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WHO: Sponsored by the Office of the Federal Register.

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

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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, September 15, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741-6008



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Federal Register

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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 636

RIN 0578-AA49

Wildlife Habitat Incentive Program

AGENCY: Natural Resources Conservation Service, United States Department of Agriculture.

ACTION: Interim final rule; amendment; reopening of comment period.

SUMMARY: The Natural Resources Conservation Service (NRCS) published in the Federal Register of January 16, 2009, an interim final rule with request for comment amending the program regulations for the Wildlife Habitat Incentive Program (WHIP) to incorporate programmatic changes authorized by the Food, Conservation, and Energy Act of 2008 (2008 Act). On March 12, 2009, NRCS corrected language in the interim final rule regarding the erroneous application of the payment limitation to joint operations, and extended the comment period to April 17, 2009. This document amends the interim final rule by expanding the definition of agricultural lands to include areas of a farm or ranch that are not currently under production. NRCS is also using the opportunity presented by this rulemaking to reopen the comment period. Comments are limited to the content of this amendment.

DATES: This amendment is effective on July 15, 2009. The comment period for the WHIP Interim Final Rule published on January 16, 2009 (74 FR 2786), extended March 12, 2009 (74 FR 10673), until April 17, 2009, is reopened. Submit comments on or before August 14, 2009.

ADDRESSES: You may send comments (identified by Docket Number NRCS-IFR-08005) using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://regulations.gov> and follow the instructions for sending comments electronically.
- *E-mail:* whip2008@wdc.usda.gov.
- *Mail:* Gregory Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Washington, DC 20250-2890.
- *Fax:* (202) 720-4265.
- *Hand Delivery Room:* USDA South Building, 1400 Independence Avenue, SW., Room 5237, Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Please ask the guard at the entrance to the South Building to call (202) 720-1845 in order to be escorted into the building.

• This interim final rule may be accessed via Internet. Users can access the NRCS homepage at: <http://www.nrcs.usda.gov/>; select the Farm Bill link from the menu; select the Interim Final Rules link from beneath the Farm Bill Public Comments Links title. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720-2600 (voice and TDD).

To view public comments, ask the guard at the entrance to the South Building to call (202) 720-4527 in order to be escorted into the building.

FOR FURTHER INFORMATION CONTACT: Gregory Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Washington, DC 20013-2890; *Phone:* (202) 720-1845; *Fax:* (202) 720-4265.

SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Order 12866

Pursuant to Executive Order 12866 (FR Doc. 93-24523, September 30, 1993), the interim final rule published on January 16, 2009, is a significant regulatory action, and NRCS conducted an economic analysis of the potential impacts associated with this program. The administrative record is available

for public inspection in Room 5831 South Building, USDA, 1400 Independence Avenue, SW., Washington, DC. NRCS reviewed the economic analysis prepared for the January 16, 2009, interim final rule and determined that the provisions of this interim final rule do not alter the assessment and the findings that were originally prepared. A copy of the analysis is available upon request from Gregory Johnson, Director, Financial Assistance Programs Division, Department of Agriculture, Natural Resources Conservation Service, Room 5237 South Building, Washington, DC 20250-2890 or electronically at: <http://www.nrcs.usda.gov/programs/whip/> under the WHIP Rules and Notices with Supporting Documents title.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Section 2904(c) of the 2008 Act requires that the Secretary use the authority in Section 808(2) of Title 5, U.S.C., which allows an agency to forego SBREFA's usual 60-day congressional review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. NRCS hereby determines that it has good cause to do so in order to meet the congressional intent to have the conservation programs, authorized or amended by Title II, in effect as soon as possible. Accordingly, this rule is effective upon filing for public inspection by the Office of the Federal Register.

Executive Order 13175

This interim final rule has been reviewed in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. NRCS has assessed the impact of this interim final rule on Indian Tribal Governments and has concluded that this rule will not have substantial direct effects 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.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this interim final rule because NRCS is required by 5 U.S.C. 553, or by any other provision of law, to publish a notice of proposed

rulemaking with respect to the subject matter of this rule.

Environmental Analysis

Availability of the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI). A programmatic environmental assessment has been prepared in association with the January 16, 2009, interim final rule. The provisions of this interim final rule do not alter the assessment and the findings that were originally prepared. The analysis determined that there would not be a significant impact to the human environment and, as a result, an Environmental Impact Statement was not required to be prepared (40 CFR part 1508.13). The EA and FONSI are available for review and comment for an additional 30 days from the date of publication of this amendment to the interim final rule in the Federal Register. A copy of the EA and FONSI may be obtained from the following Web site: http://www.nrcs.usda.gov/programs/Env_Assess/. A hard copy may also be requested from the following address and contact: Matt Harrington, National Environmental Coordinator, Ecological Sciences Division, Natural Resources Conservation Service, 1400 Independence Ave., SW., Washington, DC 20250. Comments from the public should be specific and reference that comments provided are on the EA and FONSI. Public comment may be submitted by any of the following means: (1) E-mail comments to NEPA2008@wdc.usda.gov, (2) e-mail to e-gov Web site: <http://www.regulations.gov>, or (3) written comments to: Matt Harrington, National Environmental Coordinator, Ecological Sciences Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Ave., SW., Washington, DC 20250.

Civil Rights Impact Analysis

NRCS determined through a Civil Rights Impact Analysis that the January 16, 2009, interim final rule disclosed no disproportionately adverse impacts for minorities, women, or persons with disabilities. The provisions of this interim final rule do not alter the assessment and the findings that were originally prepared.

Paperwork Reduction Act

Section 2904 of the 2008 Act requires that the promulgation of regulations and the administration of Title II of this Act shall be made without regard to chapter 35 of Title 44 U.S.C., also known as the

Paperwork Reduction Act. Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this amendment or the January 16, 2009, interim final rule.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS has developed an online application and information system for public use.

Executive Order 12988

This interim final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this interim final rule are not retroactive. The provisions of this interim final rule preempt State and local laws to the extent that such laws are inconsistent with this interim final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614 and 11 must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Title III, Section 304, requires that for each proposed major regulation with a primary purpose to regulate issues of human health, human safety, or the environment, USDA is to publish an analysis of the risks addressed by the regulation and the costs and benefits of the regulation. NRCS has determined that such a risk assessment does not apply to this interim final rule. NRCS recognizes that although such assessments can be quite helpful, the Act pertains only to a rule that has been designated as a "proposed major regulation." NRCS does not consider "interim final" or "final" rules as falling into the category of proposed major regulations.

Unfunded Mandates Reform Act of 1995

NRCS assessed the effects of the January 16, 2009, rulemaking action on State, local, and tribal governments, and the public. NRCS determined that such action did not compel the expenditure of \$100 million or more in any one year (adjusted for inflation) by any State, local, or tribal governments, or anyone in the private sector. Additionally, the

provisions of this interim final rule do not alter this determination. Therefore, a statement under Section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Background

NRCS published an interim final rule in the **Federal Register** of January 16, 2009 (74 FR 2786), amending the program regulations for WHIP found at 7 CFR part 636. NRCS published a correction to the interim final rule in the Federal Register on March 12, 2009, to address the incorrect application of the \$50,000 payment limitation to joint operations.

Under the January 16, 2009, interim final rule, NRCS limited the definition of agricultural lands to lands that are currently used to produce agricultural and forest-related products or on which livestock are produced. NRCS adopted this particular definition of "agricultural lands" for WHIP to increase consistency of definitions between similar programs. However, through its adoption of the same definition for agricultural lands, NRCS inadvertently limited the WHIP statute's inherent flexibility to enroll lands that are not eligible for enrollment under other NRCS conservation programs. Traditionally, WHIP has served as a niche program through its ability to improve wildlife habitat on areas that were not otherwise eligible for NRCS assistance.

Additionally, NRCS has precluded landowners from enrolling part of their overall farmstead into WHIP simply because the particular area is not currently used for agricultural production. NRCS has determined that the WHIP statute should not be interpreted so narrowly, especially since it may be these lands that are not currently under production that can most readily be improved for wildlife habitat consistent with the extent of current management of the farm or ranch.

NRCS proposes in this Amendment to the interim final rule an expansion of the definition of "agricultural land" for the purposes of WHIP. In particular, NRCS intends to define agricultural lands to mean cropland, grassland, rangeland, pasture, and other land determined by NRCS to be suitable for fish and wildlife habitat development, on which agricultural and forest-related products or livestock are *or have the potential to be produced*. Agricultural lands may include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of land used for *or have the potential to be used for production*.

■ For the reasons stated in the preamble, NRCS amends part 636 of Title 7 of the CFR as set forth below:

PART 636—WILDLIFE HABITAT INCENTIVE PROGRAM

■ 1. The authority citation for part 1466 continues to read as follows:

Authority: 16 U.S.C. 3839bb-1.

■ 2. Amend § 636.3 by revising the definition of “agricultural lands” to read as follows:

§ 636.3 Definitions.

* * * * *

Agricultural lands means cropland, grassland, rangeland, pasture, and other land determined by NRCS to be suitable for fish and wildlife habitat development on which agricultural and forest-related products or livestock are produced or have the potential to be produced. Agricultural lands may include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of land used for or have the potential to be used for production.

Signed this 8th day of July 2009, in Washington, DC.

Dave White,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

[FR Doc. E9-16705 Filed 7-14-09; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0633; Directorate Identifier 2009-CE-037-AD; Amendment 39-15964; AD 2009-15-01]

RIN 2120-AA64

Airworthiness Directives; Hawker Beechcraft Corporation (Type Certificate Previously Held by Raytheon Aircraft Company) Model G36 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation (Type Certificate previously held by Raytheon Aircraft Company) Model G36 airplanes. This AD requires you to inspect for any improper installation and/or chafing of the P60/J60 electrical connector,

associated wiring, and fuel line and, if found, correct the installation and replace damaged parts. This AD results from reports of chafing between the wire harness/connector(s) and fuel line. We are issuing this AD to detect and correct chafing between the wire harness/connector(s) and fuel line. This chafing could lead to fuel leaking into the cockpit and fire in the cockpit if wiring arcs through the fuel line.

DATES: This AD becomes effective on July 27, 2009.

On July 27, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive any comments on this AD by September 14, 2009.

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

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

- **Fax:** (202) 493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this AD, contact Hawker Beechcraft Corporation, *Attn:* Piston Technical Support, P.O. Box 85, Wichita, Kansas 67201; telephone: (800) 429-5372; fax: (316) 676-8745; *E-mail:* tmcd@hawkerbeechcraft.com; *Internet:* <http://www.hawkerbeechcraft.com>.

To view the comments to this AD, go to <http://www.regulations.gov>. The docket number is FAA-2009-0633; Directorate Identifier 2009-CE-037-AD.

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, Aerospace Engineer, 1801 Airport Road, Room 100, Wichita, Kansas 67209; *telephone:* (316) 946-4153; *fax:* (316) 946-4107.

SUPPLEMENTARY INFORMATION:

Discussion

We received reports of chafing between the fuel line and the P60/J60 connector and wiring. One report indicated arcing from a chafing wire harness burned a hole through the fuel tube. Another report resulted from an inspection finding where the P60/J60 connector directly contacted the fuel line.

During the manufacturing of fuel line part number (P/N) 36-920001-13,

protective insulation tube P/N 106242-6-01300, or other post-manufacturing spiral wrap was not installed or was located improperly, thereby allowing chafing electrical wire/connectors to directly contact the fuel line.

This condition, if not corrected, could result in chafing between the wire harness/connector(s) and fuel line. This chafing could lead to fuel leaking into the cockpit and fire in the cockpit if wiring arcs through the fuel line.

Relevant Service Information

We reviewed Hawker Beechcraft Mandatory Service Bulletin SB 28-3967, dated June 2009. The service information describes procedures for inspecting for any improper installation and/or chafing of the P60/J60 electrical connector, associated wiring, and fuel line and, if found, correcting the installation and replacing damaged parts.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This AD requires you to inspect for any improper installation and/or chafing of the P60/J60 electrical connector, associated wiring, and fuel line and, if found, correct the installation and replace damaged parts.

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 chafing between the wire harness/connector(s) and fuel line could lead to fuel leaking into the cockpit and fire in the cockpit if wiring arcs through the fuel line. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number “FAA-2009-0633; Directorate Identifier 2009-CE-037-AD” at the beginning of your

comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–15–01 Hawker Beechcraft Corporation (Type Certificate previously held by Raytheon Aircraft Company): Amendment 39–15964; Docket No. FAA–2009–0633; Directorate Identifier 2009–CE–037–AD.

Effective Date

(a) This AD becomes effective on July 27, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model G36 airplanes, serial numbers E–3630, E–3636 through E–3817, E–3819 through E–3834, E–3836 through E–3887, E–3889 through E–3896, E–3898, and E–3899, that are certificated in any category.

Unsafe Condition

(d) This AD results from reports of chafing between the wire harness/connector(s) and fuel line. We are issuing this AD to detect and correct improper installation and/or chafing between the wire harness/connector(s) and fuel line. This chafing could lead to fuel leaking into the cockpit and fire in the cockpit if wiring arcs through the fuel line.

Compliance

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

Actions	Compliance	Procedures
(1) Inspect for improper installation of the P60/J60 electrical connector, associated wiring, and fuel line. Also inspect for any chafing damage of the electrical wiring and fuel line.	Within 10 hours time-in-service (TIS) after July 27, 2009 (the effective date of this AD) or 6 calendar months after July 27, 2009 (the effective date of this AD), whichever occurs first.	Follow Hawker Beechcraft Mandatory Service Bulletin SB 28–3967, dated June 2009.
(2) If, as a result of the inspection required by paragraph (e)(1) of this AD, you find any improper installation of the P60/J60 electrical connector, associated wiring, or fuel line, correct the installation of the P60/J60 electrical connector, associated wiring, and fuel line. If, as a result of the inspection required by paragraph (e)(1) of this AD, you find any chafing damage of the electrical wiring or fuel line, replace or repair the damaged parts.	Before further flight after the inspection required by paragraph (e)(1) of this AD.	Follow Hawker Beechcraft Mandatory Service Bulletin SB 28–3967, dated June 2009.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita 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:* Jeff Pretz, Aerospace Engineer, 1801 Airport Road, Room 100, Wichita, Kansas 67209; *telephone:* (316) 946–4153; *fax:* (316) 946–

4107. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District

Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(g) You must use Hawker Beechcraft Mandatory Service Bulletin SB 28-3967, dated June 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 Hawker Beechcraft Corporation, Attn: Piston Technical Support, P.O. Box 85, Wichita, Kansas 67201; telephone: (800) 429-5372; fax: (316) 676-8745; E-mail: tmdc@hawkerbeechcraft.com; Internet: <http://www.hawkerbeechcraft.com>.

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

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

Issued in Kansas City, Missouri, on July 2, 2009.

Scott A. Horn,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-16383 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0437; Directorate Identifier 2009-CE-018-AD; Amendment 39-15963; AD 2009-14-13]

RIN 2120-AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC-12, PC-12/45, PC-12/47, and PC-12/47E Airplanes

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

ACTION: Final rule.

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

product. The MCAI (two different MCAI) describes the unsafe condition as:

FOCA AD HB 2002-271 was issued because the Nose Landing Gear (NLG) Right Hand (RH) upper drag link, Part Number (P/N) 532.20.12.140 was found broken on some aircraft due to fatigue cracking, and therefore a life limit of 4,000 landings was introduced.

Recent investigation of a new occurrence revealed that the replacement part NLG RH upper drag link P/N 532.20.12.289 also suffered fatigue cracking, however on a different location.

Complete failure of the NLG RH upper drag link could result in NLG collapse during landing.

and

This Airworthiness Directive (AD) is prompted by reports of several in-service cracked torque tubes. A reduced wall thickness produced during the manufacturing process has been determined to be the initial cause.

Additionally, all the involved torque tubes have been found to show fatigue cracking problems.

Such a condition, if left uncorrected, could lead to failure of the torque tube and result in loss of the steering control on ground and consequent unsafe condition.

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

DATES: This AD becomes effective August 19, 2009.

On August 19, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the Docket 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: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; fax: (816) 329-4090.

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 May 8, 2009 (74 FR 21561), and proposed to supersede AD 2003-14-07, Amendment 39-13226 (68 FR 41903, July 16, 2003). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI (two different MCAI) states:

FOCA AD HB 2002-271 was issued because the Nose Landing Gear (NLG) Right Hand (RH) upper drag link, Part Number (P/N) 532.20.12.140 was found broken on some aircraft due to fatigue cracking, and therefore a life limit of 4,000 landings was introduced.

Recent investigation of a new occurrence revealed that the replacement part NLG RH upper drag link P/N 532.20.12.289 also suffered fatigue cracking, however on a different location.

Complete failure of the NLG RH upper drag link could result in NLG collapse during landing. To address that condition, this AD is issued to mandate the implementation of the latest revision of the PC-12 Aircraft Maintenance Manual (AMM) chapter 4—airworthiness limitations section—by establishing repetitive inspections for the NLG RH upper drag links P/N 532.20.12.140 and P/N 532.20.12.289.

and

This Airworthiness Directive (AD) is prompted by reports of several in-service cracked torque tubes. A reduced wall thickness produced during the manufacturing process has been determined to be the initial cause.

Additionally, all the involved torque tubes have been found to show fatigue cracking problems.

Such a condition, if left uncorrected, could lead to failure of the torque tube and result in loss of the steering control on ground and consequent unsafe condition.

For the reason described above, this new AD mandates the replacement of certain torque tubes by new ones of an improved design and the latest revision of chapter 4 'limitations' of the PC-12 Aircraft Maintenance Manual (AMM) which introduces the new life limit for torque tubes with Part Number (P/N) 532.50.12.047.

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

Comments

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

Comment Issue: Require Using Limitations Document in Latest Maintenance

Manual Revision

Tim Kitzman states that document 12-A-04-00-00-00A-000T-A, dated January 28, 2009, has been incorporated into the latest revision of the aircraft maintenance manual. He requests that we update the AD to require incorporating the data module found in PC-12 AMM, Document No. 02049, Rev 19, dated March 1, 2009.

We disagree with the commenter. Structural and Component Limitations—Airworthiness Limitations, document 12-A-04-00-00-00A-000T-

A, dated January 28, 2009, contains the required limitations information for this AD. We are aware Pilatus periodically updates their aircraft maintenance manuals (both electronic and paper versions), and the manuals contain the limitations section referenced in this AD. We encourage owners/operators to keep their maintenance manuals up-to-date. However, paragraph 145.c.(2) of the FAA Airworthiness Directives Manual FAA-IR-M-8040.1B, dated May 28, 2008, states:

Only the version given to the OFR (Office of the Federal Register) for IBR (incorporation by reference) is the legally enforceable one. Later revised service bulletin pages, for instance, would constitute a change to the document and an "alternative method of compliance" that has not been subject to public notice and comment.

We use the AD process to mandate changes to the limitations section and we can not mandate future revisions. If the document containing the limitations section is updated and an owner/operator wants to incorporate the latest version of the document (including the limitations section) into their maintenance program, they can request an alternative method of compliance (AMOC) following the procedures in paragraph (h)(1) of this AD. You may get a copy of the FAA Airworthiness Directives Manual on the Internet at http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgOrders.nsf/Frameset?OpenPage.

We are not changing the final rule AD action based on this comment.

Conclusion

We 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 determined that 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 FAA policies.

Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 540 products of U.S. registry. We also estimate that it will take about 3.5 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 \$300 per product. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$313,200, or \$580 per product.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours and require parts costing \$4,000, for a cost of \$4,480 per product. We have no way of determining the number of products that may need these actions.

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 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 Management Facility 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 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 removing Amendment 39-13226 (68 FR 41903, July 16, 2003) and adding the following new AD:

2009-14-13 Pilatus Aircraft Ltd.:

Amendment 39-15963; Docket No. FAA-2009-0437; Directorate Identifier 2009-CE-018-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 19, 2009.

Affected ADs

(b) This AD supersedes AD 2003-14-07, Amendment 39-13226.

Applicability

(c) This AD applies to the following model and serial number airplanes, certificated in any category:

- (1) Models PC-12, PC-12/45, PC-12/47, manufacturer serial numbers (MSNs) 101 through 544 and MSNs 546 through 888; and
- (2) Model PC-12/47E, MSN 545 and MSNs 1001 through 1150.

Subject

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

Reason

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

FOCA AD HB 2002-271 was issued because the Nose Landing Gear (NLG) Right Hand (RH) upper drag link, Part Number (P/N) 532.20.12.140 was found broken on some aircraft due to fatigue cracking, and therefore a life limit of 4,000 landings was introduced.

Recent investigation of a new occurrence revealed that the replacement part NLG RH upper drag link P/N 532.20.12.289 also suffered fatigue cracking, however on a different location.

Complete failure of the NLG RH upper drag link could result in NLG collapse during landing. To address that condition, this AD is issued to mandate the implementation of the latest revision of the PC-12 Aircraft Maintenance Manual (AMM) chapter 4—airworthiness limitations section—by establishing repetitive inspections for the NLG RH upper drag links P/N 532.20.12.140 and P/N 532.20.12.289.

and

This Airworthiness Directive (AD) is prompted by reports of several in-service cracked torque tubes. A reduced wall thickness produced during the manufacturing process has been determined to be the initial cause. Additionally, all the involved torque tubes have been found to show fatigue cracking problems.

Such a condition, if left uncorrected, could lead to failure of the torque tube and result in loss of the steering control on ground and consequent unsafe condition.

For the reason described above, this new AD mandates the replacement of certain torque tubes by new ones of an improved design and the latest revision of chapter 4 “limitations” of the PC-12 Aircraft Maintenance Manual (AMM) which introduces the new life limit for torque tubes with Part Number (P/N) 532.50.12.047.

Actions and Compliance

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

(1) *Limitations Section Actions:* For all airplanes, before further flight after August 19, 2009 (the effective date of this AD), insert Structural and Component Limitations—Airworthiness Limitations, document 12-A-04-00-00-00A-000T-A, dated January 28, 2009 (for PC-12, PC-12/45, PC-12/47), and Structural and Component Limitations—Airworthiness Limitations, document 12-B-04-00-00-00A-000A-A, dated January 27, 2009 (for PC-12/47E), into the Limitations section of the FAA approved maintenance program (e.g., maintenance manual). The limitations section revision does the following:

(i) Establishes a life limit for torque tube P/N 532.50.12.047 and does not impose a life limit on torque tube P/N 532.50.12.064;

(ii) Requires doing initial and repetitive inspections of nose landing gear right hand upper drag link P/N 532.20.12.140 (for PC-12 and PC-12/45 airplanes) or P/N 532.20.12.289 (for all airplanes) in accordance with the time limits specified in the revision. The limitations do not allow

installation of the upper drag link P/N 532.20.12.140 on PC-12/47 and PC-12/47E airplanes. The 4,000 landing limit for the upper drag link P/N 532.20.12.140 installed on the PC-12 and PC-12/45 is retained from AD 2003-14-07 through this limitation requirement; and

(iii) Does not require doing initial and repetitive inspections of nose landing gear right hand upper drag link P/N 532.20.12.296; therefore, installation of upper drag link P/N 532.20.12.296 terminates the inspection requirement referenced in paragraph (f)(1)(ii) of this AD.

(2) Additional Torque Tube Actions:

(i) For PC-12 and PC-12/45, S/N 101 through 299, airplanes: Within the next 100 hours time-in-service (TIS) after August 19, 2009 (the effective date of this AD) or 1 year after August 19, 2009 (the effective date of this AD), whichever occurs first, replace the torque tube P/N 532.50.12.047 with torque tube P/N 532.50.12.064 following PILATUS AIRCRAFT LTD. Service Bulletin No: 32-021, dated November 21, 2008.

(ii) For all airplanes: As of August 19, 2009 (the effective date of this AD), do not install torque tube P/N 532.50.12.047.

FAA AD Differences

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

Other FAA AD Provisions

(h) 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: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; 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.

Special Flight Permit

(i) We are limiting the special flight permits for this AD by requiring you to fly with the landing gear extended in order to reach the nearest maintenance facility where the inspection or replacement is done.

Consult the airplane flight manual or contact PILATUS AIRCRAFT LTD. for the additional limitations for flight with landing gear extended.

Related Information

(j) Refer to MCAI (two different MCAI) AD No.: 2009-0086 dated April 14, 2009, and AD No.: 2009-0060 dated March 11, 2009; PILATUS AIRCRAFT LTD. Service Bulletin No: 32-021, dated November 21, 2008; Structural and Component Limitations—Airworthiness Limitations, document 12-A-04-00-00-00A-000T-A, dated January 28, 2009; and Structural and Component Limitations—Airworthiness Limitations, document 12-B-04-00-00-00A-000A-A, dated January 27, 2009, for related information.

Material Incorporated by Reference

(k) You must use PILATUS AIRCRAFT LTD. Service Bulletin No: 32-021, dated November 21, 2008; Structural and Component Limitations—Airworthiness Limitations, document 12-A-04-00-00-00A-000T-A, dated January 28, 2009; and Structural and Component Limitations—Airworthiness Limitations, document 12-B-04-00-00-00A-000A-A, dated January 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 PILATUS AIRCRAFT LTD., Customer Service Manager, CH-6371 STANS, Switzerland; telephone: +41 (0)41 619 62 08; fax: +41 (0)41 619 73 11; Internet: <http://www.pilatus-aircraft.com/>, or e-mail: SupportPC12@pilatus-aircraft.com.

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

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

Issued in Kansas City, Missouri, on July 1, 2009.

Scott A. Horn,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-16230 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2009-0638; Directorate Identifier 2009-CE-038-AD; Amendment 39-15968; AD 2009-15-05]

RIN 2120-AA64

Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. This AD requires you to measure the roll and the yaw bridle cable tension (adjusting as necessary) and to torque the clamp screws. This AD results from two reported incidences of slack bridle cables with the swaged balls unseating from their drum recesses. We are issuing this AD to detect and correct loose bridle cable clamps, which could result in the swaged ball unseating from the recess in the servo drum and contacting the cable guard pin. This failure could lead to very limited control of the rudder and/or aileron with consequent loss of control.

DATES: This AD becomes effective on July 27, 2009.

On July 27, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive any comments on this AD by September 14, 2009.

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

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

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706; Wichita, Kansas 67277;

telephone: (316) 517-5800; *fax:* (316) 942-9006; *Internet:* <http://www.cessna.com>.

To view the comments to this AD, go to <http://www.regulations.gov>. The docket number is FAA-2009-0638; Directorate Identifier 2009-CE-038-AD.

FOR FURTHER INFORMATION CONTACT: Ann Johnson, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; *telephone:* (316) 946-4105; *fax:* (316) 946-4107; *E-mail:* ann.johnson@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We received reports on two Cessna Models 208 and 208B production airplanes with autopilot heading squawks. Upon investigation by the manufacturer, technicians found in both cases the bridle cable for the autopilot aileron servo was slack, and the swaged ball was unseated from the drum recess.

The cause of the bridle cables going slack was insufficient torque on the bridle cable clamp screws, allowing slippage of the bridle cable clamps on the roll bridle cable. Since the rudder and aileron autopilot interface are similar, the same condition could exist with the yaw bridle cable.

This condition, if not corrected, could result in the swaged ball unseating from the recess in the servo drum and contacting the cable guard pin. This failure could lead to very limited control of the rudder and/or aileron with consequent loss of control.

Relevant Service Information

We reviewed Cessna Aircraft Company Caravan Service Bulletin CAB08-9, dated November 24, 2008. The service information describes procedures for inspecting the bridle cables for looseness, adjusting the bridle cable tension, and tightening the bridle cable clamp screws to the correct torque. The manufacturer intends that the actions specified in the service information adequately address the unsafe condition.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This AD requires you to measure the autopilot roll and yaw bridle cable tensions (adjusting as necessary) and to torque the bridle cable clamp screws.

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 swaged ball on the bridle cable could unseat from the servo drum and contact the cable guard pin. This failure could lead to very limited control of the rudder and/or aileron. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number "FAA-2009-0638; Directorate Identifier 2009-CE-038-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

Examining the AD Docket

You may examine the AD docket that contains the AD, the regulatory evaluation, any comments received, and other information on the Internet at <http://www.regulations.gov>; or in person

at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647-5527) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009-15-05 Cessna Aircraft Company:
Amendment 39-15968; Docket No. FAA-2009-0638; Directorate Identifier 2009-CE-038-AD.

Effective Date

(a) This AD becomes effective on July 27, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

Model	Serial No.
208	20800500 through 20800504.
208B	208B1216, 208B2001, 208B2003 through 208B2023, 208B2025 through 208B2029, 208B2031 through 208B2037, 208B2040, 208B2042, and 208B2043.

Unsafe Condition

(d) This AD is the result of two reported incidences of slack bridle cables with the swaged balls unseated from their drum recesses. We are issuing this AD to detect and correct loose bridle cable clamps, which could result in the swaged ball unseating from the recess in the servo drum and contacting the cable guard pin. This failure could lead to very limited control of the rudder and/or aileron with consequent loss of control.

Compliance

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

Actions	Compliance	Procedures
(1) Measure and adjust as necessary, the roll bridle cable tension and yaw bridle cable tension, and torque the 12 bridle cable clamp screws.	Within the next 10 hours time-in-service after July 27, 2009 (the effective date of this AD).	Follow Accomplishment Instructions, paragraphs 2. through 7., of Cessna Aircraft Company Caravan Service Bulletin CAB08-9, dated November 24, 2008. Send the report to the FAA at the address specified in paragraph (f) of this AD.
(2) Use the form (Figure 1 of this AD) to report the results of the inspections required in paragraph (e)(1) of this AD. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 <i>et seq.</i>) and assigned OMB Control Number 2120-0056.	Within 10 days after the inspection required in paragraph (e)(1). If Cessna Aircraft Company Caravan Service Bulletin CAB08-9, dated November 24, 2008, was done before July 27, 2009 (the effective date of this AD) the report is not required.	

AD 2009-15-05 INSPECTION REPORT

[If the SB was done before the effective date of this AD, this report does not need to be completed and returned to the Wichita ACO]

Airplane Model	
Airplane Serial Number	
Did you find the yaw bridle cable tension to be within the range of 15-25 lbs?	
Did you find the roll bridle cable tension to be within the range of 10-14 lbs?	
Were any other discrepancies noted during the inspection?	

AD 2009-15-05 INSPECTION REPORT—Continued

[If the SB was done before the effective date of this AD, this report does not need to be completed and returned to the Wichita ACO]

Name	
Telephone and/or e-mail address	
Date	
<p><i>Send report to:</i> Ann Johnson, Aerospace Engineer ACE-116W, Wichita Aircraft Certification Office 1801 Airport Road, Room 100 Wichita, KS 67209 fax: (316) 946-4107 e-mail: ann.johnson@faa.gov</p>	

Figure 1

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita 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:* Ann Johnson, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; *telephone:* (316) 946-4105; *fax:* (316) 946-4107; *E-mail:* ann.johnson@faa.gov. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(g) You must use Cessna Aircraft Company Caravan Service Bulletin CAB08-9, dated November 24, 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 Cessna Aircraft Company, Product Support, P.O. Box 7706; Wichita, Kansas 67277; *telephone:* (316) 517-5800; *fax:* (316) 942-9006; *Internet:* <http://www.cessna.com>.

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

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

Issued in Kansas City, Missouri, on July 6, 2009.

Kim Smith,
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-16465 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0832; Directorate Identifier 2008-NM-067-AD; Amendment 39-15965; AD 2009-15-02]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 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:

In-service experience has shown that a fracture of the gerotor pump of the A320 RAT [ram air turbine] may occur. This may lead to the non-operation of the RAT in case of an in-flight deployment.

The Non-Deployment or Non-Pressurization of the RAT, associated with a double engine failure or a total loss of normal electrical power generation constitutes an unsafe condition.

* * * * *

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

DATES: This AD becomes effective August 19, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 19, 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: Tim Dulin, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2141; 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 August 4, 2008 (73 FR 45174). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

In-service experience has shown that a fracture of the gerotor pump of the A320 RAT [ram air turbine] may occur. This may lead to the non-operation of the RAT in case of an in-flight deployment.

The Non-Deployment or Non-Pressurization of the RAT, associated with a double engine failure or a total loss of normal electrical power generation constitutes an unsafe condition.

This AD mandates the replacement of the affected gerotor pump assembly, which will provide the required improved reliability of the RAT.

The implementation of this modification was originally managed by an AIRBUS monitoring campaign. However, the rate of installation of the modification by operators has not met the predicted target. As such and

to ensure continued compliance with the certification requirements it is considered necessary to require compliance by use of [an] AD.

* * * * *

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 considered the comments received.

Request To Change Certain Compliance Times

Northwest Airlines (NWA) asks that the compliance time required by paragraph (f)(2) of the NPRM be changed from “before further flight” to “within 15 months after the effective date of the AD.” NWA states that paragraph (f)(1) allows 15 months to identify the part number and serial number of the RAT, and paragraph (f)(2) requires replacement of the suspect RAT gerotor pumps before further flight. NWA notes that this requirement is not conducive to effective planning and cost control; operators would be required to guess the number of pumps that would need replacement, which could result in unnecessary multiple orders (and resultant lead time issues) or over-purchasing of replacement pumps. NWA adds that if the location of the RAT is identified first, it would enable more efficient incorporation of the specified actions and prevent possible disruptions in schedule and costs that could result from ordering an incorrect amount of replacement parts.

We agree with NWA because the unsafe condition is addressed if the pumps are replaced within the 15 month compliance time allowed. We have changed paragraphs (f)(1) and (f)(2) of this AD to clarify that the 15-month compliance time is for all the required actions, which is consistent with the referenced EASA AD.

NWA also asks that the compliance time in paragraph (f) of the NPRM be changed from 15 months to 21 months to align with scheduled “C” checks. NWA states that this extension would allow for replacement of the gerotor in a controlled environment, which is more conducive to the type of work where both personnel and equipment are available. NWA does not believe the additional compliance time will have an appreciable effect on safety, since the FAA quotes the MCAI, which specifically states in the NPRM that the AD is being proposed as a result of limited implementation of Airbus Service Bulletin A320–29–1122, dated July 27, 2006, by operators. Therefore,

NWA suggests that the compliance time necessary for replacing the RAT gerotor is not an immediate issue.

We do not agree with NWA. The NPRM does not specify that it was proposed as a result of limited implementation of Airbus Service Bulletin A320–29–1122, dated July 27, 2006; instead, it states that the rate of installation of the modification by operators has not met the predicted target of the AIRBUS monitoring campaign. That statement does not mean the unsafe condition should not be addressed in a timely manner.

