 minimum size and price instruction of the d-Quote), the d-Quote would not trade. Or, if in addition to the 1,000 shares offered at .08 that is displayed, there is an additional 3,000 shares offered at .08 in reserve interest, notwithstanding that the displayed offer and reserve interest at the .08 price point would meet the discretionary volume instructions of the d-Quote, the d-Quote would not trade.

The Exchange notes that decreasing the minimum discretionary size of the d-Quote would not permit the d-Quote to trade with the contra-side liquidity because the discretionary pricing instructions of a d-Quote are active only for that portion of an e-Quote that also has discretionary size instructions.[5] For example, if a d-Quote for 1,000 shares has a discretionary price range of .04 and a minimum volume of 100 shares, in the above example, only those 100 shares would trade against the displayed offer. The remaining 900 shares would be treated as an e-Quote bid for .05 and would not be eligible to trade with the displayed offer or any other interest within the discretionary price instructions.

Proposed Amendment

The Exchange proposes to amend Rule 70.25(c)(iii) to remove the restriction that only the displayed interest will be considered when determining whether the contra-side volume is within the discretionary pricing instructions of the d-Quote. The Exchange believes that all interest willing to trade at certain price points should be permitted to trade. Because Exchange systems have both displayed and undisplayed liquidity, considering only displayed contra-side liquidity does not take into account the true state of liquidity when determining whether to activate a d-Quote. The current rule therefore restricts which interest may be considered rather than allow willing interest to interact.

As proposed, if all available contra-side volume within the discretionary price and size instructions of a d-Quote is considered, such d-Quote will trade against such contra-side liquidity in the same manner that a market order or a marketable limit order would execute against such available contra-side liquidity. For example, assuming that the Exchange BBO is still .05 bid for 1,000 shares and offering 1,000 shares at .08, if a market order or marketable limit order to buy 4,000 shares entered Exchange systems, such order would trade not only with the displayed offer of .08, but would also trade with any reserve interest that is better than the displayed offer (*e.g.,* if there is non-displayed interest offered at .07), reserve interest at the price of the displayed offer, and if there is insufficient liquidity at the displayed offer price or better, the market order would sweep up the Book. Similarly, as proposed, if the d-Quote bid for .05 had four cents of price discretion for a minimum size of 4,000 shares, that d-Quote would interact with the market the same as a market order or a marketable limit order to buy 4,000 shares.

The Exchange notes that the d-Quote functionality sought with this rule proposal provides Floor brokers with functionality similar to that previously available to Floor brokers. As permitted by former Rule 123A.30(a), a CAP–DI order was the elected or converted portion of a percentage order that was convertible on a destabilizing tick and designated for immediate execution or cancel election. When elected, a CAP–DI order would have automatically executed against any contra-side volume available at the electing price and was eligible to participate in a sweep. The Rule 70.25(c)(iii) limitation that only displayed interest is considered when determining whether the contra-side volume meets the d-Quotes discretionary size instructions was added during a time when Floor brokers still had the ability to enter CAP–DI orders.

In connection with the Next Generation Market Model, the Exchange eliminated CAP orders in part because the manner in which such orders were processed impeded the efficiency of the Book.[6] Accordingly, Floor brokers no longer have the capability to enter an order into Exchange systems that would be elected at certain price points and then be eligible to trade with any available contra-side liquidity.

The Exchange notes that, when it eliminated CAP orders, it did not have the technology to permit d-Quotes to fully replicate the functionality of a CAP order. Moreover, when d-Quote functionality was introduced in October 2006, the Exchange did not offer the ability to enter fully dark reserve interest. Since that time, the Exchange has added two new order types, the Minimum Display Reserve Order and the Non-Displayable Reserve Order.[7] By restricting d-Quotes to be active only when the displayed interest meets the discretionary size instructions, d-Quotes are limited in their ability to interact with the type of liquidity that exists at the Exchange.

The Exchange therefore believes that the modernization of d-Quote functionality proposed in this rule filing enables willing interest to trade with all willing contra-side liquidity, including reserve interest, which will result in greater executed volume, better fill rates, new price improvement opportunities for incoming orders, and improved overall market quality. Additionally, the proposed functionality for d-Quotes is consistent with the initial purpose of providing Floor brokers with functionality to replicate the functionalities and characteristics that Floor brokers exercised in an auction-market model and to modernize such tools as the manner of trading at the Exchange evolves. As such, this enhancement does not expand functionality available to Floor brokers but merely restores functionality that previously existed, albeit in a slightly different format.

The Exchange further believes that providing this improved functionality provides customers with a greater array of execution and representation choices when routing an order to the Exchange. For example, a customer currently can choose, among others, to: route an order directly to the Book electronically from an off-Floor location; Route an order to a Floor broker for the Floor broker to represent on the Floor of the Exchange; or, route an order to the New York Block Exchange (''NYBX Facility''), an Exchange facility that allows for the interaction of non-displayed liquidity with the aggregate of displayed and non-displayed liquidity on the Book.[8] Each option provides different benefits for the customer. For example, routing an order directly to Exchange systems provides the benefit of an ultra low latency execution, which is particularly important for an algorithmically-driven trading strategy. Additionally, a customer may choose to use a Floor broker because that customer wants the benefit of that broker's expertise in managing complex orders, performing price discovery, and exercising discretion at the point of sale. Similarly,

[5] *See* Rule 70.25(a)(iv) (''Discretionary instructions will be applied only if all d-Quoting prerequisites are met. Otherwise, the d-Quote will be handled as a regular e-Quote, notwithstanding the fact that the Floor broker has designated the e-Quote as a d-Quote.'').

[6] *See* Securities Exchange Act Release No. 58845 (Oct. 24, 2008), 73 FR 64379 (Oct. 29, 2008) (SR–NYSE–2008–46).

[7] *See id.*

[8] *See* Rule 1600.

a customer may choose to route an order to NYBX in order to include more flexible instructions in the order. For example, an order entered in the NYBX Facility can include a minimum triggering volume (''MTV'') instruction, which would require that the Book have sufficient contra-side liquidity before the order in NYBX attempts to execute. No execution of an NYBX order will be attempted if the MTV is not met.

The Exchange believes that the proposed d-Quote functionality is similar to how orders in the NYBX Facility are treated, in that orders in that facility do not require the Exchange contra-side liquidity to be at the Exchange BBO before the NYBX order is triggered for execution. Therefore, the benefit from this proposed d-Quote functionality is already available in another form to customers via the NYBX Facility. By modernizing d-Quote functionality, the Exchange is therefore not only replacing functionality that was previously eliminated, but is also providing customers who elect to use a Floor broker with functionality that is already available in another format, thereby meeting the diverse needs of all customers.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act[9] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[10] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investor's orders in the best market. The Exchange believes that permitting d-Quotes to consider all available contra-side liquidity when determining whether the discretionary size range of the d-Quote has been met meets such goals because it ensures that customer orders eligible to trade will execute against willing contra-side liquidity.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 21-day comment period.

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–NYSE–2009–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2009–55 and should be submitted on or before July 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13721 Filed 6–10–09; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60048; File No. SR–CBOE–2009–035]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Temporary Membership Status and Interim Trading Permit Access Fees

June 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 29, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adjust (i) the monthly access fee for persons granted temporary CBOE membership status (''Temporary Members'') pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 (''Rule 3.19.02'') and (ii) the monthly access fee for Interim Trading Permit (''ITP'') holders under CBOE Rule 3.27. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The current access fee for Temporary Members under Rule 3.19.02 [2] and the current access fee for ITP holders under Rule 3.27 [3] are both $9,014 per month. Both access fees are currently set at the indicative lease rate (as defined below) for May 2009. The Exchange proposes to adjust both access fees effective at the beginning of June 2009 to be equal to the indicative lease rate for June 2009 (which is $10,171). Specifically, the Exchange proposes to revise both the Temporary Member access fee and the ITP access fee to be $10,171 per month commencing on June 1, 2009.

The indicative lease rate is defined under Rule 3.27(b) as the highest clearing firm floating monthly rate [4] of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases.[5] The Exchange determined the indicative lease rate for June 2009 by polling each of these Clearing Members and obtaining the clearing firm floating monthly rate designated by each of these Clearing Members for that month.

The Exchange used the same process to set the proposed Temporary Member and ITP access fees that it used to set the current Temporary Member and ITP access fees. The only difference is that the Exchange used clearing firm floating monthly rate information for the month of June 2009 to set the proposed access fees (instead of clearing firm floating monthly rate information for the month of May 2009 as was used to set the current access fees) in order to take into account changes in clearing firm floating monthly rates for the month of June 2009.

The Exchange believes that the process used to set the proposed Temporary Member access fee and the proposed Temporary Member access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–12 with respect to the original Temporary Member access fee.[6] Similarly, the Exchange believes that the process used to set the proposed ITP access fee and the proposed ITP access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–77 with respect to the original ITP access fee.[7]

Each of the proposed access fees will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act [8] to modify the applicable access fee or the applicable status (*i.e.,* the Temporary Membership status or the ITP status) is terminated. Accordingly, the Exchange may, and likely will, further adjust the proposed access fees in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of each proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions relating to the assessment of that access fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[2] *See* Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR–CBOE–2007–107) for a description of the Temporary Membership status under Rule 3.19.02.

[3] *See* Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008) (SR–CBOE–2008–40) for a description of the Interim Trading Permits under Rule 3.27.

[4] Rule 3.27(b) defines the clearing firm floating monthly rate as the floating monthly rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate.

[5] The concepts of an indicative lease rate and of a clearing firm floating month rate were previously utilized in the CBOE rule filings that set and adjusted the Temporary Member access fee. Both concepts are also codified in Rule 3.27(b) in relation to ITPs.

[6] *See* Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR–CBOE–2008–12), which established the original Temporary Member access fee, for detail regarding the rationale in support of the original Temporary Member access fee and the process used to set that fee, which is also applicable to this proposed change to the Temporary Member access fee as well.

[7] *See* Securities Exchange Act Release No. 58200 (July 21, 2008), 73 FR 43805 (July 28, 2008) (SR–CBOE–2008–77), which established the original ITP access fee, for detail regarding the rationale in support of the original ITP access fee and the process used to set that fee, which is also applicable to this proposed change to the ITP access fee as well.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2009–035 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–035. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2009–035 and should be submitted on or before July 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13722 Filed 6–10–09; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6658]

Title: Meetings of the United States-Chile Environment Affairs Council and Joint Commission for Environmental Cooperation

ACTION: Notice and request for comments.

SUMMARY: The Department of State and the Office of the United States Trade Representative (USTR) are providing notice that, as set forth in Chapter 19 (Environment) of the United States-Chile Free Trade Agreement (FTA) and the United States-Chile Environmental Cooperation Agreement (ECA), the two governments intend to hold the fifth meeting of the Environment Affairs Council (the ''Council'') and the third meeting of the Joint Commission for Environmental Cooperation (the ''Commission'') in Washington, DC on July 1st, 2009. A public information session will be held for on July 1st, at 3 p.m., in room 1107 at the U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. If you would like to attend the session, please send the following information to Robert Wing at the fax number or e-mail address listed below under **ADDRESSES:** (1) Your name, (2) your date of birth, and (3) the number of a valid identification card that a government has issued to you.

The purpose of the Council and Commission meeting is detailed below under **SUPPLEMENTARY INFORMATION.**

The meeting agenda will include an overview of Chapter 19 and review of its implementation, progress report on projects outlined in the FTA's Environment Chapter, a discussion of the roles and activities of the Trade and Environment Policy Advisory Committee and the public advisory committee that advises the Chilean government on trade and environment policy issues, an overview of progress of implementing selected projects under the 2007–2008 Work Program pursuant to the United States-Chile ECA and the presentation of a new ECA Work Program. The Department of State and USTR invite interested agencies, organizations, and members of the public to submit written comments or suggestions regarding agenda items and to attend the public session.

In preparing comments, we encourage submitters to refer to:

- The FTA's Environment Chapter including Annex 19.3, and the Final Environment Review of the FTA, available at: *http://www.ustr.gov/Trade_Agreements/Bilateral/Chile_FTA/Section_Index.html.*
- The ECA, available at: *http://www.state.gov/g/oes/rls/or/22185.htm.*

DATES: To be assured of timely consideration, comments are requested no later than June 25, 2009.

ADDRESSES: Written comments or suggestions should be submitted to both: (1) Robert Wing, U.S. Department of State, Bureau of Oceans, Environment, and Science, Office of Environmental Policy by electronic mail at *wingRD@state.gov* with the subject line ''US-Chile EAC Meeting'' or by fax to (202) 647–5947; and (2) Mara M. Burr, Deputy Assistant United States Trade Representative for Environment and Natural Resources, Office of the United States Trade Representative by electronic mail at *mburr@ustr.eop.gov* with the subject line ''US-Chile EAC Meetings'' or by fax to (202) 395–9517.

FOR FURTHER INFORMATION CONTACT: Robert Wing, Telephone (202) 647–9266 or Mara M. Burr, Telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION: The United States-Chile FTA entered into force on January 4, 2004. Article 3 of Chapter 19 (Environment) of the FTA establishes an Environment Affairs Council, which is required to meet at least once a year to discuss the implementation of, and progress under, Chapter 19. Chapter 19 requires that meetings of the Council include a public session. Under Chapter 19, the two governments agreed to undertake eight specific cooperative activities set out in Annex 19.3 of the Chapter and to negotiate a United States-Chile Environmental Cooperation Agreement to further environmental cooperative activities. The ECA entered into force on May 1, 2004 and sets out a framework for environmental cooperative activities between the two governments. Article II of the ECA establishes the United States-Chile Joint Commission for Environmental Cooperation, with responsibilities that include developing and periodically reviewing a Work Program. The Commission is required to meet at least every two years. The first meetings of the Council and the Commission were held on July 22, 2004, in Santiago, Chile, and the third meeting

of the Council and second meeting of the Commission were held on October 23–24, 2006, in Santiago, Chile.

At the fourth Council meeting held on April 24, 2008, in Santiago, Chile the Council discussed the implementation of Chapter 19 of the FTA with respect to public participation, progress reports on the eight cooperation projects under Chapter 19, implementation of the 2005–2006 Work Program, and elaboration of the 2007–2008 Work Program. At this meeting the Trade and Environment Policy Advisory Committee and Chile's Advisory Committee held the first ever exchange between FTA-related trade and environment advisory committees.

At the upcoming fifth meeting of the Council, the Council will review the status of implementation of Chapter 19 and receive reports on (1) The progress of projects outlined in the FTA's Environment Chapter, (2) the roles and activities of the Trade and Environment Policy Advisory Committee and the public advisory committee that advises the Chilean government on trade and environment policy issues, and (3) the 2009–2010 Work Program Pursuant to the U.S-Chile ECA. At its third meeting, the Commission, during a Joint Public Session with the Council, will receive reports on progress of implementing the 2007–2008 ECA Work Program and review and approve a new Work Program. At these meetings, the Council and Commission will also consider recommendations for future bilateral environmental cooperation. The public is advised to refer to the State Department Web site at *http://www.state.gov/g/oes/env/* and the USTR Web site at *http://www.USTR.gov* for further information related to the Council meeting.

Dated: June 4, 2009.

Daniel T. Fantozzi,

Director, Office of Environmental Policy, Department of State.

[FR Doc. E9–13619 Filed 6–10–09; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q)

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending May 30, 2009. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2009–0129.

Date Filed: May 27, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 17, 2009.

Description: Application of SmartLynx Airlines, Ltd. requesting a foreign air carrier permit authorizing the carrier to operate charter foreign air transportation of persons, property and mail (a) between any point or points behind the European Union, via any point or points in the European Union and intermediate points, to any point or points in the United States, and beyond; (b) between any point or points in the European Common Aviation Area and any point or points in the United States; and (c) pursuant to the prior approval requirements of Part 212.

Docket Number: DOT–OST–2009–0132.

Date Filed: May 28, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 18, 2009.

Description: Application of Lufthansa Cargo AG requesting a foreign air carrier permit authorizing it to engage in: (a) Scheduled and charter foreign air transportation of property and mail from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (b) scheduled and charter foreign air transportation of property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (c) scheduled and charter foreign air transportation of property and mail between any point or points in the United States and any point or points; (d) other charter pursuant to the prior approval requirements; and (e) transportation authorized by any additional route rights made available to European Community carriers in the future.

Docket Number: DOT–OST–2008–0026.

Date Filed: May 27, 2009.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 17, 2009.

Description: Application of Air Italy S.p.A. requesting an amendment of the first two paragraphs of its foreign air carrier permit it now holds to authorize: (a) Scheduled and charter foreign air transportation of persons, property and mail from any point or points behind any Member State of the European Community via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; and (b) scheduled and charter foreign air transportation of persons, property and mail between any point or points in the United States and any point or points in the European Common Aviation Area. Air Italy also seeks an exemption to permit its operations as a scheduled foreign air carrier within the full geographic scope of the permit amendment.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9–13710 Filed 6–10–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 697X)]

CSX Transportation, Inc.—Abandonment Exemption—in Glynn County, GA

On May 22, 2009, CSX Transportation, Inc. (CSXT) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 0.31-mile rail line on its Southern Region, Jacksonville Division, Brunswick Subdivision, between milepost AOB 534.36 and milepost AOB 534.67 in Brunswick, Glynn County, GA. The line traverses United States Postal Service Zip Code 31520.

CSXT also requests expedited consideration of the exemption petition, including effectiveness of the exemption no later than August 1, 2009. CSXT states that expedited action is necessary here because a new middle school has been built to the east of the right-of-way. In order to access the school, a new road must be built across the line. CSXT argues that construction must begin soon in order for the new road to be completed before the start of the school

year. Therefore, CSXT contends that expedited handling of the abandonment is warranted. The request will be addressed in the final decision.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by September 9, 2009, or sooner if the request to expedite is granted.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than July 1, 2009. Each trail use request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).[1]

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 697X), and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Louis E. Gitomer, Esq., 600 Baltimore Avenue, Suite 301, Towson, MD 21204–4022. Replies to the petition are due on or before July 1, 2009.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

[1] On June 4, 2009, the Board increased the fee for trails use requests. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2009 Update,* STB Ex Parte No. 542 (Sub-No. 16) (STB served May 5, 2009).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 5, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–13686 Filed 6–10–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35247]

Grenada Railway, LLC—Acquisition and Operation Exemption—Illinois Central Railroad Company and Waterloo Railway Company

Correction

In notice document E9–12365 beginning on page 25799 in the issue of Friday, May 29, 2009, make the following correction:

On page 25800, in the first column, under DEPARTMENT OF TRANSPORTATION, in the first paragraph, lines 6–8 of the text, ''603.0, at Water Valley Junction, and milepost 614.42, at Bruce Junction'' should read ''603.0, at Bruce Junction, and milepost 614.42, at Water Valley Junction''.

Dated: June 8, 2009.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–13746 Filed 6–10–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236, as detailed below.

Docket Number: FRA–2009–0046.

Applicant: Paducah & Louisville Railway, Inc., Mr. C.D. Edwards, General Supervisor of Signals and Structures, 1400 Bell Avenue, Paducah, Kentucky 42003.

The Paducah & Louisville Railway, Inc. (P&L) seeks approval of the proposed discontinuance and removal of signal locations between Milepost (MP) J 22.0 and MP J 45.0, and replacing with new signal and track circuitry.

The locations are between West Point, Kentucky, MP J 22.0 and North Cecilia, Kentucky, MP J 45.0. The proposal consists of retiring nine back-to-back signal locations between MP J 22 and MP J 45, and replacing with six back-to-back signal locations. Electro Code II track circuitry is to be replaced with Electro Code 5 track circuitry.

The signals to be removed are: J234, J235; J262, J261; NBH, J283; J308, SBH; J238, J239; J356, J355; J382, J381; J408, J407; and J432, J433. The signals to be installed are: J250, J251; NBH, J283; J308, SBH; J346, J345; J382, J381; and J420, J421.

The reason given for the proposed changes is to improve safety of train operation and reduce the cost of testing, and maintenance.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

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–2009–0046) 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 June 5, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–13629 Filed 6–10–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35249]

Kern W. Schumacher—Continuance in Control Exemption—Grenada Railway, LLC and Natchez Railway, LLC

Correction

In notice document E9–12366 beginning on page 25798 in the issue of Friday, May 29, 2009, make the following correction:

On page 25799, in the first column, under DEPARTMENT OF TRANSPORTATION, in the first paragraph, lines 3–5 of the text, ''603.0, at Water Valley Junction, MS, and milepost 614.42, at Bruce Junction, MS'' should read ''603.0, at Bruce Junction, MS, and milepost 614.42, at Water Valley Junction, MS''.

Dated: June 8, 2009.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–13747 Filed 6–10–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Departmental Offices within the Department of the Treasury is soliciting comments concerning the servicer application for the Making Home Affordable.

DATES: Written comments should be received on or before August 10, 2009* to be assured of consideration.

ADDRESSES: Direct all written comments to Department of the Treasury, Kathleen Hutchinson, 1500 Pennsylvania Avenue, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed as above.

SUPPLEMENTARY INFORMATION:

Title: TARP—Making Home Affordable Participants.

OMB Number: 1505–0216.

Abstract: Authorized under the Emergency Economic Stabilization Act (EESA) of 2008 (Pub. L. 110–343), the Department of the Treasury has implemented several aspects of the Troubled Asset Relief Program. Among these components is a voluntary foreclosure prevention program—Making Home Affordable (MHA) program, under which the Department will use TARP capital to lower the mortgage payments of qualifying borrowers. The Treasury will do this through agreements with mortgage servicers to modify loans on their systems. All servicers are eligible to participate in the program. The information will be used to set the servicers up on the data system, ensure that the servicers can be paid for the loan modifications that they undertake, check for compliance, and report out on the effectiveness of the program.

Current Actions: Continuation of application.

Type of Review: Extension.

Affected Public: Financial Institutions.

Estimated Number of Respondents: 360.

Estimated Total Annual Burden Hours: 198,880 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E9–13666 Filed 6–10–09; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the

Departmental Offices within the Department of the Treasury are soliciting comments concerning the Monthly Lending Report.

DATES: Written comments should be received on or before August 10, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Department of the Treasury, David Eagles, 1500 Pennsylvania Avenue, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed as above.

SUPPLEMENTARY INFORMATION:

Title: Monthly Lending Report.

OMB Number: 1505–0214.

Abstract: Authorized under the Emergency Economic Stabilization Act (EESA) of 2008 (Pub. L. 110–343), the Department of the Treasury has implemented several aspects of the Troubled Asset Relief Program. Among these components is a voluntary Capital Purchase Program (CPP) under which the Department may purchase qualifying capital in U.S. banking organizations. The Treasury has so far invested capital through this program in almost 600 financial institutions. As part of the Capital Purchase Program, Treasury would like to gauge whether the capital injections made through the CPP are having the desired effect of ensuring liquidity within the banking system and thereby increasing lending activity. To gauge this, Treasury would like to monitor the lending activity of all CPP participants. The Treasury will be conducting evaluations using quarterly Call Report data supplied by these financial institutions to their primary regulator. However, in order to have a more frequent and timely snapshot of the current lending environment, Treasury is requesting the ability to conduct a monthly survey of all participants in the CPP in order to supplement the quarterly analysis.

Current Actions: Continuation of survey.

Type of Review: Extension.

Affected Public: Financial Institutions.

Estimated Number of Respondents: 700.

Estimated Total Annual Burden Hours: 5,600.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E9–13667 Filed 6–10–09; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8874

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8874, New Markets Credit.

DATES: Written comments should be received on or before August 10, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, (202) 622–6688, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: New Markets Credit.

OMB Number: 1545–1804.

Form Number: Form 8874.

Abstract: Investors use Form 8874 to claim a credit for equity investments made in Qualified Community Development Entities.

Current Actions: Due to the revision of Form 8874, 16 line items were deleted. Also, in order to accommodate the business filers, the responses were decreased by 3,334 making a total of 6,666 responses. These changes resulted in an overall decrease of burden hours to 32,464.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Responses: 6,666.

Estimated Time per Respondent: 4 hours, 52 minutes.

Estimated Total Annual Burden Hours: 32,464.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 29, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–13653 Filed 6–10–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8861

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8861, Welfare-to-Work Credit.

DATES: Written comments should be received on or before August 10, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Welfare-to-Work Credit.

OMB Number: 1545–1569.

Form Number: 8861.

Abstract: Section 51A of the Internal Revenue Code allows employers an income tax credit 35% of the first $10,000 of first-year wages and 50% of the first $10,000 of second-year wages paid to long-term family assistance recipients. The credit is part of the general business credit.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Responses: 300.

Estimated Time per Respondent: 5 hours, 19 minutes.

Estimated Total Annual Burden Hours: 1,593.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 20, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–13654 Filed 6–10–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 56–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 56–A, Notice Concerning Fiduciary Relationship—Illinois Type Land Trust.

DATES: Written comments should be received on or before August 10, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 56–A, Notice Concerning Fiduciary Relationship—Illinois Type Land Trust.

OMB Number: 1545–1683.

Form Number: 56–A.

Abstract: Form 56–A will be used by trustees of Illinois Land Trusts to report the creation of such trusts and any changes to the trust such as the adding or removing of a beneficiary or a change in the power of direction of the trust.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 10,000.

Estimated Time per Respondent: 2 hrs., 12 minutes.

Estimated Total Annual Burden Hours: 22,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of

information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 27, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–13655 Filed 6–10–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8886

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8886, Reportable Transaction Disclosure Statement.

DATES: Written comments should be received on or before August 10, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, 202–622–6688, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reportable Transaction Disclosure Statement.

OMB Number: 1545–1800.

Form Number: 8886.

Abstract: Regulation section 1.6011–4 requires certain taxpayers to disclose reportable transactions in which they directly or indirectly participated.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 400.