In developing an appropriate compliance time for this AD, we considered the urgency associated with the subject unsafe condition and the practical aspect of accomplishing the required actions on the fleet in a timely manner. We recognize that operators may have different schedules for accomplishing heavy maintenance, but we have determined that the 15-month compliance time will include most operators’ schedules for that type of work. Further, according to the provisions of paragraph (g)(1) of this AD, we may approve a request to adjust the compliance time if the request includes data that prove that the new compliance time would provide an acceptable level of safety. No change to this AD is necessary in this regard.

Retrofit Information

NWA asks that the AD not require operators to submit the retrofit information sheet, as recommended in the Accomplishment Instructions of Airbus Service Bulletin A320–29–1122, dated July 27, 2006. We agree with NWA. We have included Note 1 in this AD to clarify that the retrofit information sheet is not required.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that 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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 758 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 \$0 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 \$303,200, or \$400 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:

2009-15-02 Airbus: Amendment 39-15965. Docket No. FAA-2008-0832; Directorate Identifier 2008-NM-067-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 19, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A318, A319, A320, and A321 airplanes, certificated in any category; except airplanes on which Airbus Modification 27189 was done in production or Airbus Service Bulletin A320-29-1100 was done in service, and on which Airbus Modification 28413 was not done in production.

Subject

(d) Air Transport Association (ATA) of America Code 29: Hydraulic power.

Reason

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

In-service experience has shown that a fracture of the gerotor pump of the A320 RAT [ram air turbine] may occur. This may lead to the non-operation of the RAT in case of an in-flight deployment.

The Non-Deployment or Non-Pressurization of the RAT, associated with a double engine failure or a total loss of normal electrical power generation constitutes an unsafe condition.

This AD mandates the replacement of the affected gerotor pump assembly, which will provide the required improved reliability of the RAT.

The implementation of this modification was originally managed by an AIRBUS monitoring campaign. However, the rate of installation of the modification by operators has not met the predicted target. As such and to ensure continued compliance with the certification requirements it is considered necessary to require compliance by use of [an] AD.

* * * * *

Actions and Compliance

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

(1) Within 15 months after the effective date of this AD: Identify the part number (P/N) and serial number (S/N) of the RAT in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-29-1122, dated July 27, 2006.

(2) For airplanes on which a RAT with P/N 680203037 is installed that has a S/N between 0101 and 0354 inclusive: Within 15 months after the effective date of this AD, replace the gerotor pump assembly and re-identify the RAT in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-29-1122, dated July 27, 2006.

(3) For airplanes on which a RAT with P/N 680203037 is installed that does not have a S/N between 0101 and 0354 inclusive, or a RAT with a P/N other than P/N 680203037 is installed: No further action is required by this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: Although Appendix 01 of Airbus Service Bulletin A320-29-1122, dated July 27, 2006, tells you to submit information to the manufacturer, this AD specifies that such submittal is not required.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Dulin, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2141; 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 EASA Airworthiness Directive 2008-0034, dated February 20, 2008 [corrected February 21, 2008]; and Airbus Service Bulletin A320-29-1122, excluding Appendix 01, dated July 27, 2006, for related information.

Material Incorporated by Reference

(i) You must use Airbus Service Bulletin A320-29-1122, excluding Appendix 01, dated July 27, 2006; 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 Airbus, Airworthiness Office — EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: account.airworth-eas@airbus.com; Internet <http://www.airbus.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 July 2, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-16466 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2009-0330; Directorate Identifier 2008-NE-43-AD; Amendment 39-15961; AD 2009-14-11]

RIN 2120-AA64

Airworthiness Directives; Turbomeca S.A. ARRIUS 2F Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), 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) issued 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:

On several ARRIUS 2F engines, the clearance between the P3 air pipe P/N 0319719180 and the rear right bulkhead P/N 0319998240 has been found to be too small.

Investigations have shown that both P3 air pipe and rear right bulkhead were compliant to the design. The Turbomeca Engineering Department concluded that the tolerance of assembly established during the design could result in some rubbing between parts.

Rubs between the pipe and the bulkhead may lead to premature wearing and finally rupture of the P3 air pipe. The loss of P3 air pressure would then force the fuel control system to idle which could have a detrimental effect in critical phases of flight.

We are issuing this AD to prevent an uncommanded power loss, which could result in an emergency autorotation landing or accident.

DATES: This AD becomes effective August 19, 2009. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 19, 2009.

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

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: james.lawrence@faa.gov; telephone (781) 238-7176; fax (781) 238-7199.

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 April 13, 2009 (74 FR 16809). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

On several ARRIUS 2F engines, the clearance between the P3 air pipe P/N 0319719180 and the rear right bulkhead P/N 0319998240 has been found to be too small.

Investigations have shown that both P3 air pipe and rear right bulkhead were compliant to the design. The Turbomeca Engineering Department concluded that the tolerance of assembly established during the design could result in some rubbing between parts.

Rubs between the pipe and the bulkhead may lead to premature wearing and finally rupture of the P3 air pipe. The loss of P3 air pressure would then force the fuel control system to idle which could have a detrimental effect in critical phases of flight.

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.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 94 engines installed on helicopters of U.S. registry. We also estimate that it will take about 1 work-hour per engine to comply with this AD. The average labor rate is \$80 per work-hour. Required parts will cost about \$705 per engine. Based on these figures, we estimate the cost of the AD on U.S. operators to be \$73,790. Our cost estimate is exclusive of possible warranty coverage.

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

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:

2009–14–11 Turbomeca S.A.: Amendment 39–15961. Docket No. FAA–2009–0330; Directorate Identifier 2008–NE–43–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 19, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca S.A. ARRIUS 2F turboshaft engines with P3 air pipe, part number 0319719180, installed. These engines are installed on, but not limited to, Eurocopter EC120B helicopters.

Reason

(d) Rubs between the pipe and the bulkhead may lead to premature wearing and finally rupture of the P3 air pipe. The loss of P3 air pressure would then force the fuel control system to idle which could have a detrimental effect in critical phases of flight.

We are issuing this AD to prevent an uncommanded power loss, which could result in an emergency autorotation landing or accident.

Actions and Compliance

(e) Unless already done, do the following actions within 100 operating hours after the effective date of this AD. Use paragraphs 2.B.(1) through 2.C.(2) of Turbomeca Mandatory Service Bulletin No. 319 75 4810, dated May 14, 2008.

(1) Visually inspect P3 air pipe (first section) and RH rear half-wall.

(2) Inspect play between P3 air pipe (first section) and RH rear half-wall.

(3) Replace P3 air pipe (first section) if any damage is found.

(4) Readjust the first section of the P3 air pipe if the inspected clearance is found to be not compliant.

(5) If the play after readjusting the first section of the P3 air pipe is still less than 0.5 mm, repeat paragraphs (e)(1) through (e)(4) of this AD within intervals of 100 hours time-since-last inspection.

(6) Replace RH rear half-wall if any damage is found.

FAA AD Differences

(f) None.

Other FAA AD Provisions

(g) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2008–0134R1, dated February 17, 2009, and Turbomeca S.A. Mandatory Service Bulletin No. 319 75 4810, dated May 14, 2008, for related information. Contact Turbomeca, 40220 Tarnos, France; telephone 33 (0)5 59 74 40 00; telex 570 042; fax 33 (0)5 59 74 45 15, for a copy of this service information.

(i) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: james.lawrence@faa.gov; telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) You must use Turbomeca Mandatory Service Bulletin No. 319 75 4810, dated May 14, 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 Turbomeca, 40220 Tarnos, France; telephone 33 (0)5 59 74 40 00; telex 570 042; fax 33 (0)5 59 74 45 15.

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Burlington, Massachusetts, on June 30, 2009.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–16113 Filed 7–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2009–0137; Directorate Identifier 2008–NM–201–AD; Amendment 39–15967; AD 2009–15–04]

RIN 2120–AA64

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

Several reports have been received from A330 and A340 operators concerning chafing of the electrical harness behind the lavatory,

located at L (level) 53, resulting in a number of short-circuits. This harness contains cables for lighting, plugs, loudspeakers and oxygen controls and indications.

This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks (up to 32% of all seats) not being supplied with oxygen, possibly causing personal injuries.

* * * * *

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

DATES: This AD becomes effective August 19, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 19, 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:

Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; 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 8036). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Several reports have been received from A330 and A340 operators concerning chafing of the electrical harness behind the lavatory, located at L (level) 53, resulting in a number of short-circuits. This harness contains cables for lighting, plugs, loudspeakers and oxygen controls and indications.

This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks (up to 32% of all seats) not being supplied with oxygen, possibly causing personal injuries.

For the reasons described above, AD 2008–0154 was issued to require a wiring modification of the affected harnesses on right and left sides of the passenger compartment between frames (FR) 39.1 and 39.2 and between FR 53.3 and 53.4, on pre-modification 48825 aircraft (*i.e.* non-enhanced cabin).

Since that AD was issued, it has been found that due to discrepancies in the referenced Airbus Service Bulletin (SB) at original issue, the modification should have been mandated at Revision 1 of the SB, rather than indicating that application of the SB at original issue is acceptable.

For that reason, this EASA (European Aviation Safety Agency) AD retains the requirements of EASA AD 2008-0154, which is superseded, amends the requirement to specify that the SB must be accomplished at Revision 1 and that for aircraft on which the SB at original issue has already been accomplished, additional work must be done.

* * * * *

The modification includes rerouting the affected electrical harnesses and replacing certain wiring mounts and brackets in the passenger compartment. For all airplanes, additional work is required. The additional work includes interchanging certain fixed brackets and modifying certain wiring routing. 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.

Actions Since the NPRM Was Issued

We have received revisions to the service information specified in the NPRM. Airbus issued Mandatory Service Bulletin A330-92-3066, Revision 02, dated March 19, 2009; and Mandatory Service Bulletin A340-92-4071, Revision 03, dated March 19, 2009 ("the service bulletins"). The actions described in the service bulletins are intended to correct the unsafe condition identified in the MCAI. Those revisions of the service bulletins include editorial changes, clarifying language, and no substantive changes to the Accomplishment Instructions. No additional work is required for airplanes modified by Airbus Mandatory Service Bulletin A330-92-3066, Revision 01, dated August 1, 2008; and Airbus Mandatory Service Bulletin A340-92-4071, Revision 02, dated November 28, 2008.

We have changed paragraphs (f)(1), (f)(2), and (h) to refer to the new revisions of the service bulletins, and added Airbus Mandatory Service Bulletin A330-92-3066, Revision 01; and Airbus Mandatory Service Bulletin A340-92-4071, Revision 02; to paragraph (f)(3) as acceptable for complying with the requirements of paragraphs (f)(1) and (f)(2) of this AD.

EASA, which is the Technical Agent for the Member States of the European Community, has issued EASA

Airworthiness Directive 2008-0161R1, dated March 23, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. That MCAI differs from MCAI EASA AD 2008-0161, dated August 25, 2008, which is referenced in the NPRM, by adding a paragraph extending the compliance time to 24 months from the 20 months stated in the MCAI referenced in the NPRM. We have included that additional paragraph of the new MCAI in the quoted material in paragraph (e) of this AD, and changed paragraph (f) of this AD to reflect the new compliance time stated in the MCAI.

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 that 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 9 products of U.S. registry. We also estimate that it will take 210 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 \$0 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 \$151,200, or \$16,800 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:

2009-15-04 Airbus: Amendment 39-15967. Docket No. FAA-2009-0137; Directorate Identifier 2008-NM-201-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 19, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model A330-201, -202, -203, -223, -243, -301, -302, -303, -321, -322, -323, -341, -342, and -343 series airplanes; and Model A340-211, -212, -213, -311, -312, and -313 series airplanes; all manufacturer serial numbers, certificated in any category, except those on which Airbus Modification 48825 has been embodied in production.

Subject

(d) Air Transport Association (ATA) of America Code 92.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states: Several reports have been received from A330 and A340 operators concerning chafing of the electrical harness behind the lavatory, located at L (level) 53, resulting in a number of short-circuits. This harness contains cables for lighting, plugs, loudspeakers and oxygen controls and indications.

This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks (up to 32% of all seats) not being supplied with oxygen, possibly causing personal injuries.

For the reasons described above, AD 2008-0154 was issued to require a wiring modification of the affected harnesses on right and left sides of the passenger compartment between frames (FR) 39.1 and 39.2 and between FR 53.3 and 53.4, on pre-modification 48825 aircraft (*i.e.* non-enhanced cabin).

Since that AD was issued, it has been found that due to discrepancies in the referenced Airbus Service Bulletin (SB) at original issue, the modification should have been mandated at Revision 1 of the SB, rather than indicating that application of the SB at original issue is acceptable.

For that reason, this EASA (European Aviation Safety Agency) AD retains the requirements of EASA AD 2008-0154, which is superseded, amends the requirement to specify that the SB must be accomplished at Revision 1 and that for aircraft on which the SB at original issue has already been accomplished, additional work must be done.

The [e] Revision 1 [of EASA AD 2008-0161] is issued to extend the compliance time, which originally was 20 months, to 24

months * * * after the effective date of this AD. * * *

The modification includes rerouting the affected electrical harnesses and replacing certain wiring mounts and brackets in the passenger compartment. For all airplanes, additional work is required. The additional work includes interchanging certain fixed brackets and modifying certain wiring routing.

Actions and Compliance

(f) Unless already done, within 24 months after the effective date of this AD, do the following actions, as applicable.

(1) Except as required by paragraph (f)(2) of this AD, modify the affected passenger compartment electrical harnesses, including the "ADDITIONAL WORK," in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330-92-3066, Revision 02, dated March 19, 2009; or Airbus Mandatory Service Bulletin A340-92-4071, Revision 03, dated March 19, 2009; as applicable.

(2) For airplanes that have already been modified prior to the effective date of this AD in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330-92-3066, dated November 27, 2007; or Airbus Service Bulletin A340-92-4071, dated November 27, 2007; as applicable: Accomplish the "ADDITIONAL WORK" in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330-92-3066, Revision 02, dated March 19, 2009; or Airbus Mandatory Service Bulletin A340-92-4071, Revision 03, dated March 19, 2009; as applicable.

(3) Actions accomplished according to the Airbus service information identified in Table 1 of this AD, including the "ADDITIONAL WORK," as applicable, are acceptable for complying with the requirements of paragraphs (f)(1) and (f)(2) of this AD.

TABLE 1—ACCEPTABLE SERVICE INFORMATION

Airbus Mandatory Service Bulletin	Revision	Date
A330-92-3066	01	August 1, 2008.
A340-92-4071	01	August 1, 2008.
A340-92-4071	02	November 28, 2008.

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: Vladimir

Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; 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 EASA Airworthiness Directive 2008-0161R1, dated March 23, 2009, and the service information listed in Table 2 of this AD, for related information.

TABLE 2—RELATED SERVICE INFORMATION

Airbus Mandatory Service Bulletin	Revision	Date
A330-92-3066	01	August 1, 2008.
A330-92-3066	02	March 19, 2009.
A340-92-4071	01	August 1, 2008.
A340-92-4071	02	November 28, 2008.
A340-92-4071	03	March 19, 2009.

Material Incorporated by Reference

(i) You must use the applicable service information contained in Table 3 of this AD 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 Airbus SA—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail airworthiness.A330-A340@airbus.com; Internet <http://www.airbus.com>.

(3) You may review copies of the service information 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

Airbus Mandatory Service Bulletin	Revision	Date
A330-92-3066	01	August 1, 2008.
A330-92-3066	02	March 19, 2009.
A340-92-4071	01	August 1, 2008.
A340-92-4071	02	November 28, 2008.
A340-92-4071	03	March 19, 2009.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-16468 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0138; Directorate Identifier 2008-NM-216-AD; Amendment 39-15966; AD 2009-15-03]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model BD-700-1A10 and BD-700-1A11 Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing 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:

During scheduled maintenance inspection, a bolt which connects the PCU (power control unit) to the elevator surface was found fractured in the assembly. Further inspection of the assembly revealed that the bearing on the PCU rod end had seized, which resulted in damage to the attachment fitting bushing and fracture of the bolt. Inspection of other in-service airplanes revealed two more seized PCU attachment joints. However, except seizure, no fractured bolt was found on these airplanes. Failure of the bolts in both PCUs on one side could result in disconnection of the elevator control surface which would lead to flutter and loss of the aircraft.

* * * * *

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

DATES: This AD becomes effective August 19, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 19, 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:

Pong K. Lee, 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) 228-7324; fax (516) 794-5531.

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 8045). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During scheduled maintenance inspection, a bolt which connects the PCU (power control unit) to the elevator surface was found fractured in the assembly. Further inspection of the assembly revealed that the bearing on the PCU rod end had seized, which resulted in damage to the attachment fitting bushing and fracture of the bolt. Inspection of other in-service airplanes revealed two more seized PCU attachment joints. However, except seizure, no fractured bolt was found on these airplanes. Failure of the bolts in both PCUs on one side could result in disconnection of the elevator control surface which would lead to flutter and loss of the aircraft.

This Airworthiness Directive (AD) is issued to mandate the inspection and

lubrication of all part number (P/N) GT411-3800-5 and GT411-3800-7 PCU attachment joints.

The required actions include inspections for damage and seizure (including signs of seizure) of the PCU attachment joints, an inspection for damage (including wear damage, fretting, corrosion, galling, scoring, fretting wear, and parts that do not meet

inspection requirements) of the PCU attachment joint components, and applicable corrective actions. You may obtain further information by examining the MCAI in the AD docket.

Explanation of Revised Service Information

Bombardier has issued the revised service information specified in the

below table. We have changed paragraphs (f)(1) through (f)(5), paragraph (f)(7), and paragraphs (g)(1) and (g)(2) of this AD to add the revised service information specified in the following table.

REVISED SERVICE INFORMATION

Service Bulletin	Revision level	Date
Bombardier Alert Service Bulletin A700-1A11-27-024	02	November 10, 2008.
Bombardier Alert Service Bulletin A700-27-066	02	November 10, 2008.
Bombardier Service Bulletin 700-1A11-27-025	01	November 24, 2008.
Bombardier Service Bulletin 700-27-067	01	November 24, 2008.

No additional work is necessary for airplanes on which the previously issued service information specified in the following table has been

accomplished. We have revised paragraph (f)(6) and added a new paragraph (g)(3) to this AD to include credit for accomplishing the actions

before the effective date of this AD using the previously issued service information.

PREVIOUSLY ISSUED SERVICE INFORMATION

Service Bulletin	Revision level	Date
Bombardier Alert Service Bulletin A700-1A11-27-024	01	October 3, 2008.
Bombardier Alert Service Bulletin A700-27-066	01	October 3, 2008.
Bombardier Service Bulletin 700-1A11-27-025	(¹)	October 9, 2008.
Bombardier Service Bulletin 700-27-067	(¹)	October 9, 2008.

¹ Original.

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.

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 that 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 about 157 products of U.S. registry.

We estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$50,240, or \$320 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this 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 removing Amendment 39-15753 (73 FR 72316, November 28, 2008) and adding the following new AD:

2009-15-03 Bombardier, Inc.: Amendment 39-15966. Docket No. FAA-2009-0138; Directorate Identifier 2008-NM-216-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 19, 2009.

Affected ADs

(b) This AD supersedes AD 2008-24-12, Amendment 39-15753.

Applicability

(c) This AD applies to Bombardier Model BD-700-1A10 and BD-700-1A11 airplanes, certificated in any category, serial numbers (S/Ns) 9002 through 9222 inclusive; equipped with elevator power control units (PCUs) having part number (P/N) GT411-3800-5 or GT411-3800-7.

Subject

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

Reason

(e) The mandatory continuing airworthiness information (MCAI) states: During scheduled maintenance inspection, a bolt which connects the PCU (power

control unit) to the elevator surface was found fractured in the assembly. Further inspection of the assembly revealed that the bearing on the PCU rod end had seized, which resulted in damage to the attachment fitting bushing and fracture of the bolt. Inspection of other in-service airplanes revealed two more seized PCU attachment joints. However, except seizure, no fractured bolt was found on these airplanes. Failure of the bolts in both PCUs on one side could result in disconnection of the elevator control surface which would lead to flutter and loss of the aircraft.

This Airworthiness Directive (AD) is issued to mandate the inspection and lubrication of all part number (P/N) GT411-3800-5 and GT411-3800-7 PCU attachment joints.

The required actions include inspections for damage and seizure (including signs of seizure) of the PCU attachment joints, an inspection for damage (including wear damage, fretting, corrosion, galling, scoring, fretting wear, and parts that do not meet inspection requirements) of the PCU attachment joint components, and applicable corrective actions.

Restatement of Requirements of AD 2008-24-12:

(f) Unless already done: For airplanes on which elevator PCUs with P/N GT411-3800-5 or P/N GT411-3800-7, S/N 0615 and lower, are installed, excluding P/N GT411-3800-7 PCUs having a serial number listed in Table 1 of this AD, and excluding P/N GT411-3800-7 PCUs on which less than 1,000 flight hours have accumulated on the PCUs as of December 15, 2008 (the effective date of AD 2008-24-12), do the actions specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD.

Note 1: Units listed in Table 1 of this AD have been lubricated by the vendor and the inspections required by paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) of this AD are not required for those units.

TABLE 1—SERIAL NUMBERS

0030	0199
0031	0202
0033	0205
0041	0206
0046	0208
0060	0210
0062	0214
0066	0218
0081	0222
0083	0223
0087	0240
0092	0262
0097	0265
0101	0281
0105	0296
0108	0301
0109	0310
0111	0323
0110	0365
0119	0369
0130	0406
0138	0407
0141	0408
0145	0413

TABLE 1—SERIAL NUMBERS—Continued

0156	0420
0161	0427
0163	0429
0164	0430
0165	0431
0171	0433
0173	0435
0174	0438
0178	0453
0179	0491
0181	0495
0183	0504
0188	0506
0190	0513
0191	0533
0197	0536
0198	0586

(1) Within 10 flight cycles or 50 flight hours after December 15, 2008, whichever occurs first: Inspect for damage and wear and lubricate the PCU attachment joints in accordance with Bombardier Alert Service Bulletin A700-1A11-27-024, Revision 02, dated November 10, 2008; or Bombardier Alert Service Bulletin A700-27-066, Revision 02, dated November 10, 2008; as applicable.

(2) Within 90 days or 200 flight hours after performing the actions required by paragraph (f)(1) of this AD, whichever occurs first: Repeat the inspection and lubrication of the PCU attachment joints in accordance with Bombardier Alert Service Bulletin A700-1A11-27-024, Revision 02, dated November 10, 2008; or Bombardier Alert Service Bulletin A700-27-066, Revision 02, dated November 10, 2008; as applicable.

(3) Within 45 days or 100 flight hours after performing the actions required by paragraph (f)(2) of this AD, whichever occurs first: Repeat the inspection and lubrication of the PCU attachment joints in accordance with Bombardier Alert Service Bulletin A700-1A11-27-024, Revision 02, dated November 10, 2008; or Bombardier Alert Service Bulletin A700-27-066, Revision 02, dated November 10, 2008; as applicable. Repeat the inspection thereafter at intervals not to exceed 45 days or 100 flight hours, whichever occurs first, until paragraph (f)(4) of this AD is accomplished.

(4) Completion of a disassembly with an inspection for damage, applicable corrective actions, and lubrication of the PCU attachment joint components in accordance with Bombardier Service Bulletin 700-1A11-27-025, Revision 01, dated November 24, 2008; or Bombardier Service Bulletin 700-27-067, Revision 01, dated November 24, 2008; as applicable; constitutes terminating action for the inspections required by paragraphs (f)(1), (f)(2), and (f)(3) of this AD.

(5) Unless already done, if any damage or seizure is found during any inspection required by paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) of this AD, before further flight, replace the affected part in accordance with Bombardier Service Bulletin 700-1A11-27-025, Revision 01, dated November 24, 2008; or Bombardier Service Bulletin 700-27-067, Revision 01, dated November 24, 2008; as applicable.

(6) Actions done before December 15, 2008, in accordance with Bombardier Alert Service Bulletin A700-1A11-27-024 or Bombardier Alert Service Bulletin A700-27-066, both dated October 2, 2008; or Revision 01, both dated October 3, 2008; as applicable; are acceptable for compliance with the corresponding requirements of this AD.

(7) Unless already done, submit a report to Bombardier of all findings found during any inspection required by paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) of this AD, in accordance with the applicable service bulletin listed in Table 2 of this AD.

(i) If the inspection was done on or after December 15, 2008: Submit the report within 14 days after the inspection.
 (ii) If the inspection was done before December 15, 2008: Submit the report within 14 days after December 15, 2008.

TABLE 2—SERVICE BULLETINS FOR REPORTS

Service Bulletin	Revision level	Date
Bombardier Alert Service Bulletin A700-1A11-27-024	02	November 10, 2008.
Bombardier Alert Service Bulletin A700-27-066	02	November 10, 2008.
Bombardier Service Bulletin 700-1A11-27-025	01	November 24, 2008.
Bombardier Service Bulletin 700-27-067	01	November 24, 2008.

New Requirements of This AD: Actions and Compliance

(g) Unless already done, do the actions specified in paragraph (g)(1) or (g)(2) of this AD, as applicable, at the time specified.

(1) For airplanes identified in paragraph (f) of this AD: Within 45 days or 100 flight hours after the effective date of this AD, whichever occurs first, complete a disassembly with an inspection for damage, applicable corrective actions, and lubrication of the PCU attachment joint components in accordance with Bombardier Service Bulletin 700-1A11-27-025, Revision 01, dated November 24, 2008; or Bombardier Service Bulletin 700-27-067, Revision 01, dated November 24, 2008; as applicable.

(2) For airplanes not identified in paragraph (f) of this AD on which elevator PCUs with P/N GT411-3800-7 are installed: Within 180 days or 400 flight hours after the effective date of this AD, whichever occurs first, complete a disassembly with an inspection for damage, applicable corrective actions, and lubrication of the PCU attachment joint components in accordance with Bombardier Service Bulletin 700-1A11-27-025, Revision 01, dated November 24, 2008; or Bombardier Service Bulletin 700-27-067, Revision 01, dated November 24, 2008; as applicable.

(3) Actions done before the effective date of this AD in accordance with Bombardier Service Bulletin 700-1A11-27-025, dated October 9, 2008; or Bombardier Service Bulletin 700-27-067, dated October 9, 2008;

as applicable; are acceptable for compliance with the corresponding requirements of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: Paragraph A.3. of the MCAI requires a one-time inspection; however, since we have changed the compliance time for the terminating action in paragraph A.4. of the MCAI (refer to paragraph (g)(1) of this AD), paragraph (f)(3) of this AD requires repeating the inspections until the terminating action is performed.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York 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:* Pong K. Lee, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7324; 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.

(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.

(4) *Special Flight Permits:* As described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), special flight permits are not allowed.

Related Information

(i) Refer to MCAI Canadian Emergency Airworthiness Directive CF-2008-31, dated October 9, 2008, and the service information specified in Table 2 of this AD, for related information.

Material Incorporated by Reference

(j) 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.

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

Document	Revision level	Date
Bombardier Alert Service Bulletin A700-1A11-27-024	02	November 10, 2008.
Bombardier Alert Service Bulletin A700-27-066	02	November 10, 2008.
Bombardier Service Bulletin 700-1A11-27-025	01	November 24, 2008.
Bombardier Service Bulletin 700-27-067	01	November 24, 2008.

(1) The Director of the Federal Register approved the incorporation by reference of the 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.crj@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 July 2, 2009.

Ali Bahrami,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. E9-16467 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61 and 121

[Docket No. FAA-2006-26139; Amendment Nos. 61-123 and 121-344]

RIN 2120-AJ01

Part 121 Pilot Age Limit

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Code of Federal Regulations to conform certain regulations with recent legislation raising the upper age limit for pilots serving in domestic, flag, and supplemental operations until they reach their 65th birthday. The legislation, known as the “Fair Treatment for Experienced Pilots Act,” raised the upper age limit from age 60 to age 65. The legislation became effective December 13, 2007. The intended effect of this action is to update the Code of Federal Regulations to reflect the recent legislation.

DATES: These amendments become effective July 15, 2009. Except as otherwise required by statute, affected parties do not have to comply with the information collection requirements in §§ 61.23 and 121.440 until the FAA publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) for these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this rule contact Lawrence Youngblut, Air Transportation Division, AFS-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9630, e-mail lawrence.youngblut@faa.gov. For legal

questions concerning this rule contact Angela Washington, Office of the Chief Counsel, AGC-210, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7556; e-mail angela.washington@faa.gov.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

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

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

Small Business Regulatory Enforcement Fairness Act

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

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking fulfills the mandate of H.R. 4343, the “Fair Treatment for Experienced Pilots Act,” Pub. L. 110-135, hereinafter referred to as the Act.

Background

On December 13, 2007, the President signed into law the Act, which raised the upper age limit for pilots serving in 14 CFR part 121 air carrier operations to age 65. The legislation took effect December 13, 2007. As of that date, § 121.383(c) of the Code of Federal

Regulations (14 CFR 121.383(c)) ceased to be effective. Section 121.383(c) prohibited any air carrier or commercial operator conducting flights under part 121 from using the services of any person as a pilot, and prohibited any person from serving as a pilot, on an airplane engaged in operations under part 121 if that person had reached his or her 60th birthday.

The Act has now been codified at 49 U.S.C. Section 44729. Section 44729 of Title 49 allows a pilot to “serve in multicrew covered operations until attaining 65 years of age,” subject to certain limitations. For the purposes of the Act, “Covered Operations” means “operations under part 121 of Title 14, Code of Federal Regulations.” The Act specifies a limitation for international flights. Pursuant to § 44729(c)(1), “A pilot who has attained 60 years of age may serve as pilot-in-command in covered operations between the United States and another country only if there is another pilot in the flight deck crew who has not yet attained 60 years of age.” Section 44729(c)(2) states that paragraph (c)(1) ceases to be effective “on such date as the Convention on International Civil Aviation provides that a pilot who has attained 60 years of age may serve as pilot-in-command in international commercial operations without regard to whether there is another pilot in the flight deck crew who has not attained age 60.”

Section 44729(e)(1) states “No person who has attained 60 years of age before the date of enactment of this section may serve as a pilot for an air carrier engaged in covered operations unless—

(A) such person is in the employment of that air carrier in such operations on such date of enactment as a required flight deck crew member; or

(B) such person is newly hired by an air carrier as a pilot on or after such date of enactment without credit for prior seniority or prior longevity for benefits or other terms related to length of service prior to the date rehired under any labor agreement or employment policies of the air carrier.”

Section 44729(g)(1) requires that, except as provided by paragraph (g)(2) “a person serving as a pilot for an air carrier engaged in covered operations shall not be subject to different medical standards, or different, greater, or more frequent medical examinations, on account of age unless the Secretary determines (based on data received or studies published after the date of enactment of this section) that different medical standards, or different, greater, or more frequent medical examinations, are needed to ensure an adequate level of safety in flight.”

Section 44729(g)(2) states that “No person who has attained 60 years of age may serve as a pilot of an air carrier engaged in covered operations unless the person has a first-class medical certificate. Such a certificate shall expire on the last day of the 6-month period following the date of examination shown on the certificate.”

Section 44729(h)(1) requires that “Each air carrier engaged in covered operations shall continue to use pilot training and qualification programs approved by the Federal Aviation Administration, with specific emphasis on initial and recurrent training and qualification of pilots who have attained 60 years of age, to ensure continued acceptable levels of pilot skill and judgment.”

Section 44729(h)(2) requires that “Not later than 6 months after the date of enactment of this section, and every 6 months thereafter, an air carrier engaged in covered operations shall evaluate the performance of each pilot of the air carrier who has attained 60 years of age through a line check of such pilot. Notwithstanding the preceding sentence, an air carrier shall not be required to conduct for a 6-month period a line check under this paragraph of a pilot serving as second-in-command if the pilot has undergone a regularly scheduled simulator evaluation during that period.”

This final rule implements congressional legislation by conforming FAA regulations to statutory requirements. It was Congress’ objective to impact rules governing the age limitation requirements (and associated medical certificate and training requirements) of pilots engaged in operations under part 121. However, part 121 contains regulations imposing the same age limitation on check airmen and flight instructors. Specifically, check airmen and flight instructors who have reached their 60th birthday may not serve as pilot flight crewmembers in part 121 operations. Yet, Congress did not specifically amend those requirements. We do not believe that Congress intended that the age limitation imposed on a particular population of pilots should be different than that imposed on check airmen and flight instructors when they serve as pilot flight crewmembers, especially when, prior to the legislation’s enactment, the age limitation was the same for all airmen. To maintain that consistency, the FAA is amending §§ 121.411 and 121.412 to raise the age limit from age 60 to age 65, thus allowing check airmen and flight instructors to serve as pilot flight

crewmembers until they reach the age of 65.

Likewise, part 61 contains similar age restrictions for pilots operating civil airplanes of U.S. registry. Section 61.3(j) prohibits a person who holds a part 61 pilot certificate from serving as a pilot in certain international air services and air transportation operations if the pilot has reached the age of 60. Also, § 61.77(e) prohibits a person who holds a part 61 special purpose pilot authorization from serving as a pilot in certain international air services and air transportation operations if the pilot has reached the age of 60. While part 61 encompasses operations conducted under part 121, it could also include operations governed by parts 125 and 129. These are not “covered operations” pursuant to the Act. Although Congress did not directly mandate amendments to these provisions, the FAA believes Congress clearly intended to implement the ICAO age requirements for pilots operating internationally, allowing them to conduct commercial air transportation operations under certain conditions until the age of 65. The ICAO standard increases the upper age limit for commercial pilots operating two pilot aircraft. In operations with more than one pilot, ICAO standard 2.1.10.1 allows a person to serve as a pilot in command of an aircraft engaged in international commercial air transport operations until his or her 65th birthday if the other pilot is younger than 60 years of age. Again, we do not think it was the intent of Congress to treat that population of pilots who conduct operations under parts 125 and 129 any differently than pilots conducting operations under part 121. Thus, the FAA is also amending the applicable provisions of part 61 to reflect the new upper age limit.

Additionally, the ICAO standard places no limitation on whether a pilot is operating between his or her home state and another country or whether he or she is operating between two international territories. Because we believe Congress intended to implement ICAO standards, we do not think that it intended to limit pilots over the age of 60 from operating between two international territories. However, the crew pairing provision of the Act does not address this scenario. The crew pairing provision states that a pilot over the age of 60 could serve as a pilot in command in covered operations between the United States and another country, assuming there was another pilot as part of the flight deck crew under the age of 60. This provision is not entirely consonant with the ICAO standard. The unintended consequence

under the statute would lead to a contradiction with ICAO standards for international flights, which include those flights between two countries outside of the United States. The FAA believes that one of the primary purposes of the Fair Treatment Act is to harmonize FAA regulations with ICAO standards, and we have amended our regulations to reflect those standards. This rule allows a person over the age of 60 to serve as a pilot in command in covered operations between the United States and another country, and in operations between other countries, if there is another pilot in the flight deck crew under the age of 60.