Estimated Time per Respondent: 22 hours, 16 minutes.

Estimated Total Annual Burden Hours: 8,904.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–13657 Filed 6–10–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 14411

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 14411, Systemic Advocacy Issue Submission Form.

DATES: Written comments should be received on or before August 10, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Systemic Advocacy Issue Submission Form.

OMB Number: 1545–1832.

Form Number: 14411.

Abstract: Systemic Advocacy Issue Submission Form is an optional use form for taxpayers (individual and business), tax professionals, trade and business associations, etc. to submit systemic problems. These problems may pertain to experiences with the Internal Revenue Service's processes procedures or make legislative recommendations.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, farms, Federal, State, local or tribal governments.

Estimated Number of Respondents: 420.

Estimated Number of Response: 48 minutes.

Estimated Total Annual Burden Hours: 336.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 26, 2009.

R. Joseph Durbala,

IRS Reports Clearance Office.

[FR Doc. E9–13658 Filed 6–10–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13388

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13388, Improving the Accuracy of EITC Prepared Returns.

DATES: Written comments should be received on or before August 10, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Improving the Accuracy of EITC Prepared Returns.

OMB Number: 1545–1825.

Form Number: 13388.

Abstract: This postcard will be sent to tax preparers that submitted a mixture of paper and electronic returns for their clients. The postcard provides these professionals an opportunity to acquire additional information about the EITC. It is part of a brochure to encourage 100% filing of EITC returns.

Current Actions: There are no changes being made to Form 13388 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Number of Respondents: 9 minutes.

Estimated Total Annual Burden Hours: 150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 26, 2009.

R. Joseph Durbala,

IRS Reports Clearance Office.

[FR Doc. E9–13660 Filed 6–10–09; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
June 11, 2009

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602

Application of Separate Limitations to Dividends From Noncontrolled Section 902 Corporations; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9452]

RIN 1545–BB28

Application of Separate Limitations to Dividends From Noncontrolled Section 902 Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations, temporary regulations, and removal of temporary regulations.

SUMMARY: This document contains final regulations regarding the application of separate foreign tax credit limitations to dividends received from noncontrolled section 902 corporations. The American Jobs Creation Act of 2004 (AJCA) modified the treatment of such dividends effective for taxable years beginning after December 31, 2002. The Gulf Opportunity Zone Act of 2005 (GOZA) permits taxpayers to elect to defer the effective date of the AJCA amendments until taxable years beginning after December 31, 2004. The final regulations provide guidance needed to comply with these changes and affect corporations claiming foreign tax credits.

DATES: *Effective Date:* These regulations are effective on June 11, 2009.

Applicability Dates: For dates of applicability, *see* §§ 1.861–9(k), 1.861–12(c)(5), 1.902–1(g), 1.904–2(h)(1) and (2), 1.904–4(n), 1.904–5(o)(2), 1.904–7(f)(10), 1.904(f)–12(g)(5), and 1.964–1(d).

FOR FURTHER INFORMATION CONTACT: Richard Chewning at (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

The collections of information contained in the final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork and Reduction Act (44 U.S.C. 3507(d)) under control number 1545–2014. The collections of information in the final regulations are in §§ 1.904–7(f)(9)(ii)(C) and 1.964–1(c)(3). This information is required, with respect to § 1.904–7(f)(9)(ii)(C), to notify the IRS that taxpayer has made the election to defer the applicability of the provisions of section 403 of the AJCA. With respect to § 1.964–1(c)(3), this information is required to notify the IRS and domestic shareholders of a foreign corporation of elections made to adopt or change a method of accounting or taxable year of the foreign corporation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

Books or records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On April 20, 2006, a notice of proposed rulemaking by cross-reference to temporary regulations (REG–144784–02) under sections 861, 902, 904, and 964 of the Code and temporary regulations (TD 9260) (the 2006 temporary regulations) were filed with the Office of the Federal Register. On April 25, 2006, the notice of proposed rulemaking by cross-reference to temporary regulations and the 2006 temporary regulations were published in the **Federal Register** (71 FR 24543 and 71 FR 24516, respectively). Corrections to the 2006 temporary regulations were published on August 21, 2006, and December 26, 2006, in the **Federal Register** (71 FR 48474 and 71 FR 77264, respectively). Comments were received. A public hearing was not requested and none was held. After consideration of the comments, the proposed regulations are adopted as amended by this Treasury decision.

Explanation and Summary of Comments

The IRS and the Treasury Department received written comments on the 2006 temporary regulations. Those comments are discussed in this preamble. These new regulations make several changes to the 2006 temporary regulations to take into account comments received, while adopting without amendment most of the temporary regulations. The significant comments and revisions are described in this preamble.

I. Interest Expense Apportionment

A. Interest Expense of a 10/50 Corporation

Section 904(d)(4)(A), as amended by the AJCA, provides that any dividend paid by a noncontrolled section 902 corporation (10/50 corporation) shall be treated as income in a separate category based on the separate category of the underlying earnings and profits being distributed (look-through treatment), effective for taxable years beginning after December 31, 2002 (post-2002 taxable years), without regard to when the distributed earnings were accumulated. For purposes of apportioning interest expense of a 10/50 corporation in order to apply the dividend look-through rule, § 1.861–9T(f)(4) of the 2006 temporary regulations generally applies the same principles as § 1.861–9T(f)(3) (apportionment of interest expense of a controlled foreign corporation). Under these rules, interest expense of a 10/50 corporation may be apportioned using either the asset method or the modified gross income method. Regardless of the interest expense apportionment methods used by its majority domestic corporate shareholders, the 10/50 corporation (or the majority domestic corporate shareholders on behalf of the 10/50 corporation) may elect to use any of the methods described in § 1.861–9T or § 1.861–9 (that is, the modified gross income, tax book value, alternative tax book value or fair market value method) to apportion the 10/50 corporation's interest expense.

Section 1.861–9T(j)(1) provides a rule for ''tiering up'' the income of tiers of controlled foreign corporations (CFCs) that use the modified gross income method to apportion interest expense. Under that rule, the lowest-tier CFC's interest expense is allocated and apportioned based on its gross income, and its gross income reduced by such allocated and apportioned interest expense is then treated as gross income of the next-higher-tier CFC for purposes of apportioning the higher-tier CFC's interest expense. These steps are then essentially repeated, moving up the tiers. A commenter requested that the IRS and the Treasury Department clarify the mechanics of apportioning interest expense when tiered corporations elect different apportionment methods. This commenter raises issues that are beyond the scope of this regulation project and therefore are not addressed in this document.

B. Definition of ''10 Percent Owned Corporation''

Prior to revision by the 2006 temporary regulations, § 1.861–12T(c)(2) required an affiliated group using the tax book value method in apportioning its interest expense to adjust the basis of stock in any ''10 percent owned corporation'' that is held directly by members of the group to reflect each member's pro rata share of such 10 percent owned corporation's earnings and profits (or deficit in earnings and profits). The rule, as revised by the 2006 temporary regulations, applies to stock

of a 10 percent owned corporation not only where its stock is held directly by members of the affiliated group, but also where its stock is held indirectly through a partnership or other pass-through entity. The revision was effective on April 25, 2006, and applied prospectively. The IRS and the Treasury Department stated in the preamble to the 2006 temporary regulations that the revision was a clarification.

A commenter questioned why the regulations include a prospective, rather than a retroactive, effective date, if the revision clarified existing law. The IRS and the Treasury Department maintain that the revision is a clarification of existing law but continue to believe a prospective effective date is appropriate because the prior regulations were ambiguous.

II. Carryover of Unused Foreign Taxes Under Section 904(c)

In the case of unused foreign taxes attributable to dividends from a 10/50 corporation with respect to which the taxpayer was no longer a qualifying shareholder as of the first day of the taxpayer's first taxable year ending after the first day of the 10/50 corporation's first post-2002 taxable year, § 1.904–2T(h)(1) provides that the unused foreign taxes are allocated among the taxpayer's separate categories in the same percentages as the earnings in the 10/50 corporation's non-look-through pool or pre-1987 accumulated profits ''would have been assigned had they been distributed in the last taxable year in which the taxpayer was a domestic shareholder in such corporation.'' In response to a comment, § 1.904–2(h)(1) of the final regulations clarifies that such taxes will be allocated as if look-through treatment applied in the year of the hypothetical distribution.

III. Look-Through Rules as Applied to 10/50 Corporations

A. General Application of Look-Through

With respect to applying the look-through rule to any dividend paid by a 10/50 corporation in a post-2002 taxable year, § 1.904–5T(c)(4)(iii) of the 2006 temporary regulations provides that any dividends paid in a post-2002 taxable year to a domestic corporation by a 10/50 corporation with respect to which the domestic corporation meets the stock ownership requirements of section 902(a) are treated as income in a separate category in proportion to the ratio of the portion of earnings and profits of the 10/50 corporation attributable to income in such category to the total amount of earnings and profits of the 10/50 corporation.

A commenter expressed concern that in some cases, where a domestic shareholder meets the stock ownership requirements of section 902(a) but has a relatively small ownership interest, the administrative burden on both the taxpayer and the IRS of applying look-through to earnings and foreign taxes in a 10/50 corporation's look-through pools could be significant. The commenter asserted that the process of obtaining and analyzing multiple years of historical financial data to ascertain the exact portion of distributions that relate to specific categories of income can be challenging, particularly where distributions relate to earnings from certain historical periods (for example, those during which the taxpayer did not own stock in the 10/50 corporation). The commenter indicated that the reconstruction and safe harbor methods provided in § 1.904–7T(f)(4)(i) and (ii) of the 2006 temporary regulations, respectively, reduce difficulties in reconstructing historical accumulated earnings and taxes accounts of a 10/50 corporation, but those rules apply only to undistributed earnings and taxes accumulated in non-look-through periods and do not apply to distributions of earnings accumulated in look-through pools. The commenter suggested that the IRS and the Treasury Department consider providing an elective safe harbor approach for domestic shareholders who own a relatively small interest, such as 15 percent or less, in the 10/50 corporation, which would characterize a dividend paid by a 10/50 corporation as income in a separate category by reference to the gross revenue of the 10/50 corporation for the last three years or a similar abbreviated period, with anti-abuse rules to address distortions.

The IRS and the Treasury Department recognize that in some circumstances a domestic shareholder of a 10/50 corporation (as well as a noncontrolling shareholder of a controlled foreign corporation (CFC)) may face difficulties in substantiating accumulated earnings and taxes accounts of the 10/50 corporation (or CFC) on a look-through basis. However, the IRS and the Treasury Department believe use of a safe harbor is appropriate only as a limited rule for reconstructing earnings and taxes accumulated during prior year periods when the look-through rules did not apply to dividends from 10/50 corporations. An ongoing safe harbor is not appropriate because the statutory look-through rules, which apply to all domestic shareholders meeting the stock ownership requirements of section 902(a) (that is, 10 percent), generally require substantiation, and if the look-through treatment of a dividend from a 10/50 corporation has not been adequately substantiated, section 904(d)(4)(C)(ii) requires that such dividend be treated as passive income. *See* also § 1.904–5T(c)(4)(iii) of the 2006 temporary regulations.

B. Substantiation of Look-Through Treatment

Section 1.904–5T(c)(4)(iii) of the 2006 temporary regulations provides that a dividend from a 10/50 corporation is treated as passive income if the look-through characterization of the dividend is not substantiated to the satisfaction of the Commissioner.

A commenter expressed concern that if a 10/50 corporation has high-taxed income outside the general and passive categories a taxpayer may intentionally fail to substantiate the look-through characterization of a dividend from the 10/50 corporation in order to achieve cross-crediting. The commenter suggested that the final regulations include an anti-abuse rule for situations where the Commissioner determines that a taxpayer deliberately failed to substantiate the look-through characterization of the dividend. The commenter suggested that the anti-abuse rule could provide that in such a situation the earnings and associated taxes would be placed in a separate sub-basket to prevent cross-crediting. Alternatively, the commenter suggested that the final regulations could apply rules similar to the rules of section 907. Finally, the commenter suggested that the inadequate substantiation rule in § 1.904–5T(c)(4)(iii) should be revised to conform to the rule in § 1.904–7T(f)(4)(iii), which provides that the Commissioner will allocate the undistributed earnings and taxes in the non-look-through pools to the foreign corporation's passive category only if the Commissioner determines that the look-through characterization of such earnings and taxes cannot reasonably be determined based on the available information. The IRS and the Treasury Department agree with this latter suggestion, and the rule in § 1.904–5(c)(4)(iii) of the final regulations adopts this comment.

C. Application of Section 904(h) to 10/50 Corporations

For purposes of the section 904 foreign tax credit limitation, section 904(h) (section 904(g) prior to redesignation in the AJCA) provides that certain income derived from a United States-owned foreign corporation which would be treated as foreign source income under other Code provisions is

treated as U.S. source income. This resourcing rule applies to certain payments of interest and dividends by a United States-owned foreign corporation as well as inclusions in gross income under sections 951(a) and 1293 to the extent the payments or inclusions are attributable to income of the United States-owned foreign corporation from sources within the United States. Section 904(h)(6) generally defines a United States-owned foreign corporation as any foreign corporation if United States persons (as defined in section 7701(a)(30)) hold 50 percent or more of either the total combined voting power of all classes of voting stock or the total value of the stock.

Section 1.904–5(m) provides rules for the resourcing of certain amounts received or accrued (or treated as received or accrued) by a United States shareholder (as defined in section 951(b)) from a United States-owned foreign corporation. Section 1.904–5T(m)(1) of the 2006 temporary regulations clarified that the resourcing rule applies not only to CFCs but also to 10/50 corporations that meet the definition of a United States-owned foreign corporation, and § 1.904–5T(m)(2)(ii) and (4) provide rules for resourcing interest and dividend payments from 10/50 corporations.

In the preamble to the 2006 temporary regulations, the IRS and the Treasury Department stated that this revision clarified that the rules for resourcing interest and dividends also apply to a 10/50 corporation that meets the definition of a United States-owned foreign corporation.

A commenter suggested that the inclusion of 10/50 corporations within the resourcing rule of § 1.904–5T(m) was not simply a clarification and that the combination of referring to this provision as only a clarification and the prospective application of the rule is confusing. In addition, the commenter requested guidance on the appropriate treatment of dividends from 10/50 corporations for 2003 through 2006 under section 904(h) (section 904(g) as applicable for those years). The commenter suggested that § 1.904–5T(m) be made retroactive to 2003 (or 2005 for taxpayers electing to apply the pre-AJCA section 904(d) rules to assign dividends paid by 10/50 corporations in their 2003 and 2004 taxable years to a single separate category for dividends from all 10/50 corporations) to match the retroactive effective date of the statutory changes to the look-through rules for 10/50 corporations and of the § 1.904–7T rules for reconstructing non-look-through pools.

This comment is not adopted. The IRS and the Treasury Department continue to believe that the revision is a clarification of existing law. A retroactive effective date is unnecessary, however, because the statute provides the applicable rule.

A commenter suggested that, because section 904(h) applies exactly the same rule to both section 951(a) and section 1293 inclusions, § 1.904–5(m)(5) (other than the special rules for related person interest expense which are incorporated by cross-reference) should also reference section 1293 inclusions from United States-owned 10/50 corporations. The IRS and the Treasury Department agree, and § 1.904–5(m)(5) of the final regulations adopts this comment.

D. Treatment of Earnings and Taxes Accumulated During a Non-Look-Through Period

i. Reconstruction Method

Section 1.904–7T(f)(2) of the 2006 temporary regulations provides that any undistributed earnings and foreign income taxes in the non-look-through pools of a 10/50 corporation that were accumulated and paid as of the end of the 10/50 corporation's last pre-2003 taxable year are treated as if they were accumulated and paid during a period in which a distribution would have been eligible for look-through treatment. Section 1.904–7T(f)(4)(i) of the 2006 temporary regulations provides that in order to substantiate the look-through characterization of the earnings and taxes in the non-look-through pools, the taxpayer must make a reasonable, good-faith effort to reconstruct the non-look-through pools of earnings and taxes for each year in the non-look-through period, beginning with the first year in which earnings were accumulated in the non-look-through pool. Section 1.904–7T(f)(4)(i) further provides that reconstruction will be based on reasonably available books and records and other relevant information, and must take into account earnings distributed and taxes deemed paid in the non-look-through period as if they were distributed and deemed paid pro rata from the amounts that were added to the non-look-through pools during the non-look-through period.

In recognition of the difficulty in reconstructing the pools, the IRS and the Treasury Department stated in the preamble to the 2006 temporary regulations that a reasonable approximation of the amounts properly included in the look-through pools, based on available records obtained through reasonable, good-faith efforts by the taxpayer, will adequately substantiate the reconstruction required by the statute.

A commenter suggested that clarification of what constitutes other relevant information would be helpful. The IRS and the Treasury Department do not adopt this comment because the substantiation requirement requires evaluation of the facts and circumstances of each situation.

With respect to earnings accumulated and foreign taxes paid in the 2003 through 2006 taxable years, a commenter suggested that the rules in the 2006 temporary regulations concerning the look-through characterization and reconstruction of earnings and taxes in the non-look-through pools need to be clarified to provide that taxpayers are required to determine the sub-characterization of earnings and taxes, if relevant. As an example, the commenter stated that if a 10/50 corporation conducts a financing business but does not itself qualify as a financial services entity within the meaning of § 1.904–4(e)(3)(i), a qualifying shareholder of the 10/50 corporation must (if the shareholder does not elect the safe harbor method) determine what portion of the non-look-through earnings qualify as active financing income as defined in § 1.904–4(e)(2)(i). Such a determination would be necessary in order to determine whether the income would be placed in the separate category for financial services income upon distribution to an upper-tier financial services entity. The IRS and the Treasury Department agree with this comment that sub-characterization of earnings and taxes is required, if relevant, in determining the look-through characterization of earnings and taxes in the non-look-through pools and in reconstructing such pools. However, the IRS and the Treasury Department believe that the 2006 temporary regulations already require reconstruction as if look-through applied for all section 904 purposes, including any relevant sub-characterization of the earnings and taxes pools. Accordingly, the final regulations adopt the rule in the 2006 temporary regulations without change.

ii. Safe Harbor

Section 1.904–7T(f)(4)(ii) of the 2006 temporary regulations provides a safe harbor in reconstructing the non-look-through pools under which a taxpayer may allocate the earnings and taxes in the non-look-through pools ratably to the look-through pools on the first day of the 10/50 corporation's first post-2002 taxable year in the same percentages as the taxpayer (or the qualified group member that owns the

10/50 corporation) properly characterizes the stock of the 10/50 corporation in the separate categories for purposes of apportioning the taxpayer's (or qualified group member's) interest expense in its first taxable year ending after the first day of the 10/50 corporation's first post-2002 taxable year. If a taxpayer elects to use the safe harbor method with respect to a 10/50 corporation that uses the modified gross income method to apportion interest expense for the 10/50 corporation's first post-2002 taxable year, earnings and taxes in the non-look-through pools are allocated to the look-through pools based on an average of the 10/50 corporation's modified gross income ratios for its taxable years beginning in 2003 and 2004. The IRS and the Treasury Department stated in the preamble to the 2006 temporary regulations that the two-year base period rule is necessary to avoid potential distortions associated with allocating earnings and taxes from the non-look-through pool to the look-through pools based on the 10/50 corporation's modified gross income for just one taxable year.

A commenter suggested that other potential distortions are not addressed in § 1.904–7T(f)(4)(ii), such as instances in which a material change in the foreign corporation's operations (or asset composition) would distort the characterization of the non-look-through earnings and taxes under the safe harbor method. The commenter suggested that conditioning the use of the safe harbor method on the lack of any material change in the foreign corporation's operations, structure, assets or income from the non-look-through period would reduce the likelihood of a distortion.

The IRS and the Treasury Department acknowledge that the safe harbor method does not address all potential distortions. However, the purpose of the safe harbor method is to provide certainty and to minimize administrative burdens. The IRS and the Treasury Department believe that revising the safe harbor method to reflect the commenter's suggestion would diminish these benefits of the safe harbor method.

A commenter also suggested that the regulations should include guidance on how the safe harbor method election is to be made and the time frame for making the election. The commenter suggested that taxpayers should be allowed to elect the safe harbor method retroactively, on an amended return or during audit.

The IRS and the Treasury Department agree with this comment. The final regulations provide that taxpayers may choose to use the safe harbor method on either timely filed or amended tax returns or during audit. However, if a taxpayer chooses to use the safe harbor method on an amended return or in the course of an audit, the taxpayer must make appropriate adjustments to eliminate any duplicate benefits arising from application of the safe harbor method to taxable years that are not open for assessment. A taxpayer's choice to use the safe harbor method is evidenced by simply employing the method. No separate statement need be filed.

In addition, the final regulations clarify that the safe harbor method is only available as a transition rule for taxpayers who were required to characterize the stock of the foreign corporation for purposes of apportioning interest expense in the taxpayer's first taxable year ending after the first day of the foreign corporation's first post-2002 taxable year. The safe harbor is not available to determine the look-through treatment of earnings accumulated by a foreign corporation that did not have a shareholder that was entitled to look-through treatment in such a year.

iii. Treatment of a Deficit Accumulated in a Non-Look-Through Period

Section 1.904–7T(f)(5) of the 2006 temporary regulations provides that if there is an accumulated deficit in the non-look-through pool of a 10/50 corporation or a CFC as of the end of the foreign corporation's last pre-2003 taxable year, the deficit and associated taxes, if any, are treated as if they had been accumulated and paid during a look-through period. The earnings and deficits in earnings making up the accumulated deficit are assigned to the look-through pools based on where the foreign corporation's income and expenses or losses would have been assigned had they been incurred during a look-through period, or, if the taxpayer uses the safe harbor method, the deficit is allocated based on how the stock of the foreign corporation is properly characterized for interest expense apportionment purposes.

A commenter suggested that the regulations should clarify that, for shareholders not using the safe harbor method, one or more separate income categories could have positive earnings, while one or more separate income categories could have a greater deficit. Thus, for example, if a 10/50 corporation had a $100 deficit accumulated in its non-look-through pool as of the end of its last pre-2003 taxable year, the deficit could consist of a $200 deficit in general limitation income and $100 earnings in the separate category for shipping income.

The IRS and the Treasury Department believe that § 1.904–7T(f)(5) of the 2006 temporary regulations is clear that, as part of reconstruction of a non-look-through pool that contains an accumulated deficit, one or more separate income categories could have positive earnings, while one or more separate income categories could have a greater deficit, and that therefore, the rule does not need to be revised to reflect the comment.

iv. Section 952(c) Recapture Accounts

In response to a comment, § 1.904–7(f)(7) of the final regulations provides that section 952(c)(2) recapture accounts maintained by a CFC with respect to dividends received from a 10/50 corporation that were subject to the earnings and profits limitation of section 952(c)(1) are allocated to separate categories in the same manner as the associated post-1986 undistributed earnings.

v. GOZA Election

Conforming changes are made to the transition rules at § 1.904–7(f)(9) for taxpayers electing to defer the applicability of the look-through rules for two years to reflect changes in response to comments made with respect to the general transition rules of § 1.904–7(f)(7).

E. Pre-Acquisition E&P

Section 904(d)(4)(C)(i)(II), as amended by the AJCA, provides that the Secretary may prescribe regulations regarding the treatment of distributions out of earnings and profits of a 10/50 corporation for periods before the taxpayer's acquisition of the stock to which the distributions relate (pre-acquisition E&P). Such distributions may be out of post-1986 undistributed earnings accumulated by a 10/50 corporation before the specific shareholder acquired its stock or out of pre-1987 accumulated profits accumulated before the 10/50 corporation had any qualifying shareholder. The 2006 temporary regulations extend look-through treatment to dividends out of earnings and profits accumulated in non-look-through periods during which a 10/50 corporation or a CFC had no qualifying shareholder and do not restrict look-through treatment of dividends paid to a new qualifying shareholder of an existing 10/50 corporation. The preamble to the 2006 temporary regulations stated that the IRS and the Treasury Department believe that look-

through treatment of pre-acquisition earnings is the more appropriate policy result than passive category treatment, if look-through characterization can be adequately substantiated under §§ 1.904–5T(c)(4)(iii) and 1.904–7T(f)(4).

A commenter suggested that the extension of look-through treatment to pre-acquisition E&P is inappropriate because the liberalized cross-crediting of foreign taxes permitted by this treatment may encourage tax-motivated acquisitions in order to traffic in excess foreign taxes. The commenter suggested that the IRS and the Treasury Department exercise the regulatory authority under section 904(d)(4)(C)(i)(II) to create new separate categories for pre-acquisition earnings and profits.

This comment is not adopted. The IRS and the Treasury Department continue to believe that look-through treatment of pre-acquisition earnings, where the earnings and taxes are substantiated, is the more appropriate policy result. Moreover, denying look-through treatment to dividends of earnings of a 10/50 corporation accumulated prior to a specific shareholder's acquisition of stock entails unacceptable administrative complexity associated with maintaining multiple sets of look-through pools starting on different dates for different shareholders. Accordingly, the final regulations adopt the rule in the 2006 temporary regulations without change.

IV. Recapture of an Overall Foreign Loss or Separate Limitation Loss Incurred in a Separate Category for Dividends From a 10/50 Corporation

Section 1.904(f)–12T(g)(1) of the 2006 temporary regulations provides that where a taxpayer had an overall foreign loss (OFL) or separate limitation loss (SLL) in a separate category for dividends from a 10/50 corporation, the OFL or SLL account is recaptured in subsequent taxable years out of income in the same separate categories in which the stock of the 10/50 corporation is properly characterized for purposes of apportioning the taxpayer's interest expense in its first taxable year in which dividends from the 10/50 corporation are eligible for look-through treatment (that is, its first taxable year ending after the first day of the 10/50 corporation's first post-2002 taxable year).

A commenter suggested that a rule providing for recapture of the OFL or SLL from the other separate categories in the same proportions that post-OFL or SLL dividends from the 10/50 corporation would have been assigned to such other separate categories had look-through applied would be more consistent with § 1.904–2T(h)(1) and (2) (carryovers of excess foreign taxes from 10/50 baskets) and § 1.904–7T(f)(2) and (3) (characterization of non-look-through pools as if look-through had applied) that generally take the approach of following the consequences that would have applied if look-through had always been in effect. This comment is not adopted. The IRS and the Treasury Department stated in the preamble to the 2006 temporary regulations and continue to believe that recapturing losses from income earned in subsequent years is a forward-looking concept, and that reallocating OFL and SLL accounts based on the interest expense apportionment ratio (as opposed to, for example, reallocating losses based on reconstructed non-look-through pools) is consistent with that concept.

V. Regulations Under Section 964

A. Tax Elections, Adoptions of Method of Accounting or Taxable Year, and Changes in Method of Accounting or Taxable Year Made on Behalf of a CFC or 10/50 Corporation

The 2006 temporary regulations at § 1.964–1T(c)(2) and (3) provide rules allowing the majority domestic corporate shareholders of a 10/50 corporation to make an election, adopt a method of accounting or taxable year, or change a method of accounting or taxable year on behalf of the 10/50 corporation. The 2006 temporary regulations also allow the controlling United States shareholders of a CFC to make an election, adopt a method of accounting or taxable year, or change a method of accounting or taxable year on behalf of the CFC. Section 1.964–1T(c)(2) provides that for the first taxable year of a foreign corporation beginning after April 25, 2006, in which such foreign corporation first qualifies as a CFC or 10/50 corporation, any method of accounting or taxable year allowable under this section may be adopted or elected by such foreign corporation or on its behalf notwithstanding that, in previous years, its books or financial statements were prepared on a different basis, and notwithstanding that such election is required by the Code or regulations to be made in a prior taxable year. Section 1.964–1T(c)(6) further provides that such actions may be deferred until the first year in which the computation of the foreign corporation's earnings and profits is significant for U.S. tax purposes, and includes a nonexclusive list of significant events for taxable years beginning after April 25, 2006.

Section 1.964–1T(c)(4) of the 2006 temporary regulations acknowledges that a 10/50 corporation may have had a significant event in taxable years beginning on or before April 25, 2006, such as a distribution with respect to which the corporation's shareholder could claim a deemed-paid foreign tax credit under section 902. In order to determine the allowable foreign tax credit, at the time of the distribution the 10/50 corporation's domestic corporate shareholder would have had to compute the 10/50 corporation's earnings and profits, even though no procedure was then available for the controlling domestic shareholders to adopt or elect accounting methods on the 10/50 corporation's behalf. Section 1.964–1T(c)(4) provides that in this situation the 10/50 corporation's earnings and profits shall be computed as if no accounting method elections were made and any permissible accounting method not requiring an election and reflected in the books of account regularly maintained by the 10/50 corporation for purposes of accounting to its shareholders had been adopted. Thereafter, in taxable years beginning after April 25, 2006, the 10/50 corporation, or its controlling domestic shareholders, must obtain the consent of the Commissioner in order to change a particular accounting method or methods (or its taxable year) pursuant to the applicable revenue procedure. A commenter suggested that in post-2006 years the controlling domestic shareholders of a 10/50 corporation should be permitted to change accounting methods on its behalf without obtaining the consent of the Commissioner or making adjustments to the 10/50 corporation's earnings and profits under the principles of section 481 to prevent the duplication or omission of amounts attributable to previous years. This comment is not adopted. The IRS and the Treasury Department believe that it would be inappropriate to give the controlling domestic shareholders of a 10/50 corporation this type of ''fresh start.''

A commenter recommended simplifying the procedures in § 1.964–1T(c)(3) of the 2006 temporary regulations by which controlling domestic shareholders may make an election or adopt or change a method of accounting or taxable year on behalf of a foreign corporation. Specifically, the commenter suggested that § 1.964–1T(c)(3)(i) and (ii) be revised to provide that where a United States shareholder changes a method of accounting on behalf of a CFC of which it is the sole shareholder, such shareholder need file

only the original Form 3115 with its tax return, and need not file the statement (described in § 1.964–1T(c)(3)(ii)) that is required to be filed with each controlling domestic shareholder's tax return. The IRS and the Treasury Department agree with the comment and believe it is equally applicable to changes in the taxable year of the CFC. Accordingly, § 1.964–1(c)(3)(ii) of the final regulations provides that in the case of a controlling domestic shareholder that is the sole shareholder of a CFC, no separate statement need be filed if the information described in § 1.964–1(c)(3)(ii) is included on Form 5471 (Information Return of U.S. Persons With Respect to Certain Foreign Corporations) and Form 3115 (Application for Change in Accounting Method) or Form 1128 (Application to Adopt, Change or Retain a Tax Year), as applicable, filed with respect to the CFC with the shareholder's return for such taxable year.

B. Section 481(a) Adjustments

Prior to its expiration, § 1.964–1T(g)(5) provided that adjustments to the appropriate separate category of earnings and profits and income of the controlled foreign corporation was required using the principles of section 481(a) to prevent any duplication or omission of amounts attributable to previous years that would otherwise result from any election or adoption of a method of accounting. This provision was cross-referenced in § 1.964–1T(c)(4) of the 2006 temporary regulations. Commenters requested clarification regarding the mechanics of making the adjustments according to the principles of section 481(a), such as the period over which the section 481(a) adjustment is spread and whether a correlative section 481(a) adjustment should be made at the domestic shareholder level in order to capture an increased subpart F inclusion that would have been generated had earnings and profits initially been determined using the method subsequently elected or adopted. One commenter suggested that the regulations state specifically that the applicable domestic principles should apply so that the section 481 adjustment would be taken into account in determining the current earnings and profits of the CFC or 10/50 corporation beginning with the year of change and for the same period as the adjustment is taken into account for purposes of computing taxable income.

In response to the comment, § 1.964–1(c)(2) of the final regulations provides that adjustments to the appropriate separate category (as defined in § 1.904–5(a)(1)) of earnings and profits and income of the foreign corporation shall be required under section 481 to prevent any duplication or omission of amounts attributable to previous years that would otherwise result from any change in a method of accounting. The details concerning the section 481 adjustment are addressed in applicable revenue procedures. See, for example, Rev. Proc. 2008–52, 2008–36 IRB 587.

C. Miscellaneous Cross-References

The 2006 temporary regulations included in § 1.964–1T(c)(4) cross-references to expired § 1.964–1T(g) that are updated in the final regulations. In addition, § 1.964–1(c)(2) of the final regulations adds cross-references to §§ 1.985–5, 1.985–6, and 1.986–7, which provide that a qualified business unit must make adjustments to its earnings and profits when it changes its functional currency or begins to use the dollar approximate separate transactions method of accounting.

Section 1.964–1(b)(1)(v) includes a cross-reference to ''paragraph (d) of this section.'' Because of revisions to § 1.964–1, that cross-reference and a similar cross-reference in § 1.989(b)–1 were no longer effective. The final regulations replace the cross-references to paragraph (d) with the appropriate cross-reference to section 988 and the regulations under that section.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of 5 U.S.C. chapter 5 does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act, 5 U.S.C. chapter 6, does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation and temporary regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal authors of the final regulations are Richard Chewning and Jeffrey Parry of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1**. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2**. Section 1.861–9 is amended by removing paragraphs (h)(5)(iii) and (i)(4), revising paragraphs (a), (b), (c), (d), (e), (f), and (g)(1)(i), and adding paragraph (k), to read as follows:

1.861–9 Allocation and apportionment of interest expense.

(a) through (f)(3)(i) [Reserved]. For further guidance, see § 1.861–9T(a) through (f)(3)(i).

(f)(3)(ii) *Manner of election.* The election shall be made by filing the statement and providing the written notice described in § 1.964–1(c)(3)(ii) and (iii), respectively, at the time and in the manner described therein. For further guidance, *see* § 1.861–9T(f)(3)(ii).

(f)(3)(iii) and (iv) [Reserved]. For further guidance, *see* § 1.861–9T(f)(3)(iii) and (iv).

(4) *Noncontrolled section 902 corporations*—(i) *In general.* For purposes of computing earnings and profits of a noncontrolled section 902 corporation (as defined in section 904(d)(2)(E)) for Federal tax purposes, the interest expense of a noncontrolled section 902 corporation may be apportioned using either the asset method described in § 1.861–9T(g) or the modified gross income method described in § 1.861–9T(j). A noncontrolled section 902 corporation that is not a controlled foreign corporation may elect to use a different method of apportionment than that elected by one or more of its shareholders. A noncontrolled section 902 corporation must use the same method of apportionment with respect to all its domestic corporate shareholders.

(ii) *Manner of election.* The election to use the asset method described in § 1.861–9T(g) or the modified gross income method described in § 1.861–9T(j) may be made either by the

noncontrolled section 902 corporation or by the majority domestic corporate shareholders (as defined in § 1.964–1(c)(5)(ii)) on behalf of the noncontrolled section 902 corporation. The election shall be made by filing the statement and providing the written notice described in § 1.964–1(c)(3)(ii) and (iii), respectively, at the time and in the manner described therein. For further guidance, *see* § 1.861–9T(f)(4)(ii).

(iii) *Stock characterization.* In general, the stock of a noncontrolled section 902 corporation shall be characterized in the hands of any domestic corporation that meets the ownership requirements of section 902(a) with respect to the noncontrolled section 902 corporation, or in the hands of any member of the same qualified group as defined in section 902(b)(2), using the same method that the noncontrolled section 902 corporation uses to apportion its interest expense. Stock in a noncontrolled section 902 corporation shall be characterized as a passive category asset in the hands of any such shareholder that fails to meet the substantiation requirements of § 1.904–5(c)(4)(iii), or in the hands of any shareholder that is not eligible to compute an amount of foreign taxes deemed paid with respect to a dividend from the noncontrolled section 902 corporation for the taxable year. *See* § 1.861–12(c)(4).

(f)(5) through (g)(1)(i) [Reserved]. For further guidance, see § 1.861–9T(f)(5) through (g)(1)(i).

* * * * *

(k) *Effective/applicability date.* Paragraph (h)(5) of this section applies to taxable years beginning after December 31, 1989. Paragraph (i) of this section applies to taxable years beginning on or after March 26, 2004. Paragraphs (f)(3)(ii) and (4) of this section apply to taxable years of shareholders ending on or after April 20, 2009. See 26 CFR 1.861–9T(f)(3)(ii)(last sentence) and (4) (revised as of April 1, 2009) for rules applicable to taxable years of shareholders ending after the first day of the first taxable year of the noncontrolled section 902 corporation beginning after December 31, 2002, and ending before April 20, 2009.

■ **Par. 3**. Section 1.861–9T is amended as follows:

■ 1. Remove paragraph (b)(6)(viii).

■ 2. Revise the last sentence of paragraph (f)(3)(ii) and paragraph (f)(4).

■ 3. Add paragraph (k).

The revisions and additions read as follows:

§ 1.861–9T Allocation and apportionment of interest expense (temporary).

* * * * *

(f) * * *

(3) * * *

(ii) * * * For guidance relating to the time and manner of this election, *see* § 1.861–9(f)(3)(ii).

* * * * *

(4) * * * For further guidance, *see* § 1.861–9(f)(4).

* * * * *

(k) *Effective/applicability dates.* Paragraph (b)(6) of this section applies to losses on any transaction described in paragraph (b)(6)(i) of this section that was entered into after September 14, 1988. Paragraph (b)(6) of this section also applies to any gain that was realized on any transaction described in paragraph (b)(6)(i) of this section that was entered into after August 11, 1989. Taxpayers may also apply paragraph (b)(6) of this section to any gain that was realized on any transaction described in paragraph (b)(6)(i) of this section that was entered into after September 14, 1988, and on or before August 11, 1989, if the taxpayer can demonstrate to the satisfaction of the Commissioner that substantially all of the arrangements described in paragraph (b)(6)(i) of this section to which the taxpayer became a party during that interim period were identified on the taxpayer's books and records with the liabilities of the taxpayer in a substantially contemporaneous manner and that all losses and expenses that are subject to the rules of paragraph (b)(6) of this section were treated in the same manner as interest expense. For this purpose, arrangements that were identified in a substantially contemporaneous manner with the taxpayer's assets shall be ignored. For further guidance, *see* § 1.861–9(k).

■ **Par. 4**. Section 1.861–12 is added as follows:

§ 1.861–12 Characterization rules and adjustments for certain assets.

(a) through (c)(1) [Reserved]. For further guidance, *see* § 1.861–12T(a) through (c)(1).

(2) *Basis adjustment for stock in nonaffiliated 10 percent owned corporations*— (i) *Taxpayers using the tax book value method*—(A) *General rule.* For purposes of apportioning expenses on the basis of the tax book value of assets, the adjusted basis of any stock in a 10 percent owned corporation owned by the taxpayer either directly or, for taxable years beginning after April 25, 2006, indirectly through a partnership or other pass-through entity shall be—

(*1*) Increased by the amount of the earnings and profits of such corporation (and of lower-tier 10 percent owned corporations) attributable to such stock and accumulated during the period the taxpayer or other members of its affiliated group held 10 percent or more of such stock; or

(*2*) Reduced (but not below zero) by any deficit in earnings and profits of such corporation (and of lower-tier 10 percent owned corporations) attributable to such stock for such period.

(c)(2)(i)(B) through (c)(3) [Reserved] For further guidance, *see* § 1.861–12T(c)(2)(i)(B) through (c)(3).

(4) *Characterization of stock of noncontrolled section 902 corporations*—(i) *General rule.* The principles of § 1.861–12T(c)(3) shall apply to stock in a noncontrolled section 902 corporation (as defined in section 904(d)(2)(E)). Accordingly, stock in a noncontrolled section 902 corporation shall be characterized as an asset in the various separate limitation categories on the basis of either the asset method described in § 1.861–12T(c)(3)(ii) or the modified gross income method described in § 1.861–12T(c)(3)(iii). Stock in a noncontrolled section 902 corporation the interest expense of which is apportioned on the basis of assets shall be characterized in the hands of its domestic shareholders (as defined in § 1.902–1(a)(1)) under the asset method described in § 1.861–12T(c)(3)(ii). Stock in a noncontrolled section 902 corporation the interest expense of which is apportioned on the basis of gross income shall be characterized in the hands of its domestic shareholders under the gross income method described in § 1.861–12T(c)(3)(iii).

(ii) *Nonqualifying shareholders.* Stock in a noncontrolled section 902 corporation shall be characterized as a passive category asset in the hands of a shareholder that is not eligible to compute an amount of foreign taxes deemed paid with respect to a dividend from the noncontrolled section 902 corporation for the taxable year, and in the hands of any shareholder with respect to whom look-through treatment is not substantiated. *See* § 1.904–5(c)(4)(iii).

(5) *Effective/applicability date.* Paragraphs (c)(2)(i)(A) and (4) of this section apply to taxable years of shareholders ending on or after April 20, 2009. *See* 26 CFR § 1.861–12T(c)(2)(i) introductory text, (2)(i)(A), (2)(i)(B), and (4) (revised as of April 1, 2009) for rules applicable to taxable years of shareholders ending after the first day of the first taxable year of the

noncontrolled section 902 corporation beginning after December 31, 2002, and ending before April 20, 2009.

(d) through (j) [Reserved]. For further guidance, *see* § 1.861–12T(d) through (j).

■ **Par. 5**. Section 1.861–12T is amended as follows:

■ 1. Paragraph (c)(2)(i) introductory text is removed.

■ 2. Paragraph (c)(2)(i)(A) is revised.

■ 3. Paragraph (c)(2)(i)(B) is removed.

■ 4. A paragraph heading is added to the undesignated text following paragraph (c)(2), which is designated as new paragraph (c)(2)(i)(B).

■ 5. Paragraph (c)(4) is revised.

■ 6. A new paragraph (c)(5) is added.

The revisions and additions read as follows:

§ 1.861–12T Characterization rules and adjustments for certain assets (temporary).

* * * * *

(c) * * *

(2)(i)(A) [Reserved]. For further guidance, *see* § 1.861–12(c)(2)(i)(A).

(B) *Computational rules.* * * *

(4) [Reserved]. For further guidance, *see* § 1.861–12(c)(4).

(5) [Reserved]. For further guidance, *see* § 1.861–12(c)(5).

* * * * *

■ **Par. 6**. Section 1.902–1 is amended by revising paragraphs (a)(4)(ii), (a)(6), (a)(7), (a)(8)(i), (c)(8), (d)(1), (d)(2)(i), and (g) to read as follows:

§ 1.902–1 Credit for domestic corporate shareholder of a foreign corporation for foreign income taxes paid by the foreign corporation.

(a) * * *

(4) * * *

(ii) *Fourth-, fifth-, or sixth-tier corporation.* In the case of dividends paid to a third-, fourth-, or fifth-tier corporation by a foreign corporation in a taxable year beginning after August 5, 1997, the foreign corporation is a fourth-, fifth-, or sixth-tier corporation, respectively, if at the time the dividend is paid, the corporation receiving the dividend owns at least 10 percent of the foreign corporation's voting stock, the chain of foreign corporations that includes the foreign corporation is connected through stock ownership of at least 10 percent of their voting stock, the domestic shareholder in the first-tier corporation in such chain indirectly owns at least 5 percent of the voting stock of the foreign corporation through such chain, such corporation is a controlled foreign corporation (as defined in section 957) and the domestic shareholder is a United States shareholder (as defined in section 951(b)) in the foreign corporation. Taxes paid by a fourth-, fifth-, or sixth-tier corporation shall be taken into account in determining post-1986 foreign income taxes only if such taxes are paid with respect to taxable years beginning after August 5, 1997, in which the corporation was a controlled foreign corporation.

* * * * *

(6) *Upper- and lower-tier corporations.* In the case of a sixth-tier corporation, the term *upper-tier corporation* means a first-, second-, third-, fourth-, or fifth-tier corporation. In the case of a fifth-tier corporation, the term upper-tier corporation means a first-, second-, third-, or fourth-tier corporation. In the case of a fourth-tier corporation, the term upper-tier corporation means a first-, second-, or third-tier corporation. In the case of a third-tier corporation, the term upper-tier corporation means a first- or second-tier corporation. In the case of a second-tier corporation, the term upper-tier corporation means a first-tier corporation. In the case of a first-tier corporation, the term *lower-tier corporation* means a second-, third-, fourth-, fifth-, or sixth-tier corporation. In the case of a second-tier corporation, the term lower-tier corporation means a third-, fourth-, fifth-, or sixth-tier corporation. In the case of a third-tier corporation, the term lower-tier corporation means a fourth-, fifth-, or sixth-tier corporation. In the case of a fourth-tier corporation, the term lower-tier corporation means a fifth- or sixth-tier corporation. In the case of a fifth-tier corporation, the term lower-tier corporation means a sixth-tier corporation.

(7) *Foreign income taxes.* The term *foreign income taxes* means income, war profits, and excess profits taxes as defined in § 1.901–2(a), and taxes included in the term income, war profits, and excess profits taxes by reason of section 903, that are imposed by a foreign country or a possession of the United States, including any such taxes deemed paid by a foreign corporation under this section. Foreign income, war profits, and excess profits taxes shall not include amounts excluded from the definition of those taxes pursuant to section 901 and the regulations under that section. *See* section 901(f) and (i) and paragraph (c)(5) of this section. Foreign income, war profits, and excess profits taxes also shall not include taxes for which a credit is disallowed under section 901 and the regulations under section 901. *See* section 901(j), (k), and (l), and paragraphs (c)(4) and (8) of this section.

(8) *Post-1986 foreign income taxes*—(i) *In general.* Except as provided in paragraphs (a)(10) and (13) of this section, the term *post-1986 foreign income taxes* of a foreign corporation means the sum of the foreign income taxes paid, accrued, or deemed paid in the taxable year of the foreign corporation in which it distributes a dividend plus the foreign income taxes paid, accrued, or deemed paid in the foreign corporation's prior taxable years beginning after December 31, 1986, to the extent the foreign taxes were not attributable to dividends distributed to, or earnings otherwise included (for example, under section 304, 367(b), 551, 951(a), 1248, or 1293) in the income of, a foreign or domestic shareholder in prior taxable years. Except as provided in paragraph (b)(4) of this section, foreign taxes paid or deemed paid by the foreign corporation on or with respect to earnings that were distributed or otherwise removed from post-1986 undistributed earnings in prior post-1986 taxable years shall be removed from post-1986 foreign income taxes regardless of whether the shareholder is eligible to compute an amount of foreign taxes deemed paid under section 902, and regardless of whether the shareholder in fact chose to credit foreign income taxes under section 901 for the year of the distribution or inclusion. Thus, if an amount is distributed or deemed distributed by a foreign corporation to a United States person that is not a domestic shareholder within the meaning of paragraph (a)(1) of this section (for example, an individual or a corporation that owns less than 10% of the foreign corporation's voting stock), or to a foreign person that does not meet the definition of an upper-tier corporation under paragraph (a)(6) of this section, then although no foreign income taxes shall be deemed paid under section 902, foreign income taxes attributable to the distribution or deemed distribution that would have been deemed paid had the shareholder met the ownership requirements of paragraphs (a)(1) through (4) of this section shall be removed from post-1986 foreign income taxes. Further, if a domestic shareholder chooses to deduct foreign taxes paid or accrued for the taxable year of the distribution or inclusion, it shall nonetheless be deemed to have paid a proportionate share of the foreign corporation's post-1986 foreign income taxes under section 902(a), and the foreign income taxes deemed paid must be removed from post-1986 foreign income taxes. In the case of a foreign corporation the foreign income taxes of which are determined based on an accounting period of less than one year,

the term *year* means that accounting period. *See* sections 441(b)(3) and 443.

* * * * *

(c) * * *

(8) *Effect of certain liquidations, reorganizations, or similar transactions on certain foreign taxes paid or accrued in taxable years beginning on or before August 5, 1997*—(i) *General rule.* Notwithstanding the effect of any liquidation, reorganization, or similar transaction, foreign taxes paid or accrued by a member of a qualified group (as defined in section 902(b)(2)) shall not be eligible to be deemed paid if they were paid or accrued in a taxable year beginning on or before August 5, 1997, by a corporation that was a fourth-, fifth- or sixth-tier corporation with respect to the taxpayer on the first day of the corporation's first taxable year beginning after August 5, 1997.

(ii) *Example.* The following examples illustrate the application of this paragraph (c)(8):

Example. P, a domestic corporation, has owned 100 percent of the voting stock of foreign corporation S at all times since January 1, 1987. Until June 30, 2002, S owned 100 percent of the voting stock of foreign corporation T, T owned 100 percent of the voting stock of foreign corporation U, and U owned 100 percent of the voting stock of foreign corporation V. P, S, T, U, and V each use the calendar year as their U.S. taxable year. Thus, beginning in 1998 V was a fourth-tier controlled foreign corporation, and its foreign taxes paid or accrued in 1998 and later taxable years were eligible to be deemed paid. On June 30, 2002, T was liquidated, causing S to acquire 100 percent of the stock of U. As a result, V became a third-tier controlled foreign corporation. In 2003, V paid a dividend to U. Under paragraph (c)(8) of this section, foreign taxes paid by V in taxable years beginning before 1998 are not taken into account in computing the foreign taxes deemed paid with respect to the dividend paid by V to U.

(d) *Dividends from controlled foreign corporations and noncontrolled section 902 corporations*—(1) *General rule.* If a dividend is described in paragraphs (d)(1)(i) through (iv) of this section, the following rules apply. If a dividend is paid out of post-1986 undistributed earnings or pre-1987 accumulated profits of a foreign corporation attributable to more than one separate category, the amount of foreign income taxes deemed paid by the domestic shareholder or the upper-tier corporation under section 902 and paragraph (b) of this section shall be computed separately with respect to the post-1986 undistributed earnings or pre-1987 accumulated profits in each separate category out of which the dividend is paid. *See* § 1.904–5(c)(4) and (i), and paragraph (d)(2) of this section. The separately computed deemed-paid taxes shall be added to other taxes paid by the domestic shareholder or upper-tier corporation with respect to income in the appropriate separate category. The rules of this paragraph (d)(1) apply to dividends received by —

(i) A domestic shareholder that is a United States shareholder (as defined in section 951(b) or section 953(c)) from a first-tier corporation that is a controlled foreign corporation;

(ii) A domestic shareholder from a first-tier corporation that is a noncontrolled section 902 corporation;

(iii) An upper-tier controlled foreign corporation from a lower-tier controlled foreign corporation if the corporations are related look-through entities within the meaning of § 1.904–5(i) (*see* § 1.904–5(i)(3)); or

(iv) A foreign corporation that is eligible to compute an amount of foreign taxes deemed paid under section 902(b)(1), from a controlled foreign corporation or a noncontrolled section 902 corporation (that is, both the payor and payee corporations are members of the same qualified group as defined in section 902(b)(2) (*see* § 1.904–5 (i)(4)).