Good Cause for Immediate Adoption of This Final Rule

Section 4 of the Administrative Procedure Act (APA) (5 U.S.C. section 553(b)(B)) authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking.

The FAA finds that notice and public comment to this final rule are unnecessary and contrary to the public interest. This final rule is a result of the Act. Because this rule implements Congressional mandates, good cause exists for the FAA to amend without notice its rules concerning pilot age limits. A legislative mandate of this nature makes it unnecessary to provide an opportunity for notice and comment. Further, good cause exists for making this rule effective upon publication to minimize any possible confusion. In addition, the FAA has determined good cause exists to amend without notice the part 61 and §§ 121.411 and 121.412 provisions regarding age limitations. If we do not correct the language in the CFR, we are likely to receive numerous petitions for exemption, because the published language is not consistent with the statute. Since the FAA would not have safety or policy reasons to deny the exemptions, we have included these amendments in the final rule.

Discussion of Dates

The Act was effective on December 13, 2007. However, pending publication of this rule, the FAA has not enforced the Age 60 rule since December 13, 2007, in a manner inconsistent with the Act. This final rule, which promulgates conforming amendments to the FAA’s regulations as well as other amendments deemed necessary as a result of

Congressional legislation, is effective upon publication in the **Federal Register**.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these conforming regulations.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the information collection requirements in this final rule to the Office of Management and Budget for its review. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

This final rule requires all pilots over the age of 60 who serve in part 121 operations to hold an FAA first-class medical certificate, valid for 6 months. Some pilots who serve as second-in-command (or co-pilots) on certain part 121 operations may hold an FAA second-class medical certificate, valid for 12 months. Pursuant to this rulemaking, those pilots who serve as second-in-command must obtain an FAA first-class medical certificate every 6 months instead of the previously required annual second-class medical certificate. Also, all pilots serving in

part 121 operations over age 60 must be evaluated, through a line check, every 6 months. Current regulations only require pilots-in command to be evaluated, through a line check, every 12 months.

The FAA estimates that airlines, pilots, and the FAA will incur additional paperwork burdens (and hence an increase in paperwork costs). Over a 15-year period, total paperwork costs would be approximately \$11.7 million. Total paperwork costs are composed of record keeping costs and reporting costs.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

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

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States.

In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final

rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of the Act. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that the Act: (1) Has benefits that justify its costs; (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866; (3) is "significant" as defined in DOT's Regulatory Policies and Procedures because of Congressional and public interest. Accordingly, this final rule has been reviewed by the Office of the Secretary of Transportation and the Office of Management and Budget; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses are summarized below.

Total Benefits and Costs of the Act

The following table enumerates the total costs and benefits of the Act over a 15-year period and then summarizes net benefits as the discounted present value of the stream of benefits and costs. Both accounting costs and economic costs are shown. The accounting costs are relevant because they show the distributional effects of the Act—a net transfer from airlines and consumers to pilots. The economic net benefits of the Act suggest that society is better off with the Act than without it.

(BENEFITS) AND COSTS OF CHANGING PILOT MANDATORY RETIREMENT AGE TO 65
 [Constant 2007 dollars]

	Sections 61.23, 121.383, 121.411 and 121.412						Sections 61.3(j) and 121.440					
	Salary	Pension contributions	Disability pay	Retirement	Training	Re-programming	Additional pilots scheduling and vacation	Medical certificate	Salary	Line check	Total constant dollar costs ²	DPV total costs ²
Total (Accounting Costs)	\$2,253,407,476	\$155,872,313	\$1,173,427,286	(\$39,887,500)	(\$621,985,624)	\$0	\$51,444,611	\$5,306,821	\$3,818,813	\$31,180,154	\$3,012,584,349	\$1,762,743,114
Total (Economic Costs)	0	0	0	(39,042,500)	(439,768,672)	0	35,917,440	5,060,459	3,818,813	31,180,154	(402,834,306)	(333,614,036)

Notes:

- (1) Results of the accounting and economic costs estimates use different unit costs and therefore show different results in each cost category.
- (2) Excludes paperwork costs, which are insignificant relative to the proposed rule's other costs. See section IV for more details on these costs.

It is important to note that negative figures in the above table are benefits of the Act. Because the mandatory retirement age has been increased to age 65, airlines and consumers will incur “real costs” and “transfer payments” totaling \$1.8 billion (present value) over 15 years, but society will have a cost savings or net benefit of \$334 million in terms of real resource use (real costs reflect real resource use, whereas transfer payments are monetary payments from one group to another that do not affect total resources available to society).

In addition to the above quantified benefits, the FAA estimates that the Act will result in an increase in the supply of pilots of approximately 12 percent over 5 years. In particular, there may be a public interest in taking advantage of the experience of pilots aged 60 to 65. In addition, the Act makes FAA regulations consistent with ICAO Amendment 167 by increasing the “upper age limit” for pilots operating in “international commercial air transport operations” up to age 65. Previously,

pilots certificated outside the United States and flying for a foreign air carrier on a non-U.S. registered aircraft, who were over age 60, were permitted to fly into the United States under ICAO standards through operation specifications. FAA has not estimated the value of these benefits because they are unquantifiable.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.” To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

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

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. The basis for such determination follows.

The Small Business Administration suggests that “small” represent the impacted entities with 1,500 or fewer employees. FAA identified a total of 48 air carriers that meet this definition, as shown below.

Small Business Exposure to Act

CLASSIFICATION OF BUSINESSES

Operator FAR	Large	Small	Unknown	Grand total
121	55	32	5	92
121/135	1	16	2	19
Grand Total	56	48	7	111
Percentage	50%	43%	6%	100%

Small = 1,500 employees or less

For each of these entities, FAA attempted to retrieve revenue data published in Form 41. The Form 41 financial reports contain financial information on certificated U.S. air carriers. This data is collected by the Office of Airline Information of the Bureau of Transportation Statistics. Consideration was made for the most recent quarterly data available, such that no data is for years prior to fiscal 2005. If data was not available in any quarter, the FAA assigned the last quarterly figures available. FAA also employed sources such as Dun & Bradstreet, Yahoo Finance (<http://finance.yahoo.com/>), Reuters (<http://www.reuters.com/investing>) and the 2006 edition of the World Airspace Database to estimate annual revenues. FAA then compared the annualized accounting costs with annual revenues. Of the 36 entities that FAA found data for, it expects that the projected annualized accounting costs of the Act will be higher than one percent of the

annual revenue for three of them. For the group as a whole, the annualized cost is estimated as 0.17% of annual revenue.

Therefore, as the FAA Administrator, I certify that this Act will not have a significant economic impact on any small entities.

International Trade Impact Statement

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of the Act and determined that it will impose no additional costs on foreign firms, and will make FAA’s upper age limit for

pilots consistent with international standards.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$136.1 million in lieu of \$100 million.

The requirements of Title II do not apply because the Act is not a mandate, rather it is permissive.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We

determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this rulemaking under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 61

Airmen, Aviation safety.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety.

The Amendment

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

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 2. Amend § 61.3 by revising paragraph (j) to read as follows:

§ 61.3 Requirement for certificates, ratings, and authorizations.

* * * * *

(j) *Age limitation for certain operations* (1) *Age limitation.* No person who holds a pilot certificate issued under this part may serve as a pilot on a civil airplane of U.S. registry in the following operations if the person has reached his or her 65th birthday:

(i) Scheduled international air services carrying passengers in turbojet-powered airplanes;

(ii) Scheduled international air services carrying passengers in airplanes having a passenger-seat configuration of more than nine passenger seats, excluding each crewmember seat;

(iii) Nonscheduled international air transportation for compensation or hire in airplanes having a passenger-seat configuration of more than 30 passenger seats, excluding each crewmember seat; or

(iv) Scheduled international air services, or nonscheduled international air transportation for compensation or hire, in airplanes having a payload capacity of more than 7,500 pounds.

(2) *Age Pairing Requirement.* No person who has attained the age of 60 but who has not attained the age of 65 may serve as a pilot in command in any of the operations described in paragraphs (j)(1)(i) through (iv) of this section unless there is another pilot in the flight deck crew who has not yet attained 60 years of age.

(3) *Definitions.* (i) "International air service," as used in this paragraph (j), means scheduled air service performed in airplanes for the public transport of passengers, mail, or cargo, in which the service passes through the airspace over the territory of more than one country.

(ii) "International air transportation," as used in this paragraph (j), means air transportation performed in airplanes for the public transport of passengers, mail, or cargo, in which the service passes through the airspace over the territory of more than one country.

* * * * *

■ 3. Amend § 61.23 to revise paragraph (a)(1) to read as follows:

§ 61.23 Medical certificates: Requirement and duration.

(a) * * *

(1) Must hold a first-class medical certificate:

(i) When exercising the privileges of an airline transport pilot certificate; or

(ii) If that person has reached his or her 60th birthday and serves as a pilot in 14 CFR part 121 operations. Notwithstanding the provisions of § 61.23(d)(1)(iii), that person's first-class medical certificate expires, for 14 CFR part 121 operations, at the end of the last day of the 6th month after the

month of the date of examination shown on the medical certificate.

* * * * *

■ 4. Amend § 61.77 to revise paragraphs (b)(3), (e) introductory text, and (g) to read as follows:

§ 61.77 Special purpose pilot authorization: Operation of U.S.-registered civil aircraft leased by a person who is not a U.S. citizen.

* * * * *

(b) * * *

(3) Documentation showing when the applicant will reach the age of 65 years (an official copy of the applicant's birth certificate or other official documentation);

* * * * *

(e) *Age limitation.* No person who holds a special purpose pilot authorization issued under this part, may serve as a pilot on a civil airplane of U.S. registry if the person has reached his or her 65th birthday, in the following operations:

* * * * *

(g) *Age Pairing Requirement.* No person who has attained the age of 60 but who has not attained the age of 65 may serve as a pilot in command in any of the operations described in § 61.3(j)(1)(i) through (iv) unless there is another pilot in the flight deck crew who has not yet attained 60 years of age.

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 5. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 41721, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

§ 121.2 [Amended]

■ 6. Amend § 121.2 by removing paragraph (i) and redesignating paragraph (j) as paragraph (i).

■ 7. Amend § 121.383 by removing and reserving paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 121.383 Airman: Limitations on use of services.

* * * * *

(d) No certificate holder may:

(1) Use the services of any person as a pilot on an airplane engaged in operations under this part if that person has reached his or her 65th birthday.

(2) Use the services of any person as a pilot in command in operations under this part between the United States and another country, or in operations

between other countries, if that person has reached his or her 60th birthday unless there is another pilot in the flight deck crew who has not yet attained 60 years of age.

(e) No pilot may:

(1) Serve as a pilot in operations under this part if that person has reached his or her 65th birthday.

(2) Serve as a pilot in command in operations under this part between the United States and another country, or in operations between other countries, if that person has reached his or her 60th birthday unless there is another pilot in the flight deck crew who has not yet attained 60 years of age.

■ 8. Amend § 121.411 by revising paragraph (e) to read as follows:

§ 121.411 Qualifications: Check airmen (airplane) and check airmen (simulator).

* * * * *

(e) Check airmen who have reached their 65th birthday or who do not hold an appropriate medical certificate may function as check airmen, but may not serve as pilot flightcrew members in operations under this part.

* * * * *

9. Amend § 121.412 by revising paragraph (e) to read as follows:

§ 121.412 Qualifications: Flight instructors (airplane) and flight instructors (simulator).

* * * * *

(e) Flight instructors who have reached their 65th birthday or who do not hold an appropriate medical certificate may function as flight instructors, but may not serve as pilot flightcrew members in operations under this part.

* * * * *

■ 10. Amend § 121.440 by adding paragraphs (d), (e), and (f) to read as follows:

§ 121.440 Line checks.

* * *

(d) No certificate holder may use the services of any person as a pilot in operations under this part unless the certificate holder evaluates every 6 months the performance, through a line check, of each pilot of the certificate holder who has attained 60 years of age. Notwithstanding the foregoing, a certificate holder is not required to conduct for a 6-month period a line check under this paragraph of a pilot serving as a second-in-command if the pilot has undergone a regularly scheduled simulator evaluation during that period.

(e) No pilot who has attained 60 years of age may serve as a pilot in operations under this part unless the certificate holder has evaluated the pilot's

performance every 6 months, through a line check. Notwithstanding the foregoing, a certificate holder is not required to conduct for a 6-month period a line check under this paragraph of a pilot serving as a second-in-command if the pilot has undergone a regularly scheduled simulator evaluation during that period.

(f) The training program provisions of § 121.401(b) do not apply to pilots who have attained 60 years of age and serve in operations under this part.

Issued in Washington, DC, on July 8, 2009.

J. Randolph Babbitt,

Administrator.

[FR Doc. E9-16777 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

[Docket No. FDA-2009-N-0665]

New Animal Drugs; Ceftiofur Sodium

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original abbreviated new animal drug application (ANADA) filed by Cephazone Pharma, LLC. The ANADA provides for the use of ceftiofur sodium powder for injection as a solution in dogs, horses, cattle, swine, day old chickens, turkey poults, sheep, and goats as therapy for various bacterial infections.

DATES: This rule is effective July 15, 2009.

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

SUPPLEMENTARY INFORMATION: Cephazone Pharma, LLC, 250 East Bonita Ave., Pomona, CA 91767, filed ANADA 200-420 that provides for use of Ceftiofur Sodium Sterile Powder, as an injectable solution, in dogs, horses, cattle, swine, day-old chickens, turkey poults, sheep, and goats as therapy for various bacterial infections. Cephazone Pharma, LLC's Ceftiofur Sodium Sterile Powder is approved as a generic copy of NAXCEL (ceftiofur sodium) Sterile Powder for Injection, sponsored by

Pharmacia & Upjohn Co., a Division of Pfizer, Inc., under NADA 140-338. The ANADA is approved as of May 27, 2009, and the regulations are amended in 21 CFR 522.313c to reflect the approval.

In addition, Cephazone Pharma, LLC, has not been previously listed in the animal drug regulations as a sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to add entries for this firm.

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.

The agency 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

21 CFR Part 510

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

21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

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

■ 2. In § 510.600, in the table in paragraph (c)(1) alphabetically add an entry for "Cephazone Pharma, LLC"; and in the table in paragraph (c)(2) numerically add an entry for "068330" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

Firm name and address	Drug labeler code
Cephazone Pharma, LLC, 250 East Bonita Ave., Pomona, CA 91767	068330

Drug labeler code	Firm name and address
068330	Cephazone Pharma, LLC, 250 East Bonita Ave., Pomona, CA 91767

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 4. In § 522.313c, revise paragraph (b) to read as follows:

§ 522.313c Ceftiofur sodium

(b) *Sponsors.* See Nos. 000009 and 068330 in § 510.600(c) of this chapter.

Dated: July 8, 2009.

Bernadette Dunham,
Director, Center for Veterinary Medicine.
[FR Doc. E9-16734 Filed 7-14-09; 8:45 am]
BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA-2009-N-0665]

Implantation or Injectable Dosage Form New Animal Drugs; Flunixin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original abbreviated new animal drug application (ANADA) filed by Norbrook Laboratories, Ltd. The

ANADA provides for the use of flunixin meglumine injectable solution in swine.

DATES: This rule is effective July 15, 2009.

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

SUPPLEMENTARY INFORMATION: Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland, filed ANADA 200-476 that provides for use of Flunixin Injection -S in swine for various bacterial infections. Norbrook Laboratories, Ltd.'s Flunixin Injection -S is approved as a generic copy of BANAMINE-S (flunixin meglumine) injectable solution, sponsored by Schering-Plough Animal Health Corp. under NADA 101-479. The ANADA is approved as of June 22, 2009, and the regulations are amended in 21 CFR 522.970 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.

The agency 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 522

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 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 2. In § 522.970, revise paragraphs (b)(1) and (b)(4) to read as follows:

§ 522.970 Flunixin.

(b) * * *

(1) See Nos. 000061 and 055529 for use as in paragraph (e) of this section.

(4) See Nos. 059130 and 061623 for use as in paragraphs (e)(1) and (e)(2) of this section.

Dated: July 8, 2009.

Bernadette Dunham,
Director, Center for Veterinary Medicine.
[FR Doc. E9-16735 Filed 7-14-09; 8:45 am]
BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA-2009-N-0665]

New Animal Drugs for Use in Animal Feeds; Lasalocid; Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original new animal drug application (NADA) filed by Alpharma Inc. The NADA provides for use of single-ingredient Type A medicated articles containing lasalocid and roxarsone to formulate two-way combination drug Type C medicated feeds for use in growing turkeys.

DATES: This rule is effective July 15, 2009.

FOR FURTHER INFORMATION CONTACT: Timothy Schell, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-276-8116, e-mail: *timothy.schell@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Alpharma Inc., 440 Rte. 22, Bridgewater, NJ 08807, filed NADA 141-293 that provides for use of AVATEC (lasalocid sodium) and 3-NITRO (roxarsone) single-ingredient Type A medicated articles to formulate two-way combination drug Type C medicated feeds for use in growing turkeys. The NADA is approved as of May 22, 2009, and the regulations are amended in 21 CFR 558.311 and § 558.530 (21 CFR 558.530) to reflect the approval.

In addition, FDA is amending § 558.530 to remove an incorrect human food safety warning and to revise an animal safety limitation for use of roxarsone in chicken and turkey feeds. The food safety warning restricting use of roxarsone in poultry producing eggs for human consumption was codified in error during a change from text to table format in 2005 (70 FR 41958; July 21, 2005). The animal safety warning is revised to reflect recommendations of the National Academy of Sciences-National Research Council (NAS-NRC) Drug Efficacy Study in 1970 (35 FR 14273; September 10, 1970), following their evaluation of the product. NAS-NRC's recommended warning was restated, but not codified, at the time of Drug Efficacy Study Implementation's finalization of NADA 7-891 for a roxarsone Type A medicated article in 1981 (46 FR 52330; October 27, 1981). The revised warning for medicated feed use agrees with the warning that is codified for roxarsone oral dosage forms in 21 CFR part 520.

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.

The agency 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 558

Animal drugs, Animal feeds.

■ 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 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.311, in the table in paragraph (e)(1)(xv), alphabetically add a new entry for "Roxarsone 22.7 to 45.4" to read as follows:

§ 558.311 Lasalocid.

* * * * *
 (e) * * *
 (1) * * *

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(xv) 68 (0.0075 pct) to 113 (0.0125 pct).	*	* *	* *	*
*	*	*	*	*
	Roxarsone 22.7 to 45.4	Growing turkeys: For prevention of coccidiosis caused by <i>E. meleagridis</i> , <i>E. gallopavonis</i> , and <i>E. adenoides</i> , increased rate of weight gain, improved feed efficiency, and improved pigmentation.	Feed continuously as the sole ration. Roxarsone provided by No. 046573 in § 510.600(c) in this chapter.	046573
*	*	*	*	*

§ 558.530 [Amended]

- 3. Amend § 558.530 as follows:
 - a. In the table in paragraph (d)(1)(i), in the "Limitations" column, remove the phrase "do not feed to chickens producing eggs for human consumption;" and remove the phrase "may result in leg weakness" and in its place add the phrase "may result in weakness or paralysis of the legs" and
 - b. In the table in paragraph (d)(2)(i), in the "Limitations" column, remove the phrase "do not feed to turkeys producing eggs for human consumption;" and remove the phrase "may result in leg weakness" and in its place add the phrase "may result in weakness or paralysis of the legs".

Dated: July 9, 2009.

Bernadette Dunham,
 Director, Center for Veterinary Medicine.
 [FR Doc. E9-16733 Filed 7-14-09; 8:45 am]
BILLING CODE 4160-01-S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.
ACTION: Final rule.

SUMMARY: Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans prescribes interest assumptions for valuing and paying certain benefits under terminating single-employer plans. This final rule amends the benefit payments regulation to adopt interest assumptions for plans with valuation dates in August 2009. Interest assumptions are also published on PBGC's Web site (<http://www.pbgc.gov>).

DATES: Effective August 1, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

These interest assumptions are found in two PBGC regulations: the regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022) and the regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044). Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates only the assumptions under the benefit payments regulation.

Two sets of interest assumptions are prescribed under the benefit payments regulation: (1) A set for PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by PBGC (found in Appendix B to Part 4022), and (2) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4022 the interest assumptions for PBGC to use for its own lump-sum payments in plans with valuation dates during August 2009, and (2) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical

methodology for valuation dates during August 2009.

The interest assumptions that PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for July 2009) of 0.75 percent in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during August 2009, PBGC finds that good cause exists for making the assumptions set forth in this

amendment effective less than 30 days after publication.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 190, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		<i>i</i> ₁	<i>i</i> ₂	<i>i</i> ₃	<i>n</i> ₁	<i>n</i> ₂
	* * *	* * *		* * *	* * *	* * *	* * *	* * *
190	8-1-09	9-1-09	3.00	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 190, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		<i>i</i> ₁	<i>i</i> ₂	<i>i</i> ₃	<i>n</i> ₁	<i>n</i> ₂
	* * *	* * *		* * *	* * *	* * *	* * *	* * *
190	8-1-09	9-1-09	3.00	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 8th day of July 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. E9-16770 Filed 7-14-09; 8:45 am]

BILLING CODE 7709-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2009-0562]

Regattas and Marine Parades; Great Lakes Annual Marine Events

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the local regulations for annual regattas and marine parades in the Captain of the Port Detroit zone from 7 a.m. on July 9, 2009 through 6 p.m. on August 2, 2009. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after regattas or marine parades. This rule will establish restrictions upon, and control movement of, vessels in specified areas immediately prior to, during, and immediately after regattas or marine parades. During the enforcement periods, no person or vessel may enter the regulated areas without permission of the Captain of the Port.

DATES: The regulations in 33 CFR 100 will be enforced as listed in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: CDR Joseph Snowden, Prevention, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; (313) 568-9508.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the following regulated areas which were published in the July 18, 2008 issue of the **Federal Register**. (73 FR 41261):

§ 100.918 *Detroit APBA Gold Cup, Detroit, MI.* This regulation is effective from 7 a.m. on July 9, 2009 until 7 p.m. on July 12, 2009. This regulation will be enforced daily from 7 a.m. to 7 p.m. on July 9, 10, 11, and 12, 2009.

§ 100.920 *Tug Across the River, Detroit, MI.* This regulation is effective from 5:30 p.m. to 7 p.m. on July 17, 2009.

§ 100.914 *Trenton Rotary Roar on the River, Trenton, MI.* This regulation is effective from 2 p.m. on July 24, 2009

until 8 p.m. on July 26, 2009. This regulation will be enforced from 2 p.m. to 6 p.m. on July 24, 2009, from 8 a.m. to 8 p.m. on July 25, 2009 and from 8 a.m. to 8 p.m. on July 26, 2009.

§ 100.915 *St. Clair River Classic Offshore Race, St. Clair, MI.* This regulation is effective from 10 a.m. on July 31, 2009 until 6 p.m. on August 2, 2009. This regulation will be enforced daily from 10 a.m. to 6 p.m. on July 31, August 1, and August 2, 2009.

In accordance with the general regulations in section 100.901 of this part, entry into, transiting, or anchoring within these regulated areas is prohibited unless authorized by the Captain of the Port Detroit or the Patrol Commander.

These regulated areas are closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or the Patrol Commander.

Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the Captain of the Port or the Patrol Commander.

Dated: June 24, 2009.

F.M. Midgette,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. E9-16684 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG-2009-0233]

RIN 1625-AA09

Drawbridge Operation Regulation; Manasquan River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the Route 70 Bridge, mile 3.4, across Manasquan River at Riviera Beach, NJ. The existing bridge has been modified by permit from a movable bridge to a fixed bridge. Since the bridge is no longer a movable bridge, the regulation controlling the opening and closing of the bridge is no longer necessary.

DATES: This rule is effective July 15, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG-2009-

0233 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0233 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION: The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the bridge that the regulation governed has been modified from a movable bridge to a fixed bridge and does not open for the passage of vessels.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register** because this rule removes the regulation used for the operation of a movable bridge that has been modified to become a fixed bridge. The modification has already taken place and the removal of the regulation will not affect mariners.

Background and Purpose

On September 23, 2005, a Coast Guard Bridge Permit (2-05-5) was issued to the New Jersey Department of Transportation (NJDOT) to replace the existing single-leaf bascule bridge, which carries Route 70 over Manasquan River at Riviera Beach, NJ, with a new fixed bridge. NJDOT completed construction for a new fixed bridge in December 2008.

Since the bridge has been modified to a fixed bridge, a special operating regulation for a movable bridge is unnecessary. This final rule removes the operating regulation regarding the Route 70 Bridge.

Discussion of Rule

The Coast Guard is changing the regulation in 33 CFR 117 without publishing an NPRM. The change removes the regulation governing a movable bridge that was modified to a fixed bridge that does not open for the passage of vessels.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This rule is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This rule merely removes an operating regulation for a movable bridge that was modified to a fixed bridge and no longer opens for the passage of vessels. Therefore, the operating regulation is unnecessary and its removal will not have a *de minimis* economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Since the bridge is no longer a movable bridge, the regulation controlling the opening and closing of the bridge is no

longer necessary. Hence this action removing the operating regulation of the bridge will have no economic impact on small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive

Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (32)(e) of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

§ 117.727 [Amended]

■ 2. Section 117.727 is removed.

Dated: June 15, 2009.

Fred M. Rosa, Jr.,

*Rear Admiral, United States Coast Guard
Commander, Fifth Coast Guard District.*
[FR Doc. E9-16833 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2007-0129]

RIN 1625-AA09

Drawbridge Operation Regulation; Ernest Lyons (SR A1A), Stuart FL, and Memorial Clearwater Causeway (SR 60), Clearwater, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the regulations governing the operation of the Ernest Lyons (SR A1A) Bridge across the Atlantic Intracoastal Waterway, mile 984.9 at Stuart, Florida, and the Memorial Clearwater Causeway (SR 60) Bridge across the Gulf Intracoastal Waterway, mile 136.0, at Clearwater, Florida. The bascule bridges have been removed, and fixed replacement bridges have been constructed. The regulations controlling the opening and closing of the drawbridges are no longer necessary.

DATES: This rule is effective July 15, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2007-0129, and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2007-0129 in the Docket ID box, pressing ENTER, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M-31), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Gwin Tate, Bridge Branch, Seventh Coast Guard District, at 305-415-6747. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553 b)). This provision authorizes an agency to issue a rule without prior

notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because public comment is unnecessary since the drawbridges that the regulations governed have been removed.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. There is no need to delay the implementation of this rule because this rule seeks to remove 33 CFR 117.261(p) and 33 CFR 117.287(j) from the Code of Federal Regulations since they govern drawbridges that have been removed and no longer affect navigation.

Background and Purpose

The former drawbridges across the Atlantic Intracoastal Waterway, mile 984.9, and the Gulf Intracoastal Waterway, mile 136.0, which had previously serviced the area were removed. They no longer affect navigation. The regulation governing the operation of the drawbridges is found in 33 CFR 117.261(p) and CFR 117.287(j). The purpose of this rule is to remove 33 CFR 117.261(p) and CFR 117.287(j) from the Code of Federal Regulations. This final rule removes the regulations regarding the Ernest Lyons (SR A1A) and Memorial Clearwater (SR 60) drawbridges.

Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This rule removes the operating regulations for two bridges that have already been removed.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises

small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Since the bridges governed by these operating regulations has been removed have been removed, the regulations controlling the opening and closing of the bridges are no longer necessary. Hence this action removing the operating regulations of the bridges will have no economic impact on small entities.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this is one of a category of actions which, individually or cumulatively, is not likely to have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2. Figure 2–1, paragraph 32(e) of the Instruction and neither an environmental assessment nor an environmental statement is required. This rule involves the removal of the operating regulations for two drawbridges that have been removed and replaced with fixed bridges.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

§ 117.261(p) [Amended]

■ 2. Remove § 117.261(p).

§ 117.287(j) [Amended]

■ 3. Remove § 117.287(j).

Dated: June 17, 2009.

D.W. Kunkel,

*Rear Admiral, U.S. Coast Guard, Commander,
Seventh Coast Guard District.*

[FR Doc. E9-16836 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

RIN 1625-AA00

[Docket No. USCG-2009-0532]

Safety Zones; Fireworks Displays Within the Captain of the Port Puget Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is establishing safety zones on the waters of the Puget Sound located in the Captain of the Port Puget Sound Zone during multiple firework displays. This action is necessary for the safety of life and property on navigable waters during these events. Entry into, transit through, mooring, or anchoring within these zones is prohibited unless authorized by the Captain of the Port, Puget Sound or a designated representative.

DATES: This rule is effective from 8 a.m. on July 2, 2009 through 8 a.m. on August 2, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0532 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0532 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign Ashley M. Wanzer, USCG Sector Seattle Waterways Management Division, Coast Guard; telephone 206-217-6175, e-mail Ashley.M.Wanzer@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate creation of a safety zone is necessary to protect the public from the hazards associated with these fireworks events. These events involve the launching of projectiles over a marine environment and falling hot debris and flammable materials in the vicinity of public marine traffic and spectators.

Under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons.

Background and Purpose

The U.S. Coast Guard is establishing temporary safety zones to allow for safe fireworks displays. All events occur within the Captain of the Port Puget Sound area of responsibility. These events may result in a number of vessels congregating near fireworks launching barges and sites. The safety zones are needed to protect watercraft and their occupants from safety hazards associated with fireworks displays. The Captain of the Port Puget Sound may be assisted by other federal and local agencies in the enforcement of this safety zone.

Discussion of Rule

This rule will control the movement of all vessels and persons in safety zones surrounding the following fireworks events:

- (1) Alderbrook Resort & Spa 4th of July, Hood Canal, WA, 9:45 p.m. to 11:30 p.m. on July 2, 2009.
- (2) Langlie's Old Fashioned Independence Celebration, Indianola, WA, 9:30 p.m. to 11:30 p.m. on July 3, 2009.
- (3) Independence Day Firework Show, Liberty Bay Poulsbo, WA, 7:30 p.m. to 11:30 p.m. on July 3, 2009.
- (4) Deer Harbor Annual Fireworks Display, Deer Harbor, WA, 11:30 a.m. on July 3, 2009 to 01 a.m. on July 4, 2009.

(5) Tacoma Freedom Fair, Commencement Bay, WA, 9 p.m. to 11:30 p.m. on July 4, 2009.

(6) Blast Over Bellingham Bay, Bellingham Bay, WA, 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(7) Bainbridge Island 4th of July, Eagle Harbor, WA, 9 p.m. to 11:30 p.m. on July 4, 2009.

(8) Sheridan Beach Community, Lake Forest Park, WA, 9 p.m. to 11:30 p.m. on July 4, 2009.

(9) City of Kenmore 4th of July, Lake Forest Park, WA, 9 p.m. to 11:30 p.m. on July 4, 2009.

(10) Vashon Island 4th of July, Quartermaster Harbor, WA, 9 p.m. to 11:30 p.m. on July 4, 2009.

(11) Three Tree Point Community, Three Tree Point, WA, 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(12) Medina Days, Medina Park, WA, 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(13) Orcas Island, Rock Island, Orcas Island, WA, 9 p.m. to 11:59 p.m. on July 4, 2009.

(14) Kingston Fireworks, Appletree Cove, WA, 9:30 p.m. to 11 p.m. on July 4, 2009.

(15) Port Townsend Sunrise Rotary, Port Townsend, WA, 9:30 p.m. to 11 p.m. on July 4, 2009.

(16) City of Mount Vernon 4th of July, Edgewater Park, WA, 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(17) Kirkland 4th of July, Kirkland, Lake Washington, WA, 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(18) Lake Forest Park 4th of July, Lake Forest Park, WA, 9:30 p.m. to 11 p.m. on July 4, 2009.

(19) City of Renton, Renton, Lake Washington, WA, 9:30 p.m. to 11 p.m. on July 4, 2009.

(20) Yarrow Point Community, Yarrow Point, WA, 9:30 p.m. to 11 p.m. on July 4, 2009.

(21) Fireworks Display, Henderson Bay, WA, 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(22) Chase Family Fourth at Lake Union, Lake Union, WA, 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(23) Port Orchard 4th of July Fireworks, Port Orchard, WA, 8:30 p.m. to 11:59 p.m. on July 4, 2009.

(24) Steilicoom Annual 4th of July Fireworks, Steilicoom, WA, 7:30 p.m. to 11:30 p.m. on July 4, 2009.

(25) Friday Harbor Independence, Friday Harbor, WA, 8:30 p.m. to 11:59 p.m. on July 4, 2009.

(26) City of Anacortes, Fidalgo Bay, WA, 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(27) Port Angeles, Port Angeles Harbor, WA, 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(28) 4th of July, Roche Harbor, WA, 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(29) Brewster Fire Department 4th of July, Brewster, WA, 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(30) Des Moines 4th of July, Des Moines, WA, 9:30 p.m. to 11 p.m. on July 4, 2009.

(31) Mercer Island Summer Celebration, Mercer Island, WA, 9 p.m. to 11:30 p.m. on July 11, 2009.

(32) Whaling Days, Dyes Inlet Silverdale, WA, 7:30 p.m. to 11:30 p.m. on July 24, 2009.

(33) Seafair, Lake Washington, WA, 9:30 p.m. to 11 p.m. on August 1, 2009.

Through this action, the U.S. Coast Guard intends to protect the safety of vessels and spectators during these firework displays. Entry into these zones will be prohibited unless authorized by the Captain of the Port or a designated representative. The Captain of the Port may be assisted by other federal, state, or local agencies as needed.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Analysis is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This temporary rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit a portion of the Puget Sound while this

rule is enforced. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. These temporary safety zones will be in effect for minimal times when vessel traffic volume is low and are limited in size. If safe to do so, traffic will be allowed to pass through the zones with the permission of the Captain of the Port or a designated representative.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the

effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these

standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction because this rule involves the establishment of safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under

ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 7013306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Public Law 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new temporary section § 165.T13-095 to read as follows:

§ 165.T13-095 Safety Zones; Fireworks displays within the Captain of the Port Puget Sound Zone.

(a) Safety Zones. The following areas are safety zones:

(1) Alderbrook Resort & Spa 4th of July, Hood Canal, WA.

Location. All waters of Hood Canal, WA extending to a 300' radius from the launch site at 47°21'02" N 123°04'06" W.

Effective time and date. 9:45 p.m. to 11:30 p.m. on July 2, 2009.

(2) Langlie's Old Fashioned Independence Celebration, Indianola, WA.

Location. All waters of Indianola, WA extending out to a 500' radius from the launch site at 47°44'49" N 122°31'32" W.