(2) *Look-through*—(i) *Dividends.* Any dividend distribution by a controlled foreign corporation or noncontrolled section 902 corporation to a domestic shareholder or a foreign corporation that is eligible to compute an amount of foreign taxes deemed paid under section 902(b)(1) shall be deemed paid pro rata out of each separate category of income. Any dividend distribution by a controlled foreign corporation to a controlled foreign corporation that is a related look-through entity within the meaning of § 1.904–5(i)(3) shall also be deemed to be paid pro rata out of each separate category of income. *See* §§ 1.904–5(c)(4) and (i), and 1.904–7. The portion of the foreign income taxes attributable to a particular separate category that shall be deemed paid by the domestic shareholder or upper-tier corporation must be computed under the following formula:

$$\text{Foreign taxes deemed paid by domestic shareholder or upper-tier corporation with respect to a separate category} = \text{Post-1986 foreign income taxes of first-tier or lower-tier corporation allocated and apportioned to the separate category under §1.904-6} \times \frac{\text{Dividend amount attributable to the separate category}}{\text{Post-1986 undistributed earnings of first-tier or lower-tier corporation in the separate category}}$$

(g) *Effective/applicability dates.* This section applies to any distribution made in and after a foreign corporation's first taxable year beginning on or after January 1, 1987, except that the provisions of paragraphs (a)(4)(ii), (a)(6), (a)(7), (a)(8)(i), and (c)(8) of this section and, except as provided in § 1.904–7(f)(9), the provisions of paragraph (d) of this section apply to distributions made in taxable years of foreign corporations ending on or after April 20, 2009. *See* 26 CFR 1.902–1T(a)(4)(ii), (a)(6), (a)(7), (a)(8)(i), and (c)(8) (revised as of April 1, 2009) for rules applicable to distributions made in taxable years of foreign corporations beginning after April 25, 2006, and ending before April 20, 2009, and 26 CFR 1.902–1T(d), except as provided in 26 CFR 1.904–7T(f)(9) (revised as of April 1, 2009), for rules applicable to distributions made in taxable years of foreign corporations beginning after December 31, 2002, and ending before April 20, 2009.

§ 1.902–1T [Removed]

■ **Par. 7**. Section 1.902–1T is removed.

■ **Par. 8**. Section 1.904–0 is amended by revising the section heading and the entries for §§ 1.904–5(m), (m)(5), and (n), and 1.904–7(f) to read as follows:

§ 1.904–0 Outline of regulation provisions for section 904.

* * * * *

§ 1.904–5 Look-through rules as applied to controlled foreign corporations and other entities.

* * * * *

(m) Application of section 904(h).

* * * * *

(5) *Treatment of inclusions under sections 951(a)(1)(A) and 1293.*

* * * * *

(n) Order of application of sections 904(d) and (h).

§ 1.904–7 Transition rules.

* * * * *

(f) * * *

(1) Definition of non-look-through pools.

(2) Treatment of non-look-through pools of a noncontrolled section 902 corporation.

(3) Treatment of non-look-through pools of a controlled foreign corporation.

(4) Substantiation of look-through character of undistributed earnings and taxes in a non-look-through pool.

(i) Reconstruction of earnings and taxes pools.

(ii) Safe harbor method.

(iii) Inadequate substantiation.

(iv) Examples.

(5) Treatment of a deficit accumulated in a non-look-through pool.

(6) Treatment of pre-1987 accumulated profits.

(7) Treatment of post-1986 undistributed earnings or a deficit of a controlled foreign corporation attributable to dividends from a noncontrolled section 902 corporation paid in taxable years beginning before January 1, 2003.

(i) Look-through treatment of post-1986 undistributed earnings at controlled foreign corporation level.

(ii) Look-through treatment of deficit in post-1986 undistributed earnings at controlled foreign corporation level.

(iii) Substantiation required for look-through treatment.

(8) Treatment of distributions received by an upper-tier corporation from a lower-tier noncontrolled section 902 corporation, including when the corporations do not have the same taxable years.

(i) Rule.

(ii) Example.

(9) Election to apply pre-AJCA rules to 2003 and 2004 taxable years.

(i) Definition.

(ii) Time, manner, and form of election.

(iii) Treatment of non-look-through pools in taxable years beginning after December 31, 2004.

(iv) Carryover of unused foreign tax.

(v) Carryback of unused foreign tax.

(vi) Recapture of overall foreign loss or separate limitation loss in the single category for dividends from all noncontrolled section 902 corporations.

(vii) Recapture of separate limitation losses in other separate categories.

(viii) Treatment of undistributed earnings in an upper-tier corporation-level single category for dividends from lower-tier noncontrolled section 902 corporations.

(ix) Treatment of a deficit in the single category for dividends from lower-tier noncontrolled section 902 corporations.

(10) Effective/applicability date.

■ **Par. 9**. Section 1.904–2 is amended by revising paragraphs (a) and (h) to read as follows:

§ 1.904–2 Carryback and carryover of unused foreign tax.

(a) *Credit for foreign tax carryback or carryover.* A taxpayer who chooses to claim a credit under section 901 for a taxable year is allowed a credit under that section not only for taxes otherwise allowable as a credit but also for taxes deemed paid or accrued in that year as a result of a carryback or carryover of an unused foreign tax under section 904(c). However, the taxes so deemed paid or accrued shall not be allowed as a deduction under section 164(a). Paragraphs (b) through (g) of this section and § 1.904–3, providing rules for the computation of carryovers and carrybacks, do not reflect a number of intervening statutory amendments, including the redesignation of section 904(d) as section 904(c) for taxable years beginning after 1975, amendments to sections 904(d) and (f) regarding the application of separate limitations in taxable years beginning after 1986, the limitation of the carryback period to one year for unused foreign taxes arising in taxable years beginning after October 22, 2004, and the extension of the carryover period to ten years for unused foreign taxes that may be carried to any taxable year ending after October 22, 2004. However, the principles of paragraphs (b) through (g) of this section and § 1.904–3(b) through (g) shall apply in determining carrybacks and carryovers of unused foreign taxes, modified so as to take into account the effect of statutory amendments. For transition rules relating to the carryover and carryback of unused foreign tax paid with respect to dividends from noncontrolled section 902 corporations, *see* paragraph (h) of this section. For special rules regarding these computations in case of taxes paid, accrued, or deemed paid with respect to foreign oil and gas extraction income or foreign oil related income, see section 907(f) and the regulations under that section.

* * * * *

(h) *Transition rules for carryovers and carrybacks of pre-2003 and post-2002 unused foreign tax paid or accrued with respect to dividends from noncontrolled section 902 corporations*—(1) *Carryover of unused foreign tax.* Except as provided in §§ 1.904–7(f)(9)(iv) and 1.904(f)–12(g)(3), the rules of this paragraph (h)(1) apply to reallocate to the taxpayer's other separate categories any unused foreign taxes (as defined in paragraph (b)(2) of this section) that were paid or accrued or deemed paid under section 902 with respect to a dividend from a noncontrolled section 902 corporation paid in a taxable year of the noncontrolled section 902 corporation beginning before January 1, 2003, which taxes were subject to a separate limitation for dividends from that noncontrolled section 902 corporation. To the extent any such unused foreign taxes are carried forward to a taxable year of a domestic shareholder beginning on or after the first day of the noncontrolled section 902 corporation's first taxable year beginning after December 31, 2002, such taxes shall be allocated among the taxpayer's separate categories in the same proportions as the related dividend would have been assigned had such dividend been eligible for look-through treatment when paid. Accordingly, the taxes shall be allocated in the same percentages as the reconstructed earnings in the noncontrolled section 902 corporation's non-look-through pool and pre-1987 accumulated profits that were accumulated in taxable years beginning before January 1, 2003, out of which the dividend was paid, in accordance with the rules of § 1.904–7(f), or, if the taxpayer uses the safe harbor method of § 1.904–7(f)(4)(ii), in the same percentages as the taxpayer properly characterizes the stock of the noncontrolled section 902 corporation for purposes of apportioning its interest expense in its first taxable year ending after the first day of the noncontrolled section 902 corporation's first taxable year beginning after December 31, 2002. *See* § 1.904–7(f)(2) and (4). In the case of unused foreign taxes allocable to dividends from a noncontrolled section 902 corporation with respect to which the taxpayer was no longer a domestic shareholder (as defined in § 1.902–1(a)) as of the first day of such taxable year, such taxes shall be allocated among the taxpayer's separate categories in the same percentages as the earnings in the noncontrolled section 902 corporation's non-look-through pool or pre-1987 accumulated profits would have been assigned had they been distributed and eligible for look-through treatment in the last taxable year in which the taxpayer was a domestic shareholder in such corporation. The unused foreign taxes that are carried forward shall be treated as allocable to general limitation income to the extent that such taxes would otherwise have been allocable to passive income, either on a look-through basis or as a result of inadequate substantiation under the rules of § 1.904–7(f)(4).

(2) *Carryback of unused foreign tax.* The rules of this paragraph (h)(2) apply to any unused foreign taxes that were paid or accrued or deemed paid under section 902 with respect to a dividend from a noncontrolled section 902 corporation paid in a taxable year of the noncontrolled section 902 corporation ending on or after April 20, 2009, which dividends were eligible for look-through

treatment. *See* 26 CFR § 1.904–2T(h)(2) (revised as of April 1, 2009) for rules applicable to such unused foreign taxes with respect to a dividend from a noncontrolled section 902 corporation paid in a taxable year of the noncontrolled section 902 corporation beginning after December 31, 2002 and ending before April 20, 2009, which dividends were eligible for look-through treatment. To the extent any such unused foreign taxes are carried back to a prior taxable year of a domestic shareholder, a credit for such taxes shall be allowed only to the extent of the excess limitation in the same separate category or categories to which the related look-through dividend was assigned and not in any separate category for dividends from noncontrolled section 902 corporations.

* * * * *

■ **Par. 10**. Section 1.904–2T is amended by revising paragraphs (a), (b), (c), (d), (e), (f), (g), and (h) to read as follows:

§ 1.904–2T Carryback and carryover of unused foreign tax (temporary).

(a) through (h) [Reserved]. For further guidance, *see* § 1.904–2(a) through (h).

* * * * *

■ **Par. 11**. Section 1.904–4 is amended as follows:

■ 1. Remove paragraph (c)(2)(i).

■ 2. Redesignate paragraphs (c)(2)(ii)(A) and (c)(2)(ii)(B) as paragraphs (c)(2)(i) and (c)(2)(ii), respectively.

■ 3. Remove the language ''§ 1.904–6(a)(iii)'' from the second sentence in newly-designated paragraph (c)(2)(i) and add the language ''§ 1.904–6(a)(1)(iii)'' in its place.

■ 4. Remove the language ''paragraph (c)(2)(ii)(B)'' from the last sentence in newly-designated paragraph (c)(2)(i) and add the language ''paragraph (c)(2)(ii)'' in its place.

■ 5. Remove the language ''paragraph (c)(2)(ii)(A)'' from the first sentence in newly-designated paragraph (c)(2)(ii) and add the language ''paragraph (c)(2)(i)'' in its place.

■ 6. Revise paragraphs (c)(3) and (c)(4) introductory text.

■ 7. Add paragraph (n).

The revisions and addition read as follows:

§ 1.904–4 Separate application of section 904 with respect to certain categories of income.

* * * * *

(c) * * *

(3) *Amounts received or accrued by United States persons.* Except as otherwise provided in paragraph (c)(5) of this section, all passive income received by a United States person shall be subject to the rules of this paragraph (c)(3). However, subpart F inclusions that are passive income, dividends from a controlled foreign corporation or noncontrolled section 902 corporation that are passive income, and income that is earned by a United States person through a foreign QBU that is passive income shall be subject to the rules of this paragraph only to the extent provided in paragraph (c)(4) of this section. For purposes of this section, a foreign QBU is a qualified business unit (as defined in section 989(a)), other than a controlled foreign corporation or noncontrolled section 902 corporation, that has its principal place of business outside the United States. These rules shall apply whether the income is received from a controlled foreign corporation of which the United States person is a United States shareholder, from a noncontrolled section 902 corporation of which the United States person is a domestic corporation meeting the stock ownership requirements of section 902(a), or from any other person. For purposes of determining whether passive income is high-taxed income, the following rules apply:

(i) All passive income received during the taxable year that is subject to a withholding tax of fifteen percent or greater shall be treated as one item of income.

(ii) All passive income received during the taxable year that is subject to a withholding tax of less than fifteen percent (but greater than zero) shall be treated as one item of income.

(iii) All passive income received during the taxable year that is subject to no withholding tax or other foreign tax shall be treated as one item of income.

(iv) All passive income received during the taxable year that is subject to no withholding tax but is subject to a foreign tax other than a withholding tax shall be treated as one item of income.

(4) *Dividends and inclusions from controlled foreign corporations, dividends from noncontrolled section 902 corporations, and income of foreign QBUs.* Except as provided in paragraph (c)(5) of this section, all dividends and all amounts included in gross income of a United States shareholder under section 951(a)(1) with respect to the foreign corporation that (after application of the look-through rules of section 904(d)(3) and § 1.904–5) are attributable to passive income received or accrued by a controlled foreign corporation, all dividends from a noncontrolled section 902 corporation that are received or accrued by a domestic corporate shareholder meeting the stock ownership requirements of section 902(a) that (after application of the look-through rules of section 904(d)(4) and § 1.904–5) are treated as passive income, and all amounts of passive income received or accrued by a United States person through a foreign QBU shall be subject to the rules of this paragraph (c)(4). This paragraph (c)(4) shall be applied separately to dividends and inclusions with respect to each controlled foreign corporation of which the taxpayer is a United States shareholder and to dividends with respect to each noncontrolled section 902 corporation of which the taxpayer is a domestic corporate shareholder meeting the stock ownership requirements of section 902(a). This paragraph (c)(4) also shall be applied separately to income attributable to each foreign QBU of a controlled foreign corporation, noncontrolled section 902 corporation, or any other look-through entity as defined in § 1.904–5(i), except that if the entity subject to the look-through rules is a United States person, then this paragraph (c)(4) shall be applied separately only to each foreign QBU of that United States person.

* * * * *

(n) *Effective/applicability dates.* For purposes of determining whether passive income is high-taxed income, the grouping rules of paragraphs (c)(3) and (4) of this section apply in taxable years ending on or after April 20, 2009. *See* 26 CFR § 1.904–4T(c)(3) and (4) (revised as of April 1, 2009) for grouping rules applicable to taxable years beginning after December 31, 2002, and ending before April 20, 2009. For corresponding rules applicable to taxable years beginning before January 1, 2003, *see* 26 CFR § 1.904–4(c)(2)(i) (revised as of April 1, 2006).

■ **Par. 12**. Section 1.904–4T is amended by revising paragraphs (c), (d), (e), (f), (g), (h)(1), and (h)(2) to read as follows:

§ 1.904–4T Separate application of section 904 with respect to certain categories of income (temporary).

* * * * *

(c) through (h)(2) [Reserved]. For further guidance, *see* § 1.904–4(c) through (h)(2).

* * * * *

■ **Par. 13**. Section 1.904–5 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(4), (b), (c)(2)(iii), (c)(4)(iii), (i)(1), (i)(3), (i)(4), (i)(5) *Examples 4* and *5,* (m)(1), (m)(2)(ii), (m)(4)(i), (m)(5)(i), (n), and (o)(2) to read as follows:

§ 1.904–5 Look-through rules as applied to controlled foreign corporations and other entities.

(a) *Definitions.* For purposes of section 904(d)(3) and (4) and the

regulations under section 904, the following definitions apply:

(1) The term *separate category* means, as the context requires, any category of income described in section 904(d)(1)(A) and (B) (or section 904(d)(1)(A), (B), (C), (D), (F), (G), (H), or (I) for taxable years beginning before January 1, 2007) and in § 1.904–4T(b) (or § 1.904–4(e) for taxable years beginning before January 1, 2007), any category of income described in § 1.904–4(m), or any category of earnings and profits to which income described in such provisions is attributable.

* * * * *

(4) The term *noncontrolled section 902 corporation* means any foreign corporation with respect to which the taxpayer meets the stock ownership requirements of section 902(a), or, with respect to a lower-tier foreign corporation, the taxpayer meets the requirements of section 902(b). Except as provided in section 902 and the regulations under that section and paragraphs (i)(3) and (i)(4) of this section, a controlled foreign corporation shall not be treated as a noncontrolled section 902 corporation with respect to any distributions out of its earnings and profits for periods during which it was a controlled foreign corporation. In the case of a partnership owning a foreign corporation, the determination of whether a taxpayer meets the ownership requirements of section 902(a) or (b) will be made with respect to the taxpayer's indirect ownership, and not the partnership's direct ownership, in the foreign corporation. *See* section 902(c)(7).

(b) *In general*. Except as otherwise provided in section 904(d)(3) and (4) and this section, dividends, interest, rents, and royalties received or accrued by a taxpayer from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as general category income. *See* paragraph (c)(4)(iii) of this section for the treatment of dividends received by a domestic corporation from a noncontrolled section 902 corporation in which the domestic corporation meets the stock ownership requirements of section 902(a).

(c) * * *

(2) * * *

(iii) *Allocating and apportioning expenses of a noncontrolled section 902 corporation*. Expenses of a noncontrolled section 902 corporation shall be allocated and apportioned in the same manner as expenses of a controlled foreign corporation under paragraph (c)(2)(ii) of this section, except that the related person interest rule of paragraphs (c)(2)(ii)(C) and (D) of this section shall not apply.

* * * * *

(4) * * *

(iii) *Look-through rule for dividends from noncontrolled section 902 corporations*. Except as otherwise provided in this paragraph (c)(4)(iii), any dividend that is distributed by a noncontrolled section 902 corporation and received or accrued by a domestic corporation that meets the stock ownership requirements of section 902(a) shall be treated as income in a separate category in proportion to the ratio of the portion of earnings and profits attributable to income in such category to the total amount of earnings and profits of the noncontrolled section 902 corporation. A dividend distributed by a noncontrolled section 902 corporation shall be treated as passive income if the Commissioner determines that the look-through characterization of such dividend cannot reasonably be determined based on the available information, or if such dividend is received or accrued by a shareholder that is neither a domestic corporation meeting the stock ownership requirements of section 902(a) nor a foreign corporation meeting the requirements of section 902(b). *See* paragraph (i)(4) of this section. *See* § 1.904–7 for transition rules concerning the treatment of undistributed earnings (or a deficit) of a noncontrolled section 902 corporation that were accumulated in taxable years beginning before January 1, 2003.

* * * * *

(i) *Application of look-through rules to related entities*—(1) *In general.* Except as provided in paragraphs (i)(2), (3), and (4) of this section, the principles of this section shall apply to distributions and payments that are subject to the look-through rules of section 904(d)(3) and this section from a controlled foreign corporation or other entity otherwise entitled to look-through treatment (a ''look-through entity'') under this section to a related look-through entity. A noncontrolled section 902 corporation shall be considered a look-through entity only to the extent provided in paragraph (i)(4) of this section. Two look-through entities shall be considered to be related to each other if one owns, directly or indirectly, stock possessing more than 50 percent of the total voting power of all classes of voting stock of the other entity or more than 50 percent of the total value of such entity. In addition, two look-through entities are related if the same United States shareholders own, directly or indirectly, stock possessing more than 50 percent of the total voting power of all voting classes of stock (in the case of a corporation) or more than 50 percent of the total value of each look-through entity. In the case of a corporation, value shall be determined by taking into account all classes of stock. In the case of a partnership, value shall be determined under the rules in paragraph (h)(4) of this section. For purposes of this section, indirect ownership shall be determined under section 318 and the regulations under that section.

* * * * *

(3) *Special rule for dividends between controlled foreign corporations*. Solely for purposes of dividend payments between controlled foreign corporations, two controlled foreign corporations shall be considered related look-through entities if the same United States shareholder owns, directly or indirectly, at least 10 percent of the total voting power of all classes of stock of each foreign corporation. If two controlled foreign corporations are not considered related look-through entities for purposes of this section because a United States shareholder does not satisfy the ownership requirement set forth in this paragraph (i)(3), the dividend payment will be characterized under the look-through rules of section 904(d)(4) and this section if the requirements set forth in paragraph (i)(4) of this section are satisfied.

(4) *Payor and recipient of dividend are members of the same qualified group*. Solely for purposes of dividend payments in taxable years beginning after December 31, 2002, between controlled foreign corporations, noncontrolled section 902 corporations, or a controlled foreign corporation and a noncontrolled section 902 corporation, the payor and recipient corporations shall be considered related look-through entities if the corporations are members of the same qualified group as defined in section 902(b)(2) and the recipient corporation is eligible to compute foreign taxes deemed paid with respect to the dividend under section 902(b)(1).

(5) * * *

Example 4. P, a domestic corporation, owns all of the voting stock of S, a controlled foreign corporation. S owns 5 percent of the voting stock of T, a controlled foreign corporation. The remaining 95 percent of the stock of T is owned by P. In 2006, T pays a $50 dividend to S and a $950 dividend to P. The dividend to S is not eligible for look-through treatment under paragraph (i)(4) of this section, and S is not eligible to compute an amount of foreign taxes deemed paid with respect to the dividend from T, because S and T are not members of the same qualified group (S owns less than 10 percent of the

voting stock of T). See section 902(b) and § 1.902–1(a)(3). However, the dividend is eligible for look-through treatment under paragraph (i)(3) of this section because P owns at least 10 percent of the voting power of all classes of stock of both S and T. The dividend is subpart F income of S that is taxable to P.

Example 5. P, a domestic corporation, owns 50 percent of the voting stock of S, a controlled foreign corporation. S owns 10 percent of the voting stock of T, a controlled foreign corporation. The remaining 50 percent of the stock of S and the remaining 90 percent of the stock of T are owned, respectively, by X and Y. X and Y are each United States shareholders of T but are not related to P, S, or each other. In 2006, T pays a $100 dividend to S. The dividend is not eligible for look-through treatment under paragraph (i)(3) of this section because no United States shareholder owns at least 10 percent of the voting power of all classes of stock of both S and T (P and X each own only 5 percent of T). However, the dividend is eligible for look-through treatment under paragraph (i)(4) of this section, and S is eligible to compute an amount of foreign taxes deemed paid with respect to the dividend from T, because S and T are members of the same qualified group. See section 902(b) and § 1.902–1(a)(3). The dividend is subpart F income of S that is taxable to P and X.

* * * * *

(m) *Application of section 904(h)*—(1) *In general.* This paragraph (m) applies to certain amounts derived from controlled foreign corporations and noncontrolled section 902 corporations that are treated as United States-owned foreign corporations as defined in section 904(h)(6). For purposes of determining the portion of an interest payment that is allocable to income earned or accrued by a controlled foreign corporation or noncontrolled section 902 corporation from sources within the United States under section 904(h)(3), the rules in paragraph (m)(2) of this section apply. For purposes of determining the portion of a dividend (or amount treated as a dividend, including amounts described in section 951(a)(1)(B)) paid or accrued by a controlled foreign corporation or noncontrolled section 902 corporation that is treated as from sources within the United States under section 904(h)(4), the rules in paragraph (m)(4) of this section apply. For purposes of determining the portion of an amount included in gross income under section 951(a)(1)(A) or 1293 that is attributable to income of the controlled foreign corporation or noncontrolled section 902 corporation from sources within the United States under section 904(h)(2), the rules in paragraph (m)(5) of this section apply. In order to determine whether section 904(h) applies, section 904(h)(5) (exception if a United States-owned foreign corporation has a *de minimis* amount of United States source income) shall be applied to the total amount of earnings and profits of a controlled foreign corporation or noncontrolled section 902 corporation for a taxable year without regard to the characterization of those earnings under section 904(d).

(2) * * *

(ii) *Interest payments from noncontrolled section 902 corporations.* If interest is received or accrued by a shareholder from a noncontrolled section 902 corporation (where the shareholder is a domestic corporation that meets the stock ownership requirements of section 902(a)), the rules of paragraph (m)(2)(i) of this section apply in determining the portion of the interest payment that is from sources within the United States, except that the related party interest rules of paragraph (c)(2)(ii)(C) of this section shall not apply.

* * * * *

(4) *Treatment of dividend payments*—(i) *Rule.* Any dividend or distribution treated as a dividend under this section (including an amount included in gross income under section 951(a)(1)(B)) that is received or accrued by a United States shareholder from a controlled foreign corporation, or any dividend that is received or accrued by a domestic corporate shareholder meeting the stock ownership requirements of section 902(a) from a noncontrolled section 902 corporation, shall be treated as income in a separate category derived from sources within the United States in proportion to the ratio of the portion of the earnings and profits of the controlled foreign corporation or noncontrolled section 902 corporation in the corresponding separate category from United States sources to the total amount of earnings and profits of the controlled foreign corporation or noncontrolled section 902 corporation in that separate category.

* * * * *

(5) *Treatment of inclusions under sections 951(a)(1)(A) and 1293*—(i) *Rule.* Any amount included in the gross income of a United States shareholder of a controlled foreign corporation under section 951(a)(1)(A) or in the gross income of domestic corporate shareholders that meet the stock ownership requirements of section 902(a) with respect to a noncontrolled section 902 corporation that is a qualified electing fund under section 1293 shall be treated as income subject to a separate limitation that is derived from sources within the United States to the extent such amount is attributable to income of the controlled foreign corporation or qualified electing fund, respectively, in the corresponding category of income from sources within the United States. In order to determine a controlled foreign corporation's taxable income and earnings and profits from sources within the United States in each separate category, the principles of paragraph (m)(4)(ii) of this section shall apply. In order to determine a qualified electing fund's earnings and profits from sources within the United States in each separate category, the principles of paragraph (m)(4)(ii) of this section shall apply, except that the related person interest rule of paragraph (m)(2) of this section shall not apply.

* * * * *

(n) *Order of application of section 904(d) and (h).* In order to apply the rules of this section, section 904(d)(1) shall first be applied to the controlled foreign corporation or noncontrolled section 902 corporation to determine the amount of income and earnings and profits derived by the controlled foreign corporation or noncontrolled section 902 corporation in each separate category. The income and earnings and profits in each separate category that are from United States sources shall then be determined. Section 904(d)(3), (d)(4), and (h), and this section shall then be applied for purposes of characterizing and sourcing income received, accrued, or included by a United States shareholder in the controlled foreign corporation or a domestic corporate shareholder that meets the stock ownership requirements of section 902(a) with respect to a noncontrolled section 902 corporation that is attributable or allocable to income or earnings and profits of the foreign corporation.