Effective time and date. 9:30 p.m. to 11:30 p.m. on July 3, 2009.

(3) Independence Day Firework Show, Liberty Bay Poulsbo, WA.

Location. All waters of Liberty Bay Poulsbo, WA extending out to a 800' radius from the launch site at 47°43'55" N 122°39'08" W.

Effective time and date. 7:30 p.m. to 11:30 p.m. on July 3, 2009.

(4) Deer Harbor Annual Fireworks Display, Deer Harbor, WA.

Location. All waters of Deer Harbor, WA extending to a 500' radius from the launch site at 48°37'00" N 123°00'15" W.

Effective time and date. 11:30 a.m. on July 3, 2009 to 01 a.m. on July 4, 2009.

(5) Tacoma Freedom Fair, Commencement Bay, WA.

Location. All waters of Commencement Bay, WA extending out to a 700' radius from the launch site at 47°16'49" N 122°27'56" W.

Effective time and date. 9 p.m. to 11:30 p.m. on July 4, 2009.

(6) Blast Over Bellingham Bay, Bellingham Bay, WA.

Location. All waters of Bellingham Bay, WA extending to a 1300' radius from the launch site at 48°44'56" N 122°29'40" W.

Effective time and date. 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(7) Bainbridge Island 4th of July, Eagle Harbor, WA.

Location. All waters of Eagle Harbor, WA extending out to a 800' radius from the launch site at 47°37'16" N 122°31'35" W.

Effective time and date. 9 p.m. to 11:30 p.m. on July 4, 2009.

(8) Sheridan Beach Community, Lake Forest Park, WA.

Location. All waters of Lake Forest Park, WA extending out to a 300' radius from the launch site at 47°44'47" N 122°16'55" W.

Effective time and date. 9 p.m. to 11:30 p.m. on July 4, 2009.

(9) City of Kenmore 4th of July, Lake Forest Park, WA.

Location. All waters of Lake Forest Park, WA extending out to a 400' radius from the launch site at 47°39'00" N 122°13'33" W.

Effective time and date. 9 p.m. to 11:30 p.m. on July 4, 2009.

(10) Vashon Island 4th of July, Quartermaster Harbor, WA.

Location. All waters of Quartermaster Harbor, WA extending out to a 1300' radius from the launch site at 47°45'15" N 122°15'45" W.

Effective time and date. 9 p.m. to 11:30 p.m. on July 4, 2009.

(11) Three Tree Point Community, Three Tree Point, WA.

Location. All waters of Three Tree Point, WA extending out to a 500' radius from the launch site at 47°27'02" N 122°23'09" W.

Effective time and date. 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(12) Medina Days, Medina Park, WA.

Location. All waters of Medina Park, WA extending out to a 400' radius from the launch site at 47°36'52" N 122°14'30" W.

Effective time and date. 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(13) Orcas Island, Rock Island, Orcas Island, WA.

Location. All waters of Rock Island, Orcas Island, WA extending out 700' radius from the launch site at 48°41'19" N 122°54'28" W.

Effective time and date. 9 p.m. to 11:59 p.m. on July 4, 2009.

(14) Kingston Fireworks, Appletree Cove, WA.

Location. All waters of Appletree Cove, WA extending out to a 400' radius from the launch site at 47°47'39" N 122°29'55" W.

Effective time and date. 9:30 p.m. to 11 p.m. on July 4, 2009.

(15) Port Townsend Sunrise Rotary, Port Townsend, WA.

Location. All waters of Fort Wooden Park, Port Townsend, WA extending out to a 500' radius from the launch site at 48°08'04" N 122°46'28" W.

Effective time and date. 9:30 p.m. to 11 p.m. on July 4, 2009.

(16) City of Mount Vernon 4th of July, Edgewater Park, WA.

Location. All waters of Edgewater Park, WA within a box bounded by the points: 48°25'15" N 122°20'28" W; 48°25'14" N 122°20'21" W; 48°25'03" N 122°20'23" W; 48°25'10" N 122°20'30" W.

Effective time and date. 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(17) Kirkland 4th of July, Kirkland, Lake Washington, WA.

Location. All waters of Kirkland, Lake Washington WA extending out to a 700' radius from the launch site at 47°40'35" N 122°12'84" W.

Effective time and date. 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(18) Lake Forest Park 4th of July, Lake Forest Park, WA.

Location. All waters of Lake Forest Park, WA extending out to a 400' radius from the launch site at 47°45'07" N 122°16'22" W.

Effective time and date. 9:30 p.m. to 11 p.m. on July 4, 2009.

(19) City of Renton, Renton, Lake Washington, WA.

Location. All waters of Renton, Lake Washington, WA extending out to a 400' radius from the launch site at 47°29'59" N 122°11'51" W.

Effective time and date. 9:30 p.m. to 11 p.m. on July 4, 2009.

(20) Yarrow Point Community, Yarrow Point, WA.

Location. All waters of Yarrow Point, WA extending out to a 600' radius from the launch site at 47°38'43.62" N 122°13'27.95" W.

Effective time and date. 9:30 p.m. to 11 p.m. on July 4, 2009.

(21) Fireworks Display, Henderson Bay, WA.

Location. All waters of Henderson Bay, WA extending out to a 600' radius from the launch site at 47°21'48" N 122°38'22" W.

Effective time and date. 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(22) Chase Family Fourth at Lake Union, Lake Union, WA.

Location. All waters of Lake Union, WA bounded by the following points: 47°38.592' N 122°20.242' W; 47°38.567' N 122°19.963' W; 47°38.210' N 122°20.238' W; 47°38.210' N 122°19.953' W.

Effective time and date. 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(23) Port Orchard 4th of July Fireworks, Port Orchard, WA.

Location. All waters of Port Orchard, WA extending to a 1,000' radius from the launch site at 47°32'53" N 122°37'55" W.

Effective time and date. 8:30 p.m. to 11:59 p.m. on July 4, 2009.

(24) Steilicoom Annual 4th of July Fireworks, Steilicoom, WA.

Location. All waters of Steilicoom, WA extending to a 1300' radius from the launch site at 47°10'24" N 122°36'12" W.

Effective time and date. 7:30 p.m. to 11:30 p.m. on July 4, 2009.

(25) Friday Harbor Independence, Friday Harbor, WA.

Location. All waters of Friday Harbor, WA extending to a 700' radius from the launch site at 48°32'36" N 122°00'28" W.

Effective time and date. 8:30 p.m. to 11:59 p.m. on July 4, 2009.

(26) City of Anacortes, Fidalgo Bay, WA.

Location. All waters of Fidalgo Bay, WA extending to a 600' radius from the launch site at 47°17'06" N 122°28'24" W.

Effective time and date. 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(27) Port Angeles, Port Angeles Harbor, WA.

Location. All waters of Port Angeles Harbor, WA extending to a 600' radius

from the launch site at 48°07'02" N 123°24'58" W.

Effective time and date. 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(28) 4th of July, Roche Harbor, WA.

Location. All waters of Roche Harbor, WA extending to an 800' radius from the launch site at 48°36'42" N 123°09'30" W.

Effective time and date. 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(29) Brewster Fire Department 4th of July, Brewster, WA.

Location. All waters of northern Columbia River, WA extending to an 800' radius from the launch site at 48°06'22" N 119°47'09" W.

Effective time and date. 9:30 p.m. to 11:30 p.m. on July 4, 2009.

(30) Des Moines 4th of July, Des Moines, WA.

Location. All waters of Des Moines Marina Pier, WA extending to a 400' radius from the launch site at 47°24'07" N 122°20'02" W.

Effective time and date. 9:30 p.m. to 11 p.m. on July 4, 2009.

(31) Mercer Island Summer Celebration, Mercer Island, WA.

Location. All waters of Lake Washington, WA extending out to a 400' radius from the launch site at 47°35'31" N 122°13'14" W.

Effective time and date. 9 p.m. to 11:30 p.m. on July 11, 2009.

(32) Whaling Days, Dyes Inlet Silverdale, WA.

Location. All waters of Dyes Inlet Silverdale, WA extending out to a 1000' radius from the launch site at 47°38'39" N 122°41'21" W.

Effective time and date. 7:30 p.m. to 11:30 p.m. on July 24, 2009.

(33) Seafair, Lake Washington, WA.

Location. All waters of Lake Washington, WA extending out to a 1000' radius from the launch site at 47°34'20" N 122°16'01" W.

Effective time and date. 9:30 p.m. to 11 p.m. on August 1, 2009.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel may enter, transit, moor, or anchor within any of these safety zones except for vessels authorized by the Captain of the Port or a Designated Representative.

(c) *Authorization.* All vessel operators who desire to enter any of these safety zones must obtain permission from the Captain of the Port or a Designated Representative by contacting either the on-scene patrol craft on VHF Ch 13 or Ch 16 or the Coast Guard Sector Seattle Joint Harbor Operations Center (JHOC) via telephone at (206) 217-6002.

(d) *Enforcement Period.* This rule is effective from 8 a.m. on July 2, 2009 through 8 a.m. on August 2, 2009.

Dated: July 1, 2009.

Suzane E. Englebert,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. E9-16804 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2009-0521]

RIN 1625-AA00

Safety Zone; Fireworks Display at the Craneway Building, Richmond, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters off of Richmond, CA, in support of a fireworks display for a corporate party at the Craneway building. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or his designated representative.

DATES: This rule is effective from 12:45 p.m. on August 21, 2009 through 10:15 p.m. on August 27, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0521 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2009-0521 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying two locations: the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Ensign Liezl Nicholas, U.S. Coast Guard Sector San Francisco, at (415) 399-7436 or Liezl.A.Nicholas@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Background and Purpose

Innovative Entertainment will sponsor a fireworks display on August 21, 23, 25, & 27, 2009, on the navigable waters off of Richmond, CA. The fireworks display is meant for entertainment purposes. This safety zone is issued to establish a temporary restricted area on the waters surrounding the fireworks launch site during loading of the pyrotechnics, and during the fireworks display. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barges. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

Discussion of Rule

During the set up of the fireworks and until the start of the fireworks display, the temporary safety zone applies to the navigable waters around the fireworks site within a radius of 100 feet. Loading of the pyrotechnics onto the barge at Pier 50 is scheduled to commence at 1 p.m. on August 21, 23, 25, & 27, 2009. From 9:30 p.m. until 10:15 p.m., the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around the fireworks launch site within a radius of 1,000 feet.

The effect of the temporary safety zone will be to restrict navigation in the

vicinity of the fireworks site while the fireworks are set up, and until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels a safe distance away from the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the affected

portion of the areas off Richmond, CA to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165-T11.207 to read as follows:

§ 165-T11.207 Safety Zone; Fireworks Display at the Craneway Building, Richmond, CA.

(a) *Location.* This temporary safety zone is established for the waters off Richmond, CA. The fireworks launch site will be located in position 37°54' 26.99" N, 122°21' 39.31" W (NAD 83).

During the loading of the fireworks onto the barge, and until the start of the

fireworks display, the temporary safety zone applies to the navigable waters around the fireworks site within a radius of 100 feet. From 9:30 p.m. until 10:15 p.m. on August 21, 23, 25, & 27, 2009, the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around the fireworks site within a radius of 1,000 feet.

(b) *Definitions.* As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.*

(1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the designated representative. Persons and vessels may request permission to enter the safety zone on VHF-16 or through the 24-hour Command Center at telephone (415) 399-3547.

(d) *Effective period.* This section is effective from 12:45 p.m. through 10:15 p.m. on August 21, 23, 25, & 27, 2009.

Dated: June 29, 2009.

P.M. Gugg,

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

[FR Doc. E9-16683 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2009-0568]

RIN 1625-AA00

Safety Zone; James River, Navy Live Fire and Explosive Training

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the M/V Del Monte. This safety zone will restrict vessel traffic on a portion of the James River within a 1,500-foot radius of the M/V Del Monte. This action is intended to restrict vessel traffic movement in the vicinity of the James River Reserve Fleet to protect mariners from the hazards associated with live fire and explosive training events.

DATES: This rule is effective from 8 a.m. on July 30, 2009, to 11 p.m. on August 8, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0568 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0568 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Tiffany Duffy, Chief Waterways Management, Sector Hampton Roads, Coast Guard; telephone 757–668–5580, e-mail tiffany.a.duffy@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because delaying the effective date would be contrary to the public interest since immediate action is needed to ensure

the public’s safety during the Navy’s live fire and explosive training event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest since immediate action is needed to ensure the public’s safety during the Navy’s live fire and explosive training event.

Background and Purpose

Coast Guard Sector Hampton Roads has been notified that the U.S. Navy will conduct a live fire and explosive training event onboard the M/V Del Monte in the vicinity of the James River Reserve Fleet. The event is scheduled to take place from July 30, 2009, to August 8, 2009. Due to the need to protect mariners transiting on James River in the vicinity of the exercise from the hazards associated with live fire and explosive events, the Coast Guard is establishing a safety zone bound by a 1,500-foot radius around approximate position 37°06’11” N/076°38’40” W (NAD 1983). Access to this area will be temporarily restricted for public safety purposes.

Discussion of Rule

The Coast Guard is establishing a 1,500-foot radius safety zone on specified waters of James River around approximate position 37°06’11” N/076°38’40” W (NAD 1983) in the vicinity of the James River Reserve Fleet. This safety zone is being established in the interest of public safety during the live fire and explosive training exercise and will be enforced from 8 a.m. to 11 p.m. on July 30, 2009, to August 8, 2009. Access to the safety zone will be restricted during the specified dates and times. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and

Budget has not reviewed it under that Order. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the James River from 8 a.m. to 11 p.m. from July 30, 2009, to August 8, 2009. This safety zone will not have a significant economic impact on a substantial number of small entities because the safety zone will only be in place for a limited duration. Before the effective period beginning July 30, 2009, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132. Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it does not have a substantial

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves a temporary safety zone that will be in effect for only ten days and is intended to keep mariners safe from

the hazards associated with live fire and explosive exercises. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0568 to read as follows:

§ 165.T05–0568 Safety Zone; James River, Navy Live Fire and Explosive Training.

(a) *Regulated Area.* The following area is a safety zone: All waters in the vicinity of the James River Reserve Fleet on the James River within a 1,500-foot radius of position 37°06′11″ N/076°38′40″ W (NAD 1983).

(b) *Definition:* For the purposes of this section, *Captain of the Port Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations:* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number 757–638–6641.

(4) The Coast Guard Representatives enforcing the safety zone can be

contacted on VHF-FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement Period:* This regulation will be enforced from 8 a.m. to 11 p.m. beginning July 30, 2009, to August 8, 2009.

Dated: July 2, 2009.

M.S. Ogle,

Captain, U.S. Coast Guard Captain of the Port Hampton Roads.

[FR Doc. E9-16829 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-15-P

POSTAL SERVICE

39 CFR Part 111

Price Marking Requirements for Commercial Base and Commercial Plus Pricing

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is implementing new price marking requirements on Express Mail® and Priority Mail® pieces mailed at commercial base and commercial plus prices. The new markings are needed to fulfill our revenue reporting and revenue assurance requirements.

DATES: *Effective Date:* November 2, 2009.

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

SUPPLEMENTARY INFORMATION: On April 3, 2009, the Postal Service published a **Federal Register** proposed rule (Volume 74, Number 63, pages 15226-15227) inviting comments on a revision to require price markings on Express Mail and Priority Mail pieces mailed at commercial base and commercial plus prices. We received two sets of comments. After reviewing those comments, and upon further consideration of the proposed revisions, the Postal Service has decided to adopt the proposed regulations with no revisions.

As noted in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, the Postal Service is revising the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) to require price markings on Express Mail and Priority Mail pieces mailed at the commercial base or the commercial plus prices. The new markings will help us determine which price was applied to these pieces, and verify that the pieces qualify for the price claimed. The markings must appear on pieces paid by any means

except permit imprint or Express Mail Corporate Account.

Under this final rule, mailers must print or produce as part of the meter imprint or PC Postage® indicia—“Commercial Base Price,” “Commercial Base Pricing,” or “ComBasPrice,” for pieces paid at the Commercial Base price; and “Commercial Plus Price,” “Commercial Plus Pricing,” or “ComPlsPrice” for pieces paid at the Commercial Plus price. The appropriate marking must appear directly above, directly below, or to the left of the postage.

Evaluation of Comments Received

The Postal Service received two sets of comments. Both of the comments suggested that the Postal Service allow the markings “Express CBP” and “Priority CBP.” We have decided not to add these markings to the list of acceptable price markings because “Priority Mail” and “Express Mail” are trademarks owned by the Postal Service for expedited delivery services and expedited delivery packaging. The use of an incomplete trademark, *i.e.*, the single words “Priority” or “Express” on “Priority Mail” pieces or “Express Mail” pieces is unacceptable to the Postal Service.

One commenter also asked that we extend our effective date past the 90 days we proposed. Even though the Postal Service thinks 90 days is sufficient time to conform to this rule, mailers requiring additional time may submit a request for an exception to the Manager, Mailing Standards. Requests will be evaluated based on the circumstances of the individual mailer’s progress towards transition.

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

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

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

PART 111—[AMENDED]

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

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

■ 2. Revise the following sections of *Mailing Standards of the United States*

Postal Service, Domestic Mail Manual (DMM) as follows:

* * * * *

400 Commercial Parcels

* * * * *

402 Elements on the Face of a Mailpiece

* * * * *

2.0 Placement and Content of Markings

[Renumber 2.1 through 2.5 as 2.2 through 2.6 and add new 2.1, Express Mail and Priority Mail Markings, as follows:]

2.1 Express Mail and Priority Mail Markings

Except for pieces paid using permit imprint or an Express Mail Corporate Account, Express Mail and Priority Mail pieces claiming the commercial base or commercial plus price must bear the appropriate price marking, printed on the piece or produced as part of the meter imprint or PC Postage indicia. Place the marking directly above, directly below, or to the left of the postage. Markings are as follows: a. “Commercial Base Price,” “Commercial Base Pricing,” or “ComBasPrice.” b. “Commercial Plus Price,” “Commercial Plus Pricing,” or “ComPlsPrice.”

* * * * *

410 Express Mail

* * * * *

415 Mail Preparation

[Reorganize and revise section 1.0 by adding a new 1.2 as follows:]

1.0 General Information for Mail Preparation

1.1 Express Mail Packaging Provided by the USPS

Express Mail packaging provided by the USPS must be used only for Express Mail. Regardless of how the packaging is reconfigured or how markings may be obliterated, any material mailed in USPS-provided Express Mail packaging is charged the appropriate Express Mail price.

1.2 Price Marking

Except for pieces paid using an Express Mail Corporate Account, Express Mail pieces claiming the commercial base or commercial plus price must bear the appropriate price marking, printed on the piece or produced as part of the meter imprint or PC Postage indicia. Place the marking directly above, directly below, or to the left of the postage. Markings are as follows:

a. "Commercial Base Price," "Commercial Base Pricing," or "ComBasPrice."

b. "Commercial Plus Price," "Commercial Plus Pricing," or "ComPlsPrice."

* * * * *

420 Priority Mail

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425 Mail Preparation

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2.0 Marking

[Reorganize and revise section 2.0 as follows:]

2.1 Product Marking

The marking "Priority Mail" must be placed prominently on the address side of each piece of Priority Mail.

2.2 Price Marking

Except for pieces paid using permit imprint, Priority Mail pieces claiming the commercial base or commercial plus price must bear the appropriate price marking, printed on the piece or produced as part of the meter imprint or PC Postage indicia. Place the marking directly above, directly below, or to the left of the postage. Markings are as follows:

a. "Commercial Base Price," "Commercial Base Pricing," or "ComBasPrice."

b. "Commercial Plus Price," "Commercial Plus Pricing," or "ComPlsPrice."

* * * * *

Stanley F. Mires,

Attorney, Legislative.

[FR Doc. E9-16205 Filed 7-14-09; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2008-0458; FRL-8423-8]

Fenamidone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fenamidone in or on cilantro, leaves; grape; okra; turnip, greens; and vegetable, root, except sugar beet, subgroup 1B, except radish; and combined residues of fenamidone and its metabolite RPA 717879 in or on corn, field, forage; corn, field, grain; corn, field, stover; corn,

sweet, forage; corn, sweet, kernel plus cob with husks removed; corn, sweet, stover; soybean, forage; soybean, hay; and soybean, seed. It also removes existing permanent and time-limited tolerances on carrot that are superseded by the new tolerance on vegetable, root, except sugar beet, subgroup 1B, except radish. The new tolerance on grape will be a tolerance with regional registration (East of the Rocky Mountains) and will replace the current tolerance which is restricted to imported grapes. Interregional Research Project Number 4 (IR-4) and Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 15, 2009. Objections and requests for hearings must be received on or before September 14, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2008-0458. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5218; e-mail address: stanton.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2008-0458 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 14, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA

without prior notice. Submit this copy, identified by docket ID number EPA-HQ-OPP-2008-0458, by one of the following methods:

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

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

II. Petition for Tolerance

In the **Federal Registers** of June 13, 2008 (73 FR 33814) (FRL-8367-3) and December 3, 2008 (73 FR 73644) (FRL 8386-9), EPA issued notices pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7350) by Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201W, Princeton, NJ 08540; and a pesticide petition (PP 8F7410) by Bayer CropScience, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. PP 8E7350 requested that 40 CFR 180.579 be amended by establishing tolerances for residues of the fungicide fenamidone, 4*H*-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino)-, (S)-, in or on vegetables, root, except sugar beet, subgroup 1B, except radish at 0.2 parts per million (ppm); turnip, leaves at 55 ppm; coriander, leaves at 60 ppm; okra at 3.5 ppm; and a tolerance with regional registration for residues of fenamidone on grape at 1.0 ppm. The grape tolerance would replace an existing grape tolerance that was established only to address the importation of grapes containing fenamidone residues. PP 8F7410 requested that 40 CFR 180.579 be amended by establishing tolerances for indirect or inadvertent residues of fenamidone and its metabolite RPA 717879, 2,4-imidazolidinedione, 5-methyl-5-phenyl-, in or on corn, field, forage at 0.50 ppm; corn, field grain at 0.02 ppm; corn, stover at 0.35 ppm; corn, sweet, forage at 0.15 ppm; corn, sweet, kernel plus cob with husks removed at 0.02 ppm; soybean, forage at

0.20 ppm; soybean, hay at 0.20 ppm; and soybean, seed at 0.02 ppm (all in PP 8F7410). The notices referenced summaries of the petitions prepared by Bayer CropScience, the registrant, which are available to the public in docket ID numbers EPA-HQ-OPP-2008-0458 (PP 8E7350) and EPA-HQ-OPP-2006-0848 (PP 8F7410) at <http://www.regulations.gov>. There were no comments received in response to the notices of filing.

Based upon review of the data supporting the petition, EPA has revised the commodity terms, and/or tolerance levels for several commodities. EPA also determined that separate tolerances should be established on stover from field and sweet corn. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of fenamidone on cilantro, leaves at 60 ppm; okra at 3.5 ppm; turnip, greens at 55 ppm; and vegetable, root, except sugar beet, subgroup 1B, except radish at 0.15 ppm; a tolerance with regional registration in or on grape at 1.0 ppm; and tolerances for combined residues of fenamidone and its metabolite RPA 717879 in or on corn, field, forage at 0.25 ppm; corn, field, grain at 0.02 ppm; corn, field,

stover at 0.40 ppm; corn, sweet, forage at 0.15 ppm; corn, sweet, kernel plus cob with husks removed at 0.02 ppm; corn, sweet, stover at 0.20 ppm; soybean, forage at 0.15 ppm; soybean, hay at 0.25 ppm; and soybean, seed at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Fenamidone has low acute toxicity via the oral, dermal and inhalation routes of exposure. It is a moderate eye irritant, but is not a dermal irritant or a dermal sensitizer. The liver is the target organ in chronic studies in the rat, mouse and dog. The thyroid is also a target organ in the rat. There is no evidence of immunotoxicity in the available toxicity studies with fenamidone and no indication of carcinogenicity in the carcinogenicity studies conducted in rats and mice. EPA has classified fenamidone as "not likely to be a human carcinogen" by all relevant routes of exposure.

Fenamidone did not demonstrate any qualitative or quantitative increased susceptibility of fetuses or offspring in the rat and rabbit developmental toxicity studies or the 2-generation rat reproduction study. In the rat reproduction study (Sprague Dawley rat), decreased absolute brain weight and pup body weight occurred at the same dose levels as decreased absolute brain weight and parental body weight, food consumption and increased liver and spleen weight. Developmental toxicity (decreased fetal weights and incomplete ossification) was observed in the rat only at the limit dose. Fenamidone did not produce developmental toxicity in the rabbit or reproductive toxicity in the rat.

No treatment-related effects were observed on motor activity or in the functional observation battery (FOB) parameters measured in the subchronic neurotoxicity study in rats. In this subchronic neurotoxicity study, marginal decreases in brain weights were observed only in high dose males. In the acute neurotoxicity study in rats, the most commonly observed clinical sign was staining/soiling of the anogenital region. Other day-1 FOB findings included mucous in the feces,

hunched posture and unsteady gait. In a developmental neurotoxicity study in Wistar rats, no neurobehavioral effects and no neuropathological changes were observed at any dose in the offspring, but decreased body weight was observed during pre- and post-weaning.

Specific information on the studies received and the nature of the adverse effects caused by fenamidone as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in the document *Fenamidone. Human Health Risk Assessment to Support Section 3 Proposals to Add New Uses on the Root Vegetable Subgroup 1B (except radish), Okra, Turnip Greens, Cilantro Leaves, Grapes Grown East of the Rock Mountains and Rotational Crop Uses for Field Corn, Sweet Corn and Soybeans*, page 30 in docket ID number EPA-HQ-OPP-2008-0458.

B. Toxicological Endpoints

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

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus,

the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/pesticides/factsheets/riskassess.htm>.

A summary of the toxicological endpoints for fenamidone used for human risk assessment can be found at <http://www.regulations.gov> in the document *Fenamidone. Human Health Risk Assessment to Support Section 3 Proposals to Add New Uses on the Root Vegetable Subgroup 1B (except radish), Okra, Turnip Greens, Cilantro Leaves, Grapes Grown East of the Rock Mountains and Rotational Crop Uses for Field Corn, Sweet Corn and Soybeans*, page 12 in docket ID number EPA-HQ-OPP-2008-0458.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fenamidone, EPA considered exposure under the petitioned-for tolerances as well as all existing fenamidone tolerances in 40 CFR 180.579. EPA assessed dietary exposures from fenamidone in food as follows:

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

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994-1996 and 1998 Nationwide Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA assumed that 100% of all crops with existing or proposed registrations are treated with fenamidone and that residues are present at maximum field trial levels.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994-1996 and 1998 CSFII. As to residue levels in food, EPA assumed that 100% of all crops with existing or proposed registrations are treated with fenamidone and that residues are present at maximum field trial levels.

iii. *Cancer.* Based on the results of carcinogenicity studies in rats and mice, EPA classified fenamidone as "not likely to be carcinogenic to humans;" therefore, an exposure assessment for

evaluating cancer risk is not needed for this chemical.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

EPA did not use PCT information in assessing dietary exposure to fenamidone.

2. *Dietary exposure from drinking water.* The fenamidone residues of toxicological concern in drinking water include parent fenamidone and its degradation products, RPA 412636, RPA 412108, RPA 411639, RPA 413255, RPA 409446, and RPA 410995. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fenamidone and its degradates in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fenamidone and its degradates. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of fenamidone and its degradates for acute exposures are estimated to be 47.88 parts per billion (ppb) for surface water and 176 ppb for ground water. The EDWCs of fenamidone and its degradates for chronic exposures for non-cancer assessments are estimated to be 12.86 ppb for surface water and 176 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute and chronic dietary risk assessment, the water concentration value of 176 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in

this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fenamidone is not registered for any specific use patterns that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The pre- and postnatal toxicity database for fenamidone includes rat and rabbit developmental toxicity studies, a rat developmental neurotoxicity study (DNT) and a 2-generation reproduction toxicity study in rats. No evidence of increased quantitative or qualitative susceptibility of rat or rabbit fetuses to *in utero* exposure was observed in the developmental toxicity studies. There was no developmental toxicity in rabbit fetuses up to 100 milligrams/kilogram/

day (mg/kg/day), the highest dose tested (HDT); whereas an increase in absolute liver weight was observed in the does at 30 and 100 mg/kg/day. Since the liver was identified as one of the principal target organs in rodents and dogs, the occurrence of this finding in rabbits at 30 and 100 mg/kg/day was considered strong evidence of maternal toxicity. In the rat developmental study, developmental toxicity manifested as decreased fetal body weight and incomplete fetal ossification in the presence of maternal toxicity in the form of decreased body weight and food consumption at the limit dose (1,000 mg/kg/day). The effects at the limit dose were comparable between fetuses and dams. No quantitative or qualitative evidence of increased susceptibility was observed in the 2-generation reproduction study in rats. In that study, both the parental and offspring LOAELs were based on decreased absolute brain weight in female F₁ adults and female F₂ offspring at 89.2 mg/kg/day. At 438.3 mg/kg/day, parental effects consisted of decreased body weight and food consumption, and increased liver and spleen weight. Decreased pup body weight was also observed at the same dose level of 438.3 mg/kg/day. There were no effects on reproductive performance up to 438.3 mg/kg/day (HDT).

The results of the DNT study indicated an increased susceptibility of offspring. There was no maternal toxicity at the HDT (429 mg/kg/day). Effects in the offspring included decreased body weight (9–11%) and body weight gain (8–20%) during pre-weaning and decreased body weight (4–6%) during post-weaning at 429 mg/kg/day (LOAEL). There were no neurobehavioral effects and no neuropathological changes at any dose in the offspring. The concern for the increased susceptibility observed in the DNT is low because:

- i. Of the lack of neurobehavioral or neuropathological changes in the offspring at any dose;
- ii. A clear NOAEL for the adverse effects in the study was identified;
- iii. The endpoints used for the various risk assessment scenarios are much more sensitive than that of the decreased bodyweight of the offspring occurring at almost half the limit-dose (429 mg/kg/day); and
- iv. The NOAELs of 10.4, 5.4 and 2.83 mg/kg/day used for short-term, intermediate-term and long-term risk assessments, respectively, are considerably (9–45 fold) lower than the offspring NOAEL of 92.3 mg/kg/day in the DNT.

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

i. The toxicity database for fenamidone is adequate to assess the pre- and postnatal toxicity of fenamidone. In accordance with the revised 40 CFR part 158 Data Requirements for Pesticides, an immunotoxicity study (870.7800) is required for fenamidone. In the absence of specific immunotoxicity studies, EPA has evaluated the available fenamidone toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. There was no evidence of adverse effects on the organs of the immune system in any study with fenamidone, and fenamidone does not belong to a class of chemicals (e.g., the organotins, heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be immunotoxic. Based on these considerations, EPA does not believe that conducting immunotoxicity testing will result in a point of departure lower than those already selected for fenamidone; therefore, an additional database uncertainty factor is not needed to account for potential immunotoxicity.

ii. There was no evidence of neurotoxicity in the subchronic neurotoxicity study submitted for fenamidone. There was evidence of neurotoxicity (urination, staining/soiling of the anogenital region, mucus in the feces and unsteady gait in females) in the acute neurotoxicity study, and EPA used the NOAEL from this study to assess acute dietary exposure. There was also evidence of neurotoxicity (decreased absolute brain weights) in the 2-generation rat reproduction study; however, there was no indication of increased susceptibility of offspring with regard to these effects. Finally, there was no evidence of neurotoxicity at any dose in the submitted DNT study. Based on the results of these studies, EPA concluded that there is no need for additional UFs to account for neurotoxicity.

iii. There is no evidence that fenamidone results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in offspring in the 2-generation reproduction study. Although there is evidence of increased quantitative susceptibility in the DNT study, the degree of concern is low and the Agency did not identify any residual uncertainties after establishing toxicity

endpoints and traditional UFs to be used in the risk assessment of fenamidone.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on reliable data from residue field trials and assuming 100 PCT. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fenamidone in drinking water. Residential exposure is not expected from the existing and new uses of fenamidone. These assessments will not underestimate the exposure and risks posed by fenamidone.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to fenamidone will occupy 5% of the aPAD for children, 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fenamidone from food and water will utilize 88% of the cPAD for children, 1 to 2 years old, the population group receiving the greatest exposure. There are no residential uses for fenamidone.

3. *Short-term and intermediate-term risk.* Short-term and intermediate-term aggregate exposure take into account short-term or intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fenamidone is not registered for any use patterns that would result in residential exposure. Therefore, the short-term or

intermediate-term aggregate risk is the sum of the risk from exposure to fenamidone through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population.* Fenamidone is classified as “not likely to be carcinogenic to humans” and is, therefore, not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatographic method coupled with tandem mass spectrum detection (LC/MS/MS)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

There are no Codex, Canadian or Mexican MRLs (maximum residue levels) for residues of fenamidone in or on any of the commodities requested in these petitions.

C. Revisions to Petitioned-for Tolerances

EPA has revised the commodity terms and/or tolerance levels for several commodities. EPA revised the commodity terms proposed by IR–4 as “vegetables, root, except sugar beet, subgroup 1B, except radish”; “coriander, leaves”; and “turnip, leaves” to read “vegetable, root, except sugar beet, subgroup 1B, except radish”; “cilantro, leaves”; and “turnip, greens”; and determined that separate tolerances were needed for stover from field and sweet corn (i.e., “corn, field, stover” and “corn, sweet, stover”) to agree with the Food and Feed Vocabulary. EPA revised the tolerance level for “vegetable, root, except sugar beet, subgroup 1B, except radish” from 0.2 ppm to 0.15 ppm to agree with the existing tolerance on carrot, the representative commodity on which the proposed tolerance was based. EPA revised the tolerances for “corn, field, forage” from 0.50 ppm to 0.25 ppm”; “corn, field, stover” from 0.35 ppm to 0.40 ppm; “corn, sweet, stover” from 0.35 ppm to 0.20 ppm; “soybean, forage” from 0.20 ppm to 0.15 ppm; and “soybean, hay” from 0.20

ppm to 0.25 based on analyses of field trial data using the Agency’s Tolerance Spreadsheet in accordance with the Agency’s *Guidance for Setting Pesticide Tolerances Based on Field Trial Data*.