(o) * * *

(2) *Rules for noncontrolled section 902 corporations.* Paragraphs (a), (a)(1), (a)(4), (b), (c)(2)(iii), (c)(4)(iii), (i)(1), (i)(3), (i)(4), (i)(5), *Examples 4* and *5,* (m)(1), (m)(2)(ii), (m)(4)(i), (m)(5)(i), and (n) of this section apply to distributions from a noncontrolled section 902 corporation that are paid in taxable years of the noncontrolled section 902 corporation ending on or after April 20, 2009. *See* 26 CFR 1.904–5T(a), (a)(1), (a)(4), (b), (c)(2)(iii), (c)(4)(iii), (i)(1), (i)(3), (i)(4), (i)(5), *Examples 4* and *5,* and 26 CFR 1.904–7T(f)(9) (revised as of April 1, 2009) for rules applicable to distributions from a noncontrolled section 902 corporation that are paid in taxable years of the noncontrolled section 902 corporation beginning after December 31, 2002, and ending before April 20, 2009. *See* 26 CFR 1.904–

5T(m)(1), (m)(2)(ii), (m)(4)(i), and (n) (revised as of April 1, 2009) for rules applicable to distributions from a noncontrolled section 902 corporation paid in taxable years of such corporation beginning after April 25, 2006, and ending before April 20, 2009. For corresponding rules applicable to taxable years beginning before January 1, 2003, *see* 26 CFR 1.904–5 (revised as of April 1, 2006).

* * * * *

■ **Par. 14**. Section 1.904–5T is amended by revising paragraphs (a), (b), (c), (d), (e), (f), (g), (h)(1), (h)(2), (i), (j), (k), (l), (m), (n), (o)(1), and (o)(2) to read as follows:

§ 1.904–5T Look-through rules as applied to controlled foreign corporations and other entities (temporary).

(a) through (h)(2) [Reserved]. For further guidance, *see* § 1.904–5(a) through (h)(2).

* * * * *

(i) through (o)(2). [Reserved]. For further guidance, *see* § 1.904–5(i) through (o)(2).

* * * * *

■ **Par. 15**. Section 1.904–7 is amended by revising paragraph (f) to read as follows:

§ 1.904–7 Transition rules.

* * * * *

(f) *Treatment of non-look-through pools of a noncontrolled section 902 corporation or a controlled foreign corporation in post-2002 taxable years*—(1) *Definition of non-look-through pools.* The term *non-look-through pools* means the pools of post-1986 undistributed earnings (as defined in § 1.902–1(a)(9)) that were accumulated, and post-1986 foreign income taxes (as defined in § 1.902–1(a)(8)) paid, accrued, or deemed paid, in and after the first taxable year in which the foreign corporation had a domestic shareholder (as defined in § 1.902–1(a)(1)) but before any such shareholder was eligible for look-through treatment with respect to dividends from the foreign corporation.

(2) *Treatment of non-look-through pools of a noncontrolled section 902 corporation.* Any undistributed earnings in the non-look-through pool that were accumulated in taxable years beginning before January 1, 2003, by a noncontrolled section 902 corporation as of the last day of the corporation's last taxable year beginning before January 1, 2003, shall be treated in taxable years beginning after December 31, 2002, as if they were accumulated during a period when a dividend paid by the noncontrolled section 902 corporation to a domestic shareholder would have been eligible for look-through treatment under section 904(d)(4) and § 1.904–5. Post-1986 foreign income taxes paid, accrued or deemed paid with respect to such earnings shall be treated as if they were paid, accrued or deemed paid during a period when the related earnings were eligible for look-through treatment. Any such earnings and taxes in the non-look-through pools shall constitute the opening balance of the noncontrolled section 902 corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes on the first day of the foreign corporation's first taxable year beginning after December 31, 2002, in accordance with the rules of paragraph (f)(4) of this section.

(3) *Treatment of non-look-through pools of a controlled foreign corporation.* A controlled foreign corporation may have non-look-through pools of post-1986 undistributed earnings and post-1986 foreign income taxes that were accumulated and paid in a taxable year beginning before January 1, 2003, in which it was a noncontrolled section 902 corporation. Any such undistributed earnings in the non-look-through pool as of the last day of the controlled foreign corporation's last taxable year beginning before January 1, 2003, shall be treated in taxable years beginning on or after January 1, 2003, as if they were accumulated during a period when a dividend paid by the controlled foreign corporation out of such earnings, or an amount included in the gross income of a United States shareholder under section 951 that is attributable to such earnings, would have been eligible for look-through treatment. Any post-1986 foreign income taxes paid, accrued, or deemed paid with respect to such earnings shall be treated in taxable years beginning on or after January 1, 2003, as if they were paid, accrued, or deemed paid during a period when a dividend or inclusion out of such earnings would have been eligible for look-through treatment. Any such undistributed earnings and taxes in the non-look-through pools shall be added to the pools of post-1986 undistributed earnings and post-1986 foreign income taxes of the controlled foreign corporation in the appropriate separate categories on the first day of the controlled foreign corporation's first taxable year beginning after December 31, 2002, in accordance with the rules of paragraph (f)(4) of this section. Similar rules shall apply to characterize any previously-taxed earnings and profits described in section 959(c)(1)(A) that are attributable to earnings in the non-look-through pool.

(4) *Substantiation of look-through character of undistributed earnings and taxes in a non-look-through pool*—(i) *Reconstruction of earnings and taxes pools.* In order to substantiate the look-through characterization of undistributed earnings and taxes in a non-look-through pool under section 904(d)(4) and § 1.904–5, the taxpayer shall make a reasonable, good-faith effort to reconstruct the non-look-through pools of post-1986 undistributed earnings and post-1986 foreign income taxes (and previously-taxed earnings and profits, if any) on a look-through basis for each year in the non-look-through period, beginning with the first taxable year in which post-1986 undistributed earnings were accumulated in the non-look-through pool. Reconstruction shall be based on reasonably available books and records and other relevant information, and it must account for earnings distributed and taxes deemed paid in these years as if they were distributed and deemed paid pro rata from the amounts that were added to the non-look-through pools during the non-look-through period.

(ii) *Safe harbor method.* A taxpayer that was eligible for look-through treatment with respect to a distribution from the foreign corporation in the taxpayer's first taxable year ending after the first day of the foreign corporation's first taxable year beginning after December 31, 2002, may allocate the undistributed earnings and taxes in the non-look-through pools to the foreign corporation's look-through pools of post-1986 undistributed earnings and post-1986 foreign income taxes in other separate categories on the first day of the foreign corporation's first taxable year beginning after December 31, 2002, in the same percentages as the taxpayer properly characterizes the stock of the foreign corporation in the separate categories for purposes of apportioning the taxpayer's interest expense in its first taxable year ending after the first day of the foreign corporation's first taxable year beginning after December 31, 2002, under § 1.861–12T(c)(3) or § 1.861–12(c)(4), as the case may be. If the modified gross income method described in § 1.861–9T(j) is used to apportion interest expense of the foreign corporation in its first taxable year beginning after December 31, 2002, the taxpayer must allocate the undistributed earnings and taxes in the non-look-through pools to the foreign corporation's look-through pools of post-1986 undistributed earnings and post-1986 foreign income taxes based on an average of the foreign corporation's

modified gross income ratios for the foreign corporation's taxable years beginning in 2003 and 2004. A taxpayer may also use the safe harbor method described in this paragraph (f)(4)(ii) to allocate to separate categories any previously-taxed earnings and profits described in section 959(c)(1)(A) that are attributable to the non-look-through pool. A taxpayer may choose to use the safe harbor method on either a timely filed or amended tax return or during an audit. However, a taxpayer that uses the safe harbor method on an amended return or in the course of an audit must make appropriate adjustments to eliminate any duplicate benefits arising from application of the safe harbor method to taxable years that are not open for assessment. A taxpayer's choice to use the safe harbor method is evidenced by employing the method. The taxpayer need not file any separate statement.

(iii) *Inadequate substantiation.* If a taxpayer does not use, or is ineligible to use, the safe harbor method described in paragraph (f)(4)(ii) of this section and the Commissioner determines that the look-through characterization of earnings and taxes in the non-look-through pools cannot reasonably be determined based on the available information, the Commissioner shall allocate the undistributed earnings and taxes in the non-look-through pools to the foreign corporation's passive category.

(iv) *Examples.* The following examples illustrate the application of this paragraph (f)(4):

Example 1. P, a domestic corporation, has owned 50 percent of the voting stock of S, a foreign corporation, at all times since January 1, 1987, and S has been a noncontrolled section 902 corporation with respect to P since that date. P and S use the calendar year as their U.S. taxable year. The first year in which post-1986 undistributed earnings were accumulated in the non-look-through pool of S was 1987. As of December 31, 2002, S had 200u of post-1986 undistributed earnings and $100 of post-1986 foreign income taxes in its non-look-through pools. P does not use the safe harbor method under paragraph (f)(4)(ii) of this section to allocate the earnings and taxes in the non-look-through pools to S's other separate categories and does not attempt to substantiate the look-through characterization of S's non-look-through pools. The Commissioner, however, reasonably determines, based on information used to characterize S's stock for purposes of apportioning P's interest expense in P's 2003 and 2004 taxable years, that 100u of the earnings and all $100 of the taxes in the non-look-through pools are properly assigned on a look-through basis to the general limitation category, and 100u of earnings and no taxes are properly assigned on a look-through basis to the passive category. Therefore, in accordance with the Commissioner's look-through characterization of the earnings and taxes in S's non-look-through pools, on January 1, 2003, S has 100u of post-1986 undistributed earnings and $100 of post-1986 foreign income taxes in the general limitation category and 100u of post-1986 undistributed earnings and no post-1986 foreign income taxes in the passive category.

Example 2. The facts are the same as in *Example 1,* except that the Commissioner cannot reasonably determine, based on the available information, the proper look-through characterization of the 200u of undistributed earnings and $100 of taxes in S's non-look-through pools. Accordingly, the Commissioner will assign such earnings and taxes to the passive category, so that as of January 1, 2003, S has 200u of post-1986 undistributed earnings and $100 of post-1986 foreign income taxes in the passive category, and the Commissioner will treat S as a passive category asset for purposes of apportioning P's interest expense.

(5) *Treatment of a deficit accumulated in a non-look-through pool.* Any deficit in the non-look-through pool of a noncontrolled section 902 corporation or a controlled foreign corporation as of the end of its last taxable year beginning before January 1, 2003, shall be treated in taxable years beginning after December 31, 2002, as if the deficit had been accumulated during a period in which a dividend paid by the foreign corporation would have been eligible for look-through treatment. In the case of a noncontrolled section 902 corporation, the deficit and taxes, if any, in the non-look-through pools shall constitute the opening balance of the look-through pools of post-1986 undistributed earnings and post-1986 foreign income taxes of the noncontrolled section 902 corporation in the appropriate separate categories on the first day of its first taxable year beginning after December 31, 2002. In the case of a controlled foreign corporation, the deficit and taxes, if any, in the non-look-through pools shall be added to the balance of the look-through pools of post-1986 undistributed earnings and post-1986 foreign income taxes of the controlled foreign corporation in the appropriate separate categories on the first day of its first taxable year beginning after December 31, 2002. The taxpayer must substantiate the look-through characterization of the deficit and taxes in accordance with the rules of paragraph (f)(4) of this section. If a taxpayer does not use the safe harbor method described in paragraph (f)(4)(ii) of this section and the Commissioner determines that the look-through characterization of the deficit and taxes cannot reasonably be determined based on the available information, the Commissioner shall allocate the deficit and taxes, if any, in the non-look-through pools to the foreign corporation's passive category. If, as of the end of a taxable year beginning after December 31, 2002, in which it pays a dividend, the foreign corporation has zero or a deficit in post-1986 undistributed earnings (taking into account any earnings or a deficit accumulated in taxable years beginning before January 1, 2003), the deficit in post-1986 undistributed earnings shall be carried back to reduce pre-1987 accumulated profits, if any, on a last-in first-out basis. *See* § 1.902–2(a)(1). If, as of the end of a taxable year beginning after December 31, 2002, in which the foreign corporation pays a dividend out of current earnings and profits, it has zero or a deficit in post-1986 undistributed earnings (taking into account any earnings or a deficit accumulated in taxable years beginning before January 1, 2003), and the sum of current plus accumulated earnings and profits is zero or less than zero, no foreign taxes shall be deemed paid with respect to the dividend. *See* § 1.902–1(b)(4).

(6) *Treatment of pre-1987 accumulated profits.* Any pre-1987 accumulated profits (as defined in § 1.902–1(a)(10)) of a controlled foreign corporation or noncontrolled section 902 corporation shall be treated in taxable years beginning after December 31, 2002, as if they were accumulated during a period in which a dividend paid by the foreign corporation would have been eligible for look-through treatment. Any pre-1987 foreign income taxes (as defined in § 1.902–1(a)(10)(iii)) shall be treated as if they were paid, accrued or deemed paid during a year when a dividend out of the related pre-1987 accumulated profits would have been eligible for look-through treatment. The taxpayer must substantiate the look-through characterization of the pre-1987 accumulated profits and pre-1987 foreign income taxes in accordance with the rules of paragraph (f)(4) of this section. If a taxpayer does not use, or is ineligible to use, the safe harbor method described in paragraph (f)(4)(ii) of this section and the Commissioner determines that the look-through characterization of the pre-1987 accumulated profits and pre-1987 foreign income taxes cannot reasonably be determined based on the available information, the pre-1987 accumulated profits and pre-1987 foreign income taxes shall be allocated to the foreign corporation's passive category.

(7) *Treatment of post-1986 undistributed earnings or a deficit of a controlled foreign corporation*

attributable to dividends from a noncontrolled section 902 corporation paid in taxable years beginning before January 1, 2003—(i) *Look-through treatment of post-1986 undistributed earnings at controlled foreign corporation level.* Dividends paid by a noncontrolled section 902 corporation to a controlled foreign corporation in post-1986 taxable years of the noncontrolled section 902 corporation beginning before January 1, 2003, were assigned to a separate category for dividends from that noncontrolled section 902 corporation. Beginning on the first day of the controlled foreign corporation's first taxable year beginning on or after the first day of the lower-tier corporation's first taxable year beginning after December 31, 2002, any post-1986 undistributed earnings, or previously-taxed earnings and profits described in section 959(c)(1) or (2), of the controlled foreign corporation in such a separate category shall be treated as if they were accumulated during a period when a dividend paid by the noncontrolled section 902 corporation would have been eligible for look-through treatment. Any post-1986 foreign income taxes in such a separate category shall also be treated as if they were paid, accrued or deemed paid during a period when such a dividend would have been eligible for look-through treatment. Any such post-1986 undistributed earnings and post-1986 foreign income taxes in a separate category for dividends from a noncontrolled section 902 corporation shall be added to the opening balance of the controlled foreign corporation's look-through pools of post-1986 undistributed earnings and post-1986 foreign income taxes in the appropriate separate categories on the first day of the controlled foreign corporation's first taxable year beginning on or after the first day of the lower-tier corporation's first taxable year beginning after December 31, 2002. Any section 952(c)(2) recapture account with respect to such a separate category shall be allocated in the same manner as the associated post-1986 undistributed earnings. The taxpayer must substantiate the look-through characterization of such earnings and taxes in accordance with the rules of paragraph (f)(7)(iii) of this section.

(ii) *Look-through treatment of deficit in post-1986 undistributed earnings at controlled foreign corporation level.* If a controlled foreign corporation has a deficit in a separate category for dividends from a lower-tier noncontrolled section 902 corporation that is a member of the controlled foreign corporation's qualified group as defined in section 902(b)(2), such deficit shall be treated in taxable years of the upper-tier corporation beginning on or after the first day of the lower-tier corporation's first taxable year beginning after December 31, 2002, as if the deficit had been accumulated during a period in which a dividend from the lower-tier corporation would have been eligible for look-through treatment. Any post-1986 foreign income taxes in the separate category for dividends from the noncontrolled section 902 corporation shall also be treated as if they were paid, accrued or deemed paid during a period when the dividends were eligible for look-through treatment. The deficit and related post-1986 foreign income taxes, if any, shall be added to the opening balance of the controlled foreign corporation's look-through pools of post-1986 undistributed earnings and post-1986 foreign income taxes in the appropriate separate categories on the first day of the controlled foreign corporation's first taxable year beginning on or after the first day of the lower-tier corporation's first taxable year beginning after December 31, 2002. The taxpayer must substantiate the look-through characterization of the deficit and taxes in accordance with the rules of paragraph (f)(7)(iii) of this section.

(iii) *Substantiation required for look-through treatment.* The taxpayer must substantiate the look-through characterization of post-1986 undistributed earnings, previously-taxed earnings and profits, or a deficit in post-1986 undistributed earnings in a separate category for dividends paid by a noncontrolled section 902 corporation in taxable years beginning before January 1, 2003, by making a reasonable, good-faith effort to reconstruct the earnings (or deficit) and taxes in the separate category at the level of the controlled foreign corporation on a look-through basis, in accordance with the principles of paragraph (f)(4)(i) of this section. Alternatively, the taxpayer may allocate the earnings (or deficit) and taxes to the controlled foreign corporation's look-through pools under the safe harbor method described in paragraph (f)(4)(ii) of this section at the level of the controlled foreign corporation. If the taxpayer uses the safe harbor method, the earnings (or deficit) and taxes shall be allocated to the controlled foreign corporation's look-through pools in the appropriate separate categories on the first day of the controlled foreign corporation's first taxable year beginning on or after the first day of the lower-tier corporation's first taxable year beginning after December 31, 2002. The allocation shall be made in the same percentages as the controlled foreign corporation would properly characterize the stock of the lower-tier noncontrolled section 902 corporation in the separate categories for purposes of apportioning the controlled foreign corporation's interest expense in its first taxable year ending after the first day of the noncontrolled section 902 corporation's first taxable year beginning after December 31, 2002. Under § 1.861–12T(c)(3), the apportionment ratios properly used by the controlled foreign corporation are in turn based on the apportionment ratios properly used by the noncontrolled section 902 corporation to apportion its interest expense in its first taxable year beginning after December 31, 2002. In the case of a taxpayer that uses the safe harbor method where the lower-tier noncontrolled section 902 corporation uses the modified gross income method described in § 1.861–9T(j) to apportion interest expense for its first taxable year beginning after December 31, 2002, earnings (or a deficit) and taxes in the separate category for dividends from the noncontrolled section 902 corporation shall be allocated to the look-through pools based on the average of the noncontrolled section 902 corporation's modified gross income ratios for its taxable years beginning in 2003 and 2004. In the case of a controlled foreign corporation that has in its qualified group a chain of lower-tier noncontrolled section 902 corporations, the safe harbor applies first to characterize the stock of the third-tier corporation and then to characterize the stock of the second-tier corporation. Where a taxpayer uses the safe harbor method with respect to a lower-tier noncontrolled section 902 corporation with respect to which the taxpayer did not meet the requirements of section 902(a) as of the end of the upper-tier controlled foreign corporation's last taxable year beginning before January 1, 2003, the earnings (or deficit) and taxes in the separate category for dividends from the lower-tier corporation shall be allocated to the upper-tier corporation's look-through pools in the separate categories in the same percentages as the stock of the lower-tier corporation would have been characterized for purposes of apportioning the upper-tier corporation's interest expense in the last year the taxpayer met the ownership requirements of section 902(a) with respect to the lower-tier corporation if the look-through rules had applied in that year. If a taxpayer does not use the safe harbor method described in this paragraph (f)(7)(iii), and the

Commissioner determines that the look-through characterization of the earnings (or deficit) and taxes cannot reasonably be determined based on the available information, the Commissioner shall allocate the earnings (or deficit) and associated foreign income taxes to the controlled foreign corporation's passive category.

(8) *Treatment of distributions received by an upper-tier corporation from a lower-tier noncontrolled section 902 corporation, including when the corporations do not have the same taxable years*—(i) *Rule.* In the case of dividends paid by a lower-tier noncontrolled section 902 corporation to an upper-tier corporation where both are members of the same qualified group as defined in section 902(b)(2), the following rules apply. Dividends paid by the lower-tier corporation in taxable years beginning before January 1, 2003, are assigned to a separate category for dividends from that corporation, regardless of whether the corresponding taxable year of the recipient corporation began after December 31, 2002. Post-1986 undistributed earnings, previously-taxed earnings and profits, and post-1986 foreign income taxes in such a separate category shall be treated, beginning on the first day of the upper-tier corporation's first taxable year beginning on or after the first day of the lower-tier corporation's first taxable year beginning after December 31, 2002, as if they were accumulated during a period when a dividend paid by the lower-tier corporation would have been eligible for look-through treatment under section 904(d)(4) and § 1.904–5. Dividends paid by a lower-tier corporation in taxable years beginning after December 31, 2002, are eligible for look-through treatment when paid, without regard to whether the corresponding taxable year of the recipient upper-tier corporation began after December 31, 2002.

(ii) *Example.* The following example illustrates the application of paragraph (f) of this section:

Example. M, a domestic corporation, has directly owned 50 percent of the stock of foreign corporation X, and X has directly owned 50 percent of the stock of foreign corporation Y, at all times since X and Y were organized on January 1, 1990. Accordingly, X and Y are noncontrolled section 902 corporations with respect to M, and X and Y are members of the same qualified group. M and Y use the calendar year as their U.S. taxable year, and X uses a taxable year beginning on July 1. Under § 1.904–4(g) and paragraph (f)(10) of this section, a dividend paid to M by X on January 15, 2003 (during X's last pre-2003 taxable year) is not eligible for look-through treatment in 2003. However, under § 1.861–12(c)(4), M will characterize the stock of X on a look-through basis for purposes of interest expense apportionment in its 2003 taxable year. Under § 1.904–2(h)(1), any unused foreign taxes in M's separate category for dividends from X will be carried over to M's other separate categories on a look-through basis for M's taxable years beginning on and after January 1, 2004. Under paragraph (f)(2) of this section, any undistributed earnings and taxes in X's non-look-through pools will be allocated to X's other separate categories on July 1, 2003. Under § 1.904–5(i)(4) and paragraphs (f)(8)(i) and (f)(10) of this section, a dividend paid to X by Y on January 15, 2003 (during Y's first post-2002 taxable year) is eligible for look-through treatment when paid, notwithstanding that it is received in a pre-2003 taxable year of X.

(9) *Election to apply pre-AJCA rules to 2003 and 2004 taxable years*—(i) *Definition.* The term *single category for dividends from all noncontrolled section 902 corporations* means the separate category described in section 904(d)(1)(E) as in effect for taxable years beginning after December 31, 2002, and prior to its repeal by the American Jobs Creation Act (AJCA), Public Law 108–357, 118 Stat. 1418 (October 22, 2004).

(ii) *Time, manner, and form of election.* A taxpayer may elect not to apply the provisions of section 403 of the AJCA and to apply the rules of this paragraph (f)(9) to taxable years of noncontrolled section 902 corporations beginning after December 31, 2002, and before January 1, 2005, without regard to whether the corresponding taxable years of the taxpayer or any upper-tier corporation begin before or after such dates. A taxpayer shall be eligible to make such an election provided that—

(A) The taxpayer's tax liability as shown on an original or amended tax return for each of its affected taxable years is consistent with the rules of this paragraph (f)(9), the guidance set forth in Notice 2003–5 (2003–1 CB 294) (*see* § 601.601(d)(2) of this chapter), and the principles of § 1.861–12(c)(4) for each such year for which the statute of limitations does not preclude the filing of an amended return;

(B) The taxpayer makes appropriate adjustments to eliminate any duplicate benefits arising from the application of this paragraph (f)(9) to taxable years that are not open for assessment; and

(C) The taxpayer attaches a statement to its next tax return for which the due date (with extensions) is more than 90 days after April 25, 2006, indicating that the taxpayer elects not to apply the provisions of section 403 of the AJCA to taxable years of its noncontrolled section 902 corporations beginning in 2003 and 2004, and that the taxpayer has filed original returns or will file amended returns reflecting tax liabilities for each affected year that satisfy the requirements described in this paragraph (f)(9)(ii).

(iii) *Treatment of non-look-through pools in taxable years beginning after December 31, 2004.* Undistributed earnings (or a deficit) and taxes in the non-look-through pools of a controlled foreign corporation or a noncontrolled section 902 corporation as of the end of its last taxable year beginning before January 1, 2005, shall be treated in taxable years beginning after December 31, 2004, as if they were accumulated and paid during a period in which a distribution out of earnings in the non-look-through pool would have been eligible for look-through treatment. Such earnings (or deficit) and taxes shall be added to the foreign corporation's pools of post-1986 undistributed earnings and post-1986 foreign income taxes in the appropriate separate categories on the first day of the foreign corporation's first taxable year beginning after December 31, 2004. In accordance with the principles of paragraph (f)(4) of this section, the taxpayer must reconstruct the non-look-through pools or, if the taxpayer chooses to use the safe harbor method, allocate the earnings and taxes in the non-look-through pools to the foreign corporation's look-through pools in the appropriate separate categories on the first day of the foreign corporation's first taxable year beginning after December 31, 2004. Under the safe harbor method, this allocation is made in the same percentages as the taxpayer properly characterized the stock of the foreign corporation for purposes of apportioning the taxpayer's interest expense in the taxpayer's first taxable year ending after the first day of the foreign corporation's first taxable year beginning after December 31, 2002. *See* § 1.861–12T(c)(3) and § 1.861–12(c)(4). If a taxpayer does not use the safe harbor method described in paragraph (f)(4)(ii) of this section and the Commissioner determines that the look-through characterization of the earnings (or deficit) and taxes cannot reasonably be determined based on the available information, the earnings (or deficit) and taxes shall be allocated to the foreign corporation's passive category.