V. Conclusion

Therefore, tolerances are established for residues of fenamidone, 4*H*-imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino)-, (S)-, on cilantro, leaves at 60 ppm; okra at 3.5 ppm; turnip, greens at 55 ppm; and vegetable, root, except sugar beet, subgroup 1B, except radish at 0.15 ppm; a tolerance with regional registration is established for residues of fenamidone in or on grape at 1.0 ppm; and tolerances are established for combined residues of fenamidone and its metabolite RPA 717879 in or on corn, field, forage at 0.25 ppm; corn, field, grain at 0.02 ppm; corn, field, stover at 0.40 ppm; corn, sweet, forage at 0.15 ppm; corn, sweet, kernel plus cob with husks removed at 0.02 ppm; corn, sweet, stover at 0.20 ppm; soybean, forage at 0.15 ppm; soybean, hay at 0.25 ppm; and soybean, seed at 0.02 ppm. The existing permanent and time-limited tolerances on carrot are removed, since residues on carrots will be covered by the new tolerance on vegetable, root, except sugar beet, subgroup 1B, except radish.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure,

Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 1, 2009.

G. Jeffery Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.579 paragraph (a)(1) table is amended by removing the commodities “carrot” and “grape (imported)” and adding the following commodities; by removing and reserving paragraph (b); by revising paragraph (c); and by adding the following commodities to the table in paragraph (d) to read as follows:

§ 180.579 Fenamidone; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
* * *	* *
Cilantro, leaves	60
Okra	3.5
Turnip, greens	55
Vegetable, root, except sugar beet, subgroup 1B, except radish	0.15
* * *	* *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* A tolerance with regional registration as defined in §180.1(m) is established for residues of fenamidone, 4*H*-Imidazol-4-one, 3,5-dihydro-5-methyl-2-(methylthio)-5-phenyl-3-(phenylamino)-, (S)-, in or on the following commodity:

Commodity	Parts per million
Grape ¹	1.0

¹Applicable to grapes grown East of the Rocky Mountains.

(d) *Indirect or inadvertent residues.* * * *

Commodity	Parts per million
Corn, field, forage	0.25
Corn, field, grain	0.02
Corn, field, stover	0.40
Corn, sweet, forage	0.15

Commodity	Parts per million
Corn, sweet, kernel plus cob with husks removed	0.02
Corn, sweet, stover	0.20
Soybean, forage	0.15
Soybean, hay	0.25
Soybean, seed	0.02
* * *	* *

[FR Doc. E9-16817 Filed 7-14-09; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA-HQ-OPPT-2005-0049; FRL-8422-7]

RIN 2070-AJ48

Lead; Minor Amendments to the Renovation, Repair, and Painting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final rule making two minor revisions to the final Lead Renovation, Repair, and Painting Program (RRP) rule that published in the **Federal Register** on April 22, 2008. First, this final rule requires accredited providers of renovator or dust sampling technician training to submit post-course notifications, including digital photographs of each successful trainee, to EPA. The 2008 rule establishes accreditation, training, certification, and recordkeeping requirements as well as work practice standards on persons performing renovations for compensation in most pre-1978 housing and child-occupied facilities. The post-course notification requirement, designed to supply important information for EPA’s compliance monitoring efforts, was inadvertently omitted from the final RRP rule’s regulatory text. In addition, this final rule removes the requirement for accredited lead-based paint activities training providers—those who provide inspector, risk assessor, project designer, and abatement supervisor and worker training—to submit to EPA a digital photograph of each successful trainee along with their post-course notifications. That requirement, inadvertently imposed as part of the final RRP rule, is unnecessary because EPA already receives photographs of these individuals through other means.

DATES: This final rule is effective July 15, 2009.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2005-0049. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Cindy Wheeler, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-0484; e-mail address: wheeler.cindy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you provide or plan to provide training in lead-safe building renovation work practices or training for dust sampling technicians. Potentially affected entities may include, but are not limited to:

- Other technical and trade schools (NAICS code 611519), e.g., training providers.

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

II. What Action is the Agency Taking?

A. Introduction

In the **Federal Register** of April 22, 2008 (73 FR 21692) (FRL-8355-7), under the authority of sections 402(c)(3), 404, 406, and 407 of the Toxic Substances Control Act (TSCA), EPA issued its final RRP rule (Ref. 1). The final RRP rule, codified in 40 CFR part 745, subparts E, L, and Q, addresses lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities.

“Target housing” is defined in TSCA section 401 as any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling. The final RRP rule defines a “child-occupied facility” as a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least 2 different days within any week (Sunday through Saturday period), provided that each day’s visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may be located in public or commercial buildings or in target housing.

The final RRP rule establishes requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. Interested States, Territories, and Indian Tribes may apply for and receive authorization to administer and enforce all of the

elements of the new renovation requirements. More information on the final RRP rule may be found in the **Federal Register** document announcing the final RRP rule (Ref. 1) or on EPA’s website at <http://www.epa.gov/lead/pubs/renovation.htm>.

Many provisions of the final RRP rule were derived from the existing lead-based paint activities regulations at 40 CFR part 745, subpart L (Ref. 2). These existing regulations were promulgated in 1996 under TSCA section 402(a), which defines lead-based paint activities in target housing as inspections, risk assessments, and abatements. The 1996 regulations cover lead-based paint activities in target housing and child-occupied facilities, along with limited screening activities called lead hazard screens. These regulations established an accreditation program for training providers and a certification program for individuals and firms performing these activities. Training course accreditation and individual certification was made available in five disciplines: Inspector, risk assessor, project designer, abatement supervisor, and abatement worker. In addition, these lead-based paint activities regulations established work practice standards and recordkeeping requirements for lead-based paint activities in target housing and child-occupied facilities.

A 2004 amendment to the lead-based paint activities regulations established notification procedures for certified professionals conducting lead-based paint abatement activities, and accredited training programs providing lead-based paint activities courses (Ref. 3). Since the effective date of the 2004 amendment, accredited training programs have been required to notify EPA before providing initial or refresher lead-based paint activities training courses and again following completion of these training courses. Both notifications must include information about the course, while the post-course notification also must include identifying information on the successful trainees. These notification requirements were designed to facilitate compliance monitoring by EPA.

The final RRP rule created two new training disciplines in the field of lead-based paint: Renovator and dust sampling technician. Persons who successfully complete renovator training from an accredited training provider are certified renovators, who are responsible for ensuring that renovations to which they are assigned are performed in compliance with the work practice requirements set out in 40 CFR 745.85. Persons who successfully

complete dust sampling technician training from an accredited training provider are certified dust sampling technicians, who may be called upon to collect optional dust samples after renovations have been completed.

While the training disciplines, the work practice standards, and the recordkeeping requirements of the final RRP rule differ from those established in the lead-based paint activities regulations, EPA determined that the accreditation requirements imposed on persons providing lead-based paint activities training would also be effective for persons providing renovation training. Therefore, the final RRP rule amended 40 CFR 745.225 to cover persons who provide or wish to provide renovation training for the purposes of the final RRP rule.

As amended by the final RRP rule, 40 CFR 745.225 requires training providers who wish to provide lead-based paint activities or renovation training for the purposes of EPA's lead-based paint programs to be accredited by EPA. The requirements for each course of study are described in detail at 40 CFR 745.225 as are the operational requirements for training programs and the process for obtaining accreditation.

As EPA began the process of implementing the final RRP rule, EPA discovered several minor omissions from the regulatory text. Because these omissions could have an impact on EPA's ability to monitor compliance with the RRP rule provisions, EPA issued a proposal (the "2009 Proposal") on April 22, 2009 (74 FR 18330) (FRL-8405-3) to amend the final RRP rule to address these omissions (Ref. 4). EPA received one public comment on the proposal.

The commenter was generally supportive of this action, while suggesting other changes that EPA should consider for the RRP program. The commenter expressed concerns about the overall emphasis on administration requirements which, according to the commenter, merely indirectly addressed environmental and health issues. Specifically, the commenter made the following suggestions: (1) Reduce the size of the photographic identification cards and require more resilient cards; (2) develop a tiered system of on-the-job training to easily verify the level of training or experience each worker has had; (3) clarify rules designed to protect workers from a increased risk of lead exposure; (4) require a certified renovator to report homes that house children or pregnant woman and that have not gone through lead-based paint abatement procedures; and (5) impose stricter penalties for

non-compliance. These comments addressed issues beyond the scope of this rulemaking. EPA's detailed response to the commenter's suggestions and questions can be found in the rulemaking docket for this action (Ref. 5).

B. This Final Rule

This final rule makes two minor amendments to the final RRP rule. These amendments affect the notification requirements for accredited providers of renovation and lead-based paint activities training.

1. *Post-course notifications.* As discussed in the preamble to the 2009 Proposal, the regulatory text of the final RRP rule inadvertently omitted a requirement for accredited providers of renovation training to provide notification to EPA after each training course the provider delivers (Ref. 4). This final rule amends 40 CFR 745.225(c)(14) to require post-course notifications from accredited providers of renovator or dust sampling technician training. This amendment also includes conforming changes to 40 CFR 745.225(c)(14)(iii) to include the correct name of the sample post-course notification form and to make it clear that all methods of post-course notification are available to both renovation training providers and lead-based paint activities training providers. As amended, 40 CFR 745.225(c)(14) now requires renovation training providers to notify EPA, no later than 10 business days following course completion. This notification must include the training provider's name, address, and accreditation number; the course discipline and type; the date the course was provided and, for each student, the name, address, date of birth, course completion certificate number, course test score, and a digital photograph of the student. The notification must be signed by the training manager.

2. *Digital photographs of lead-based paint activities trainees.* The final RRP rule amended 40 CFR 745.225(c)(14) to require training providers to submit digital photographs of each student as part of their post-course notifications. As discussed in the 2009 Proposal, language limiting the requirement to accredited providers of renovator or dust sampling technician training courses was inadvertently omitted from the final RRP rule (Ref. 4). EPA did not intend for the requirement to apply to accredited providers of lead-based paint activities (inspector, risk assessor, project designer, and abatement supervisor and worker) training because, as part of the individual

certification application process, EPA already receives photographs from individual certification candidates at or about the time that the individuals complete their training. Therefore, this final rule amends 40 CFR 745.225(c)(14)(ii)(D)(6) to limit the digital photograph requirement to accredited renovation training providers.

C. Effective Date

In the 2009 Proposal, EPA proposed to make this final rule immediately effective to minimize the impact that these inadvertent omissions will have on the regulated community, the public, and the Agency. In the preamble to the 2009 Proposal, EPA discussed the potential effect of a delay in finalizing the post-course notification requirements, and proposed to find that, under the Administrative Procedure Act (APA), 5 U.S.C. 553(d)(3), good cause exists to dispense with the 30-day delay in the effective date of this final rule (Ref. 4). For the reasons explained in the preamble to the proposal, EPA now finds good cause does exist to dispense with the 30-day delay in the effective date. EPA received no comment on this aspect of the proposal. Therefore, this final rule takes effect immediately upon publication in the **Federal Register**.

III. References

1. EPA. Lead; Renovation, Repair, and Painting Program; Final Rule. **Federal Register** (73 FR 21692, April 22, 2008) (FRL-8355-7).
2. EPA. Lead; Requirements for Lead-based Paint Activities; Final Rule. **Federal Register** (61 FR 45778, August 29, 1996) (FRL-5389-9).
3. EPA. Lead; Notification Requirements for Lead-Based Paint Abatement Activities and Training; Final Rule. **Federal Register** (69 FR 18489, April 8, 2004) (FRL-7341-5).
4. EPA. Lead; Minor Amendments to the Renovation, Repair, and Painting Program; Proposed Rule. **Federal Register** (74 FR 18330, April 22, 2009) (FRL-8405-3).
5. EPA. Lead; Minor Amendments to the Renovation, Repair, and Painting Program. Response to Comments. June 2009.
6. EPA. Information Collection Request (ICR); final rule addendum to an existing EPA ICR, entitled *TSCA Sections 402/404 Training and Certification, Accreditation, and Standards for Lead-Based Paint Activities*. Document ID Number EPA-HQ-OPPT-2005-0049-0925. March 2008.
7. EPA, Office of Pollution Prevention and Toxics (OPPT). Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Final Rule for Target Housing and Child-Occupied Facilities. March 2008.
8. EPA, OPPT. Economic Analysis for the TSCA Section 402 Lead-Based Paint Program Accreditation and Certification Fee Rule. March 2009.

9. EPA. Lead; Renovation, Repair, and Painting Program; Proposed Rule. **Federal Register** (71 FR 1588, January 10, 2006) (FRL-7755-5).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993) it has been determined that this is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). However, the costs of the requirement that accredited renovator and dust sampling technician training providers submit post-course notifications were accounted for in the ICR addendum prepared for the final RRP rule (Ref. 6). Those costs were estimated to be \$347,720 in the first year that the post-course notification requirement is in effect, \$67,896 in the second year, and \$67,489 in the third year. The costs for these providers to take a digital photograph of each trainee, include it in the trainee's course completion certificate, and forward it to EPA were estimated to be \$2 per trainee in the economic analysis for the final RRP rule (Ref. 7). The economic analysis for the final RRP rule also estimated that there would be 235,916 trainees in the first year that the accreditation and training requirements are in effect, 78,316 in the second year, and 77,995 in the third year. This results in an estimated cost for the digital photograph requirement of \$471,832 in the first year, \$156,632 in the second year, and \$155,990 in the third year.

The costs for accredited lead-based paint activities training providers to take digital photographs of successful trainees and submit them to EPA were not directly estimated, because EPA did not intend to impose this requirement. However, these costs can be calculated using the \$2 per trainee figure along with the annual number of lead-based paint activities certification and recertification applications received by EPA that was estimated for an economic analysis prepared for a separate rulemaking (Ref. 8). That economic analysis estimated that EPA would receive, on an annual basis, 1,534 certification applications and 626 recertification applications. This results in an estimated annual cost for the digital photograph requirement for accredited lead-based paint activities training providers of \$4,320. Because this final rule eliminates the digital photograph requirement for accredited lead-based paint activities training providers, this amount represents a cost savings.

B. Paperwork Reduction Act

This regulatory action does not contain any information collection requirements that require additional approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The information collection referenced in this final rule (i.e., the post-course notification requirement in 40 CFR 745.225) has already been approved by OMB under control number 2070-0155 (EPA ICR # 1715.10) (Ref. 6). EPA does not believe that this final rule has any impact on the existing burden estimate or collection description, such that additional approval by OMB is necessary.

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations codified in 40 CFR chapter I, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, 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.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, small entity is defined in accordance with section 601 of RFA as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The impacts of the post-course notification requirement on small entities who become accredited to provide renovator or dust sampling technician training courses were specifically addressed and accounted for during the development of the final RRP rule. As provided for in section 605 of RFA, the post-course notification requirements being promulgated in this final rule are so closely related to the final RRP rule that EPA considers them and the analysis prepared and the other actions taken by EPA in connection with the final RRP rule to be one rule for the purposes of sections 603 and 604 of RFA. Accordingly, in order to avoid duplicative action, EPA is relying on the analysis EPA prepared for the final RRP rule as well as the other actions that EPA took in developing the final RRP rule to satisfy its obligations under RFA for this final rule.

A description of the Agency's activities pursuant to RFA is found in the preamble to the final RRP rule (Ref. 1 at 21752). Specifically, pursuant to section 603 of RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the proposed RRP rule and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the regulated small entities on a range of issues, including training provider accreditation. As required by section 604 of RFA, the Agency also prepared a final regulatory flexibility analysis (FRFA) for the final RRP rule. The post-course notification requirements being promulgated in this final rule were included in costs analyzed in the IRFA and the FRFA for the final RRP rule. The FRFA also addressed the issues raised by public comments on the IRFA. As part of that analysis, EPA determined that including a digital photograph in the notification would not be an added cost to training providers because the cost would be recouped as part of the fee charged for the course. Thus, this requirement would not have a significant impact on any training providers. Accordingly, the impacts of the post-course notification requirements on small entities that become accredited to provide renovator or dust sampling technician training

courses have been adequately addressed for purposes of RFA.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of \$100 million by State, local, or Tribal governments or the private sector in any 1 year. In addition, this final rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this final rule does not have “federalism implications,” because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this final rule. Nevertheless, in the spirit of the objectives of this Executive Order, and consistent with EPA policy to promote communications between the Agency and State and local governments, EPA consulted with representatives of State and local governments during the rulemaking process for the RRP rule. These consultations are as described in the preamble to the 2006 RRP proposed rule (Ref. 9).

F. Executive Order 13175

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (59 FR 22951, November 9, 2000), EPA has determined that this final rule does not have tribal implications because it will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in the Executive Order. Thus, Executive Order 13175 does not apply to this final rule. Although Executive Order 13175 does not apply to this final rule, EPA consulted with Tribal officials and others by discussing potential renovation regulatory options at several national lead program meetings hosted by EPA and other interested Federal agencies.

G. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) does not apply to this final rule because it is not an “economically significant regulatory action” as defined by Executive Order 12866. While the environmental health or safety risk addressed by the RRP rule does have a disproportionate effect on children, this final rule merely covers administrative requirements for accredited training

providers and does not directly address environmental health or safety risks.

EPA has evaluated the environmental health or safety effects of renovation, repair, and painting projects on children. Various aspects of this evaluation are discussed in the preamble to the proposed RRP rule (Ref. 9). The primary purpose of the final RRP rule is to minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in housing where children under age 6 reside and in housing or other buildings frequented by children under age 6. In the absence of the final RRP rule, adequate work practices are not likely to be employed during renovation, repair, and painting activities. EPA’s analysis indicates that there will be approximately 1.4 million children under age 6 affected by the final RRP rule. These children are projected to receive considerable benefits due to the final RRP rule.

H. Executive Order 13211

This final rule is not a “significant energy action” as defined in Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not likely to have any adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

This regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

J. Executive Order 12898

Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16,

1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

While EPA has not assessed the potential impact of this final rule on minority and low-income populations, EPA did assess the potential impact of the final RRP rule as a whole. As a result of the final RRP rule assessment, contained in the economic analysis for the final RRP rule, EPA has determined that the final RRP rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population (Ref. 7).

IV. Congressional Review Act

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

List of Subjects in 40 CFR Part 745

Environmental protection, Child-occupied facility, Housing renovation, Lead, Lead-based paint, Renovation, Reporting and recordkeeping requirements.

Dated: July 7, 2009.

Lisa Jackson,
Administrator.

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

PART 745—[AMENDED]

■ 1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681–2692 and 42 U.S.C. 4852d.

■ 2. Section 745.225 is amended by revising paragraphs (c)(14) introductory text, (c)(14)(i), (c)(14)(ii)(D) (6), and (c)(14)(iii) to read as follows:

§ 745.225 Accreditation of training programs: target housing and child-occupied facilities.

* * * * *

(c) * * *

(14) The training manager must provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses.

(i) The training manager must provide EPA notification after the completion of any renovator, dust sampling technician, or lead-based paint activities course. This notice must be received by EPA no later than 10 business days following course completion.

(ii) * * *

(D) * * *

(6) For renovator or dust sampling technician courses only, a digital photograph of the student.

* * * * *

(iii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification following training courses can be accomplished by using either the sample form, entitled *Post-Training Notification* or a similar form containing the information required in paragraph (c)(14)(ii) of this section. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD (5323), or on the Internet at <http://www.epa.gov/lead>.

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[FR Doc. E9-16814 Filed 7-14-09; 8:45 am]

BILLING CODE 6560-50-S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09-1495; MB Docket No. 09-71; RM-11533]

Television Broadcasting Services; St. Paul, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Twin Cities Public Television, Inc., the permittee of KTCI-TV, post-transition digital channel *26, St. Paul, Minnesota, requesting the substitution of DTV channel *23 for channel *26 at St. Paul. **DATES:** This rule is effective July 15, 2009.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 09-71, adopted June 30, 2009, and released July 1, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be

sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Minnesota, is amended by adding DTV channel *23 and removing DTV channel *26 at St. Paul.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9-16871 Filed 7-14-09; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 212, and 234

RIN 0750-AG23

Defense Federal Acquisition Regulation Supplement; Acquisition of Commercial Items (DFARS Case 2008-D011)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Sections 805 and 815 of the National Defense Authorization Act for Fiscal Year 2008. The rule specifies the conditions under which a time-and-materials or labor-hour contract may be used for the acquisition of commercial items. In addition, the rule addresses the conditions under which major weapon systems and subsystems may be treated as commercial items.

DATES: *Effective date:* July 15, 2009.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before September 14, 2009, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2008-D011, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* dfars@osd.mil. Include DFARS Case 2008-D011 in the subject line of the message.

- *Fax:* 703-602-7887.

- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Angie Sawyer, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Sawyer, 703-602-8384.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Sections 805 and 815 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 805 specifies the types of commercial item acquisitions for which time-and-materials and labor-hour contracts may be used. Section 815 addresses the situations under which major weapon systems, subsystems of major weapon systems, and components and spare parts for major weapon systems may be acquired using procedures established for the acquisition of commercial items. In addition, Section 815 requires DoD to modify its regulations to clarify that the terms “general public” and “non-governmental entities,” with regard to sales of commercial items, do not include the Federal Government or a State, local, or foreign government.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule reinforces existing requirements for the appropriate use of

commercial acquisition procedures and for ensuring that contract prices are fair and reasonable. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2008-D011.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Sections 805 and 815 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 805 requires DoD to modify its acquisition regulations to ensure that time-and-materials and labor-hour contracts are used for commercial items only under certain specified circumstances. Section 815 limits the conditions under which major weapon systems, subsystems of major weapon systems, and components and spare parts of major weapon systems may be treated as commercial items and acquired under procedures established for the acquisition of commercial items. In addition, Section 815 requires DoD to modify its regulations on the acquisition of commercial items to clarify that the terms “general public” and “non-governmental entities” do not include the Federal Government or a State, local, or foreign government. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 202, 212, and 234

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 202, 212, and 234 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 202, 212, and 234 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. Section 202.101 is amended by adding a definition of *General public and non-governmental entities* in alphabetical order to read as follows:

202.101 Definitions.

* * * * *

General public and non-governmental entities, as used in the definition of *commercial item* at FAR 2.101, do not include the Federal Government or a State, local, or foreign government (Pub. L. 110–181, Section 815(b)).

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Section 212.207 is added to read as follows:

212.207 Contract type.

(b) In accordance with Section 805 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), use of time-and-materials and labor-hour contracts for the acquisition of commercial items is authorized only for the following:

(i) Services acquired for support of a commercial item.

(ii) Emergency repair services.

(iii) Any other commercial services only to the extent that the head of the agency concerned approves a written determination by the contracting officer that—

(A) The services to be acquired are commercial;

(B) If the services to be acquired are subject to FAR 15.403–1(c)(3)(ii), the offeror of the services has submitted sufficient information in accordance with that subsection;

(C) Such services are commonly sold to the general public through use of time-and-materials or labor-hour contracts; and

(D) The use of a time-and-materials or labor-hour contract type is in the best interest of the Government.

PART 234—MAJOR SYSTEM ACQUISITION

■ 4. Section 234.7002 is revised to read as follows:

234.7002 Policy.

(a) *Major weapon systems.* (1) A DoD major weapon system may be treated as a commercial item, or acquired under procedures established for the acquisition of commercial items, only if—

(i) The Secretary of Defense determines that—

(A) The major weapon system is a commercial item as defined in FAR 2.101; and

(B) Such treatment is necessary to meet national security objectives;

(ii) The offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for such a system; and

(iii) The congressional defense committees are notified at least 30 days before such treatment or acquisition occurs. Follow the procedures at PGI 234.7002.

(2) The authority of the Secretary of Defense to make a determination under paragraph (a)(1) of this section may not be delegated below the level of the Deputy Secretary of Defense.

(b) *Subsystems.* A subsystem of a major weapon system (other than a commercially available off-the-shelf item) may be treated as a commercial item and acquired under procedures established for the acquisition of commercial items only if—

(1) The subsystem is intended for a major weapon system that is being acquired, or has been acquired, under procedures established for the acquisition of commercial items in accordance with paragraph (a) of this section; or

(2) The contracting officer determines in writing that—

(i) The subsystem is a commercial item; and

(ii) The offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for the subsystem.

(c) *Components and spare parts.* (1) A component or spare part for a major weapon system (other than a commercially available off-the-shelf item) may be treated as a commercial item only if—

(i) The component or spare part is intended for—

(A) A major weapon system that is being acquired, or has been acquired, under procedures established for the acquisition of commercial items in accordance with paragraph (a) of this section; or

(B) A subsystem of a major weapon system that is being acquired, or has been acquired, under procedures established for the acquisition of commercial items in accordance with paragraph (b) of this section; or

(ii) The contracting officer determines in writing that—

(A) The component or spare part is a commercial item; and

(B) The offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for the component or spare part.

(2) This paragraph (c) shall apply only to components and spare parts that are acquired by DoD through a prime contract or a modification to a prime contract, or through a subcontract under a prime contract or modification to a prime contract on which the prime contractor adds no, or negligible, value.

(d) *Relevant information.* To the extent necessary to make a determination under paragraph (a)(1)(ii), (b)(2), or (c)(1)(ii) of this section, the contracting officer may request the offeror to submit—

(1) Prices paid for the same or similar commercial items under comparable terms and conditions by both Government and commercial customers; and

(2) Other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates, if the contracting officer determines that the information described in paragraph (d)(1) of this section is not sufficient to determine price reasonableness.

[FR Doc. E9–16674 Filed 7–14–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 219, 225, and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to update references within the DFARS text.

DATES: *Effective Date:* July 15, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0311; facsimile 703–602–7887.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS text as follows:

- 204.7202–2, 219.708, 219.1204, and 225.1101. Updates cross-references.

- 225.301–4. Adds a reference to a DoD Web site.
- 252.225–7040. Updates a reference to a DoD publication.

List of Subjects in 48 CFR Parts 204, 219, 225, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 204, 219, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 204, 219, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Section 204.7202–2 is revised to read as follows:

204.7202–2 DUNS numbers.

Requirements for use of DUNS numbers are in FAR 4.605(b) and 4.607(a).

PART 219—SMALL BUSINESS PROGRAMS

219.708 [Amended]

■ 3. Section 219.708 is amended in paragraphs (b)(2) and (c)(1) by removing “219.702(a)” and adding in its place “219.702”.

219.1204 [Amended]

■ 4. Section 219.1204 is amended in paragraph (c), in the last sentence, by removing “219.702(a)” and adding in its place “219.702”.

PART 225—FOREIGN ACQUISITION

■ 5. Section 225.301–4 is amended in paragraph (2) by revising the last sentence to read as follows:

225.301–4 Contract clause.

* * * * *

(2) * * * Information on the SPOT system is available at <http://www.dod.mil/bta/products/spot.html> and <http://www.acq.osd.mil/log/PS/spot.html>.

225.1101 [Amended]

■ 6. Section 225.1101 is amended in paragraph (11)(i) introductory text by removing “paragraph (10)” and adding in its place “paragraph (11)”.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7040 [Amended]

■ 7. Section 252.225–7040 is amended as follows:

■ a. By revising the clause date to read “(JUL 2009)” and

■ b. In paragraph (n)(2) by removing “DoD Directive 2310.2, Personnel Recovery” and adding in its place “DoD Directive 3002.01E, Personnel Recovery in the Department of Defense”.

[FR Doc. E9–16663 Filed 7–14–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 207

RIN 0750–AF39

Defense Federal Acquisition Regulation Supplement; Lease of Vessels, Aircraft, and Combat Vehicles (DFARS Case 2006–D013)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement statutory provisions relating to the leasing of vessels, aircraft, and combat vehicles. The rule applies to long-term leases and charters and to contracts with a substantial termination liability.

DATES: Effective Date: July 15, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Cassandra Freeman, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–8383; facsimile 703–602–7887. Please cite DFARS Case 2006–D013.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2401, as amended by Section 815 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163), permits a military department to award a long-term lease or charter, or a contract with a substantial termination liability, for a vessel, aircraft, or combat vehicle, only if the Secretary of the military department is specifically authorized by law to award the contract and provides

the appropriate notifications to the congressional defense committees.

Prior to the enactment of Public Law 109–163, the provisions of 10 U.S.C. 2401 applied to vessels and aircraft. Section 815 of Public Law 109–163 amended 10 U.S.C. 2401 to also include combat vehicles.

DoD published a proposed rule at 72 FR 28662 on May 22, 2007, to address the provisions of 10 U.S.C. 2401. Five sources submitted comments on the proposed rule. A discussion of the comments is provided below.

1. *Comment:* The proposed rule unduly applies its requirements to all leases and charters instead of only long-term leases and charters.

DoD Response: The rule has been amended to clarify that its requirements apply only to long-term leases and charters, and to contracts that provide for a substantial termination liability, consistent with the statutory provisions.

2. *Comment:* One respondent stated that the approval authority specified in the proposed rule (head of the agency) is not consistent with the approval authority specified in the statute (Secretary of the military department). Another respondent recommended delegation of the approval authority to the head of the contracting activity, to be consistent with the implementation of 10 U.S.C. 2401a at DFARS 207.470, for approval of leases and charters with terms of 18 months or more.

DoD Response: The final rule specifies the Secretary of the military department as the approval authority, consistent with 10 U.S.C. 2401. However, in accordance with FAR 1.108(b), the Secretary of the military department may delegate this authority as deemed appropriate.

3. *Comment:* The term “similar agreement” should be deleted from the rule, since this term is not defined in the DFARS or in the statute.

DoD Response: The term has been excluded from the final rule.

4. *Comment:* The rule should identify under what circumstances DoD can lease vessels, aircraft, and combat vehicles and how the decision to lease should be determined. In addition, the rule should include the definitions of the terms “long-term lease” and “substantial termination liability” found in 10 U.S.C. 2401(d).

DoD Response: The recommended changes have not been adopted. The rule is intended to inform contracting officers of the requirements of 10 U.S.C. 2401, but is not intended to address all aspects of leasing. Leasing is a highly specialized area that requires close coordination between the contracting officer and legal counsel.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily relates to DoD planning and budget considerations with regard to the leasing of vessels, aircraft, and combat vehicles.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 207

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 207 is amended as follows:

PART 207—ACQUISITION PLANNING

■ 1. The authority citation for 48 CFR Part 207 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 207.470 is amended as follows:

■ a. By redesignating paragraphs (a) and (b) as paragraphs (b) and (c) respectively;

■ b. By adding a new paragraph (a); and

■ c. In newly designated paragraph (c), by removing “Except as provided in paragraph (a) of this section” and adding in its place “Except as provided in paragraphs (a) and (b) of this section”.

The new paragraph (a) reads as follows:

207.470 Statutory requirements.

(a) *Requirement for authorization of certain contracts relating to vessels, aircraft, and combat vehicles.* The contracting officer shall not enter into any contract for the lease or charter of any vessel, aircraft, or combat vehicle, or any contract for services that would require the use of the contractor’s vessel, aircraft, or combat vehicle, unless the Secretary of the military department concerned has satisfied the requirements of 10 U.S.C. 2401, when—

(1) The contract will be a long-term lease or charter as defined in 10 U.S.C. 2401(d)(1); or

(2) The terms of the contract provide for a substantial termination liability as defined in 10 U.S.C. 2401(d)(2). Also see PGI 207.470.

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[FR Doc. E9-16650 Filed 7-14-09; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 209, 237, and 252

RIN 0750-AF80

Defense Federal Acquisition Regulation Supplement; Lead System Integrators (DFARS Case 2006-D051)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 802 of the National Defense Authorization Act for Fiscal Year 2008. Section 802 places limitations on the award of new contracts for lead system integrator functions in the acquisition of major DoD systems.

DATES: *Effective date:* July 15, 2009.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before September 14, 2009, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006-D051, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* dfars@osd.mil. Include DFARS Case 2006-D051 in the subject line of the message.

- *Fax:* 703-602-7887.

- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Cassandra Freeman, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Cassandra Freeman, 703-602-8383.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 73 FR 1823 on January 10, 2008, to implement Section 807 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) with regard to limitations on the performance of lead system integrator functions by DoD contractors. On January 28, 2008, Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181) placed additional limitations on DoD use of lead system integrators. This second interim rule amends the interim rule published on January 10, 2008, to implement Section 802 of Public Law 110-181.

One source submitted comments on the interim rule published on January 10, 2008. A discussion of the comments is provided below.

1. *Comment:* Section 802 of the Fiscal Year 2008 National Defense Authorization Act (Pub. L. 110-181), which was enacted after publication of the interim rule, contains a definition of “lead system integrator” that renders the interim rule definition obsolete.

DoD Response: The definition of “lead system integrator” in this second interim rule has been amended for consistency with the definition in Section 802 of Public Law 110-181.

2. *Comment:* The limitations on the award of new contracts for lead system integrator functions, in Section 802 of Public Law 110-181, will make any implementing regulations applicable to only a handful of contractors. Given the limited duration of ongoing contracts for programs that have been identified as lead system integrators, the newly created contract clauses in the interim rule are unlikely to be incorporated into a contract, because the fiscal year 2008 statutory prohibition effectively precludes their use. Therefore, DoD should withdraw or suspend the interim rule.

DoD Response: DoD agrees that the rule will apply only to a limited number of contractors and only for a limited duration. However, the law must be implemented for those situations where it is applicable.

3. *Comment:* It is inappropriate to require contractors to represent whether or not they propose to perform lead system integrator functions under vague definitions, given that the contract may be terminated for default or other remedies may be imposed at the sole discretion of the contracting officer if the contractor misrepresented its “financial interests” when that term is

not defined. Since a “lead system integrator with system responsibility” is essentially “as determined by the Contracting Officer” at the time of award, this presents an unacceptable situation where a contractor may be subject to penalty effectively for an errant determination by the Government. Moreover, successful offerors risk termination for default for misrepresenting their status at some later time if their lead system integrator status is found to be wrong, even if that representation was mistakenly, rather than knowingly or falsely, executed.

DoD Response: The definitions in the clause at DFARS 252.209–7007, as amended by this interim rule, sufficiently address the compliance requirements of a contractor certifying as a lead system integrator. It is incumbent upon the contractor to ensure that certifications represent the most current, accurate, and complete information to avoid the misinterpretation of information by the contracting officer. Likewise, it is the responsibility of the contracting officer to ensure due diligence in the evaluation of contractor certifications.

4. *Comment:* Existing regulations, such as those governing conflicts of interest, that are adequate to protect the public interest in situations where a prime contractor is responsible for integrating subsystems into a weapon system, are also adequate to protect the correlating situation in which a prime contractor is integrating systems into a “system of systems.” Additional policy guidance may be warranted to advise contracting officers to take appropriate steps in evaluating proposals to ensure mechanisms are in place to avoid conflicts of interest. In that case, the policy additions to Part 209 of the DFARS are sufficient to implement Section 807 of the Fiscal Year 2007 National Defense Authorization Act without the imposition of requirements for contractor representations and additional clauses in solicitations and contracts.

DoD Response: DoD considers the rule’s provision and clause to be the appropriate means of conveying this specific statutory requirement to offerors and contractors.