(iv) *Carryover of unused foreign tax.* To the extent that a taxpayer has unused foreign taxes in the single category for dividends from all noncontrolled section 902 corporations, such taxes shall be carried forward to the appropriate separate categories in the taxpayer's taxable years beginning on or after the first day of the relevant

noncontrolled section 902 corporation's first taxable year beginning after December 31, 2004. Such unused taxes shall be carried forward in the same manner as § 1.904–2(h)(1) provides that unused foreign taxes in the separate categories for dividends from each noncontrolled section 902 corporation are carried over to taxable years beginning on or after the first day of the noncontrolled section 902 corporation's first taxable year beginning after December 31, 2002, in the case of a taxpayer that does not make the election under this paragraph (f)(9). The electing taxpayer shall determine which noncontrolled section 902 corporations paid the dividends to which the unused foreign taxes are attributable and assign the taxes to the appropriate separate categories as if such dividends had been eligible for look-through treatment when paid. Accordingly, the taxpayer must substantiate the look-through characterization of the unused foreign taxes in accordance with paragraph (f)(4) of this section by reconstructing the non-look-through pools or, if the taxpayer uses the safe harbor method, by allocating the unused foreign taxes to other separate categories in the same percentages as the taxpayer properly characterized the stock of the noncontrolled section 902 corporation for purposes of apportioning the taxpayer's interest expense for its first taxable year ending after the first day of the noncontrolled section 902 corporation's first taxable year beginning after December 31, 2002. The rule described in this paragraph (f)(9)(iv) shall apply only to unused foreign taxes attributable to dividends out of earnings that were accumulated by noncontrolled section 902 corporations in taxable years of such corporations beginning before January 1, 2003, because only unused foreign taxes attributable to distributions out of pre-2003 earnings are included in the single category for dividends from all noncontrolled section 902 corporations. To the extent that unused foreign taxes carried forward to the single category for dividends from all noncontrolled section 902 corporations under the rules of Notice 2003–5 were either absorbed by low-taxed dividends paid by noncontrolled section 902 corporations out of the non-look-through pool in taxable years of such corporations beginning in 2003 or 2004, or expired unused, the amount of taxes carried forward to the separate categories on a look-through basis will be smaller than the aggregate amount of taxes initially carried forward to the single category for dividends from all noncontrolled section 902 corporations. In this case, the unused foreign taxes arising in each taxable year shall be deemed attributable to each noncontrolled section 902 corporation in the same ratio as the dividends included in the separate category that were paid by such corporation in such year bears to all such dividends paid by all noncontrolled section 902 corporations in such year. Unused foreign taxes carried forward from the separate categories for dividends from each noncontrolled section 902 corporation to the single category for dividends from all noncontrolled section 902 corporations will similarly be deemed to have been utilized on a pro rata basis. The remaining unused foreign taxes are then assigned to the appropriate separate categories under the rules of paragraph (f)(4) of this section. Unused foreign taxes shall be treated as allocable to general category income to the extent that such taxes would otherwise have been allocable to passive income (based on reconstructed pools or the safe harbor method), or to the extent that, under paragraph (f)(4)(iii) of this section, the Commissioner determines that the look-through characterization cannot reasonably be determined based on the available information.

(v) *Carryback of unused foreign tax.* To the extent that a taxpayer has unused foreign taxes attributable to a dividend paid by a noncontrolled section 902 corporation that was eligible for look-through treatment under section 904(d)(4) and § 1.904–5, any such unused foreign taxes shall be carried back to prior taxable years within the same separate category and not to the single category for dividends from all noncontrolled section 902 corporations or any separate category for dividends from a noncontrolled section 902 corporation. See Notice 2003–5 for rules relating to the carryback of unused foreign taxes in the single category for dividends from all noncontrolled section 902 corporations.

(vi) *Recapture of overall foreign loss or separate limitation loss in the single category for dividends from all noncontrolled section 902 corporations.* To the extent that a taxpayer has a balance in a separate limitation loss or overall foreign loss account in the single category for dividends from all noncontrolled section 902 corporations under section 904(d)(1)(E) (prior to its repeal by the AJCA), at the end of the taxpayer's last taxable year beginning before January 1, 2005 (or a later taxable year in which the taxpayer received a dividend subject to the separate limitation for dividends from all noncontrolled section 902 corporations), the amount of such balance shall be allocated on the first day of the taxpayer's next taxable year to the taxpayer's other separate categories. The amount of such balance that is attributable to each noncontrolled section 902 corporation shall be allocated in the same percentages as the taxpayer properly characterized the stock of such corporation for purposes of apportioning the taxpayer's interest expense for its first taxable year ending after the first day of such corporation's first taxable year beginning after December 31, 2002, under § 1.861–12T(c)(3) or § 1.861–12(c)(4), as the case may be. To the extent that a taxpayer has a balance in a separate limitation loss account for the single category for dividends from all noncontrolled section 902 corporations with respect to another separate category, and the separate limitation loss account would otherwise be assigned to that other category under this paragraph (f)(9)(vi), such balance shall be eliminated.

(vii) *Recapture of separate limitation losses in other separate categories.* To the extent that a taxpayer has a balance in any separate limitation loss account in a separate category with respect to the single category for dividends from all noncontrolled section 902 corporations at the end of the taxpayer's last taxable year with or within which ends the last taxable year of the relevant noncontrolled section 902 corporation beginning before January 1, 2005, such loss shall be recaptured in subsequent taxable years as income in the appropriate separate category. The separate limitation loss account shall be deemed attributable on a pro rata basis to those noncontrolled section 902 corporations that paid dividends out of earnings accumulated in taxable years beginning before January 1, 2003, in the years in which the separate limitation loss in the other separate category arose. The ratable portions of the separate limitation loss account shall be recaptured as income in the taxpayer's separate categories in the same percentages as the taxpayer properly characterized the stock of the relevant noncontrolled section 902 corporation for purposes of apportioning the taxpayer's interest expense in its first taxable year ending after the first day of such corporation's first taxable year beginning after December 31, 2002, under § 1.861–12T(c)(3) or § 1.861–12(c)(4), as the case may be. To the extent that a taxpayer has a balance in any separate limitation loss account in any separate category that would have been recaptured as income in that same

category under this paragraph (f)(9)(vii), such balance shall be eliminated.

(viii) *Treatment of undistributed earnings in an upper-tier corporation-level single category for dividends from lower-tier noncontrolled section 902 corporations.* Where a controlled foreign corporation or noncontrolled section 902 corporation has a single category for dividends from all noncontrolled section 902 corporations containing earnings attributable to dividends paid by one or more lower-tier corporations, the following rules apply. The post-1986 undistributed earnings, previously-taxed earnings and profits described in section 959(c)(1) or (2), if any, and associated post-1986 foreign income taxes shall be allocated to the upper-tier corporation's other separate categories in the same manner as earnings and taxes in a separate category for dividends from each noncontrolled section 902 corporation maintained by the upper-tier corporation are allocated under paragraph (f)(7) of this section. Accordingly, post-1986 undistributed earnings, previously-taxed earnings and profits, if any, and post-1986 foreign income taxes in the single category for dividends from all noncontrolled section 902 corporations shall be treated as if they were accumulated and paid, accrued or deemed paid during a period when a dividend paid by each lower-tier corporation that paid dividends included in the single category would have been eligible for look-through treatment. If the taxpayer uses the safe harbor method described in paragraph (f)(7)(iii) of this section, the earnings and taxes shall be allocated based on the apportionment ratios properly used by the lower-tier corporation to apportion its interest expense for its first taxable year beginning after December 31, 2002. Any section 952(c)(2) recapture account with respect to the single category shall be allocated in the same manner as the associated post-1986 undistributed earnings. The taxpayer must substantiate the look-through characterization of the earnings and taxes in accordance with the rules of paragraph (f)(7)(iii) of this section. If the taxpayer does not use the safe harbor method and the Commissioner determines that the look-through characterization of the earnings cannot reasonably be determined based on the available information, the earnings and taxes shall be assigned to the upper-tier corporation's passive category.

(ix) *Treatment of a deficit in the single category for dividends from lower-tier noncontrolled section 902 corporations.* Where a controlled foreign corporation or noncontrolled section 902 corporation had an aggregate deficit in the single category for dividends from all noncontrolled section 902 corporations as of the end of the upper-tier corporation's last taxable year beginning before January 1, 2005, such deficit and the associated post-1986 foreign income taxes, if any, shall be allocated to the upper-tier corporation's other separate categories in the same percentages in which the non-look-through pools of each lower-tier corporation to which the deficit is attributable were assigned to such corporation's other separate categories in its first taxable year beginning after December 31, 2002. If the taxpayer uses the safe harbor method described in paragraph (f)(7)(iii) of this section, the deficit and taxes shall be allocated based on how the taxpayer properly characterized the stock of the lower-tier noncontrolled section 902 corporation for purposes of apportioning the upper-tier corporation's interest expense for the upper-tier corporation's first taxable year ending after the first day of the lower-tier corporation's first taxable year beginning after December 31, 2002. The taxpayer must substantiate the look-through characterization of the deficit and taxes in accordance with the rules of paragraph (f)(7)(iii) of this section. If the taxpayer does not use the safe harbor method and the Commissioner determines that the look-through characterization of the deficit cannot reasonably be determined based on the available information, the deficit and taxes shall be assigned to the upper-tier corporation's passive category.

(10) *Effective/applicability date.* This paragraph (f) shall apply to dividends from a noncontrolled section 902 corporation that are paid in taxable years of the noncontrolled section 902 corporation ending on or after April 20, 2009. *See* 26 CFR § 1.904–7T(f) (revised as of April 1, 2009) for rules applicable, except in the case of a taxpayer that makes the election under paragraph (f)(9) of that section, to dividends from a noncontrolled section 902 corporation that are paid in taxable years of the noncontrolled section 902 corporation beginning after December 31, 2002, and ending before April 20, 2009. *See* 26 CFR 1.904–7T(f) (revised as of April 1, 2009) for rules applicable, in the case of a taxpayer that makes the election under paragraph (f)(9) of that section, to dividends from a noncontrolled section 902 corporation that are paid in taxable years of the noncontrolled section 902 corporation beginning after December 31, 2004, and ending before April 20, 2009. However, taxpayers may choose to apply paragraph (f) of this section in its entirety in lieu of 26 CFR 1.904–7T(f) to all dividends paid in periods covered by the temporary regulations, provided that appropriate adjustments are made to eliminate duplicate benefits arising from application of paragraph (f) to taxable years that are not open for assessment.

■ **Par. 16**. Section 1.904–7T is amended by revising paragraphs (a), (b), (c), (d), (e), and (f) to read as follows:

§ 1.904–7T Transition rules (temporary).

(a) through (f) [Reserved]. For further guidance, *see* § 1.904–7(a) through (f).

* * * * *

■ **Par. 17**. Section 1.904(f)–0 is amended by adding the entries for § 1.904(f)–12(g)(1), (g)(2), (g)(3), (g)(4), and (g)(5) as follows:

§ 1.904(f)–0 Outline of regulation provisions.

* * * * *

§ 1.904(f)–12 Transition rules.

* * * * *

(g) * * *

(1) Recapture of separate limitation loss or overall foreign loss in a separate category for dividends from a noncontrolled section 902 corporation.

(2) Recapture of separate limitation loss in another separate category.

(3) Exception.

(4) Examples.

(5) Effective/applicability date.

* * * * *

■ **Par. 18**. Section 1.904(f)–12 is amended by revising paragraph (g) to read as follows:

§ 1.904(f)–12 Transition rules.

* * * * *

(g) *Recapture in years beginning after December 31, 2002, of separate limitation losses and overall foreign losses incurred in years beginning before January 1, 2003, with respect to the separate category for dividends from a noncontrolled section 902 corporation*—(1) *Recapture of separate limitation loss or overall foreign loss in a separate category for dividends from a noncontrolled section 902 corporation.* To the extent that a taxpayer has a balance in any separate limitation loss or overall foreign loss account in a separate category for dividends from a noncontrolled section 902 corporation under section 904(d)(1)(E) (prior to its repeal by Public Law 108–357, 118 Stat. 1418 (October 22, 2004)) at the end of the taxpayer's last taxable year beginning before January 1, 2003 (or a later taxable year in which the taxpayer received a dividend subject to a separate limitation for dividends from that noncontrolled section 902 corporation), the amount of such balance shall be allocated on the

first day of the taxpayer's next taxable year to the taxpayer's other separate categories. The amount of such balance shall be allocated in the same percentages as the taxpayer properly characterized the stock of the noncontrolled section 902 corporation for purposes of apportioning the taxpayer's interest expense for its first taxable year ending after the first day of such corporation's first taxable year beginning after December 31, 2002, under § 1.861–12T(c)(3) or § 1.861–12(c)(4), as the case may be. To the extent a taxpayer has a balance in any separate limitation loss account in a separate category for dividends from a noncontrolled section 902 corporation with respect to another separate category, and the separate limitation loss would otherwise be assigned to that other category under this paragraph (g)(1), such balance shall be eliminated.

(2) *Recapture of separate limitation loss in another separate category.* To the extent that a taxpayer has a balance in any separate limitation loss account in a separate category with respect to a separate category for dividends from a noncontrolled section 902 corporation under section 904(d)(1)(E) (prior to its repeal by Public Law 108–357, 118 Stat. 1418 (October 22, 2004)) at the end of the taxpayer's last taxable year with or within which ends the last taxable year of the noncontrolled section 902 corporation beginning before January 1, 2003, such loss shall be recaptured in subsequent taxable years as income in the appropriate separate categories. The separate limitation loss shall be recaptured as income in other separate categories in the same percentages as the taxpayer properly characterizes the stock of the noncontrolled section 902 corporation for purposes of apportioning the taxpayer's interest expense in its first taxable year ending after the first day of the foreign corporation's first taxable year beginning after December 31, 2002, under § 1.861–12T(c)(3) or § 1.861–12(c)(4), as the case may be. To the extent a taxpayer has a balance in a separate limitation loss account in a separate category that would have been recaptured as income in that same category under this paragraph (g)(2), such balance shall be eliminated.

(3) *Exception.* Where a taxpayer formerly met the stock ownership requirements of section 902(a) with respect to a foreign corporation, but did not meet the requirements of section 902(a) on December 20, 2002 (or on the first day of the taxpayer's first taxable year beginning after December 31, 2002, in the case of a transaction that was the subject of a binding contract in effect on December 20, 2002), if the taxpayer has a balance in any separate limitation loss or overall foreign loss account for a separate category for dividends from that foreign corporation under section 904(d)(1)(E) (prior to its repeal by Public Law 108–357, 118 Stat. 1418 (October 22, 2004)) at the end of the taxpayer's last taxable year beginning before January 1, 2003, then the amount of such balance shall not be subject to recapture under section 904(f) and this section. If a separate limitation loss or overall foreign loss account for such category is not subject to recapture under this paragraph (g)(3), the taxpayer cannot carry over any unused foreign taxes in such separate category to any other limitation category. However, a taxpayer may elect to recapture the balances of all separate limitation loss and overall foreign loss accounts for all separate categories for dividends from such formerly-owned noncontrolled section 902 corporations under the rules of paragraphs (g)(1) and (2) of this section. If a taxpayer so elects, it may carry over any unused foreign taxes in these separate categories to the appropriate separate categories as provided in § 1.904–2(h).

(4) *Examples.* The following examples illustrate the application of this paragraph (g):

Example 1. X is a domestic corporation that meets the ownership requirements of section 902(a) with respect to Y, a foreign corporation the stock of which X owns 50 percent. Therefore, Y is a noncontrolled section 902 corporation with respect to X. Both X and Y use the calendar year as their taxable year. As of December 31, 2002, X had a $100 balance in its separate limitation loss account for the separate category for dividends from Y, of which $60 offset general limitation income and $40 offset passive income. For purposes of apportioning X's interest expense for its 2003 taxable year, X properly characterized the stock of Y as a multiple category asset (80% general and 20% passive). Under paragraph (g)(1) of this section, on January 1, 2003, $80 ($100 × 80/100) of the $100 balance in the separate limitation loss account is assigned to the general limitation category. Of this $80 balance, $32 ($80 × 40/100) is with respect to the passive category, and $48 ($80 × 60/100) is with respect to the general limitation category and therefore is eliminated. The remaining $20 balance ($100 × 20/100) of the $100 balance is assigned to the passive category. Of this $20 balance, $12 ($20 × 60/100) is with respect to the general limitation category, and $8 ($20 × 40/100) is with respect to the passive category and therefore is eliminated.

Example 2. The facts are the same as in *Example 1*, except that as of December 31, 2002, X had a $30 balance in its separate limitation loss account in the general limitation category, and a $20 balance in its separate limitation loss account in the passive category, both of which offset income in the separate category for dividends from Y. Under paragraph (g)(2) of this section, the separate limitation loss accounts in the general limitation and passive categories with respect to the separate category for dividends from Y will be recaptured on and after January 1, 2003, from income in other separate categories, as follows. Of the $30 balance in X's separate limitation loss account in the general category with respect to the separate category for dividends from Y, $6 ($30 × 20/100) is with respect to the passive category, and $24 ($30 × 80/100) is with respect to the general limitation category and therefore is eliminated. Of the $20 balance in X's separate limitation loss account in the passive category with respect to the separate category for dividends from Y, $16 ($20 × 80/100) will be recaptured out of general limitation income, and $4 ($20 × 20/100) would otherwise be recaptured out of passive income and therefore is eliminated.

(5) *Effective/applicability date.* This paragraph (g) applies to taxable years ending on or after April 20, 2009. *See* 26 CFR 1.904(f)–12T(g) (revised as of April 1, 2009) for rules applicable to taxable years beginning after December 31, 2002, and ending before April 20, 2009.

* * * * *

■ **Par. 19.** Section 1.904(f)–12T is amended by revising paragraphs (a), (b), (c), (d), (e), (f), and (g) to read as follows:

§ 1.904(f)–12T Transition rules (temporary).

(a) through (g) [Reserved]. For further guidance, *see* § 1.904(f)–12(a) through (g).

* * * * *

■ **Par. 20.** Section 1.964–1 is amended as follows:

■ 1. Revise paragraph (a)(1).

■ 2. Remove the last sentence of paragraph (a)(2).

■ 3. Revise paragraphs (b)(1)(v), (c)(1)(v), (c)(2), (c)(3), (c)(4), (c)(5), and (c)(6).

■ 4. Remove and reserve paragraph (c)(8).

■ 5. Add new paragraphs (a)(3) and (d).

■ 6. Designate the undesignated text preceding paragraph (c)(1)(v) as paragraph (c)(1)(vi) and revise it.

The revisions and additions read as follows:

§ 1.964–1 Determination of the earnings and profits of a foreign corporation.

(a)(1) *In general.* For rules for determining the earnings and profits (or deficit in earnings and profits) of a foreign corporation for taxable years beginning before January 1, 1987, for purposes of sections 951 through 964, *see* 26 CFR 1.964–1(a) (revised as of April 1, 2006). For taxable years beginning after December 31, 1986,

except as otherwise provided in the Code and regulations, the earnings and profits (or deficit in earnings and profits) of a foreign corporation for its taxable year shall be computed for all Federal income tax purposes substantially as if such corporation were a domestic corporation by—

* * * * *

(3) *Translation into dollars.* In the case of a foreign corporation with a functional currency other than the United States dollar (dollar), see sections 986(b) and 989(b) for rules regarding the time and manner of translating distributions or inclusions of the foreign corporation's earnings and profits into dollars.

(b) * * *

(1) * * *

(v) *Foreign currency.* If transactions effected in a foreign currency other than that in which the books of the corporation are kept are translated into the foreign currency reflected in the books, such translation shall be made in a manner substantially similar to that as prescribed in section 988 and the regulations under that section for the translation of foreign currency amounts into United States dollars.

* * * * *

(c) * * *

(1) * * *

(v) *Taxable years.* The period for computation of taxable income and earnings and profits known as the taxable year shall reflect the provisions of section 441 and the regulations under that section.

(vi) *Applicable requirements.* Except as provided in paragraphs (c)(2) and (c)(3) of this section, any requirements imposed by the Code or applicable regulations with respect to making an election or adopting or changing a method of accounting or taxable year must be satisfied by or on behalf of the foreign corporation just as though it were a domestic corporation if such election or such adoption or change of method or taxable year is to be taken into account in the computation of its earnings and profits.

(2) *Adoption or change of method or taxable year.* For the first taxable year of a foreign corporation beginning after April 25, 2006, in which such foreign corporation first qualifies as a controlled foreign corporation (as defined in section 957 or 953) or a noncontrolled section 902 corporation (as defined in section 904(d)(2)(E)), any method of accounting or taxable year allowable under this section may be adopted, and any election allowable under this section may be made, by such foreign corporation or on its behalf notwithstanding that, in previous years, its books or financial statements were prepared on a different basis, and notwithstanding that such election is required by the Code or regulations to be made in a prior taxable year. Any allowable methods adopted or elections made shall be reflected in the computation of the foreign corporation's earnings and profits for such taxable year, prior taxable years, and (unless the Commissioner consents to a change) subsequent taxable years. However, see section 898 for the rules regarding the taxable year of a specified foreign corporation as defined in section 898(b). Any allowable method of accounting or election that relates to events that first arise in a subsequent taxable year may be adopted or made by or on behalf of the foreign corporation for such year. Adjustments to the appropriate separate category (as defined in § 1.904–5(a)(1)) of earnings and profits and income of the foreign corporation shall be required under section 481 to prevent any duplication or omission of amounts attributable to previous years that would otherwise result from any change in a method of accounting. *See* paragraph (c)(3) of this section for the manner in which a method of accounting or a taxable year may be adopted or changed on behalf of the foreign corporation. *See* paragraph (c)(4) of this section for applicable rules if the amount of the foreign corporation's earnings and profits became significant for United States tax purposes before a method of accounting or taxable year was adopted by the foreign corporation or on its behalf in accordance with the rules of paragraph (c)(3) of this section. *See* paragraph (c)(6) of this section for special rules postponing the time for taking action by or on behalf of a foreign corporation until the amount of its earnings and profits becomes significant for U.S. tax purposes. *See* also §§ 1.985–5, 1.985–6, and 1.986–7 relating to adjustments to earnings and profits of a QBU required when the QBU changes its functional currency or begins to use the dollar approximate separate transactions method of accounting.

(3) *Action on behalf of corporation*—(i) *In general.* An election shall be deemed made, or an adoption or change in method of accounting or taxable year deemed effectuated, on behalf of the foreign corporation only if its controlling domestic shareholders (as defined in paragraph (c)(5) of this section)—

(A) Satisfy for such corporation any requirements imposed by the Internal Revenue Code or applicable regulations with respect to such election or such adoption or change in method or taxable year (including the provisions of sections 442 and 446 and the regulations under those sections, as well as any operative provisions), such as the filing of forms, the execution of consents, securing the permission of the Commissioner, or maintaining books and records in a particular manner. For purposes of this paragraph (c)(3)(i)(A), the books of the foreign corporation shall be considered to be maintained in a particular manner if the controlling domestic shareholders or the foreign corporation regularly keep the records and accounts required by section 964(c) and the regulations under that section in that manner;

(B) File the statement described in paragraph (c)(3)(ii) of this section, at the time and in the manner prescribed therein; and

(C) Provide the written notice required by paragraph (c)(3)(iii) of this section at the time and in the manner prescribed therein.

(ii) *Statement required to be filed with a tax return.* The statement required by this paragraph (c)(3)(ii) shall set forth the name, country of organization, and U.S. employer identification number (if applicable) of the foreign corporation, the name, address, stock interests, and U.S. employer identification number of each controlling domestic shareholder (or, if applicable, the shareholder's common parent) approving the action, and the names, addresses, U.S. employer identification numbers, and stock interests of all other domestic shareholders notified of the action taken. Such statement shall describe the nature of the action taken on behalf of the foreign corporation and the taxable year for which made, and identify a designated shareholder who retains a jointly executed consent confirming that such action has been approved by all of the controlling domestic shareholders and containing the signature of a principal officer of each such shareholder (or its common parent). Each controlling domestic shareholder (or its common parent) shall file the statement with, and on or before the due date (including extensions) of, its own tax return (or information return, if applicable) for its taxable year with or within which ends the taxable year of the foreign corporation for which the election is made or for which the method of accounting or taxable year is adopted or changed. In the case of a controlling domestic shareholder that is the sole shareholder of a controlled foreign corporation, no separate statement need be filed if the information described in this paragraph (c)(3)(ii) is included on Form 5471 and Form 3115 or 1128, as applicable, filed

with respect to the controlled foreign corporation with the shareholder's return for such taxable year.

(iii) *Notice.* On or before the filing date described in paragraph (c)(3)(ii) of this section, the controlling domestic shareholders shall provide written notice of the election made or the adoption or change of method or taxable year effected to all other persons known by them to be domestic shareholders who own (within the meaning of section 958(a)) stock of the foreign corporation. Such notice shall set forth the name, country of organization and U.S. employer identification number (if applicable) of the foreign corporation, and the names, addresses, and stock interests of the controlling domestic shareholders. Such notice shall describe the nature of the action taken on behalf of the foreign corporation and the taxable year for which made, and identify a designated shareholder who retains a jointly executed consent confirming that such action has been approved by all of the controlling domestic shareholders and containing the signature of a principal officer of each such shareholder (or its common parent). However, the failure of the controlling domestic shareholders to provide such notice to a person required to be notified shall not invalidate the election made or the adoption or change of method or taxable year effected.