5. *Comment:* Section 209.570–1 of the rule merely references the reader to the clause at 252.209–7007 for a definition of lead system integrator. The definition should be included in section 209.570–1 instead of referring the reader to the clause section of the DFARS.

DoD Response: The reference to the definition in the contract clause is consistent with the DFARS convention of minimizing repetition of text.

6. *Comment:* The rule would benefit in the Definitions section by the addition of a cross-reference to the existing statutory or regulatory definition of a major system, so that it is clear exactly what type of standards (dollar threshold, *etc.*) apply to the rule.

DoD Response: FAR 2.101 provides a definition of “major system.” It is not necessary to include a cross-reference in this DFARS rule, since the definitions in FAR 2.101 apply throughout the FAR system unless otherwise specified.

7. *Comment:* Clarification is needed on the term “substantial portion” used in paragraph (a)(2) of the clause at 252.209–7007.

DoD Response: Contracting officers have the discretion to determine whether an activity constitutes a “substantial portion” of the work on the system and the major subsystems. Factors to be considered in making this determination are the relative dollar value of the effort and the criticality of the effort to be performed.

8. *Comment:* Section 209.570–2(b)(1) states that the statutory prohibition does not apply if the Secretary of Defense certifies to both the House and Senate Armed Services Committees that the lead system integrator contractor was selected through a competitive process, and any potential organizational conflict of interest was neutralized in the selection process. The certification requirement itself would benefit from some clarity, and both the certification level and the body to whom the certification is made would benefit from the flexibility to delegate the exception authority to another approval level, such as the head of the contracting activity.

DoD Response: The certification requirement is consistent with Section 807 of the National Defense Authorization Act for Fiscal Year 2007. In view of the limited number of contracts to which this requirement applies, DoD considers it unnecessary to delegate this exception authority.

9. *Comment:* Section 209.570–2(b)(2), which cites another exception to the prohibition, is confusing. If the goal of this section is to allow for a lead system integrator to act as a subcontractor in the major system development/ construction contract after completing lead system integrator functions, the standard for the exception is unclear. What exactly is a “process over which the entity exercised no control”? The tiering of subcontractors as an ingredient to the selection process for an exception requires clarification.

DoD Response: Section 209.570–2(b)(2) of the rule is consistent with the language in Section 807 of National

Defense Authorization Act for Fiscal Year 2007. The record does not document the legislative intent; however, DoD believes that a “process over which the entity exercised no control” means that the entity was selected to perform as a lower-tier subcontractor as a result of an independent selection process in which the entity did not participate as a decision-maker.

10. *Comment:* Section 235.008 contains language that is unclear. In particular, the statement “See 209.570 for limitations on the award of contracts to contractors acting as lead system integrators,” appears to prohibit the award of contracts for research and development efforts to lead system integrators.

DoD Response: The cross-reference in DFARS 235.008 does not prohibit the award of contracts for research and development efforts to lead system integrators; it advises the reader to consider the limitations on contractors acting as lead system integrators when evaluating research and development proposals for contract award.

11. *Comment:* Both the provision at 252.209–7006 and the clause at 252.209–7007 present problematic interpretation issues. Both include references to two different types of lead system integrators: a lead system integrator with system responsibility and a lead system integrator without system responsibility. The distinction between these two types of lead system integrators is somewhat difficult to comprehend, but the offeror is asked to make written representations as to its lead system integrator status based presumably on the type of work statement contained in the solicitation (which may or may not state that the work is for integration or systems engineering, *etc.*).

DoD Response: Consistent with the statutory provisions, the definitions recognize two categories of contracts for major systems: development/production contracts and service contracts. The offeror’s representation will be based upon the contract work statement and any special provisions in the solicitation in light of the limitations and prohibitions in the provision at 252.209–7006 and the clause at 252.209–7007.

12. *Comment:* The definition of “lead system integrator without system responsibility” in the clause at 252.209–7007 anticipates that the lead system integrator understands and can make judgments about what is meant by inherently governmental functions. The definition references a section of the Federal Acquisition Regulation

completely unaddressed elsewhere in the rule. At no time prior to this juncture was the prohibition against lead system integrators receiving development/construction contracts tied to a determination that certain types of lead system integrator work were inherently governmental, a term evolving out of the FAIR Act and Competitive Sourcing/A-76 world of contracting. The clause states that contractors performing lead system integrator functions throughout the acquisition timeframe for a major system will refrain from acquiring a financial interest in any company anywhere that might be eligible to develop or manufacture the major system. Without addressing the impact on commerce by prohibiting business enterprises doing defense-related work for the Government from making strategic acquisitions, the timeframes for the complete acquisition cycle for major systems could last for years, effectively bringing legitimate and otherwise legal forms of economic activity (mergers and acquisitions) to a halt and extending the lead system integrator limitation period well beyond that envisioned by Congress when crafting the law.

DoD Response: The definitions and the requirements in the contract clause are consistent with the statutory provisions.

13. *Comment:* Paragraph (c) of the clause at 252.209-7007 imposes an unclear standard and undefined timeline for notice from a lead system integrator contractor to the contracting officer if the lead system integrator contractor acquires a financial interest in a relevant major system contractor. Additionally, the clause provides the contracting officer the unilateral right to impose a default termination in the event that a conflict cannot be mitigated or avoided after the contract has been awarded and/or in force for some time. Termination should not be made a specific requirement of this clause; rather, if a lead system integrator contractor is acting in good faith and otherwise complying with the requirements of the contract, but termination is still necessary to comport with the principle of any final lead system integrator limitation clause, termination should be one of convenience that allows the lead system integrator contractor to recoup all costs incurred prior to termination. Both paragraphs (c) and (d) of the clause should be rewritten to establish a reasonable standard for both timely notice and to clarify the extent of the Government's remedies in termination.

DoD Response: A failure to comply with statutory prohibitions speaks to the

lack of responsibility of a contractor, and could be reasonable justification to terminate a contract for default.

However, the clause does not direct a default termination; it only provides for it and also allows other remedial action as may be appropriate.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because application of the rule is limited to contractors performing lead system integrator functions for major DoD systems. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006-D051.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 802 places additional limitations on the performance of lead system integrator functions by DoD contractors. DoD may award a new contract for lead system integrator functions in the acquisition of a major system only if the major system has not yet proceeded beyond low-rate initial production; or if the Secretary of Defense determines that it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead system integrator functions, and that doing so is in the best interest of DoD. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 209, 237, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 209, 237, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 209, 237, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 209—CONTRACTOR QUALIFICATIONS

■ 2. Section 209.570-2 is amended by adding paragraphs (c) and (d) to read as follows:

209.570-2 Policy.

* * * * *

(c) In accordance with Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), DoD may award a new contract for lead system integrator functions in the acquisition of a major system only if—

(1) The major system has not yet proceeded beyond low-rate initial production; or

(2) The Secretary of Defense determines in writing that it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead system integrator functions and that doing so is in the best interest of DoD. The authority to make this determination may not be delegated below the level of the Under Secretary of Defense for Acquisition, Technology, and Logistics. (*Also see* 209.570-3(b).)

(d) Effective October 1, 2010, DoD is prohibited from awarding a new contract for lead system integrator functions in the acquisition of a major system to any entity that was not performing lead system integrator functions in the acquisition of the major system prior to January 28, 2008.

■ 3. Section 209.570-3 is revised to read as follows:

209.570-3 Procedures.

(a) In making a responsibility determination before awarding a contract for the acquisition of a major system, the contracting officer shall—

(1) Determine whether the prospective contractor meets the definition of “lead system integrator”;

(2) Consider all information regarding the prospective contractor's direct financial interests in view of the prohibition at 209.570-2(a); and

(3) Follow the procedures at PGI 209.570-3.

(b) A determination to use a contractor to perform lead system integrator functions in accordance with 209.570–2(c)(2)—

(1) Shall specify the reasons why it would not be practicable to carry out the acquisition without continuing to use a contractor to perform lead system integrator functions, including a discussion of alternatives, such as use of the DoD workforce or a system engineering and technical assistance contractor;

(2) Shall include a plan for phasing out the use of contracted lead system integrator functions over the shortest period of time consistent with the interest of the national defense; and

(3) Shall be provided to the Committees on Armed Services of the Senate and the House of Representatives at least 45 days before the award of a contract pursuant to the determination.

PART 237—SERVICE CONTRACTING

■ 4. Section 237.102–72 is added to read as follows:

237.102–72 Contracts for management services.

In accordance with Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), DoD may award a contract for the acquisition of services the primary purpose of which is to perform acquisition support functions with respect to the development or production of a major system, only if—

(a) The contract prohibits the contractor from performing inherently governmental functions;

(b) The DoD organization responsible for the development or production of the major system ensures that Federal employees are responsible for determining—

(1) Courses of action to be taken in the best interest of the Government; and

(2) Best technical performance for the warfighter; and

(c) The contract requires that the prime contractor for the contract may not advise or recommend the award of a contract or subcontract for the development or production of the major system to an entity owned in whole or in part by the prime contractor.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Section 252.209–7007 is amended by revising the clause date and paragraphs (a)(2), (a)(3), and (e) to read as follows:

252.209–7007 Prohibited Financial Interests for Lead System Integrators.

* * * * *

PROHIBITED FINANCIAL INTERESTS FOR LEAD SYSTEM INTEGRATORS (JUL 2009)

(a) * * *

(2) *Lead system integrator with system responsibility* means a prime contractor for the development or production of a major system, if the prime contractor is not expected at the time of award to perform a substantial portion of the work on the system and the major subsystems.

(3) *Lead system integrator without system responsibility* means a prime contractor under a contract for the procurement of services, the primary purpose of which is to perform acquisition functions closely associated with inherently governmental functions (see section 7.503(d) of the Federal Acquisition Regulation) with respect to the development or production of a major system.

* * * * *

(e) This clause implements the requirements of 10 U.S.C. 2410p, as added by Section 807 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364), and Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

[FR Doc. E9–16676 Filed 7–14–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212 and 239

RIN 0750–AG32

Defense Federal Acquisition Regulation Supplement; Use of Commercial Software (DFARS Case 2008–D044)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 803 of the National Defense Authorization Act for Fiscal Year 2009. Section 803 requires DoD to identify and evaluate, at all stages of the acquisition process, opportunities for the use of commercial computer software and other non-developmental software.

DATES: *Effective Date:* July 15, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Julian Thrash, Defense Acquisition Regulations System,

OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0310; facsimile 703–602–7887. Please cite DFARS Case 2008–D044.

SUPPLEMENTARY INFORMATION:

A. Background

Section 803 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) requires DoD to ensure that contracting officials identify and evaluate, at all stages of the acquisition process (including concept refinement, concept decision, and technology development), opportunities for the use of commercial computer software and other non-developmental software. This final rule adds text at DFARS 212.212 to address the requirements of Section 803 of Public Law 110–117. In addition, the rule adds cross-references to existing DFARS policy regarding the acquisition of commercial software, software maintenance, and software documentation.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2008–D044.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 212 and 239

Government procurement.

Michele P. Peterson,
Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 212 and 239 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212 and 239 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Section 212.212 is revised to read as follows:

212.212 Computer software.

(1) Departments and agencies shall identify and evaluate, at all stages of the acquisition process (including concept refinement, concept decision, and technology development), opportunities for the use of commercial computer software and other non-developmental software in accordance with Section 803 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(2) See Subpart 208.74 when acquiring commercial software or software maintenance. See 227.7202 for policy on the acquisition of commercial computer software and commercial computer software documentation.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 3. Section 239.101 is amended by adding a second sentence to read as follows:

239.101 Policy.

* * * See 227.7202 for policy on the acquisition of commercial computer software and commercial computer software documentation.

[FR Doc. E9-16659 Filed 7-14-09; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 217

RIN 0750-AG24

Defense Federal Acquisition Regulation Supplement; Limitation on Procurements on Behalf of DoD (DFARS Case 2008-D005)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 801 of the National Defense Authorization Act for Fiscal Year 2008. Section 801 addresses internal controls for procurements made by non-DoD agencies on behalf of DoD.

DATES: *Effective date:* July 15, 2009.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before September 14, 2009, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2008-D005, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* dfars@osd.mil. Include DFARS Case 2008-D005 in the subject line of the message.

- *Fax:* 703-602-7887.

- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Cassandra Freeman, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Cassandra Freeman, 703-602-8383.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 801 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 801 places limitations on acquisitions made by non-DoD agencies on behalf of DoD. Such acquisitions exceeding the simplified acquisition threshold may be made only if the head of the non-DoD agency has certified that the non-DoD agency will comply with defense procurement requirements for the fiscal year.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the requirements of the rule are internal to the Government. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C.

610. Such comments should be submitted separately and should cite DFARS Case 2008-D005.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 801 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section 801 places limitations on acquisitions made by non-DoD agencies on behalf of DoD, and requires DoD to issue guidance on the appropriate use of interagency contracting. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 217

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 217 is amended as follows:

PART 217—SPECIAL CONTRACTING METHODS

■ 1. The authority citation for 48 CFR part 217 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 217.7800 is amended by revising paragraph (a) to read as follows:

217.7800 Scope of subpart.

* * * * *

(a) Implements Section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375) and Section 801 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181); and

* * * * *

■ 3. Sections 217.7801 and 217.7802 are revised to read as follows:

217.7801 Definitions.

As used in this subpart—

Acquisition official means—

- (1) A DoD contracting officer; or
- (2) Any other DoD official authorized to approve a direct acquisition or an assisted acquisition on behalf of DoD.

Assisted acquisition means the type of interagency contracting through which acquisition officials of a non-DoD agency award a contract or a task or delivery order for the acquisition of supplies or services on behalf of DoD.

Direct acquisition means the type of interagency contracting through which DoD orders a supply or service from a Governmentwide acquisition contract maintained by a non-DoD agency.

Non-DoD agency means any department or agency of the Federal Government other than DoD.

217.7802 Policy.

(a) A DoD acquisition official may place an order, make a purchase, or otherwise acquire supplies or services for DoD in excess of the simplified acquisition threshold through a non-DoD agency in any fiscal year only if the head of the non-DoD agency has certified that the non-DoD agency will comply with defense procurement requirements for the fiscal year.

(1) This limitation shall not apply to the acquisition of supplies and services during any fiscal year for which there is

in effect a written determination of the Under Secretary of Defense for Acquisition, Technology, and Logistics, that it is necessary in the interest of DoD to acquire supplies and services through the non-DoD agency during the fiscal year. A written determination with respect to a non-DoD agency shall apply to any category of acquisitions through the non-DoD agency that is specified in the determination.

(2) Non-DoD agency certifications and additional information are available at http://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html.

(b) Departments and agencies shall establish and maintain procedures for reviewing and approving orders placed for supplies and services under non-DoD contracts, whether through direct acquisition or assisted acquisition, when the amount of the order exceeds the simplified acquisition threshold. These procedures shall include—

(1) Evaluating whether using a non-DoD contract for the acquisition is in the best interest of DoD. Factors to be considered include—

(i) Satisfying customer requirements;

(ii) Schedule;

(iii) Cost effectiveness (taking into account discounts and fees); and

(iv) Contract administration (including oversight);

(2) Determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;

(3) Reviewing funding to ensure that it is used in accordance with appropriation limitations;

(4) Providing unique terms, conditions, and requirements to the assisting agency for incorporation into the order or contract as appropriate to comply with all applicable DoD-unique statutes, regulations, directives, and other requirements; and

(5) Collecting and reporting data on the use of assisted acquisition for analysis. Follow the reporting requirements in Subpart 204.6.

[FR Doc. E9-16668 Filed 7-14-09; 8:45 am]

BILLING CODE 5001-08-P

Proposed Rules

Federal Register

Vol. 74, No. 134

Wednesday, July 15, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0637; Directorate Identifier 2008-NM-183-AD]

RIN 2120-AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model CN-235 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

* * * [C]racks [were originally] detected on some CN-235 aircraft in flap fittings P/N 35-15501-0101, -0102, -0201 and -0202, attaching the structure of the outer flaps to their rear supports and, in the adjacent structure, DGAC Spain issued AD Nr. 01/97[.] * * * Since AD 1/97 Rev.1 was published, similar cracks have been detected in flaps longerons. * * *

Fatigue cracking of the rear internal support fittings and longerons of the outer flap structure could result in failure of the outer flaps, and consequent reduced controllability of the airplane. 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 August 14, 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 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>. 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: 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:

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-2009-0637; Directorate Identifier 2008-NM-183-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On March 23, 1999, we issued AD 99-07-13, Amendment 39-11098 (64 FR 15659, April 1, 1999). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 99-07-13, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, notified us of an additional report of similar cracks in flaps longerons. EASA has issued EASA Airworthiness Directive 2008-0119, dated June 27, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

As a consequence of cracks detected on some CN-235 aircraft, in flap fittings P/N 35-15501-0101, -0102, -0201 and -0202, attaching the structure of the outer flaps to their rear supports and, in the adjacent structure, DGAC Spain issued AD Nr. 01/97 which required, pending the analysis of the problem, boroscopic inspections of the attachment zones between both outer flaps to their rear support. After concluding that process and based on the investigation results, DGAC Spain issued AD Nr. 1/97 Rev. 1 [which corresponds to FAA AD 99-07-13] to require the replacement of the outer flaps with new designed parts, as specified in EADŚ-CASA Service Bulletin (SB) 235-57-20.

Since AD 1/97 Rev. 1 was published, similar cracks have been detected in flaps longerons. EADS-CASA issued SB 235-57-20 Revision 1, extending the scope of the inspection to these flaps longerons, instructing the drilling of holes to facilitate the inspection and introducing an improved outer flap replacement kit that included a new improved longeron. SB 235-57-20 Revision 2 has been issued to add useful references and to update the applicability.

For the reasons described above, this new EASA AD retains the requirements of DGAC Spain AD Nr. 1/97 Rev. 1, which is superseded, and confirms the approval of additional outer flaps replacement options, as specified in paragraph 2 E.2 of EADS-CASA SB 235-57-20 R2.

Fatigue cracking of the rear internal support fittings and longerons of the outer flap structure could result in failure of the outer flaps, and consequent reduced controllability of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

CASA has issued Service Bulletin SB-235-57-20, Revision 2, dated March 30, 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 8 products of U.S. registry. We also estimate that it would take about 69 work-hours per product to comply with the basic requirements of this proposed AD. The average labor

rate is \$80 per work-hour. Required parts would cost about \$193,603 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators may be \$1,592,984, or \$199,123 per product.

Authority for this Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39-11098 and adding the following new AD:

Construcciones Aeronauticas, S.A. (CASA):
Docket No. FAA-2009-0637; Directorate Identifier 2008-NM-183-AD.

Comments Due Date

- (a) We must receive comments by August 14, 2009.

Affected ADs

- (b) This AD supersedes AD 99-07-13.

Applicability

- (c) This AD applies to CASA Model CN-235, CN-235-100, CN-235-200, CN-235-300 airplanes, all serial numbers, if part number (P/N) 35-15501-0001, -0002, -0003, or -0004, or P/N 35-A0736-0001 or -0002 outer flaps are installed.

Subject

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

Reason

- (e) The mandatory continuing airworthiness information (MCAI) states: As a consequence of cracks detected on some CN-235 aircraft, in flap fittings P/N 35-15501-0101, -0102, -0201 and -0202, attaching the structure of the outer flaps to their rear supports and, in the adjacent structure, DGAC Spain issued AD Nr. 01/97 which required, pending the analysis of the problem, borescopic inspections of the attachment zones between both outer flaps to their rear support. After concluding that process and based on the investigation results, DGAC Spain issued AD Nr. 1/97 Rev.1 [which corresponds to FAA AD 99-07-13] to require the replacement of the outer flaps with new designed parts, as specified in EADS-CASA Service Bulletin (SB) 235-57-20.

Since AD 1/97 Rev.1 was published, similar cracks have been detected in flaps longerons. EADS-CASA issued SB 235-57-20 Revision 1, extending the scope of the inspection to these flaps longerons, instructing the drilling of holes to facilitate the inspection and introducing an improved outer flap replacement kit that included a new improved longeron. SB 235-57-20

Revision 2 has been issued to add useful references and to update the applicability.

For the reasons described above, this new EASA AD retains the requirements of DGAC Spain AD Nr. 1/97 Rev.1, which is superseded, and confirms the approval of additional outer flaps replacement options, as specified in paragraph 2 E.2 of EADS-CASA SB 235-57-20 R2.

Fatigue cracking of the rear internal support fittings and longerons of the outer flap structure could result in failure of the outer flaps, and consequent reduced controllability of the airplane.

Actions and Compliance

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

(1) For airplanes equipped with P/N 35-A0736-0001 or -0002 outer flaps: Within 300 flight cycles after the effective date of this AD, do a borescopic inspection to detect cracking of the outer flaps fittings and longerons, in accordance with the Accomplishment Instructions of CASA Service Bulletin SB-235-57-20, Revision 2, dated March 30, 2007.

(2) For airplanes equipped with Part Number (P/N) 35-15501-0001, -0002, -0003, or -0004 outer flaps: At the earlier of the times specified in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD, do a borescopic inspection to detect cracking of the outer flaps fittings; and within 300 flight cycles after the effective date of this AD, do a borescopic inspection to detect cracking of the longerons. Do the inspections in accordance with the Accomplishment Instructions of CASA Service Bulletin SB-235-57-20, Revision 2, dated March 30, 2007.

(i) Within 600 flight cycles after the most recent inspection done in accordance with AD 99-07-13, or within 14 days after the effective date of this AD, whichever occurs later.

(ii) Within 300 flight cycles after the effective date of this AD.

(3) If, during any inspection required by paragraph (f)(1) or (f)(2) of this AD, no crack is detected, repeat the borescopic inspections of the outer flap fittings and longerons in accordance with the Accomplishment Instructions of CASA Service Bulletin SB-235-57-20, Revision 2, dated March 30, 2007, thereafter at intervals not to exceed 300 flight cycles or 6 months, whichever occurs first, until the replacement specified in paragraph (f)(4) or (f)(5) of this AD is accomplished.

(4) If any crack is detected during any inspection required by paragraph (f)(1), (f)(2), or (f)(3) of this AD, prior to further flight, replace the outer flap with a new or retrofitted flap in accordance with the Accomplishment Instructions of CASA Service Bulletin SB-235-57-20, Revision 2, dated March 30, 2007. Such replacement constitutes terminating action for the repetitive borescopic inspection required by this AD for the replaced outer flap only.

(5) For affected parts that have not been replaced in accordance with paragraph (f)(4) of this AD: At the later of the times specified in paragraphs (f)(5)(i) and (f)(5)(ii) of this AD, replace each outer flap with a new or

retrofitted outer flap in accordance with the Accomplishment Instructions of CASA Service Bulletin SB-235-57-20, Revision 2, dated March 30, 2007. Replacing all outer flaps terminates the requirements of this AD.

(i) Before the accumulation of 4,000 total flight cycles on the flap.

(ii) Within 1,200 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(6) Actions done before the effective date of this AD in accordance with CASA Service Bulletin SB-235-57-20, dated December 23, 1997; or Revision 1, dated April 30, 2004; are acceptable for compliance with the corresponding requirements of paragraph (f)(2) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1112; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your 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 EASA Airworthiness Directive 2008-0119, dated June 27, 2008; and CASA Service Bulletin SB-235-57-20, Revision 2, dated March 30, 2007; for related information.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-16762 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0649; Directorate Identifier 2008-NM-218-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series 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:

Two incidents [of near mid-air collision] have occurred on Airbus A320 Family aircraft during [a] Resolution Advisory [from the] Traffic Alert and Collision Avoidance System (TCAS). One of the Human-Machine Interface (HMI) factors was the lack of visibility of relevant information on the Primary Flight Display (PFD).

This condition, if not corrected, could result in erroneous interpretation of TCAS Resolution Advisories, leading to an increased risk of mid-air collision.

* * * * *

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 August 14, 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 Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail

account.airworth-eas@airbus.com; Internet <http://www.airbus.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221 or 425-227-1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2141; 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-2009-0649; Directorate Identifier 2008-NM-218-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008-0198, dated November 4, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Two incidents [of near mid-air collision] have occurred on Airbus A320 Family

aircraft during [a] Resolution Advisory [from the] Traffic Alert and Collision Avoidance System (TCAS). One of the Human-Machine Interface (HMI) factors was the lack of visibility of relevant information on the Primary Flight Display (PFD).

This condition, if not corrected, could result in erroneous interpretation of TCAS Resolution Advisories, leading to an increased risk of mid-air collision.

EIS1 [Electronic Instrument System] software standard V60 introduces modifications to the vertical speed indication to further improve the legibility in the case of TCAS Resolution Advisory. This modification consists of a change in the needle colour and thickness and an increase in width of the TCAS green band.

For the reasons described above, this AD requires the introduction of the new software standard V60 and prohibits reinstallation of earlier software versions V32, V40 and V50.

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

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A320-31-1286, dated January 22, 2008. 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 564 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Required parts would cost about \$0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$180,480, or \$320 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA-2009-0649; Directorate Identifier 2008-NM-218-AD.

Comments Due Date

(a) We must receive comments by August 14, 2009.

Affected ADS

(b) None.

Applicability

(c) This AD applies to Airbus Model A319-111, -112, -113, -114, -115, -131, -132, and -133 airplanes; Model A320-111, -211, -212, -214, -231, -232, and -233 airplanes; and Model A321-111, -112, -131, -211, -212, -213, -231, and -232 airplanes; certificated in any category; all manufacturer serial numbers (MSN); equipped with Electronic Instrument System 1 (EIS1) standard V32 (Display Management Computer (DMC) Part Number (P/N) 9615325032), EIS1 standard V40 (DMC P/N 9615325040), or EIS1 standard V50 (DMC P/N 9615325050).

Subject

(d) Air Transport Association (ATA) of America Code 31: Instruments.

Reason

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

Two incidents [of near mid-air collision] have occurred on Airbus A320 Family aircraft during [a] Resolution Advisory [from the] Traffic Alert and Collision Avoidance System (TCAS). One of the Human-Machine Interface (HMI) factors was the lack of visibility of relevant information on the Primary Flight Display (PFD).

This condition, if not corrected, could result in erroneous interpretation of TCAS Resolution Advisories, leading to an increased risk of mid-air collision.

EIS1 software standard V60 introduces modifications to the vertical speed indication

to further improve the legibility in the case of TCAS Resolution Advisory. This modification consists of a change in the needle colour and thickness and an increase in width of the TCAS green band.

For the reasons described above, this AD requires the introduction of the new software standard V60 and prohibits reinstallation of earlier software versions V32, V40 and V50.

Actions and Compliance

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

(1) Within 60 months after the effective date of this AD, modify the airplane by installing EIS1 software standard V60 (DMC P/N 9615325060) in accordance with the instructions of Airbus Mandatory Service Bulletin A320-31-1286, dated January 22, 2008.

(2) After modifying an airplane as required by paragraph (f)(1) of this AD, no person shall install EIS1 software standard V32 (DMC P/N 9615325032), EIS1 software standard V40 (DMC P/N 9615325040), or EIS1 software standard V50 (DMC P/N 9615325050) on that airplane.

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: Tim Dulin, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2141; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008-0198, dated November 4, 2008; and Airbus Mandatory Service Bulletin A320-31-1286,

dated January 22, 2008, for related information.

Issued in Renton, Washington, on July 9, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9-16778 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2009-0610; Directorate Identifier 2009-NM-021-AD]

RIN 2120-AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 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 result of re-assessment of rotor burst analysis has shown the possibility of loss of electrical power supply to the following aircraft systems: Air Data System (ADS), Ailerons, Multifunctional spoilers and rudder, which result in loss of the aircraft pitch and yaw control.

* * * * *

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 August 14, 2009.

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

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

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227-901 São Jose dos Campos—SP—BRASIL; telephone: +55 12 3927-5852 or +55 12 3309-0732; fax: +55 12 3927-7546; e-mail: *distrib@embraer.com.br*; Internet: *http://www.flyembraer.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221 or 425-227-1152.

Examining the AD Docket

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

be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kenny Kaulia, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2848; 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-2009-0610; Directorate Identifier 2009-NM-021-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 Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2008-09-01, dated September 30, 2008 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

The result of re-assessment of rotor burst analysis has shown the possibility of loss of electrical power supply to the following aircraft systems: Air Data System (ADS), Ailerons, Multifunctional spoilers and rudder, which result in loss of the aircraft pitch and yaw control.

* * * * *

Required actions include modifying the electrical wiring in the overhead panel of the cockpit, modifying the air data smart probe 3B power supply bus, and modifying the Aeronautical Radio Incorporated (ARINC) 429 data bus, as applicable. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Embraer has issued the service bulletins listed in the “Service Information” table.

SERVICE INFORMATION

Embraer Service Bulletin—	Revision—	Dated—
170-24-0019	Original	December 6, 2006.
170-24-0020	Original	November 30, 2006.
170-31-0020	01	May 21, 2008.

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 77 products of U.S. registry. We also estimate that it would take

about 62 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour. Required parts would cost about \$668 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$433,356, or \$5,628 per product.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira De Aeronautica S.A. (Embraer): Docket No. FAA-2009-0610; Directorate Identifier 2009-NM-021-AD.

Comments Due Date

(a) We must receive comments by August 14, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model ERJ 170-100 LR, -100 STD, -100 SE, -100 SU, -200 LR, -200 STD, and -200 SU airplanes; certificated in any category; as identified in Embraer Service Bulletins 170-24-0019, dated December 6, 2006; 170-24-0020, dated November 30, 2006; and 170-31-0020, Revision 01, dated May 21, 2008.

Subject

(d) Air Transport Association (ATA) of America Codes 24 and 31: Electrical power and Instruments, respectively.

Reason

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

The result of re-assessment of rotor burst analysis has shown the possibility of loss of electrical power supply to the following aircraft systems: Air Data System (ADS), Ailerons, Multifunctional spoilers and rudder, which result in loss of the aircraft pitch and yaw control.

* * * * *

Required actions include modifying the electrical wiring in the overhead panel of the cockpit, modifying the air data smart probe 3B power supply bus, and modifying the Aeronautical Radio Incorporated (ARINC) 429 data bus, as applicable.

Actions and Compliance

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

(1) For airplanes identified in Embraer Service Bulletin 170-24-0019, dated December 6, 2006: Within 6,000 flight hours after the effective date of this AD, modify the electrical wiring in the overhead panel of the cockpit in accordance with Embraer Service Bulletin 170-24-0019, dated December 6, 2006.

(2) For airplanes identified in Embraer Service Bulletin 170-24-0020, dated November 30, 2006: Within 6,000 flight hours after the effective date of this AD, change the Air Data Smart Probe 3 channel B power supply bus from ESS2 to ESS3 in accordance with Embraer Service Bulletin 170-24-0020, dated November 30, 2006.

(3) For airplanes identified in Embraer Service Bulletin 170-31-0020, Revision 01, dated May 21, 2008: Within 6,000 flight hours after the effective date of this AD,

duplicate the Aeronautical Radio Incorporated (ARINC) 429 airspeed signal for an extension longer than the rotor burst impact area; change the primary power source for the modular avionics unit (MAU) 2 from DC BUS 2 to DC ESS BUS 2 to include an additional ground and to provide dual electrical power to MAU 2; and change the wiring of the slat/flap actuators control electronics (SF-ACE) 1 and 2 to primary actuator control electronics (P-ACE) 1, 2, and 3; in accordance with Embraer Service Bulletin 170-31-0020, Revision 01, dated May 21, 2008.

(4) Actions accomplished before the effective date of this AD according to Embraer Service Bulletin 170-31-0020, dated July 20, 2007, are considered acceptable for compliance with the corresponding actions 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, 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: Kenny Kaulia, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2848; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

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

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

Related Information

(h) Refer to MCAI Agência Nacional de Aviação Civil (ANAC) Airworthiness Directive 2008-09-01, dated September 30, 2008, and the service information identified in Table 1 of this AD, for related information.

TABLE 1—SERVICE INFORMATION

Embraer Service Bulletin—	Revision—	Dated—
170–24–0019	Original	December 6, 2006.
170–24–0020	Original	November 30, 2006.
170–31–0020	01	May 21, 2008.

Issued in Renton, Washington, on July 8, 2009.

Ali Bahrami,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. E9–16779 Filed 7–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 865

[Docket No. USAF–2008–0002]

RIN 0701–AA74

Personnel Review Boards

AGENCY: Department of the Air Force,
Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is proposing to amend part 865 of Chapter VII, Title 32, Code of Federal Regulations, by revising Subpart A, Air Force Board for Correction of Military Records. Subpart A establishes procedures for the consideration of applications for the correction of military records and provides guidance to applicants and others interested in the process. This revision incorporates format changes and clarifies various minor provisions of the subpart. The public is invited to participate in this rulemaking by submitting comments to the point of contact listed below.

DATES: Interested parties should submit written comments on or before September 14, 2009.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other

submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr Algie Walker Jr. at (240) 857–5380, al.walker@afncr.af.mil

SUPPLEMENTARY INFORMATION:

Executive Order 12866, “Regulatory Planning and Review”

It has been determined that 32 CFR part 865 is not a significant regulatory action. This rule does not:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that 32 CFR Part 865 does not contain a Federal Mandate that may result in the expenditure by State, local and Tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. 601)

It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 95–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 865 does not impose any additional

reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Existing reporting and recordkeeping requirements approved under OMB Control Number 0704–0003, Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code, Section 1552, will be used.

Federalism (Executive Order 13132)

It has been certified that 32 CFR Part 865 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 865

Administrative practices and procedures, Military personnel, Records.

Accordingly, 32 CFR Part 865, Subpart A, is proposed to be revised to read as follows:

PART 865—PERSONNEL REVIEW BOARDS

1. The authority citation for 32 CFR part 865 continues to read as follows:

Authority: 10 U.S.C. 1034, 1552.2.

2. Revise Subpart A to read as follows:

Subpart A—Air Force Board for Correction of Military Records

Sec.

- 865.0 Purpose.
- 865.1 Setup of the Board.
- 865.2 Board responsibilities.
- 865.3 Application procedures.
- 865.4 Board actions.
- 865.5 Decision of the Secretary of the Air Force.
- 865.6 Reconsideration of applications.
- 865.7 Action after final decision.
- 865.8 Miscellaneous provisions.

Subpart A—Air Force Board for Correction of Military Records

§ 865.0 Purpose.

This subpart sets up procedures for correction of military records to remedy error or injustice. It tells how to apply for correction of military records and how the Air Force Board for Correction

of Military Records (AFBCMR, or the Board) considers applications. It defines the Board's authority to act on applications. It directs collecting and maintaining information subject to the Privacy Act of 1974 authorized by 10 U.S.C. 1034 and 1552. System of Records notice F035 SAFCB A, Military Records Processed by the Air Force Correction Board, applies.

§ 865.1 Setup of the Board.