(4) *Effect of action or inaction by controlling domestic shareholders*—(i) *In general.* Any election, or adoption or change of method of accounting or taxable year made by the controlling domestic shareholders on behalf of the foreign corporation pursuant to paragraph (c)(3) of this section or any other provision of the regulations (for example, § 1.985–2(c)(2) or (3)) shall be reflected in the computation of the earnings and profits of such corporation under this section to the extent that it bears upon the federal income tax liability of the domestic shareholders of the foreign corporation. Any such action shall bind both the foreign corporation and its domestic shareholders as to the computation of the foreign corporation's earnings and profits for the taxable year of the foreign corporation for which the election is made or for which the method of accounting or taxable year is adopted or changed and in subsequent taxable years unless the Commissioner consents to a change. The preceding sentence shall apply regardless of—

(A) When the action was taken;

(B) Whether the foreign corporation was a controlled foreign corporation or a noncontrolled section 902 corporation at the time the action was taken;

(C) When ownership was acquired; or

(D) Whether the domestic shareholder received the written notice required by paragraph (c)(3)(ii) of this section.

(ii) *Inaction or untimely action.* In the event that action by or on behalf of the foreign corporation is not undertaken by the time specified in paragraph (c)(6) of this section and such failure is shown to the satisfaction of the Commissioner to be due to reasonable cause, such action may be undertaken during any period of at least 30 days occurring after such showing is made which the Commissioner may specify as appropriate for this purpose. In the event that action by or on behalf of the foreign corporation is not undertaken by the time specified in paragraph (c)(6) of this section and such failure is not shown to the satisfaction of the Commissioner to be due to reasonable cause, earnings and profits shall be computed as if no elections had been made and any permissible accounting methods not requiring an election and reflected in the books of account regularly maintained by the foreign corporation for the purpose of accounting to its shareholders had been adopted. Accordingly, if the earnings and profits of a noncontrolled section 902 corporation became significant for United States income tax purposes in a taxable year beginning on or before April 25, 2006, the corporation's earnings and profits shall be computed as if no elections had been made and any permissible accounting methods not requiring an election and reflected in the books of account regularly maintained by the foreign corporation for purposes of accounting to its shareholders had been adopted. Thereafter, any change in a particular accounting method or methods or taxable year may be made by, or on behalf of, the foreign corporation only with the Commissioner's consent.

(iii) *Computation of earnings and profits by a minority shareholder prior to majority election or significant event.* A shareholder of a foreign corporation may be required to compute the foreign corporation's earnings and profits before the foreign corporation or its controlling domestic shareholders make, or are required under this section to make, an election or adopt a method of accounting for federal income tax purposes. In such a case, the shareholder must compute earnings and profits in accordance with this section. Such computation shall be made as if no elections had been made and any permissible accounting methods not requiring an election and reflected in the books of account regularly maintained by the foreign corporation for the purpose of accounting to its shareholders had been adopted. However, a later, properly filed, and timely election or adoption of method by, or on behalf of, the foreign corporation shall not be treated as a change in accounting method.

(5) *Controlling domestic shareholders*—(i) *Controlled foreign corporations.* For purposes of this paragraph (c), the controlling domestic shareholders of a controlled foreign corporation shall be its controlling United States shareholders. The controlling United States shareholders of a controlled foreign corporation shall be those United States shareholders (as defined in section 951(b) or 953(c)) who, in the aggregate, own (within the meaning of section 958(a)) more than 50 percent of the total combined voting power of all classes of the stock of such foreign corporation entitled to vote and who undertake to act on its behalf. In the event that the United States shareholders of the controlled foreign corporation do not, in the aggregate, own (within the meaning of section 958(a)) more than 50 percent of the total combined voting power of all classes of the stock of such foreign corporation entitled to vote, the controlling United States shareholders of the controlled foreign corporation shall be all those United States shareholders who own (within the meaning of section 958(a)) stock of such corporation.

(ii) *Noncontrolled section 902 corporations.* For purposes of this paragraph (c), the controlling domestic shareholders of a noncontrolled section 902 corporation that is not a controlled foreign corporation shall be its majority domestic corporate shareholders. The majority domestic corporate shareholders of a noncontrolled section 902 corporation shall be those domestic corporations that meet the ownership requirements of section 902(a) with respect to the noncontrolled section 902 corporation (or to a first-tier foreign corporation that is a member of the same qualified group (as defined in section 902(b)(2)) as the noncontrolled section 902 corporation) that, in the aggregate, own directly or indirectly more than 50 percent of the combined voting power of all of the voting stock of the noncontrolled section 902 corporation that is owned directly or indirectly by all domestic corporations that meet the ownership requirements of section 902(a) with respect to the noncontrolled section 902 corporation (or a relevant first-tier foreign corporation).

(6) *Action not required until significant.* Notwithstanding any other provision of this paragraph, action by or on behalf of a foreign corporation (other

than a foreign corporation subject to tax under section 882) to make an election or to adopt a taxable year or method of accounting shall not be required until the due date (including extensions) of the return for a controlling domestic shareholder's first taxable year with or within which ends the foreign corporation's first taxable year in which the computation of its earnings and profits is significant for United States tax purposes with respect to its controlling domestic shareholders (as defined in § 1.964–1(c)(5)). The filing of the information return required by section 6038 shall not itself constitute a significant event. For taxable years beginning after April 25, 2006, events that cause a foreign corporation's earnings and profits to have United States tax significance include, without limitation:

(A) A distribution from the foreign corporation to its shareholders with respect to their stock.

(B) An amount is includible in gross income with respect to such corporation under section 951(a).

(C) An amount is excluded from subpart F income of the foreign corporation or another foreign corporation by reason of section 952(c).

(D) Any event making the foreign corporation subject to tax under section 882.

(E) The use by the foreign corporation's controlling domestic shareholders of the tax book value (or alternative tax book value) method of allocating interest expense under section 864(e)(4).

(F) A sale or exchange of the foreign corporation's stock of the controlling domestic shareholders that results in the recharacterization of gain under section 1248.

* * * * *

(d) *Effective/applicability dates.* Paragraphs (c)(1)(v) through (c)(6) of this section apply to taxable years ending on or after April 20, 2009. *See* 26 CFR §§ 1.964–1T(c)(1)(v) through (c)(6) (revised as of April 1, 2009) for rules applicable to taxable years beginning after April 25, 2006, and ending before April 20, 2009. However, taxpayers may choose to apply paragraphs (c)(1)(v) through (c)(6) of this section in their entirety in lieu of 26 CFR §§ 1.964–1T(c)(1)(v) through (c)(6) for periods covered by the temporary regulations, provided that appropriate adjustments are made to eliminate duplicate benefits arising from the application of paragraphs (c)(1)(v) through (c)(6) of this section to taxable years that are not open for assessment.

§ 1.964–1T [Removed]

■ **Par. 21**. Section 1.964–1T is removed.

§ 1.989(b)–1 [Amended]

■ **Par. 22**. Section 1.989(b)–1 is amended by removing the language ''within the meaning of § 1.964–1(d)(5)'' and adding the language ''described in § 1.988–1(d)(1)'' in its place.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 23**. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 24**. In § 602.101, paragraph (b) is amended by removing the entry for ''§ 1.964–1T'' and adding the following entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.904–7	1545–2104
* * * * *	
1.964–1	1545–2104
* * * * *	

Approved: March 24, 2009.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Bernard Knight,

Acting General Counsel of the Treasury.

[FR Doc. E9–13521 Filed 6–10–09; 8:45 am]

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Federal Register

Thursday,
June 11, 2009

Part III

Department of Education

Striving Readers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009; Notices

DEPARTMENT OF EDUCATION

Striving Readers

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final priorities, requirements, definitions, and selection criteria.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.371A.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education announces priorities, requirements, definitions, and selection criteria under the Striving Readers program grant competition. The Assistant Secretary may use these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2009 and later years. We take this action to support the implementation and evaluation of intensive, supplemental literacy interventions for struggling adolescent readers.

DATES: *Effective Date:* These priorities, requirements, definitions, and selection criteria are effective July 13, 2009.

FOR FURTHER INFORMATION CONTACT: Marcia J. Kingman, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E106, Washington, DC 20202–6400. *Telephone:* (202) 401–0003 or by *e-mail: Marcia.Kingman@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purposes of the Striving Readers program are to raise the literacy levels of adolescent students in schools that are eligible for assistance under Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (ESEA), and that enroll significant numbers of students reading below grade level and to build a strong, scientific research base for identifying and replicating strategies that improve adolescent literacy instruction. The program supports expanding the implementation of locally or regionally developed adolescent literacy initiatives, as well as the implementation of commercially published supplemental literacy interventions, for struggling readers.

Additional information about the Striving Readers program can be found at: *http://www.ed.gov/programs/strivingreaders/index.html*.

Program Authority: 20 U.S.C. 6492.

Applicable Program Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99, as applicable.

We published a notice of proposed priorities, requirements, definitions, and selection criteria (NPP) for this competition in the **Federal Register** on April 8, 2009 (74 FR 15949–15954). That notice contained background information and our reasons for proposing the particular priorities, requirements, definitions, and selection criteria. In addition to some minor editorial changes, there are several substantive differences between the NPP and this notice of final priorities, requirements, definitions, and selection criteria (NFP). These changes are explained in the *Analysis of Comments and Changes* section elsewhere in this notice.

Public Comment: In response to our invitation in the NPP, 21 parties submitted comments on the proposed priorities. We did not receive any comments on the proposed requirements, definitions, or selection criteria.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the NFP since publication of the NPP follows.

We group comments according to the priorities. Generally, we do not address technical and other minor changes.

Priority 1—Supplemental Literacy Intervention for Struggling Readers in the Middle Grades

Comment: Several commenters suggested that we require projects to implement a schoolwide adolescent literacy initiative in addition to offering struggling readers an intensive, supplemental literacy intervention. Through a schoolwide literacy intervention, teachers in all academic disciplines would teach literacy skills within the curriculum of their content area and all students would receive instruction in how to improve their literacy skills.

Discussion: We agree that all secondary school students, including struggling readers, could benefit from a school-wide literacy initiative and that such initiatives are important in ensuring that all students graduate from high school with the literacy skills they will need to succeed in postsecondary education and careers. However, because a lesser amount of funds is available for new grants in FY 2009 as compared to previous years and what will be available in FY 2010, we have limited the focus of the priority to intensive, supplemental literacy interventions for struggling readers. In future competitions, the Department hopes to support projects that implement both schoolwide literacy initiatives for all students and intensive, supplemental literacy interventions for struggling readers.

Changes: None.

Comment: One commenter requested that we revise Priority 1 to require that the intensive, supplemental literacy intervention be aligned with the regular literacy instruction for all students in both content and pedagogy.

Discussion: We agree that the intensive, supplemental intervention should complement and be consistent with the regular literacy instruction that all students in the school receive. We expect, however, that this will be a key consideration for each applicant as it reviews and selects the intervention that it will propose to implement in its project. For this reason, we do not believe it is necessary to revise the priority to make this a requirement.

Changes: None.

Comment: Several commenters expressed the view that some developed interventions, such as those that may be purchased ''off the shelf,'' are not created to identify and build on individual students' strengths or address their specific needs. In order to maximize the effectiveness of each intervention, they recommended that the priority be revised to require the use of highly skilled reading specialists who can vary instructional decisions according to individual student needs.

Discussion: We agree that, to be most effective, interventions should have the capacity to identify and build on individual students' strengths and address their individual needs because the cause of an adolescent's difficulties in reading may differ significantly from student to student. A number of intensive, supplemental interventions for struggling readers do include the use of highly skilled reading specialists for these and other reasons, while other interventions address these issues through the use of other trained personnel or through other means. Since one of the selection criteria that peer reviewers will use to evaluate applications requires each applicant to provide research and other empirical evidence that demonstrate that the supplemental literacy intervention it proposes to implement is likely to be effective in improving the reading skills of struggling readers, we do not believe it is necessary to mandate the use of highly skilled reading specialists or establish other mandates with regard to the personnel who will be involved in delivering the intervention.

In addition, although one of our requirements is that applicants implement a fully developed

intervention, we are not requiring that the intervention be one that can be bought ''off the shelf.'' We support the implementation of locally or regionally developed adolescent literacy interventions as well as commercially published adolescent literacy interventions.

Consistent with the purposes of this program, however, we do not support an intervention that is in the research stage and has not yet been fully developed, and we do not support interventions that have already been evaluated through large-scale experimental evaluations unless the proposed evaluation of such an intervention would substantially increase knowledge about the effectiveness of the intervention among a population different than those studied in previous experimental evaluations.

Changes: None.

Comment: One commenter recommended that we revise the priority to require that projects give priority to serving English language learners and language minority learners.

Discussion: The struggling readers who will be served by the supplemental literacy intervention will be identified through the use of a nationally normed, reliable, and valid screening reading assessment. We expect that English language learners will comprise a significant proportion of the students who will be served by Striving Readers projects because these students are overrepresented among struggling readers. The 2007 National Assessment of Educational Progress reading assessment found that 71 percent of eighth-grade English language learners enrolled in public schools scored below the Basic achievement level (National Center for Education Statistics, 2007). Accordingly, we do not believe it is necessary to add this type of requirement to the priority.

Changes: None.

Comment: Several commenters requested we clarify in the priority the meaning of the word ''supplemental'' in the term ''supplemental literacy intervention.''

Discussion: We use the word ''supplemental'' to describe how the literacy intervention will fit into a student's daily school schedule. Struggling students will enroll in a supplemental intervention as an add-on or appendix to their regular course schedule of mathematics, science, social studies, and English. A supplemental literacy intervention would most likely appear as an elective in the student's schedule.

We also recognize that, in some Response to Intervention (RTI) models, the term ''supplemental'' may be used to describe particular types of interventions that are implemented at different tiers of the model. ''Supplemental,'' for example, may be the adjective used to describe interventions that are implemented in the third tier of an RTI model. However, our use of the term ''supplemental'' is not intended to refer to any particular tier or class of interventions in an RTI model. We use it only to indicate that the intervention must be delivered as a supplement to the regular academic instruction that students would ordinarily receive.

Changes: None.

Comment: Several commenters recommended that the priority be amended to include high school students, as well as students in the middle grades, arguing that the need for intensive, supplemental literacy interventions is as great in grades 9 through 12 as in grades 6 through 8. The commenters also noted that State needs for improving instruction in the middle grades and at the high school level vary and that the priority should give applicants the option of using Striving Readers funds in whatever secondary school grades the needs are the greatest.

Discussion: We agree that applicants should be given the option of using Striving Readers funds at whatever secondary grade level would most benefit the State's students.

Changes: Priority 1 has been changed to include students in grades 6 through 12. To reflect this change in the range of students, we have made conforming changes to paragraph (i) of Priority 2; paragraph (b) of the requirement regarding eligible schools; and paragraphs (b) and (c) of the definition of *eligible school.*

Priority 2—Rigorous and Independent Evaluation

Comment: One commenter encouraged us to set a higher minimum threshold for the number of schools included in each project. We had proposed to require projects to include a minimum of five schools in order to meet evaluation needs. The commenter suggested that setting a higher minimum would help define these literacy projects as State initiatives and would add credibility to the evaluation results.

Discussion: We encourage applicants to serve as many schools as possible; however, we do not believe that a higher minimum number of schools is needed.

Changes: None.

Comment: Two commenters requested that we reduce the number of struggling readers (75) per school that we require as the minimum number of students needed to support a rigorous, experimental evaluation.

Discussion: We proposed the requirement of a minimum of 75 struggling readers per school per year to ensure that the process of student-level random assignment yields treatment and control group samples that are comparable. Student-level random assignment in schools with fewer than 75 eligible struggling readers is more likely to result in treatment and control groups that are not comparable. However, we have revised Priority 1 to give applicants the option of including students in grades 9 through 12, as well as in grades 6 through 8. Because high schools typically have significantly larger enrollments than middle or junior high schools, this change may enable more applicants to identify 5 or more schools that have 75 or more struggling readers.

Changes: None.

Comment: One commenter noted that screening students for placement in supplemental interventions through the administration of a nationally normed assessment would require careful planning and coordination by the evaluator and school administrators. The commenter expressed the view that the timing of the screening would most likely require that screening tests be administered in the school year prior to the year of full program implementation. The commenter asked about the timing of grant awards.

Discussion: We will make awards by September 30, 2009, and we expect the supplementary literacy intervention to be fully implemented in all schools included in a project by the start of school year 2010–11. The time period that precedes full program implementation will be used to prepare for evaluation and implementation. The Department has set aside funds for technical assistance to evaluators. Project directors and evaluators will cooperate with technical assistance providers by completing a series of plans for screening students for eligibility, randomizing students or schools, collecting data, providing professional development, and planning for other crucial processes identified by the technical assistance provider.

Changes: None.

Comment: Two commenters proposed that we require evaluations to include the direct collection of implementation data, data on the level of student participation, and an assessment of the quality of professional development. In addition, one of the commenters noted that evaluations need to employ a wider set of statistical tools such as sampling, staggered starting time, and the use of

more effective measures and that evaluations need to provide for the evaluation of fidelity of instruction for the control group. The commenter also suggested that a local literacy specialist be involved in collecting data for the evaluation.

Discussion: The Institute of Education Sciences will review all of the evaluation plans to help ensure that the impact reports produced by evaluators meet rigorous standards for scientific evidence and will consider these comments in the course of that review.

Changes: None.

Comment: A commenter asked about the availability of funds to cover administrative costs incurred by the State educational agency in implementing and evaluating the supplemental literacy interventions.

Discussion: Grant funds are available to cover reasonable and necessary expenses incurred in carrying out the project, which may include State administrative costs.

Changes: None.

Comment: None.

Discussion: We specified in the NPP that to be considered eligible an applicant must include in its evaluation design a sample size that includes no fewer than 750 struggling readers enrolled in no fewer than 5 schools in each year of the evaluation. After the publication of the NPP, we realized that applicants would benefit from a clarification of the required sample size.

*Change*s: Although, we have not made a substantive change in the definition of the sample size as it appeared in paragraph (h) of Priority 2, we have added two sentences that expand on the definition by including examples of an adequate sample size.

Requirements and Definitions—Eligible Schools

Comment: None.

Discussion: We specified in the NPP that to be considered an eligible school under this program, an applicant must include in its application, among other things, assessment data for the 2007–08 and 2008–09 school years that demonstrate that a minimum of 75 students in the grades to be served by the supplemental literacy intervention were struggling readers. After the NPP was published, we realized that the 2008–09 State assessment data may not be available in time for applicants to include these data in their applications. We have modified this requirement to provide that an applicant must include the 2007–08 and 2008–09 data or data for the most recent two years for which data are available. We have made a similar change in the definition of eligible schools.

Changes: The requirement for eligible schools and the definition of eligible schools have been changed to provide that an applicant must include in its application the 2007–08 and 2008–09 assessment data or data for the two most recent years for which data are available.

Requirements and Selection Criteria—Supplemental Literacy Intervention Logic Model and Assessment Requirements; Project Design

Comment: None.

Discussion: We proposed in the NPP that to be considered for an award under this competition, an applicant must include in its application evidence regarding the screening, diagnostic, and outcome reading assessments of student literacy skills that the applicant would use to inform the identification of struggling readers and the content of their instruction. We also proposed in the Project Design criterion that the Secretary would evaluate applications in part on the extent to which the proposed project using reading assessments for screening struggling readers and for diagnosing individual student needs. Although we identified the purposes of two of the three kinds of assessments (screening and diagnostic) in both of these sections, we did not specify the purpose of the outcome reading assessment. To correct this omission, we have modified this requirement and the Project Design selection criterion to indicate that the purpose of the outcome reading assessment is to evaluate the effectiveness of the supplemental literacy intervention.

Changes: We have modified paragraph (c) of the Supplemental Literacy Intervention Logic Model and Assessment Requirements and paragraph (4) of the Project Design selection criterion to indicate that the purpose of the outcome reading assessment is to evaluate the effectiveness of the supplemental literacy intervention.

Final Priorities

Priority 1—Supplemental Literacy Intervention for Struggling Readers in Middle and High School Grades

To be eligible for consideration under this priority, an applicant must propose to implement a supplemental literacy intervention during the second, third, and fourth years of the project period that—

(a) Will be provided to struggling readers (as defined elsewhere in this notice) in any of grades 6 through 12 in no fewer than 5 eligible schools;

(b) Supplements the regular English language arts instruction students receive;

(c) Provides instruction exclusively or primarily during the regular school day, but that may be augmented by after-school instruction;

(d) Is at least one full school year in duration;

(e) Includes the use of a nationally normed, reliable, and valid screening reading assessment (as defined elsewhere in this notice) to identify struggling readers;

(f) Includes the use of a nationally normed, reliable, and valid diagnostic reading assessment (as defined elsewhere in this notice) to pinpoint students' instructional needs;

(g) Uses a research-based literacy model that is flexible enough to meet the varied needs of struggling readers, is intense enough to accelerate the development of literacy skills, and includes, at a minimum, the following practices:

(1) Explicit vocabulary instruction.

(2) Direct and explicit comprehension strategy instruction.

(3) Opportunities for extended discussion of text meaning and interpretation.

(4) Instruction in reading foundational skills, such as decoding and fluency (for students who need to be taught these skills).

(5) Course content intended to improve student motivation and engagement in literacy learning.

(6) Instruction in writing; and

(h) Has been implemented in at least one school in the United States during the preceding five years.

Priority 2—Rigorous and Independent Evaluation

To be eligible for consideration under this priority, an applicant must propose to support a rigorous experimental evaluation of the effectiveness of the supplemental literacy intervention it implements under Priority 1 (Supplemental Literacy Intervention for Struggling Readers in Middle and High School Grades) during the second, third, and fourth years of the project that will—

(a) Be carried out by an independent evaluator whose role in the project is limited solely to conducting the evaluation;

(b) Use a random lottery to assign eligible struggling readers in each school in the project either to the supplemental literacy intervention or to other activities in which they would otherwise participate, such as a study

hall, electives, or another activity that does not involve supplemental literacy instruction;

(c) Include rigorous and appropriate procedures to monitor the integrity of the random assignment of students, minimize crossover and contamination between the treatment and control groups, and monitor, document, and, where possible, minimize student attrition from the sample;

(d) Measure outcomes of the supplemental literacy intervention using, at a minimum:

(1) The reading/language arts assessment used by the State to determine whether a school has made adequate yearly progress under part A of title I of the ESEA.

(2) A nationally normed, reliable, and valid outcome reading assessment (as defined elsewhere in this notice) that is closely aligned with the literacy skills targeted by the supplemental literacy intervention;

(e) Use rigorous statistical models to analyze the impact of the supplemental literacy intervention on student achievement, including the use of students' prior-year test scores as a covariate in the model to improve statistical precision and also including appropriate statistical techniques for taking into account the clustering of students within schools;

(f) Include an analysis of the fidelity of implementation of the critical features of the supplemental literacy intervention based on data collected by the evaluator;

(g) Include measures designed to ensure that the evaluator obtains high response rates to all data collections;

(h) Include no fewer than 750 struggling readers per year in all of the schools and grades served by the supplemental literacy intervention. To meet the eligibility requirements, an applicant with 5 schools would need an average of 150 struggling readers in all grades served by the intervention per school. An applicant with 10 schools would also meet the eligibility requirements if each school had 75 struggling readers in all grades served by the intervention; and

(i) Be designed to detect not less than a 0.10 standard deviation impact of the supplemental literacy intervention on student achievement, which represents approximately 3 to 5 months' growth in reading achievement on standardized assessments for the typical student in grades 6 through 12.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements

The Assistant Secretary for Elementary and Secondary Education establishes the following requirements for this program. We may apply these requirements in any year in which this program is in effect.

Eligible Applicants: To be considered for an award under this competition, an applicant must be a State educational agency (SEA) that applies on behalf of itself and one or more LEAs that have governing authority over the eligible schools (as defined elsewhere in this notice) that the applicant proposes to include in the project.

Eligible schools: To be considered for an award under this competition, an eligible applicant must include in its application the following with respect to each school it proposes to include in the project:

(a) The school's name, location, and enrollment disaggregated by grade level for the 2008–09 school year.

(b) State or other assessment data that demonstrate that, during each of the 2007–08 and 2008–09 school years (or the most recent two years for which data are available), a minimum of 75 students in the grades to be served by the supplemental literacy intervention were struggling readers (as defined elsewhere in this notice).

(c) Evidence that the school is eligible to receive funds under part A of title I of the ESEA, pursuant to section 1113 of the ESEA.

(d) A letter from the superintendent of the LEA that has governing authority over the school and the principal of the school in which they—

(1) Agree to implement the proposed supplemental literacy intervention during the 2010–11, 2011–12, and 2012–13 school years, adhering strictly to the design of the intervention;

(2) Agree to allow eligible struggling readers to be randomly assigned (by lottery) to either the supplemental literacy intervention curriculum or to other activities in which they would otherwise participate, such as a study hall, electives, or other activity that does not involve supplemental reading instruction; and

(3) Agree to participate in the evaluation, including in the evaluator's collection of data on student outcomes and program implementation.

Supplemental Literacy Intervention Logic Model and Assessment Requirements: To be considered for an award under this competition, an applicant must include in its application the following evidence with respect to the supplemental literacy intervention it proposes to implement and evaluate:

(a) Evidence that the supplemental literacy intervention has been implemented in at least one school in the United States during the preceding five years.

(b) A one-page logic model that shows a clear, logical pathway leading from the project inputs and activities, through classroom instruction, to the expected impacts on students.

(c) The nationally normed, reliable, and valid screening, diagnostic, and outcome reading assessments (as these reading assessments are defined elsewhere in this notice) of student literacy skills that the applicant would use to inform the identification of struggling readers and the content of their instruction, and to evaluate the effectiveness of the supplemental literacy intervention.

Definitions

The Assistant Secretary for Elementary and Secondary Education establishes several definitions that will help clarify the population of students eligible for services under this competition and the tools to be used to identify those eligible students. We may apply one or more of these definitions in any year in which this program is in effect.

Diagnostic reading assessment means an assessment that is—

(a) Valid, reliable, and based on scientifically based reading research; and

(b) Used for the purpose of—

(1) Identifying a child's specific areas of strength and weakness;

(2) Determining any difficulties that a child may have in learning to read and the potential cause of such difficulties; and

(3) Helping to determine possible reading intervention strategies and related special needs.

Eligible school means a school that—

(a) Is eligible to receive funds under part A of title I of the ESEA, pursuant to section 1113 of the ESEA;

(b) Serves students in any of grades 6 through 12; and

(c) Enrolled not fewer than 75 students in the grades that will be served by the supplemental literacy intervention during the 2007–08 and 2008–09 school years (or the two most recent years for which data are available) whose reading skills were two or more years below grade level.

Outcome reading assessment means an assessment that is—

(a) Valid, reliable, and nationally normed;

(b) Closely aligned with the literacy skills targeted by the supplemental literacy intervention; and

(c) Used for the purpose of—

(1) Measuring student reading achievement; and

(2) Evaluating the effectiveness of the supplemental literacy intervention.

Screening reading assessment means an assessment that is—

(a) Valid, reliable, and based on scientifically based reading research; and

(b) A brief procedure designed as a first step in identifying children who may be at high risk for delayed development or academic failure and in need of further diagnosis of their need for special services or additional literacy instruction.

Struggling readers means readers who—

(a) Have only partial mastery of the prerequisite knowledge and skills that are fundamental for reading at grade level; and

(b) Are reading two or more grades below grade level when measured on an initial screening reading assessment.

Selection Criteria

The Assistant Secretary for Elementary and Secondary Education establishes the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria in any year in which this program is in effect. In the notice inviting applications or the application package or both we will announce the maximum possible points assigned to each criterion.

(a) *Significance.*

(1) The potential contribution of the project to the development and advancement of theory, research, and practices in the field of adolescent literacy, including—

(i) In the case of a supplemental literacy intervention that has not been evaluated through a large-scale experimental evaluation, the extent to which other empirical evidence (such as smaller-scale experimental or quasi-experimental studies of the effects of the intervention on student achievement) demonstrates that the intervention is likely to be effective in improving the reading skills of struggling readers; or

(ii) In the case of a supplemental literacy intervention that has been evaluated by one or more large-scale experimental evaluations, the extent to which those evaluations provide evidence that demonstrates that the intervention is likely to be effective in improving the reading skills of struggling readers and that the proposed evaluation would increase substantially knowledge in the field of adolescent literacy, such as by studying the effectiveness of the intervention among a different population than studied in previous experimental evaluations or by using an improved evaluation design (such as one that has a marked increase in statistical power).

(2) The extent to which the proposed supplemental literacy intervention can be replicated in a variety of settings without significant modifications.

(b) *Project Design.*

(1) The extent to which the supplemental literacy intervention uses a research-based literacy model that is flexible enough to meet the varied needs of struggling readers, is intense enough to accelerate the development of literacy skills, and includes, at a minimum, the following practices:

(i) Explicit vocabulary instruction;

(ii) Direct and explicit comprehension strategy instruction;

(iii) Opportunities for extended discussion of text meaning and interpretation;

(iv) Instruction in reading foundational skills, such as decoding and fluency (for students who need to be taught these skills);

(v) Course content designed to improve student motivation and engagement in literacy learning; and

(vi) Instruction in writing.

(2) The extent to which the professional development model proposed for the project has sufficient intensity (in terms of the number of hours or days).

(3) The extent to which the provider of the professional development identified in the application has the appropriate experience and knowledge to provide high-quality professional development.

(4) The extent to which the proposed project uses nationally normed, valid, and reliable screening reading assessments for screening struggling readers, diagnostic reading assessments for identifying individual student needs, and outcome assessments for evaluating the effectiveness of the supplemental literacy intervention.

(c) *Project Evaluation.*

(1) The extent to which the evaluation plan includes data from the reading/English language arts assessment used by the State to measure adequate yearly progress under part A of title I of the ESEA and from a second, evaluator-administered, nationally normed, reliable, and valid measure of student reading achievement that is closely aligned with the goals of the intervention.

(2) The extent to which the evaluation plan describes an objective and appropriate method for the independent evaluator to conduct random assignment of students to treatment and control conditions; rigorous and appropriate methods for monitoring the integrity of random assignment and for minimizing crossover and contamination between the treatment and control groups; and rigorous and appropriate methods for monitoring, documenting, and, where possible, minimizing, student attrition from the sample.

(3) The extent to which the evaluation plan includes a clear, well-documented, and rigorous method for measuring the fidelity of implementation of the critical features of the intervention.

(4) The extent to which the evaluation plan describes rigorous statistical procedures for the analysis of the data that will be collected, including:

(i) A clear discussion of the relationship between hypotheses, measures, and independent and dependent variables.

(ii) Appropriate statistical techniques for taking into account the clustering of students within schools.

(iii) The use of data on students' achievement in prior years as a covariate to improve statistical precision.

(iv) In the case of qualitative data analyses, the use of appropriate and rigorous methods to index, summarize, and interpret data.

(5) The extent to which the independent evaluator identified in the application has experience in conducting scientifically based reading research and in designing and conducting experimental evaluations.

(6) The extent to which the proposed budget allocates sufficient funds to carry out a high-quality evaluation of the proposed project.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these priorities, requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this final regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priorities, requirements, definitions, and selection criteria justify the costs.

We have determined, also, that this final regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

We summarized the costs and benefits of this regulatory action in the notice of proposed priorities, requirements, definitions, and selection criteria.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Delegation of Authority: The Secretary of Education has delegated authority to Joseph C. Conaty, Director, Academic Improvement and Teacher Quality Programs for the Office of Elementary and Secondary Education, to perform the functions of the Assistant Secretary for Elementary and Secondary Education.

Dated: June 5, 2009.

Joseph P. Conaty,

Director, Academic Improvement and Teacher Quality Programs.

[FR Doc. E9–13754 Filed 6–10–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Striving Readers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

AGENCY: Department of Education.

ACTION: Notice.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.371A.

Dates:

Applications Available: June 11, 2009.

Deadline for Notice of Intent To Apply: July 1, 2009.

Date of Pre-Application Meeting: The application package on the Striving Readers Web site at *http://www.ed.gov/programs/strivingreaders/index.html* includes specific dates and times for technical assistance workshops that will instruct applicants in completing the application package.

Deadline for Transmittal of Applications: August 10, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the Striving Readers program are to raise the literacy levels of adolescent students in schools that are eligible for assistance under Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (ESEA), and that enroll significant numbers of students reading below grade level and to build a strong, scientific research base for identifying and replicating strategies that improve adolescent literacy instruction.

Priorities: These priorities are from the notice of final priorities, requirements, definitions, and selection criteria for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

Absolute Priority 1—Supplemental Literacy Intervention for Struggling Readers in Middle and High School Grades

To be eligible for consideration under this priority, an applicant must propose to implement a supplemental literacy intervention during the second, third, and fourth years of the project period that—

(a) Will be provided to struggling readers (as defined elsewhere in this notice) in any of grades 6 through 12 in no fewer than 5 eligible schools;

(b) Supplements the regular English language arts instruction students receive;

(c) Provides instruction exclusively or primarily during the regular school day, but that may be augmented by after-school instruction;

(d) Is at least one full school year in duration;

(e) Includes the use of a nationally normed, reliable, and valid screening reading assessment (as defined elsewhere in this notice) to identify struggling readers;

(f) Includes the use of a nationally normed, reliable, and valid diagnostic reading assessment (as defined elsewhere in this notice) to pinpoint students' instructional needs;

(g) Uses a research-based literacy model that is flexible enough to meet the varied needs of struggling readers, is intense enough to accelerate the development of literacy skills, and includes, at a minimum, the following practices:

(1) Explicit vocabulary instruction.

(2) Direct and explicit comprehension strategy instruction.

(3) Opportunities for extended discussion of text meaning and interpretation.

(4) Instruction in reading foundational skills, such as decoding and fluency (for students who need to be taught these skills).

(5) Course content intended to improve student motivation and engagement in literacy learning.

(6) Instruction in writing; and

(h) Has been implemented in at least one school in the United States during the preceding five years.

Absolute Priority 2—Rigorous and Independent Evaluation

To be eligible for consideration under this priority, an applicant must propose to support a rigorous experimental evaluation of the effectiveness of the supplemental literacy intervention it implements under Priority 1 (Supplemental Literacy Intervention for Struggling Readers in Middle and High School Grades) during the second, third, and fourth years of the project that will—

(a) Be carried out by an independent evaluator whose role in the project is limited solely to conducting the evaluation;

(b) Use a random lottery to assign eligible struggling readers in each school in the project either to the supplemental literacy intervention or to other activities in which they would otherwise participate, such as a study hall, electives, or another activity that does not involve supplemental literacy instruction;

(c) Include rigorous and appropriate procedures to monitor the integrity of the random assignment of students, minimize crossover and contamination between the treatment and control groups, and monitor, document, and, where possible, minimize student attrition from the sample;

(d) Measure outcomes of the supplemental literacy intervention using, at a minimum:

(1) The reading language arts assessment used by the State to determine whether a school has made adequate yearly progress under part A of title I of the ESEA.

(2) A nationally normed, reliable, and valid outcome reading assessment (as defined elsewhere in this notice) that is closely aligned with the literacy skills targeted by the supplemental literacy intervention;

(e) Use rigorous statistical models to analyze the impact of the supplemental literacy intervention on student achievement, including the use of students' prior-year test scores as a covariate in the model to improve statistical precision and also including appropriate statistical techniques for taking into account the clustering of students within schools;

(f) Include an analysis of the fidelity of implementation of the critical features of the supplemental literacy intervention based on data collected by the evaluator;

(g) Include measures designed to ensure that the evaluator obtains high response rates to all data collections;

(h) Include no fewer than 750 struggling readers per year in all of the schools and grades served by the supplemental literacy intervention. To meet the eligibility requirements, an applicant with 5 schools would need an average of 150 struggling readers in all grades served by the intervention per school. An applicant with 10 schools would also meet the eligibility requirements if each school had 75 struggling readers in all grades served by the intervention; and

(i) Be designed to detect not less than a 0.10 standard deviation impact of the supplemental literacy intervention on student achievement, which represents approximately 3 to 5 months of growth in reading achievement on standardized assessments for the typical student in grades 6 through 12.

Application Requirements: To be considered for an award under this competition, an applicant must include in its application the following evidence with respect to the supplemental literacy intervention it proposes to implement and evaluate:

(a) Evidence that the supplemental literacy intervention has been implemented in at least one school in the United States during the preceding five years.

(b) A one-page logic model that shows a clear, logical pathway leading from the project inputs and activities, through classroom instruction, to the expected impacts on students.

(c) The nationally normed, reliable, and valid screening, diagnostic, and outcome reading assessments (as these reading assessments are defined elsewhere in this notice) of student literacy skills that the applicant would use to inform the identification of struggling readers and the content of their instruction, and to evaluate the effectiveness of the supplemental literacy intervention.

Program Definitions: The following definitions apply to this program:

Diagnostic reading assessment means an assessment that is—

(a) Valid, reliable, and based on scientifically based reading research; and

(b) Used for the purpose of—

(1) Identifying a child's specific areas of strength and weakness;

(2) Determining any difficulties that a child may have in learning to read and the potential cause of such difficulties; and

(3) Helping to determine possible reading intervention strategies and related special needs.

Eligible school means a school that—

(a) Is eligible to receive funds under part A of title I of the ESEA, pursuant to section 1113 of the ESEA;

(b) Serves students in any of grades 6 through 12; and

(c) Enrolled not fewer than 75 students in the grades that will be served by the supplemental literacy intervention during the 2007–08 and 2008–09 school years (or in the two most recent years for which data are available) whose reading skills were two or more years below grade level.

Outcome reading assessment means an assessment that is—

(a) Valid, reliable, and nationally normed;

(b) Closely aligned with the literacy skills targeted by the supplemental literacy intervention; and

(c) Used for the purpose of—

(1) Measuring student reading achievement; and

(2) Evaluating the effectiveness of the supplemental literacy intervention.

Screening reading assessment means an assessment that is—

(a) Valid, reliable, and based on scientifically based reading research; and

(b) A brief procedure designed as a first step in identifying children who may be at high risk for delayed development or academic failure and in need of further diagnosis of their need for special services or additional literacy instruction.

Struggling readers means readers who—

(a) Have only partial mastery of the prerequisite knowledge and skills that are fundamental for reading at grade level; and

(b) Are reading two or more grades below grade level when measured on an initial screening reading assessment.

Program Authority: 20 U.S.C. 6492.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities, requirements, definitions, and selection criteria, published elsewhere in this issue of the **Federal Register**.

Note: The regulations for this program in 34 CFR part 79 apply to all applicants except Federally recognized Indian Tribes.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $7.2 million.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2010 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $750,000–$1.3 million.

Estimated Average Size of Awards: $1 million.

Estimated Number of Awards: 7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months. During the first several months of the project period, the Department will provide technical assistance for evaluators and project directors in planning for implementation and evaluation of the supplemental literacy intervention. Evaluators and project directors will cooperate with the Department and the technical assistance provider in preparing for full implementation in school year 2010–11 by completing a series of plans for randomizing students, tracking students, screening students for placement, collecting data, providing professional development, and planning for other crucial processes identified by the technical assistance provider.

III. Eligibility Information

1. *Eligible Applicant:* A State educational agency (SEA) that applies on behalf of itself and one or more LEAs, including charter schools considered to be LEAs in accordance with State law, that have governing authority over the eligible schools (as defined elsewhere in this notice) that the applicant proposes to include in the project.

To be considered for an award under this competition, an eligible applicant must include in the application the following with respect to each school it proposes to include in the project:

(a) The school's name, location, and enrollment disaggregated by grade level for the 2008–09 school year.

(b) State or other assessment data that demonstrate that, during each of the 2007–08 and 2008–09 school years (or the most recent two years for which data are available), a minimum of 75 students in the grades to be served by the supplemental literacy intervention were struggling readers (as defined elsewhere in this notice).

(c) Evidence that the school is eligible to receive funds under part A of title I of the ESEA, pursuant to section 1113 of the ESEA.

(d) A letter from the superintendent of the LEA that has governing authority over the school and the principal of the school that they—

(1) Agree to implement the proposed supplemental literacy intervention during the 2010–11, 2011–12, and 2012–13 school years, adhering strictly to the design of the intervention;

(2) Agree to allow eligible struggling readers to be randomly assigned (by lottery) to either the supplemental literacy intervention curriculum or to other activities in which they would otherwise participate, such as a study hall, electives, or other activity that does not involve supplemental reading instruction; and

(3) Agree to participate in the evaluation, including in the evaluator's collection of data on student outcomes and program implementation.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. Address To Request Application Package

You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/programs/strivingreaders/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. *Telephone, toll free:* 1–877–433–7827. *Fax:* (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, *toll free:* 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its *e-mail address: edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA 84.731A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. Content and Form of Application Submission

Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to no more than 40 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III). We further encourage applicants to limit resumes to no more than three pages and all other attachments or appendices to no more than 20 pages.

Our reviewers will not read any pages of your application that exceed the page limit.

3. Submission Dates and Times

Applications Available: June 11, 2009.

Deadline for Notice of Intent To Apply: We will be able to develop a more efficient process for reviewing grant applications if we have a better understanding of the number of applications we will receive. Therefore, we strongly encourage each potential applicant to send an e-mail notice of its intent to apply for funding by July 1, 2009. The notice of intent to apply is optional; you may still submit an application if you have not notified us of your intention to apply. Send the e-mail to: *StrivingReaders@ed.gov.*

Date of Pre-Application Meeting: The application package on the Striving Readers Web site at *http://www.ed.gov/programs/strivingreaders/index.html* includes specific dates and times for technical assistance workshops that will instruct applicants in completing the application package. Instructions in the form of a PowerPoint and Frequently Asked Questions will also be available on the Striving Readers Web site.

Deadline for Transmittal of Applications: August 10, 2009.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application), accessible through the Department's e-Grants site or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. Funding Restrictions

We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. Other Submission Requirements

Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E–Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgement of you submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the

Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.371A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.371A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from the notice of final priorities, requirements, definitions, and selection criteria, published elsewhere in this issue of the **Federal Register**, and are as follows:

(a) *Significance.* (10 points)

(1) The potential contribution of the project to the development and advancement of theory, research, and practices in the field of adolescent literacy, including—

(i) In the case of a supplemental literacy intervention that has not been evaluated through a large-scale experimental evaluation, the extent to which other empirical evidence (such as smaller-scale experimental or quasi-experimental studies of the effects of the intervention on student achievement) demonstrates that the intervention is likely to be effective in improving the reading skills of struggling readers; or

(ii) In the case of a supplemental literacy intervention that has been evaluated by one or more large-scale experimental evaluations, the extent to which those evaluations provide evidence that demonstrates that the intervention is likely to be effective in improving the reading skills of struggling readers and that the proposed evaluation would increase substantially knowledge in the field of adolescent literacy, such as by studying the effectiveness of the intervention among a different population than studied in previous experimental evaluations or by using an improved evaluation design (such as one that has a marked increase in statistical power).

(2) The extent to which the proposed supplemental literacy intervention can be replicated in a variety of settings without significant modifications.

(b) *Project Design.* (50 points)

(1) The extent to which the supplemental literacy intervention uses a research-based literacy model that is flexible enough to meet the varied needs of struggling readers, is intense enough to accelerate the development of literacy skills, and includes, at a minimum, the following practices (20 points):

(i) Explicit vocabulary instruction;

(ii) Direct and explicit comprehension strategy instruction;

(iii) Opportunities for extended discussion of text meaning and interpretation;

(iv) Instruction in reading foundational skills, such as decoding and fluency (for students who need to be taught these skills);

(v) Course content designed to improve student motivation and engagement in literacy learning; and

(vi) Instruction in writing.

(2) The extent to which the professional development model proposed for the project has sufficient intensity (in terms of the number of hours or days) (10 points).

(3) The extent to which the provider of the professional development identified in the application has the appropriate experience and knowledge to provide high-quality professional development (10 points).

(4) The extent to which the proposed project uses nationally normed, valid, and reliable screening reading assessments for screening struggling readers, diagnostic reading assessments for identifying individual student needs, and outcome assessments for evaluating the effectiveness of the supplemental literacy intervention. (10 points)

(c) *Project Evaluation.* (40 points)

(1) The extent to which the evaluation plan includes data from the reading/English language arts assessment used by the State to measure adequate yearly progress under part A of title I of the ESEA and from a second, evaluator-administered, nationally normed, reliable, and valid measure of student reading achievement that is closely aligned with the goals of the intervention (8 points).

(2) The extent to which the evaluation plan describes an objective and appropriate method for the independent evaluator to conduct random assignment of students to treatment and control conditions; rigorous and appropriate methods for monitoring the integrity of random assignment and for minimizing crossover and contamination between the treatment and control groups; and rigorous and appropriate methods for monitoring, documenting, and, where possible, minimizing, student attrition from the sample (8 points).

(3) The extent to which the evaluation plan includes a clear, well-documented, and rigorous method for measuring the fidelity of implementation of the critical features of the intervention (8 points).

(4) The extent to which the evaluation plan describes rigorous statistical procedures for the analysis of the data that will be collected, including (4 points):

(i) A clear discussion of the relationship between hypotheses, measures, and independent and dependent variables.

(ii) Appropriate statistical techniques for taking into account the clustering of students within schools.

(iii) The use of data on students' achievement in prior years as a covariate to improve statistical precision.

(iv) In the case of qualitative data analyses, the use of appropriate and rigorous methods to index, summarize, and interpret data.

(5) The extent to which the independent evaluator identified in the application has experience in conducting scientifically based reading research and in designing and conducting experimental evaluations (8 points).

(6) The extent to which the proposed budget allocates sufficient funds to carry out a high-quality evaluation of the proposed project (4 points).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Secretary has established the following two measures for evaluating the overall effectiveness of the Striving Readers program: (1) The percentage of adolescent students reading significantly below grade level who demonstrate a gain in their reading achievement, at a minimum of one grade level or its equivalent, after participating in an intensive intervention over an academic year; and (2) the percentage of students in schools participating in the Striving Readers program who score at or above proficient on the State's assessment in reading/language arts.

VII. Agency Contact

For Further Information Contact: Marcia J. Kingman, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E106, Washington, DC 20202–6400. *Telephone:* (202) 401–0003 or by *e-mail: Marcia.Kingman@ed.gov.*

If you use a TDD, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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Delegation of Authority: The Secretary of Education has delegated authority to Joseph C. Conaty, Director, Academic Improvement and Teacher Quality Programs for the Office of Elementary and Secondary Education, to perform the functions of the Assistant Secretary for Elementary and Secondary Education.

Dated: June 5, 2009.

Joseph C. Conaty,

Director, Academic Improvement and Teacher Quality Programs.

[FR Doc. E9–13755 Filed 6–10–09; 8:45 am]

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Federal Register

Vol. 74, No. 111

Thursday, June 11, 2009

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FEDERAL REGISTER PAGES AND DATE, JUNE

26077–26280 1
26281–26510 2
26511–26770 3
26771–26932 4
26933–27070 5
27071–27242 8
27243–27422 9
27423–27678 10
27679–27902 11

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8387 26929
8387 (Correction).....27677
8388 26931
8389 27067
8390 27069

Administrative Orders:
Memorandums:
Memo. of May 27, 2009 26277

5 CFR

Proposed Rules:
894 26302

7 CFR

28 26771
301 .....26774, 27071, 27423
319 26511
457 26281
1467 26281

Proposed Rules:
205 26591
319 27456
352 27456
360 27456
361 27456
920 26806
1205 26810
1209 26984
1220 27467

8 CFR

1 26933
100 26933
103 26933
204 26933
207 26933
208 26933
211 26933
212 26933
214 .....26514, 26933
216 26933
236 26933
244 26933
245 26933
248 26933
264 26933
274a 26514, 26933
301 26933
316 26933
320 26933
322 26933
324 26933
327 26933
328 26933
329 26933
330 26933
334 26933
392 26933

10 CFR

72 .....26285, 27423
170 27642
171 27642

Proposed Rules:
50 .....26303, 27724
52 27724
70 26814
72 .....26310, 27469
430 26816
431 26596

12 CFR

225 .....26077, 26081
229 26515
337 .....26516, 27679, 27683
370 .....26521, 26941

Proposed Rules:
34 27386
208 27386
365 27386
563 27386
610 27386
761 27386
1212 27470
1230 26989
1770 26989

13 CFR

120 .....27243, 27426

14 CFR

23 26777
25 .....26946, 26948
34 26778
36 27076
39 .....26288, 26291, 27684, 27686, 27689, 27691, 27693, 27695, 27698, 27702, 27704
71 .....27076, 27077, 27078
95 26779

Proposed Rules:
23 26818
39 .....26312, 26315, 26317, 26322, 26994, 27254, 27257, 27260, 27474, 27476, 27725

16 CFR

1500 27248

Proposed Rules:
321 .....26118, 26130
322 .....26118, 26130

17 CFR

211 27427
239 26782
274 26782

20 CFR

Proposed Rules:
416 27727
617 27262

618 27262
665 27262
671 27262

21 CFR

510 26951
520 27706
522 26951
524 26782

26 CFR

1 ....27079, 27080, 27868
20 ....27079, 27080
25 27080
602 27868
Proposed Rules:
20 26597

28 CFR

Proposed Rules:
16 26598

29 CFR

4001 27080
4901 27080
4902 27080

30 CFR

Proposed Rules:
74 27263

31 CFR

285 ....27432, 27707
356 26084
538 27433
Proposed Rules:
103 26996
285 27730

33 CFR

1 27435
25 27435
66 27435
70 27435
72 27435
100 27435
110 27435
117 ....26087, 26293, 26294, 26295, 26296, 26952, 27249, 27442
133 27435
135 27435
136 27435
137 27435
138 27435
155 27435
157 27435
161 27435
165 ....26087, 26089, 26297, 26782, 26785, 26786, 26954, 27435
166 27435
Proposed Rules:
100 ....26138, 26326, 27478
110 ....26328, 27000
117 26820
165 ....26138, 26823, 27481

36 CFR

223 26091
261 26091

38 CFR

3 ....26956, 26958
4 26958
9 26788
38 26092

39 CFR

20 26959
3020 26789

40 CFR

51 26098
52 ....26098, 26099, 26103, 26525, 27442, 27708, 27711, 27714, 27716
62 ....27444, 27718, 27720, 27722
180 ....26527, 26536, 26543, 27447
300 26962
Proposed Rules:
51 27002
52 ....26141, 26600, 27084, 27731, 27737, 27738
62 27444
63 ....26142, 27265
93 27085
300 27003

42 CFR

412 26546
Proposed Rules:
412 26600

44 CFR

64 26569
65 ....26572, 26577
Proposed Rules:
67 ....26636, 26640

45 CFR

681 26793

47 CFR

73 ....26299, 26300, 26801, 26802, 27454
74 26300
90 27455
400 26965
Proposed Rules:
1 26329
73 ....26826, 27484

48 CFR

2 26981
22 26981
52 26981
546 26107
552 26107
Proposed Rules:
2 26646
4 26646
12 26646
39 26646
52 26646

49 CFR

1 26981
Proposed Rules:
387 27485
541 27493

50 CFR

17 26488
216 26580
635 ....26110, 26803
648 ....26589, 27251, 27252
660 26983
665 27253
679 ....26804, 26805
Proposed Rules:
17 ....27004, 27266, 27271, 27588
229 27739
300 26160
622 ....26170, 26171, 26827, 26829
635 26174
679 ....26183, 27498

LIST OF PUBLIC LAWS

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H.R. 131/P.L. 111–25
Ronald Reagan Centennial Commission Act (June 2, 2009; 123 Stat. 1767)

Last List May 27, 2009

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