The AFBCMR operates within the Office of the Secretary of the Air Force according to 10 U.S.C. 1552. The Board consists of civilians in the executive part of the Department of the Air Force who are appointed and serve at the pleasure of the Secretary of the Air Force. Three members constitute a quorum of the Board.

§ 865.2 Board responsibilities.

(a) *Considering Applications.* The Board considers all individual applications properly brought before it. In appropriate cases, it directs correction of military records to remove an error or injustice, or recommends such correction.

(b) *Recommending Action.* When an applicant alleges reprisal under the Military Whistleblowers Protection Act, 10 U.S.C. 1034, the Board may recommend to the Secretary of the Air Force that disciplinary or administrative action be taken against those responsible for the reprisal.

(c) *Deciding Cases.* The Board normally decides cases on the evidence of the record. It is not an investigative body. However, the Board may, in its discretion, hold a hearing or call for additional evidence or opinions in any case.

§ 865.3 Application procedures.

(a) Who May Apply:

(1) In most cases, the applicant is a member or former member of the Air Force, since the request is personal to the applicant and relates to his or her military records.

(2) An applicant with a proper interest may request correction of another person's military records when that person is incapable of acting on his or her own behalf, is missing, or is deceased. Depending on the circumstances, a child, spouse, civilian employee or former civilian employee, former spouse, parent or other close relative, an heir, or a legal representative (such as a guardian or executor) of the member or former member may be able to show a proper interest. Applicants will send proof of proper interest with the application when requesting correction of another

person's military records. An application may be returned when proper interest has not been shown.

(3) A member, former member, employee or former employee, dependent, and current or former spouse may apply to correct a document or other record of any other military matter that affects them (This does not include records pertaining to civilian employment matters). Applicants will send proof of the effect of the document or record upon them with the application when requesting a correction under this provision.

(b) *Getting Forms.* Applicants may get a DD Form 149, "Application for Correction of Military Record Under the Provisions of Title 10, U.S.C., 1552," and Air Force Pamphlet 36-2607, *Applicants' Guide to the Air Force Board for Correction of Military Records (AFBCMR)*, from:

(1) Any Air Force Military Personnel Flight (MPF) or publications distribution office.

(2) Most veterans' service organizations.

(3) The Air Force Review Boards Office, SAF/MRBR, 550 C Street West, Suite 40, Randolph AFB TX 78150-4742.

(4) The AFBCMR, 1535 Command Drive, EE Wing 3rd Floor, Andrews AFB MD 20762-7002.

(5) Thru the Internet at <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0149.pdf> (DD Form 149) and <http://www.e-publishing.af.mil/shared/media/epubs/AFAM36-2607.pdf> (Air Force Pamphlet 36-2607).

(c) *Preparation.* Before applying, applicants should:

(1) Review Air Force Pamphlet 36-2607.

(2) Discuss their concerns with MPF, finance office, or other appropriate officials. Errors can often be corrected administratively without resort to the Board.

(3) Exhaust other available administrative remedies (otherwise the Board may return the request without considering it).

(d) *Submitting the Application.* Applicants should complete all applicable sections of the DD Form 149, including at least:

(1) The name under which the member served.

(2) The member's social security number or Air Force service number.

(3) The applicant's current mailing address.

(4) The specific records correction being requested.

(5) Proof of proper interest if requesting correction of another person's records.

(6) The applicant's original signature.

(e) Applicants should mail the original signed DD Form 149 and any supporting documents to the Air Force address on the back of the form.

(f) *Meeting Time Limits.* Ordinarily, applicants must file an application within 3 years after the error or injustice was discovered, or, with due diligence, should have been discovered. In accordance with Federal law, time on active duty is not included in the 3 year period. An application filed later is untimely and may be denied by the Board on that basis.

(1) The Board may excuse untimely filing in the interest of justice.

(2) If the application is filed late, applicants should explain why it would be in the interest of justice for the Board to waive the time limits.

(g) *Stay of Other Proceedings.*

Applying to the AFBCMR does not stay other proceedings.

(h) *Counsel Representation.*

Applicants may be represented by counsel, at their own expense.

(1) The term "counsel" includes members in good standing of the bar of any State, accredited representatives of veterans' organizations recognized under by the Secretary of Veterans Affairs pursuant to 38 U.S.C. 5902(a)(1), and other persons determined by the Executive Director of the Board to be competent to represent the interests of the applicant.

(2) See DoDD 7050.06, *Military Whistleblower Protection*¹ and AFI 90-301, *Inspector General Complaints Resolution*, for special provisions for counsel in cases processed under 10 U.S.C. 1034.

(i) *Page Limitations on Briefs.* Briefs in support of applications:

(1) May not exceed 25 double-spaced typewritten pages.

(2) Must be typed on one side of a page only with not more than 12 characters per inch.

(3) Must be assembled in a manner that permits easy reproduction.

(4) Responses to advisory opinions must not exceed 10 double-spaced typewritten pages and meet the other requirements for briefs.

(5) These limitations do not apply to supporting documentary evidence.

(6) In complex cases and upon request, the Executive Director of the Board may waive these limitations.

(j) *Withdrawing Applications.*

Applicants may withdraw an application at any time before the Board's decision. Withdrawal does not stay the 3-year time limit.

¹ Available via the Internet at <http://www.dtic.mil/whs/directives/corres/pdf/705006p.pdf>.

(k) *Authority to Reject Applications.* The Executive Director may return an application without action, if, after consultation with legal counsel, he or she determines that the application is clearly frivolous, or the remedy that is requested is beyond the authority of the Board. This authority may not be delegated.

§ 865.4 Board actions.

(a) *Board Information Sources.* The applicant has the burden of providing sufficient evidence of material error or injustice. However, the Board:

(1) May get additional information and advisory opinions on an application from any Air Force organization or official.

(2) May ask the applicant to furnish additional information regarding matters before the Board.

(b) Applicants will be given an opportunity to review and comment on advisory opinions and additional information obtained by the Board. They will also be provided with a copy of correspondence to or from the Air Force Review Boards Agency with an entity outside the Air Force Review Boards Agency in accordance with the provisions of 10 U.S.C. 1556.

(c) *Consideration by the Board.* A panel consisting of at least three board members considers each application. One panel member serves as its chair. The panel's actions and decisions constitute the actions and decisions of the Board.

(d) The panel may decide the case in executive session or authorize a hearing. When a hearing is authorized, the procedures in § 865.4(f), of this part, apply.

(e) *Board Deliberations.* Normally only members of the Board and Board staff will be present during deliberations. The panel chair may permit observers for training purposes or otherwise in furtherance of the functions of the Board.

(f) *Board Hearings.* The Board in its sole discretion determines whether to grant a hearing. Applicants do not have a right to a hearing before the Board.

(1) The Executive Director will notify the applicant or counsel, if any, of the time and place of the hearing. Written notice will be mailed 30 days in advance of the hearing unless the notice period is waived by the applicant. The applicant will respond not later than 15 days before the hearing date, accepting or declining the offer of a hearing and, if accepting, provide information pertaining to counsel and witnesses. The Board will decide the case in executive session if the applicant declines the hearing or fails to appear.

(2) When granted a hearing, the applicant may appear before the Board with or without counsel and may present witnesses. It is the applicant's responsibility to notify witnesses, arrange for their attendance at the hearing, and pay any associated costs.

(3) The panel chair conducts the hearing, maintains order, and ensures the applicant receives a full and fair opportunity to be heard. Formal rules of evidence do not apply, but the panel observes reasonable bounds of competency, relevancy, and materiality. Witnesses other than the applicant will not be present except when testifying. Witnesses will testify under oath or affirmation. A recorder will record the proceedings verbatim. The chair will normally limit hearings to 2 hours but may allow more time if necessary to ensure a full and fair hearing.

(4) Additional provisions apply to cases processed under 10 U.S.C. 1034. See DoDD 7050.06, *Military Whistleblower Protection*², and AFI 90-301, *Inspector General Complaints Resolution*.

(g) The Board will not deny or recommend denial of an application on the sole ground that the issue already has been decided by the Secretary of the Air Force or the President of the United States in another proceeding.

(h) *Board Decisions.* The panel's majority vote constitutes the action of the Board. The Board will make determinations on the following issues in writing:

(1) Whether the provisions of the Military Whistleblowers Protection Act apply to the application. This determination is needed only when the applicant invokes the protection of the Act, or when the question of its applicability is otherwise raised by the evidence.

(2) Whether the application was timely filed and, if not, whether the applicant has demonstrated that it would be in the interest of justice to excuse the untimely filing. When the Board determines that an application is not timely, and does not excuse its untimeliness, the application will be denied on that basis.

(3) Whether the applicant has exhausted all available and effective administrative remedies. If the applicant has not, the application will be denied on that basis.

(4) Whether the applicant has demonstrated the existence of a material error or injustice that can be remedied effectively through correction of the

applicant's military record and, if so, what corrections are needed to provide full and effective relief.

(5) In Military Whistleblowers Protection Act cases only, whether to recommend to the Secretary of the Air Force that disciplinary or administrative action be taken against any Air Force official whom the Board finds to have committed an act of reprisal against the applicant. Any determination on this issue will not be made a part of the Board's record of proceedings and will not be given to the applicant, but will be provided directly to the Secretary of the Air Force under separate cover (Sec 865.2b, of this part).

(i) *Record of Proceedings.* The Board staff will prepare a record of proceedings following deliberations which will include:

(1) The name and vote of each Board member.

(2) The application.

(3) Briefs and written arguments.

(4) Documentary evidence.

(5) A hearing transcript if a hearing was held.

(6) Advisory opinions and the applicant's related comments.

(7) The findings, conclusions, and recommendations of the Board.

(8) Minority reports, if any.

(9) Other information necessary to show a true and complete history of the proceedings.

(j) *Minority Reports.* A dissenting panel member may prepare a minority report which may address any aspect of the case.

(k) *Separate Communications.* The Board may send comments or recommendations to the Secretary of the Air Force as to administrative or disciplinary action against individuals found to have committed acts of reprisal prohibited by the Military Whistleblowers Protection Act and on other matters arising from an application not directly related to the requested correction of military records. Such comments and recommendations will be separately communicated and will not be included in the record of proceedings or given to the applicant or counsel.

(l) *Final Action by the Board.* The Board acts for the Secretary of the Air Force and its decision is final when it:

(1) Denies any application (except under 10 U.S.C. 1034).

(2) Grants any application in whole or part when the relief was recommended by the official preparing the advisory opinion, was unanimously agreed to by the panel, and does not affect an appointment or promotion requiring confirmation by the Senate., and does not affect a matter for which the

² Copies may be obtained via the Internet at <http://www.dtic.mil/whs/directives/corres/pdf/705006p.pdf>.

Secretary of the Air Force or his or her designee has withheld decision authority or required notification before final decision.

(3) The Board sends the record of proceedings on all other applications to the Secretary of the Air Force or his or her designee for final decision.

(m) The Board may identify DoD or Air Force policies, instructions, guidance or practices that are leading to, or likely to lead to unsound business decisions, unfair results, waste of government funds or public criticism. The Board will forward such observations directly to the appropriate offices of the Secretariat and/or Air Staff for review and evaluation. Such observations will not be included in the record of proceedings.

§ 865.5 Decision of the Secretary of the Air Force.

(a) The Secretary may direct such action as he or she deems appropriate on each case, including returning the case to the Board for further consideration. Cases returned to the Board for further reconsideration will be accompanied by a brief statement of the reasons for such action. If the Secretary does not accept the Board's recommendation, the Secretary's decision will be in writing and will include a brief statement of the grounds for his/her final decision.

(b) *Decisions in Cases Under the Military Whistleblowers Protection Act.* The Secretary will issue decisions on such cases within 180 days after receipt of the case and will, unless the full relief requested is granted, inform applicants of their right to request review of the decision by the Secretary of Defense (SecDef). Applicants will also be informed:

(1) Of the name and address of the official to whom the request for review must be submitted.

(2) That the request for review must be submitted within 90 days after receipt of the decision by the Secretary of the Air Force.

(3) That the request for review must be in writing and include the applicant's name, address, and telephone number; a copy of the application to the AFBCMR and the final decision of the Secretary of the Air Force; and a statement of the specific reasons the applicant is not satisfied with the decision of the Secretary of the Air Force.

(4) That the request must be based on the Board record; requests for review based on factual allegations or evidence not previously presented to the Board will not be considered under this paragraph but may be the basis for

reconsideration by the Board under § 865.6.

(c) In cases under § 865.5(b) of this part which involve additional issues not cognizable under that paragraph, the additional issues may be considered separately by the Board under § 865.3 and § 865.4 of this part. The special time limit in § 865.5 (b) does not apply to the decision concerning these additional issues.

(d) *Decisions in High Profile or Sensitive Cases.* Prior to taking final action on a BCMR application that has generated, or is likely to generate, significant public or Congressional interest, the Secretarial designee will provide the case record of proceedings through Secretarial channels to OSAF so that the Secretary can determine whether to decide the case personally or take other action the Secretary deems appropriate.

§ 865.6 Reconsideration of applications.

(a) The Board may reconsider an application if the applicant submits newly discovered relevant evidence that was not reasonably available when the application was previously considered. The Executive Director or Team Chiefs will screen each request for reconsideration to determine whether it contains new evidence. New arguments about, or analysis of, evidence already considered, and additional statements which are cumulative to those already in the record of proceedings will not be considered new evidence.

(b) If the request contains new evidence, the Executive Director or his/her designee will refer it to a panel of the Board for a decision. The Board will decide the relevance and weight of any new evidence, whether it was reasonably available to the applicant when the application was previously considered, and whether it was submitted in a timely manner. The Board may deny reconsideration if the request does not meet the criteria for reconsideration. Otherwise the Board will reconsider the application and decide the case either on timeliness or merit as appropriate.

(c) If the request does not contain new evidence, the Executive Director or his/her designee will return it to the applicant without referral to the Board.

§ 865.7 Action after final decision.

(a) *Action by the Executive Director.* The Executive Director or his/her designee will inform the applicant or counsel, if any, of the final decision on the application. If any requested relief was denied, the Executive Director will advise the applicant of reconsideration procedures and, for cases processed

under the Military Whistleblowers Protection Act, review by the SecDef. The Executive Director will send decisions requiring corrective action to the Chief of Staff, U.S. Air Force, for necessary action.

(b) *Settlement of Claims.* The Air Force is authorized, under 10 U.S.C. 1552, to pay claims for amounts due to applicants as a result of correction of military records.

(1) The Executive Director will furnish the Defense Finance and Accounting Service (DFAS) with AFBCMR decisions potentially affecting monetary entitlement or benefits. DFAS will treat such decisions as claims for payment by or on behalf of the applicant.

(2) DFAS settles claims on the basis of the corrected military record. Computation of the amount due, if any, is a function of DFAS. Applicants may be required to furnish additional information to DFAS to establish their status as proper parties to the claim and to aid in deciding amounts due.

(3) Earnings received from civilian employment during any period for which active duty pay and allowances are payable will be deducted from the settlement. Amounts found due will be offset by the amount of any existing indebtedness to the government in compliance with the Debt Collection Act of 1982 or successor statutes.

(c) *Public Access to Decisions.* After deletion of personal information, AFBCMR decisions will be made available for review and copying at an electronic public reading room.

§ 865.8 Miscellaneous provisions.

(a) At the request of the Board, all Air Force activities and officials will furnish the Board with:

(1) All available military records pertinent to an application.

(2) An advisory opinion concerning an application. The advisory opinion will include an analysis of the facts of the case and of the applicant's contentions, a statement of whether or not the requested relief can be done administratively, and a recommendation on the timeliness and merit of the request. Regardless of the recommendation, the advisory opinion will include instructions on specific corrective action to be taken if the Board grants the application.

(b) *Access to Records.* Applicants will have access to all records considered by the Board, except those classified or privileged. To the extent practicable, applicants will be provided unclassified or nonprivileged summaries or extracts of such records considered by the Board.

(c) *Payment of Expenses.* The Air Force has no authority to pay expenses of any kind incurred by or on behalf of an applicant in connection with a correction of military records under 10 U.S.C. 1034 or 1552.

(d) *Form Adopted:* DD Form 149.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E9-16338 Filed 7-14-09; 8:45 am]

BILLING CODE 5001-05-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG-2009-0118]

RIN 1625-AA00

Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Sault Sainte Marie Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishment of safety zones for annual events in the Captain of the Port Sault Sainte Marie Zone. This proposed rule adds events not previously published in Coast Guard regulations. These safety zones are necessary to protect spectators, participants, and vessels from the hazards associated with fireworks displays or other events.

DATES: Comments and related materials must reach the Coast Guard on or before August 14, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2009-0118 using one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call LCDR Christopher Friese, Prevention Dept. Chief, Sector Sault Sainte Marie, 337 Water St, Sault Sainte Marie, MI 49783; 906-635-3220. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2009-0118), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert "USCG-2009-0118" in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand-delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material receiving during

the comment period and may change the rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> select the Advanced Docket Search option on the right side of the screen, insert USCG-2009-0118 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

SUPPLEMENTARY INFORMATION:

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Coast Guard Sector Sault Sainte Marie at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

We propose these safety zones to control vessel traffic within the immediate location of the fireworks launching area during annual fireworks displays.

The Coast Guard proposes to establish 7 permanent Safety Zones in the Captain of the Port Sault Sainte Marie zone. These safety zones are necessary to protect vessels and people from the hazards associated with fireworks displays or other events. Such hazards include obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

Discussion of Proposed Rule

The proposed rule and associated safety zones are necessary to ensure the safety of vessels and people during annual fireworks events in the Captain of the Port Sault Sainte Marie area of responsibility that may pose a hazard to the public.

The proposed safety zones will be enforced only immediately before, during, and after events that pose hazard to the public, and only upon notice by the Captain of the Port.

The Captain of the Port Sault Sainte Marie will notify the public that the zones in this proposal will be enforced by all appropriate means to the affected segments of the public including publication in the **Federal Register**. Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is cancelled.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sault Sainte Marie, or his designated representative. The Captain of the Port or his designated representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The Coast Guard's use of these safety zones will be periodic, of short duration, and designed to minimize the impact on navigable waters. These safety zones will only be enforced immediately before, during, and after the time the events occur. The Coast Guard expects insignificant

adverse impact to mariners from the activation of these safety zones.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners of operators of vessels intending to transit or anchor in the areas designated as safety zones in subparagraphs (1) through (7) during the dates and times the safety zones are being enforced.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: this proposed rule would be in effect for short periods of time, and only once per year, per zone. The safety zones have been designed to allow traffic to pass safely around the zone whenever possible and vessels will be allowed to pass through the zones with the permission of the Captain of the Port.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Christopher Friese, Prevention Dept. Chief, Sector Sault Sainte Marie, 337 Water St, Sault Sainte Marie, MI 49783; 906–635–3220. The Coast Guard

will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this proposed rule will not result in such expenditure, we nevertheless discuss its effects elsewhere in this preamble.

Taking of Private Property

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The proposed rule does not have tribal implications under Executive

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is

available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Add section 165.943 to read as follows:

§ 165.943 Safety Zones; Annual Events requiring safety zones in the Captain of the Port Sault Sainte Marie Zone.

(a) *Safety Zones*. The following areas are designated Safety Zones:

(1) *St. Ignace Fireworks, St. Ignace, MI.*

(i) *Location*. All waters of Lake Huron within a 1000-foot radius from the fireworks launch site at the Mill Slip Pier in East Moran Bay, with its center in position: 45°52′25″ N; 084°43′20″ W. (NAD 83).

(ii) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(2) *Mackinac Island Fireworks, Mackinac Island, MI.*

(i) *Location*. All waters of Lake Huron within a 1000-foot radius from the fireworks launch site off of Bindle Point, with its center in position 45°50′40″ N; 084°37′05″ W. (NAD 83).

(ii) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(3) *Cedarville Fireworks, Cedarville, MI.*

(i) *Location*. All waters of Lake Huron within a 1000-foot radius from the fireworks launch site in Cedarville Bay, with its center in position 45°59′27″ N; 084°21′46″ W. (NAD 83).

(ii) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks

are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(4) *Sault Sainte Marie Fireworks, Sault Sainte Marie, MI.*

(i) *Location*. All waters of the St. Marys River within a 1000-foot radius from the fireworks launch site at the U.S. Army Corp of Engineers Soo Locks North East Pier, in position 46°30′20″ N; 084°20′32″ W. (NAD 83).

(ii) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(5) *Marquette Fireworks, Marquette, MI.*

(i) *Location*. All waters of Lake Superior bounded by the arc of a circle with a 1000-foot radius from the fireworks launch site in Marquette Harbor’s lower breakwater, with its center in position 46°32′02″ N; 087°22′49″ W. (NAD 83).

(ii) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(6) *Whitefish Township Fireworks, Paradise, MI.*

(i) *Location*. All waters of Lake Superior within a 1000-foot radius from the fireworks launch site in Whitefish Bay, with its center in position 46°36′53″ N; 085°02′24″ W. (NAD 83).

(ii) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(7) *Munising Fireworks, Munising, MI.*

(i) *Location*. All waters of Lake Superior within a 1000-foot radius from the fireworks launch site at the end of the Munising City Dock, with its center in position 46°24′83″ N; 086°39′14″ W. (NAD 83).

(ii) *Enforcement date and time*. July 4; 9 p.m. to 11 p.m. If the July 4 fireworks are cancelled due to inclement weather, then this section will be enforced July 5; 9 p.m. to 11 p.m.

(b) [Reserved]

Dated: March 4, 2009.

M.J. Huebschman,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 2009–3]

Mandatory Deposit of Published Electronic Works Available Only Online**AGENCY:** Copyright Office, Library of Congress.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is proposing to amend its regulations governing mandatory deposit of electronic works published in the United States and available only online. The amendments would establish that such works are exempt from mandatory deposit until a demand for deposit of copies or phonorecords of such works is issued by the Copyright Office. They would also set forth the process for issuing and responding to a demand for deposit, amend the definition of a “complete copy” of a work for purposes of mandatory deposit of online-only works, and establish new best edition criteria for electronic serials available only online. The Copyright Office seeks public comment on these proposed revisions.

DATES: Written comments must be received in the Office of the General Counsel of the Copyright Office no later than August 31, 2009. Reply comments must be received in the Office of the General Counsel of the Copyright Office no later than September 28, 2009.

ADDRESSES: If hand delivered by a private party, an original and five copies of a comment or reply comment should be brought to the Library of Congress, U.S. Copyright Office, Room 401, 101 Independence Avenue, SE, Washington, DC 20559, between 8:30 a.m. and 5 p.m. E.D.T. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office. If delivered by a commercial courier, an original and five copies of a comment or reply comment must be delivered to the Congressional Courier Acceptance Site (“CCAS”) located at 2nd and D Streets, NE, Washington, DC between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM 403, James Madison Building, 101 Independence Avenue, SE, Washington, DC 20559. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service

or DHL. If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment or reply comment should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT:

Tanya M. Sandros, Deputy General Counsel, or Christopher Weston, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202)–707–8366.

SUPPLEMENTARY INFORMATION:**Historical Context**

Under section 407 of the Copyright Act of 1976, Title 17 of the United States Code, the owner of copyright, or of the exclusive right of publication, in a work published in the United States is required to deposit two complete copies (or, in the case of sound recordings, two phonorecords) of the best edition of the work with the Copyright Office for the use or disposition of the Library of Congress. The deposit is to be made within three months after such publication. Failure to make the required deposit does not affect copyright in the work, but it may subject the copyright owner to fines and other monetary liability if the owner fails to comply after a demand for deposit is made by the Register of Copyrights. These general provisions, however, are subject to limitations. Section 407 also provides that the Register of Copyrights “may by regulation exempt any categories of material from the deposit requirements of this section, or require deposit of only one copy or phonorecord with respect to any categories.” 17 U.S.C. 407(c).

Accordingly, the Copyright Office, with the approval of the Librarian of Congress, established regulations governing mandatory deposit and deposit for registration of copyright, which are set forth in Chapter II, Part 202 of Title 37 of the Code of Federal Regulations (CFR). Section 202.19 establishes the standards governing mandatory deposit of copies and phonorecords published in the United States for the Library of Congress. Section 202.20 prescribes rules pertaining to the required deposit for registration of a copyright claim with the Copyright Office under section 408 of Title 17, and section 202.21 allows for a deposit of identifying material in lieu of copies or phonorecords in certain cases, for both mandatory deposit and registration deposit. In addition, the Library of Congress’s Best Edition Statement in Appendix B of Part 202

specifies the required deposit in instances where “two or more editions of the same version of a work have been published.”

When the mandatory deposit regulations were first issued in 1978, the Copyright Office adopted a regulation exempting machine-readable works. It reads as follows:

Literary works, including computer programs and automated databases, published in the United States only in the form of machine-readable copies (such as magnetic tape or disks, punch cards, or the like) from which the work cannot ordinarily be visually perceived except with the aid of a machine or device [are exempted]. Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films and works published in any variety of microform), and works published in visually perceivable form but used in connection with optical scanning devices, are not within this category and are subject to the applicable deposit requirements.

37 CFR 202.19(c)(5) (1978). At the time this exemption was promulgated, copies of such machine-readable works were not widely marketed to the public. Thus, the Library decided not to require their deposit.

However, by the mid-1980s many important reference materials traditionally made available only in print form were being published in whole or in part in machine-readable form (*e.g.*, CD-ROM) and the public’s demand for access to and use of these materials had increased significantly. In addition, the Library’s interest in collecting computer programs published in IBM and Macintosh formats was growing, and it needed a way to obtain these works for its collection. As a result, the Library established a Machine-Readable Collections Reading Room, and, in 1989, the Copyright Office amended the machine-readable copies exemption so that machine-readable works *published in physical form* were subject to mandatory deposit and only “automated databases available only online in the United States” were exempted. 54 FR 42295 (Oct. 16, 1989).¹

The 1989 amendments also added two classes of works to the list of those not covered by the exemption: “automated databases distributed only in the form of machine-readable copies (such as magnetic tape or disks, punch cards, or the like) from which the work cannot

¹The 1989 rulemaking did not suggest that electronic online-only works should also be subject to mandatory deposit, and there is no evidence that such an outcome was contemplated. In fact at that time, the Library did not possess the technological means of ingesting copies of online-only works.

ordinarily be visually perceived except with the aid of a machine or device” and “computerized information works in the nature of statistical compendia, serials, and reference works.” Two years later, the Copyright Office amended section 202.19(c)(5) yet again to explicitly identify CD-ROM-formatted works as another category of works no longer included in the exemption. 56 FR 47402 (Sept. 19, 1991).

Regulatory Interpretation and Practice.

The term “automated database,” although used in the regulations to characterize a class of works, is a term that has not been defined in Title 17, and neither the Copyright Office regulations regarding mandatory deposit, nor the relevant Federal Register notices proposing and implementing regulatory changes, provide a definition of the term. However, the Copyright Office did provide a definition in its Circular 65: *Copyright Registration for Automated Databases*.² The circular defines an “automated database” as “a body of facts, data, or other information assembled into an organized format suitable for use in a computer and comprising one or more files.” This definition comports with the general understanding of what constitutes a database, in that a database usually would not include works like journals, newspapers or encyclopedias.

Even so, the Copyright Office practice to date has been, for purposes of mandatory deposit, to interpret this category broadly to encompass *all* electronic works published only online. To understand how this interpretation evolved, it should be noted that when section 202.19(c)(5) was amended in 1989, there was no tension involved in using the category “automated databases available only on-line in the United States” to refer to all online-only publications. For all practical purposes, the only works being published online at that time were automated databases, *e.g.* Westlaw and Nexis. The Copyright Office, however, did not revise its definition of automated databases as other categories of works, such as articles and serial titles, began to be published online. It chose instead to include these works in the exempted category “automated databases available only on-line in the United States” as a matter of convenience because, at that time, the Library exhibited neither the intention nor the technological ability to collect such works. Unfortunately, the effect of these practices has been to stretch the definition of the excluded

category “automated databases available only on-line in the United States” beyond its generally understood limits. Hence, the proposed revision to the exemption will replace this category with the more accurate “electronic works published in the United States and available only online.”

Proposed Qualified Exemption: Demand-Based Deposit of Electronic Works Published in the United States and Available Only Online

Twenty years have passed since the adoption of the regulation used to exclude from mandatory copyright deposit electronic works published in the United States and available only online. In that time, the Internet has grown to become a fundamental tool for the publication and dissemination of millions of works of authorship. To cite just one pertinent example, the Library has determined that there are now more than five thousand scholarly electronic serials available exclusively online, with no print counterparts. In some cases the Library has purchased subscriptions to these periodicals, but such subscriptions are typically “access only,” and rarely allow the Library to acquire a “best edition” copy for its collections. Thus, the current inability of the Library to acquire online-only works through mandatory copyright deposit places the long-term preservation of the works at risk.

To fulfill its mandate of sustaining and preserving a universal collection of knowledge, the Library is currently developing technological systems that will allow it to electronically ingest online-only works and maintain them in formats suitable for long-term preservation. As part of this process, the Library will also establish policies and practices to insure the security and integrity of its electronic collections, and to provide appropriate, limited access as allowed by law. So that this strategy may be implemented, the Copyright Office proposes to amend the mandatory copyright deposit regulations and thus enable the on-demand mandatory deposit of electronic works published in the United States and available only online (*i.e.*, not published in physical form). Via this notice, the Office seeks public comment on the proposed regulatory changes.

To date, mandatory copyright deposit has been one of the most important methods for building the Library’s collections and making it the world’s largest repository of knowledge and creativity. There is no reason why mandatory deposit cannot or should not serve this function in the digital environment as well. If, for example, a

scholarly journal is subject to mandatory copyright deposit when published in paper copies, it is logical and reasonable to demand its deposit once it is published solely in an online-accessible format, and such is the goal of the proposed amendments.

a. Qualified Exemption for Electronic Works Published in the United States and Available Only Online

This notice proposes that the current section 202.19(c)(5) exemption be amended so that all electronic works published in the United States and available only online enjoy a qualified exemption from mandatory deposit, which would mean that any work in this class is exempt *until* the Copyright Office issues a demand for its deposit. This revised exemption would apply to all published electronic works available only online. It would apply to serials, monographs, sound recordings, automated databases, and all other categories of electronic works. Furthermore, because the revised exemption would apply exclusively to published online-only works, there will be no need to retain the current list of machine-readable works in physical formats to which the exemption does not apply. It is important to emphasize, however, that the revised exemption would not apply to those works published in both physical and online formats. These works, because they are not published “only” online, were never exempted from mandatory deposit by § 202.19(c)(5).³

In proposing a qualified exemption, the Office seeks to balance the current needs of the Library of Congress against the imposition of a mandatory requirement on all copyright owners of works published exclusively online to deposit one complete copy of the best edition. Guidance for adopting this approach comes from the House and Senate Reports for the Copyright Act of 1976 which state that:

The fundamental criteria governing regulations issued under section 407(c) . . . would be the needs and wants of the Library. The purpose of this provision is to make the deposit requirements as flexible as possible . . . so that reasonable

³Note that the Library’s current Best Edition Statement for “Works Existing in More Than One Medium” does not currently list electronic formats. *See, e.g.*, 37 CFR 202.20(b)(1) (“For purposes of this section, if a work is first published in both hard copy, *i.e.*, in a physically tangible format, and also in an electronic format, the current Library of Congress Best Edition Statement requirements pertaining to the hard copy format apply.”) Nevertheless, the Library of Congress retains the authority to determine what constitutes “best edition” and it may decide at a future time that, when a particular work is published in both print and electronic editions, the electronic edition is the “best edition” for purposes of mandatory deposit.

² Circular 65 is currently under revision.

adjustments can be made to meet practical needs in special cases. The regulations, in establishing special categories for these purposes, would necessarily balance the value of the copies or phonorecords to the collections of the Library of Congress against the burdens and costs to the copyright owner of providing them.

H.R. Rep. No. 94-1476, at 150 (1976); S. Rep. No. 94-473, at 133 (1975). By exempting published electronic works available only online until a demand is made, the proposed qualified exemption addresses the practical difficulties of acquiring works published in non-physical formats, ensures that the Library will only receive those works that it needs for its collections, and reduces the burdens on copyright owners, who will only have to deposit those works demanded by the Copyright Office.

b. Single Copy of Work Demanded

Title 17's mandatory deposit provision requires the deposit of two copies or phonorecords [17 U.S.C. 407(a)(1)], but grants the Copyright Office authority to reduce that number to one by regulation. Pursuant to this authority, the proposed qualified exemption will state that only a single copy or phonorecord of a demanded work is required. The Office has determined that transmitting duplicate electronic files presents a risk of slowing down the electronic ingest system of the Library, particularly in the case of a work consisting of a single large file or of many small files. Upon receipt of the single copy of a demanded work, the Library may allow simultaneous access by two on-site users. This achieves the statute's goal of providing two copies of a published work to the Library of Congress in a more efficient and flexible manner.

c. Demand Deposit Process

This notice proposes that published electronic works available only online be deposited only pursuant to a demand issued by the Copyright Office, under the authority of section 407(d) of Title 17. The Library intends to phase in its collection of online-only works on a category-by-category basis. The initial revision of § 202.19(c)(5) proposed in this notice identifies "electronic serials" as being exempt but subject to demand, because that is the first category of online-only works that the Library intends to collect. As the Library expands its collection of online-only works to other categories, these new categories would be identified in § 202.19(c)(5) as subject to demand, following a notice and comment period.

Under the proposed regulation, once a category of works is identified as being subject to demand under the qualified

exemption of § 202.19(c)(5), the Copyright Office would be able to make a demand on the owner of copyright or of the exclusive right of publication for one complete copy of a work in that category, for any such work published on or after the date that this proposed regulation goes into effect. A demand for a copy of an online-only periodical or other serial would cover not only the issue or issues specified in the demand, but also all subsequent issues of the serial title.

The owner of copyright or of the exclusive right of publication would have three months from the date of receipt of the notice in which to make the deposit, in keeping with the time period allotted by statute for deposit of the best edition of a published work not subject to an exemption. See 17 U.S.C. 407(a). The proposed regulation also includes a provision governing requests for special relief from the requirements of the demand process to accommodate, for example, situations where the work is no longer available in any of the formats listed in the Best Edition Statement.

d. Notice of Publication

The Library intends to commence the demand-deposit program proposed by this notice with the "electronic serials" category of electronic works published in the United States and available only online. The Library believes that sufficient bibliographic information exists on electronic serials (such as indexes, online search tools, and announcement lists) that it will be able to independently determine which titles to demand. However, experience with the demand-deposit process may demonstrate that a number of important electronic serial titles are escaping the Library's notice. Moreover, other categories of online-only works likely are not subject to the same level of bibliographic control as electronic serials, and hence may prove to be even more elusive.

The Copyright Office is thus soliciting comments on the question of whether the owner of copyright or of the exclusive right of publication in an online-only work should be required to notify the Library of Congress upon the publication of a new online-only work in the United States. Such a notice of publication would provide an additional source of information on which the Library could rely in ascertaining what works are available.

As a threshold matter, the Office is interested in comments regarding whether promulgating such a notice requirement as a condition of the qualified exemption from mandatory deposit is within the Office's authority

as granted by 17 U.S.C. 407. In addition, commenters should address whether a notice requirement is necessary and prudent and whether it would strike the appropriate balance between the needs of the Library for timely publication information and the imposition of a further requirement on copyright holders. Comments are also welcome on the content and frequency of notices of publication. For example, would it be preferable to require notification upon the publication of each new work or serial title, or instead to require the submission of a list of all new publications at a predetermined frequency (monthly, quarterly, etc.)? Finally, assuming the advisability of a notice of publication requirement, what should the consequences be for noncompliance?

e. Revised "Complete Copy"

Definition

Section 407 of Title 17 requires the deposit of a complete copy of the best edition of a work published in the United States. Section 202.19(b)(2) of the Copyright Office regulations defines a "complete copy" of a work for purposes of mandatory deposit as one that "includes all elements comprising the unit of publication of the best edition of the work, including elements that, if considered separately, would not be copyrightable subject matter or would otherwise be exempt from mandatory deposit requirements under paragraph(c) of this section." Published electronic works often contain elements such as metadata and formatting codes that, while they are not perceptible to the naked eye or ear, are part of the unit of publication. These elements are also critical for continued access to and preservation of a work once it is deposited. Thus, this notice proposes to clarify that a "complete copy" of a published electronic work available only online includes the associated metadata and formatting codes that make up the unit of publication.

f. Best Edition Statement for Electronic Serials

This notice proposes the creation of a new section of the Best Edition Statement in Appendix B to Part 202, describing best edition criteria for published electronic works available only online in the United States. These criteria are based primarily upon the potential sustainability of the various digital formats currently in use. A work deposited in a sustainable format is one that is less difficult and more cost-effective to transform or migrate to future systems as technologies change.

Consistent with the Library's current collection priorities, demands under the proposed amendments will initially

focus on material that has traditionally been published in hard copy. The first category of electronic works published in the United States and available only online for which the Library is proposing best edition criteria is electronic serials, a term that this notice proposes to define. It is the understanding of the Copyright Office that the formats listed in the proposed Best Edition Statement for electronic serials are all currently publication formats used by some, if not all, electronic serial publishers. Best edition criteria for other categories of electronic works published in the United States and available only online will follow as they are developed.

List of Subjects in 37 CFR Part 202

Copyright and registration of claims to copyright

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend part 202 of 37 CFR, as follows:

PART 202 – PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702

2. Amend § 202.19 as follows:

a. By revising paragraph (b)(2);
b. By adding a new paragraph (b)(4);

and

c. By revising paragraph (c)(5).

The additions and revisions to § 202.19 read as follows:

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

* * * * *

(b) * * *

(2) A complete copy includes all elements comprising the unit of publication of the best edition of the work, including elements that, if considered separately, would not be copyrightable subject matter or would otherwise be exempt from mandatory deposit requirements under paragraph (c) of this section.

(i) In the case of sound recordings, a (complete(phonorecord includes the phonorecord, together with any printed or other visually perceptible material published with such phonorecord (such as textual or pictorial matter appearing on record sleeves or album covers, or embodied in leaflets or booklets included in a sleeve, album, or other container).

(ii) In the case of a musical composition published in copies only, or in both copies and phonorecords:

(A) If the only publication of copies in the United States took place by the rental, lease, or lending of a full score and parts, a full score is a (complete(copy; and

(B) If the only publication of copies in the United States took place by the rental, lease, or lending of a conductor's score and parts, a conductor's score is a (complete(copy.

(iii) In the case of a motion picture, a copy is (complete(if the reproduction of all of the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, undeteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or that would cause mechanical, visual, or audible defects or distortions.

(iv) In the case of an electronic work published in the United States and available only online, a copy is (complete(if it includes all elements constituting the work in its published form, i.e., the complete work as published, including metadata and formatting codes otherwise exempt from mandatory deposit.

* * * * *

(4) For purposes of § 202.19(c)(5) of these regulations, an *electronic serial* is an electronic work published in the United States and available only online, issued or intended to be issued in successive parts bearing numerical or chronological designations, and intended to be continued indefinitely. This class includes periodicals; newspapers; annuals; and the journals, proceedings, transactions, etc. of societies.

(c) * * *

(5) Electronic works published in the United States and available only online. This exemption includes electronic serials available only online only until such time as a demand is issued by the Copyright Office under the regulations set forth in § 202.24. This exemption does not apply to works that are published in both online, electronic formats and in physical formats, which remain subject to the appropriate mandatory deposit requirements.

* * * * *

3. Add a new § 202.24, as follows:

§ 202.24 Deposit of Published Electronic Works Available Only Online

(a) Pursuant to authority under 17 U.S.C. 407(d), the Register of Copyrights may make written demand to deposit one complete copy or phonorecord of an electronic work published in the United

States and available only online upon the owner of copyright or of the exclusive right of publication in the work, under the following conditions:

(1) Demands may be made only for works in those categories identified in § 202.19(c)(5) of these regulations as being subject to demand.

(2) Demands may be made only for works published on or after [the effective date of the final regulation].

(3) The owner of copyright or of the exclusive right of publication must deposit the demanded work within three months of the date the demand notice is received.

(4) If the demanded work is not available in any of the formats listed in the Best Edition Statement, the owner of copyright or of the exclusive right of publication may request special relief under paragraph (c) of this section.

(b) *Definitions.* (1) "Best edition" has the meaning set forth in § 202.19(b)(1) of this part.

(2) "Complete copy" has the meaning set forth in § 202.19(b)(2) of this part.

(c) *Special relief.* (1) In the case of any demand made under paragraph (a) of this section, the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation,

(i) Extend the time period provided in section 407(d) of Title 17[e1];

(ii) Permit the deposit of incomplete copies or phonorecords; or

(iii) Permit the deposit of copies or phonorecords other than those normally comprising the best edition.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force.

(3) Requests for special relief under this section shall be made in writing to the Copyright Acquisitions Division, shall be signed by or on behalf of the owner of copyright or of the exclusive right of publication in the work, and shall set forth specific reasons why the request should be granted.

4. Amend Part 202, Appendix B, Section I as follows:

a. By redesignating section IX as section X; and

b. By adding a new section IX.

The revision to Part 202, Appendix B, Section I reads as follows:

Appendix B to Part 202 – "Best Edition" of Published Copyrighted

Works for the Collections of the Library of Congress

* * * * *

IX. Electronic Works Published in the United States and Available Only Online

For all deposits, UTF-8 encoding is preferred to ASCII encoding and other non UTF-8 encodings for non-Latin character sets in all categories below.

A. Electronic Serials

1. Content Format

a. Level 1: Serials-specific structured/markup format:

(i) Content compliant with the NLM Journal Archiving (XML) Document Type Definition (DTD), with presentation stylesheet(s), rather than without.

(ii) Other widely used serials or journal XML DTDs/schemas, with presentation stylesheet(s), rather than without.

(iii) Proprietary XML format for serials or journals (with documentation), with DTD/schema and presentation stylesheet(s), rather than without.

b. Level 2: Page-oriented rendition:

(i) PDF/A (Portable Document Format/Archival; compliant with ISO 19005).

(ii) PDF (Portable Document Format, with searchable text, rather than without).

c. Level 3: Other formats:

(i) XHTML/HTML, as made available online, with presentation stylesheets(s), rather than without.

(ii) XML (widely used, publicly documented XML-based word-processing formats, e.g. ODF/OpenDocument Format, OpenXML), with presentation stylesheets(s), if appropriate, rather than without.

(iii) Plain text.

(iv) Other formats (e.g., proprietary word processing or page layout formats).

2. Metadata Elements:

If it has already been gathered and is available, descriptive data (metadata) as described below should accompany the deposited material.

a. Title level metadata: serial or journal title, ISSN, publisher, frequency, place of publication.

b. Article level metadata, as relevant/applicable: volume(s), number(s), issue dates(s), article title(s), article author(s), article identifier (DOI, etc.).

c. With other descriptive metadata (e.g., subject heading(s), descriptor(s), abstract(s)), rather than without.

3. Access and copy controls:

a. Editions without access and copy controls, or with those controls disabled, are preferred over editions with such controls.

Dated: July 7, 2009.

Marybeth Peters,

Register of Copyrights.

[FR Doc. E9-16675 Filed 7-14-09; 8:45 am]

BILLING CODE 1410-30-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA-HQ-OAR-2006-0922; FRL- 8930-6]

RIN 2060-A019

Public Hearings for Primary National Ambient Air Quality Standards for Nitrogen Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearings.

SUMMARY: The EPA is announcing two public hearings to be held for the proposed rule "Primary National Ambient Air Quality Standards for Nitrogen Dioxide" which is published elsewhere in this **Federal Register**. The hearings will be held in Arlington, Virginia, on Monday, August 3, 2009 and Los Angeles, California, on Thursday, August 6, 2009.

In the notice of proposed rulemaking, EPA proposes to make revisions to the primary nitrogen dioxide (NO₂) national ambient air quality standard (NAAQS) in order to provide requisite protection of public health. Specifically, EPA proposes to supplement the current annual standard by establishing a new short-term NO₂ standard based on the 3-year average of the 99th percentile (or 4th highest) of the annual distribution of 1-hour daily maximum concentrations. The EPA proposes to set the level of this new standard within the range of 80 to 100 parts per billion (ppb) and solicits comment on standard levels as low as 65 ppb and as high as 150 ppb. Also, EPA proposes to establish requirements for an NO₂ monitoring network that will include monitors within 50 meters of major roadways. In addition, EPA is soliciting comment on an alternative approach to setting the standard and revising the monitoring network. Consistent with the terms of a consent decree, the Administrator will sign a notice of final rulemaking by January 22, 2010.

DATES: The public hearings will be held on August 3, 2009 in Arlington, Virginia, and on August 6, 2009 in Los Angeles, California. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the public hearings.

ADDRESSES: The hearings will be held at the following locations:

1. *Arlington, VA:* Environmental Protection Agency Conference Center, First Floor Conference Center South, One Potomac Yard, 2777 S. Crystal Drive, Arlington, VA 22202. All visitors

will need to go through security and present a valid photo identification, such as a driver's license.

2. *Los Angeles, CA:* Sheraton Los Angeles Downtown, 711 South Hope Street, Los Angeles, CA 90017, telephone (213) 488-3500.

Written comments on this proposed rule may also be submitted to EPA electronically, by mail, by facsimile, or through hand delivery/courier. Please refer to the notice of proposed rulemaking for the addresses and detailed instructions for submitting written comments.

A complete set of documents related to the proposal is available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room 3334, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents are also available through the electronic docket system at <http://www.regulations.gov>.

The EPA Web site for the rulemaking, which includes the proposal and information about the public hearings can be found at: <http://www.epa.gov/air/nitrogenoxides/>.

FOR FURTHER INFORMATION CONTACT: If you would like to speak at the public hearings or have questions concerning the public hearings, please contact Ms. Tricia Crabtree at the address given below under **SUPPLEMENTARY INFORMATION**.

Questions concerning the "Primary National Ambient Air Quality Standards for Nitrogen Dioxide" proposed rule should be addressed to Dr. Scott Jenkins, U.S. EPA, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division (C504-06), Research Triangle Park, NC 27711, telephone (919) 541-1167, e-mail: jenkins.scott@epa.gov.

SUPPLEMENTARY INFORMATION: The proposal for which EPA is holding the public hearings is published elsewhere in this **Federal Register** and is also available on the following Web site: <http://www.epa.gov/air/nitrogenoxides/>. The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rules. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. Written comments must be

received by the last day of the comment period, as specified in the proposal.

The two public hearings will be held in Arlington, VA, on August 3, 2009 and Los Angeles, CA, on August 6, 2009. The public hearings will begin each day at 9 a.m. and continue into the evening until 9 p.m. (local time) or later, if necessary, depending on the number of speakers wishing to participate. The EPA will make every effort to accommodate all speakers that arrive and register before 9 p.m. The EPA is scheduling lunch breaks from 12:30 p.m. until 2 p.m. and dinner breaks from 6 p.m. until 7:30 p.m. If you would like to present oral testimony at the hearings, please notify Ms. Tricia Crabtree (C504-02), U.S. EPA, Research Triangle Park, NC 27711. The preferred method for registering is by e-mail (crabtree.tricia@epa.gov). Ms. Crabtree may be reached by telephone at (919) 541-5688. She will arrange a general time slot for you to speak. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearings.

Oral testimony will be limited to five (5) minutes for each commenter to address the proposal. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations unless we receive special requests in advance. Commenters should notify Ms. Crabtree if they will need specific audiovisual (AV) equipment. Commenters should also notify Ms. Crabtree if they need specific translation services for non-English speaking commenters. The EPA encourages commenters to provide written versions of their oral testimonies either electronically on computer disk or CD ROM or in paper copy.

The hearing schedules, including lists of speakers, will be posted on EPA's Web site for the proposal at <http://www.epa.gov/air/nitrogenoxides/prior> to the hearings. Verbatim transcripts of the hearings and written statements will be included in the rulemaking docket.

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

The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2006-0922. The EPA has also developed a Web site for nitrogen dioxide NAAQS materials, including the notice of proposed rulemaking, at the address given above. Please refer to the notice of proposed rulemaking for detailed information on accessing information related to the proposal.

Dated: July 9, 2009.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E9-16795 Filed 7-14-09; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09-1510; MB Docket No. 09-118; RM-11545]

Television Broadcasting Services; Ann Arbor, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by ION Media Licensee Company, LLC ("ION"), the licensee of WPXD-DT, digital channel 31, Ann Arbor, Michigan. ION requests the substitution of digital channel 50 for digital channel 31 at Ann Arbor.

DATES: Comments must be filed on or before July 30, 2009, and reply comments on or before August 10, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Scott S. Patrick, Esq., Dow Lohnes PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036-6802.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, adrienne.denysyk@fcc.gov, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09-118, adopted June 29, 2009, and released July 8, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.fcc.gov/cgb/ecfs/>

www.BCPIWEB.com. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Michigan, is amended by adding DTV channel 50 and removing DTV channel 31 at Ann Arbor.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9-16870 Filed 7-14-09; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Part 216**

RIN 0750-AF81

Defense Federal Acquisition Regulation Supplement; Letter Contract Definitization Schedule (DFARS Case 2007-D011)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify requirements regarding definitization of letter contracts. The rule specifies that DoD letter contracts will be definitized using the DFARS procedures applicable to all other undefinitized contract actions.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 14, 2009, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2007-D011, using any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
E-mail: dfars@osd.mil. Include DFARS Case 2007-D011 in the subject line of the message.

Fax: 703-602-7887.

Mail: Defense Acquisition Regulations System, Attn: Ms. Cassandra Freeman, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Cassandra Freeman, 703-602-8383.

SUPPLEMENTARY INFORMATION:**A. Background**

Section 16.603 of the Federal Acquisition Regulation (FAR) permits the use of a letter contract as a preliminary, undefinitized contractual instrument, when negotiating a definitive contract is not possible in sufficient time to meet the Government's requirements. FAR 16.603-2(c)(3) requires the definitization of a letter contract within 180 days after the date of the letter contract, or before completion of 40 percent of the work to be performed, whichever occurs first. In extreme cases and according to agency procedures, the contracting officer may authorize an additional period.

DFARS Subpart 217.74 contains requirements applicable to all DoD undefinitized contract actions, consistent with 10 U.S.C. 2326. DFARS 217.7404-3(a) requires definitization of such actions by 180 days after issuance of the action (this date may be extended but may not exceed 180 days after the contractor submits a qualifying proposal), or the date on which the amount of funds obligated exceeds 50 percent of the not-to-exceed price, whichever is earlier. If the contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been obligated by the Government, the limitation on obligations before definitization may be increased to no more than 75 percent.

In view of the differences between the FAR and DFARS definitization requirements, confusion has arisen in this area. This proposed rule clarifies that the definitization requirements at DFARS 217.7404-3(a) apply to DoD letter contracts instead of the requirements at FAR 16.603-2(c)(3). This approach provides consistency in the manner in which DoD manages its undefinitized contract actions, and is in line with the specific provisions of 10 U.S.C. 2326 relating to DoD use of undefinitized contract actions.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule is a clarification of existing requirements pertaining to undefinitized contract actions. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2007-D011.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 216

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR Part 216 as follows:

PART 216—TYPES OF CONTRACTS

1. The authority citation for 48 CFR Part 216 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 216.603-2 is added to read as follows:

216.603-2 Application.

(c)(3) In accordance with 10 U.S.C. 2326, establish definitization schedules for letter contracts following the requirements at 217.7404-3(a) instead of the requirements at FAR 16.603-2(c)(3).

[FR Doc. E9-16665 Filed 7-14-09; 8:45 am]

BILLING CODE 5001-08-P

Notices

Federal Register

Vol. 74, No. 134

Wednesday, July 15, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 9, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: National Hunger Clearinghouse Database Form.

OMB Control Number: 0584-0474.

Summary of Collection: The Food and Nutrition Service (FNS) is interested in maintaining and further developing an information clearinghouse (named "National Hunger Clearinghouse") for groups that assist low-income individuals and communities concerning nutrition assistance programs or other assistance. Section 26 of the National School Lunch Act, which was added to the Act by section 123 of Public Law 102-446 on November 2, 1994, mandated that FNS enter into a contract with a non governmental organization to develop and maintain a national information clearinghouse of grassroots organizations working on hunger, food, nutrition, and other agricultural issues, including food recovery, food assistance and self-help activities to aid individuals to become self-reliant and other activities that empower low-income individuals. FNS will collect information using FNS form 543, National Hunger Clearinghouse Database. FNS will collect the information through fax, regular mail, e-mail, and the Internet.

Need and Use of the Information: FNS will collect information to provide a resource for groups that assist low-income individuals or communities regarding nutrition assistance program or other assistance. The information aids FNS to fight hunger and improve nutrition by increasing participation in the FNS nutrition programs through the development, coordination, and evaluation of strategic initiatives, partnership, and outreach activities.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1,750.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 292.

Food and Nutrition Service

Title: Request for Administrative Review.

OMB Control Number: 0584-0520.

Summary of Collection: The Food and Nutrition Service (FNS) of the U.S.

Department of Agriculture is the Federal agency responsible for the Supplemental Nutrition Assistance Program (SNAP). The Food and Nutrition Act of 2008 (7 U.S.C. 2011-2036), as codified under 7 CFR parts 278 and 279, requires that the FNS determine the eligibility of retail food stores and certain food service organizations to participate in the SNAP. If a retail or wholesale firm is found to be ineligible by FNS, or is otherwise aggrieved by certain FNS actions(s), that firm has the right to file a written request for review of the administrative action with FNS.

Need and Use of the Information: The request for administrative review is a formal letter, provided by the requester, with an original signature. FNS receives the letter requesting an administrative review and maintains it as part of the official review record. The designated reviewer will adjudicate the appeals process and make a final determination regarding the aggrieved action.

Description of Respondents: Business or other for profit.

Number of Respondents: 589.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 120.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9-16704 Filed 7-14-09; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 10, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the

burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602.

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: National Animal Health Reporting System (NAHRS).

OMB Control Number: 0579-0299.

Summary of Collection: The National Animal Health Reporting System (NAHRS) was developed through a cooperative effort between the United States Animal Health Association, the American Association of Veterinary Laboratory Diagnosticians, and the Animal and Plant Health Inspection Service (APHIS). NAHRS provides an ongoing national measure of the health status of the nation's livestock. The National Center for Animal Health Surveillance involvement in this voluntary monitoring activity is to facilitate standardization of the data throughout the United States and provide a central point for national collection. The evolving international trade arena and increased competition have heightened the need to have accurate, timely information to maintain and increase U.S. animal agriculture's overseas market share, NAHRS provides information that helps meet this need.

Need and Use of the Information: The objective of the NAHRS is to collect data needed to report the presence of confirmed clinical disease in commercial livestock, poultry, and aquaculture species in the U.S. These reports are required for membership by

the Office International des Epizooties, and to meet international trade reporting requirements for animal health. On a monthly basis State veterinarians in each of the 50 States are asked to complete the NAHRS Reportable Disease List Form. The form collects qualitative data from reporting States on the confirmed presence or absence of diseases, but does not collect or report the number of cases.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 50.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 2,400.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9-16785 Filed 7-14-09; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Supplemental Form for Collecting Taxpayer Identifying Numbers

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the Agency's proposed information collection of taxpayer identifying numbers from all persons and organizations with which the Agency has a direct payment relationship. This collection is an extension of a currently approved information collection.

DATES: Written comments must be received on or before September 14, 2009.

ADDRESSES: 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, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Mark Porter, Chief, Fiscal Policy and Reporting Branch, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 740, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Mark Porter at 703-605-0363 or via e-mail to *Mark.Porter@fns.usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov>, and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 740, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of this information collection should be directed to Mark Porter at (703) 305-0901.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Form for Collecting Taxpayer Identifying Numbers, FNS-711.

OMB Number: 0584-0501.

Form Number: FNS-711.

Expiration Date: September 30, 2009.

Type of Request: Extension of a currently approved information collection.

Abstract: Section 31001(y) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134), codified at 31 U.S.C. 3325(d), requires Federal agencies to include the taxpayer identifying number (TIN) of all persons or organizations they pay whenever a request for payment is submitted to Federal payment officials. Departmental Regulation 2100-2 reflects the statutory provision at 31 U.S.C. 7701(c) which requires all individuals and entities doing business with USDA to furnish a TIN. The purpose of the Supplemental Form for Collecting Taxpayer Identifying Numbers is to comply with Federal law by enabling the Agency to legally obtain a TIN from all persons and organizations who are entered into a direct payment relationship with FNS.

Respondents: Individuals and entities who enter into a direct payment agreement with FNS under any of the various nutrition and nutrition

education programs administered by FNS.

Estimated Number of Respondents: 800.

Number of Responses per Respondent: 1.

Estimated Number of Annual Responses: 800.

Estimated Time per Response: 0.0833 hours.

Estimated Total Annual Burden on Respondents: 67 hours.

Dated: July 9, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.
[FR Doc. E9-16750 Filed 7-14-09; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection

Activities: Proposed Collection; Comment Request—Data Collection Related to Institutions and Organizations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. This collection is an extension without change of a currently approved collection for Data Collection Related to Institutions and Organizations, and concerns whether and to what extent faith-based and community organizations are participating in Federal nutrition assistance programs.

DATES: Written comments must be received on or before September 14, 2009.

ADDRESSES: 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, including the validity of the methodology and assumptions used;
(c) ways to enhance the quality, utility, and clarity of the information to be collected; and
(d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Duke Storen, Director, Office of Strategic Initiatives, Partnerships, and Outreach, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Suite 1441, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Duke Storen at (703) 605-1937 or via e-mail to duke.storen@fns.usda.gov. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 1431.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of this information collection should be directed to Sara Gold at (703) 605-4325.

SUPPLEMENTARY INFORMATION:

Title: Data Collection Related to Institutions and Organizations.

OMB Number: 0584-0540.

Form Number: N/A.

Expiration Date: 11/30/2009.

Type of Request: EXTENSION.

Abstract: The purpose of the submission is to obtain approval to continue information collection. The Department of Agriculture, Food and Nutrition Service (FNS) issued an interim rule entitled "Data Collection Related to Institutions and Organizations," as part of the Department's effort to fulfill its responsibilities under Executive Orders 13279 and 13280. The rule enabled FNS to identify the faith-based and community organizations participating in Federal nutrition assistance programs, determine the level of their participation, ensure that FNS' programs are open to all eligible organizations, and evaluate the effectiveness of its technical assistance and outreach efforts. State agencies will submit to FNS their data collection for organizations that signed an agreement with the State agencies to participate in FNS' nutrition assistance programs during Fiscal Years (FY) 2006 through 2009.

Respondents: State Agencies.

Estimated Number of Respondents: 57.

Estimated Number of Responses per Respondent: 1,162.

Estimated Total Annual Responses: 66,256.

Estimated Time per Response: 1.99.

Estimated Total Annual Burden on Respondents: 131,849 hours.

Dated: July 1, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.
[FR Doc. E9-16767 Filed 7-14-09; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for the Period July 1, 2009 through June 30, 2010

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals and snacks served in child care centers, outside-school-hours care centers, at-risk afterschool care centers, and adult day care centers; the food service payment rates for meals and snacks served in day care homes; and the administrative reimbursement rates for sponsoring organizations of day care homes, to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are made on an annual basis each July, as required by the laws and regulations governing the Child and Adult Care Food Program.

DATES: These rates are effective from July 1, 2009 through June 30, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rothstein, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302-1594, 703-305-2590.

SUPPLEMENTARY INFORMATION:

Definitions

The terms used in this notice have the meanings ascribed to them in the Child and Adult Care Food Program regulations, 7 CFR part 226.

Background

Pursuant to sections 4, 11, and 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and sections 226.4, 226.12 and 226.13 of the regulations, notice is hereby given of the new payment rates for institutions participating in the Child and Adult

Care Food Program (CACFP). These rates are in effect during the period, July 1, 2009 through June 30, 2010.

As provided for under the law, all rates in the CACFP must be revised annually, on July 1, to reflect changes in the Consumer Price Index (CPI), published by the Bureau of Labor Statistics of the United States Department of Labor, for the most recent 12-month period. In accordance with

this mandate, the United States Department of Agriculture last published the adjusted national average payment rates for centers, the food service payment rates for day care homes, and the administrative reimbursement rates for sponsors of day care homes, for the period from July 1, 2008 through June 30, 2009, on July 7, 2008, at 73 FR 38390.

CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

[Per meal rates in whole or fractions of U.S. dollars, effective from July 1, 2009–June 30, 2010]

Centers	Breakfast		Lunch and supper ¹		Snack	
	Tier I	Tier II	Tier I	Tier II	Tier I	Tier II
Contiguous States:						
Paid	0.26		0.25		0.06	
Reduced Price	1.16		2.28		0.37	
Free	1.46		2.68		0.74	
Alaska:						
Paid	0.38		0.41		0.10	
Reduced Price	2.03		3.95		0.59	
Free	2.33		4.35		1.19	
Hawaii:						
Paid	0.29		0.30		0.07	
Reduced Price	1.40		2.75		0.43	
Free	1.70		3.15		0.86	
Day care homes						
	Breakfast		Lunch and supper		Snack	
	Tier I	Tier II	Tier I	Tier II	Tier I	Tier II
Contiguous States	1.19	0.44	2.21	1.33	0.66	0.18
Alaska	1.89	0.67	3.59	2.16	1.07	0.29
Hawaii	1.38	0.50	2.59	1.56	0.77	0.21
Administrative reimbursement rates for sponsoring organizations of day care homes per home/ per month rates in U.S. dollars			Initial 50	Next 150	Next 800	Each add'l
Contiguous States			100	76	60	52
Alaska			162	123	96	85
Hawaii			117	89	70	61

¹ These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the Program. A notice announcing the value of commodities and cash-in-lieu of commodities is published separately in the **Federal Register**.

The changes in the national average payment rates for centers reflect a 4.232 percent increase during the 12-month period, May 2008 to May 2009, (from 213.967 in May 2008, as previously published in the **Federal Register**, to 223.023 in May 2009) in the food away from home series of the CPI for All Urban Consumers.

The changes in the food service payment rates for day care homes reflect a 1.522 percent increase during the 12-month period, May 2008 to May 2009, (from 211.863 in May 2008, as previously published in the **Federal Register**, to 215.088 in May 2009) in the food at home series of the CPI for All Urban Consumers.

The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 1.281 percent decrease during the 12-

month period, May 2008 to May 2009, (from 216.632 in May 2008, as previously published in the **Federal Register**, to 213.856 in May 2009) in the series for all items of the CPI for All Urban Consumers.

The total amount of payments available to each State agency for distribution to institutions participating in the Program is based on the rates contained in this notice.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

This Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental

consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice has been determined to be not significant and was reviewed by the Office Management and Budget in conformance with Executive Order 12866.

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518).

Authority: Sections 4(b)(2), 11a, 17(c) and 17(f)(3)(B) of the Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1753(b)(2), 1759a, 1766(f)(3)(B)) and section 4(b)(1)(B) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773(b)(1)(B)).

Dated: July 9, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9-16748 Filed 7-14-09; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service; Little Sandy Trail Creek Watershed Structure No. 1: Madison County, GA

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of Availability of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2) (C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Little Sandy Trail Creek Watershed Structure No. 1, Madison County, Georgia.

FOR FURTHER INFORMATION CONTACT: Cran Upshaw, Economist, Federal Building, 355 East Hancock Avenue, Athens, Georgia 30601, Telephone (706) 546-2277, e-mail cran.upshaw@ga.usda.gov.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, James E. Tillman, Sr., State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvement include upgrading an existing floodwater retarding structure.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the U.S. Environmental Protection Agency and to various Federal, State, and local agencies and interest parties. A limited number of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Cran Upshaw at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Signed in Athens, Georgia, on July 2, 2009.

James E. Tillman, Sr.

State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under 10.916, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires inter-government consultation with State and local officials).

Finding of No Significant Impact for Little Sandy Trail Creek Watershed Structure No. 1; Madison County, Georgia, July 3, 2009

Introduction

The Little Sandy Trail Creek Watershed is a federally assisted action authorized for planning under Public Law 106-472, the Watershed Rehabilitation Act, which amends Public Law 83-566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 355 East Hancock Avenue, Athens, Georgia 30601.

Recommended Action

This document describes a plan for upgrading an existing floodwater retarding structure, Little Sandy Trail Creek Watershed Structure No. 1, to meet current dam safety criteria in Georgia. The plan calls for the modification of the existing vegetative auxiliary spillway, enlarging the principal spillway and raising the top of the dam on an existing dam. Works of improvement will be accomplished by providing financial and technical assistance through an eligible local sponsor.

The Principal Project Measures are to:

1. Modifying the existing vegetative auxiliary spillway, enlarging the principal spillway and raising the top of the dam. This construction is designed to bring the existing dam into compliance with current dam safety criteria in Georgia.

2. The measures will be planned and installed by developing a contract with the current operator of the dam.

Effects of Recommended Action

Modifying the existing vegetative auxiliary spillway, enlarging the principal spillway and raising the top of

the dam will bring Little Sandy Trail Creek Watershed Structure No. 1 into compliance with current dam safety criteria. This will essentially eliminate the risk to loss of life for individuals in 6 homes and 10 roads downstream. Additional effects will include continued protection against flooding, continued water quality benefits, continued fishing activities, continued recreational opportunities, protected land values, protected road and utility networks, and reduced maintenance costs for public infrastructure.

Wildlife habitat will not be disturbed during installation activities. No wetlands, wildlife habitat, fisheries, prime farmland, or cultural resources will be destroyed or threatened by this project. Some 30 acres of wetland and wetland type wildlife habitat will be preserved. Fishery habitats will also be maintained.

No endangered or threatened plant or animal species will be adversely affected by the project.

There are no wilderness areas in the watershed.

Alternatives

Six alternative plans of action were considered in project planning. No significant adverse environmental impacts are anticipated from installation of the selected alternative. Also, the planned action is the most practical, complete, and acceptable means of protecting life and property of downstream residents.

Consultation—Public Participation

Original sponsoring organizations include the Georgia Soil and Water Conservation Commission, Broad River Soil and Water Conservation District and Madison County. At the initiation of the planning process, meetings were held with representatives of the original sponsoring organizations to ascertain their interest and concerns regarding the Little Sandy Trail Creek Watershed. The Georgia Soil and Water Conservation Commission agreed to serve as “lead sponsor” being responsible for leading the planning process with assistance from NRCS. As lead sponsor they also agreed to provide non-federal cost-share, property rights, operation and maintenance, and public participation during, and beyond, the planning process.

An Interdisciplinary Planning Team provided for the “technical” administration of this project. Technical administration includes tasks pursuant to the NRCS nine-step planning process, and planning procedures outlined in the NRCS—National Planning Procedures Handbook. Examples of tasks completed

by the Planning Team include, but are not limited to, Preliminary Investigations, Hydrologic Analysis, Reservoir Sedimentation Surveys, Economic Analysis, Formulating and Evaluating Alternatives, and Writing the Watershed Plan—Environmental Assessment. Data collected from partner agencies, databases, landowners, and others throughout the entire planning process were presented at the public meeting on May 27, 2009. Informal discussions amongst planning team members, partner agencies, and landowners were conducted throughout the entire planning period.

Public Participation

A public meeting was held on May 27, 2009 to explain the Watershed Rehabilitation Program and to scope resource problems, issues, and concerns of local residents associated with the project area. Potential alternative solutions to bring Little Sandy Trail Creek No. 1 into compliance with current dam safety criteria were also presented. Through a voting process, eleven meeting participants heard summaries of planning accomplishments to date, provided input on issues and concerns to be considered in the planning process, were made aware of results from the reservoir sedimentation survey, and identified which planning alternative (*i.e.*, No Action, Decommission, Structural, Non-Structural) was most desirable.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant adverse local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the recommended plan of action on Little Sandy Trail Creek Watershed Structure No. 1 is not required.

Dated: July 2, 2009.

James E. Tillman, Sr.,
State Conservationist.

[FR Doc. E9-16786 Filed 7-14-09; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Sandy Creek Watershed Structure No. 23: Jackson County, GA

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of Availability of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2) (C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Sandy Creek Watershed Structure No. 23, Jackson County, Georgia.

FOR FURTHER INFORMATION CONTACT: Cran Upshaw, Economist, Federal Building, 355 East Hancock Avenue, Athens, Georgia 30601, Telephone (706) 546-2277, e-mail cran.upshaw@ga.usda.gov.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, James E. Tillman, Sr., State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvement include upgrading an existing floodwater retarding structure.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the U.S. Environmental Protection Agency and to various Federal, State, and local agencies and interest parties. A limited number of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Cran Upshaw at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Signed in Athens, Georgia, on July 2, 2009.
James E. Tillman, Sr.,
State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under 10.916, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires inter-government consultation with State and local officials).

Finding of No Significant Impact for Sandy Creek Watershed Structure No. 23, Jackson County, Georgia, July 3, 2009

Introduction

The Sandy Creek Watershed is a Federally assisted action authorized for planning under Public Law 106-472, the Watershed Rehabilitation Act, which amends Public Law 83-566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 355 East Hancock Avenue, Athens, Georgia 30601.

Recommended Action

This document describes a plan for upgrading an existing floodwater retarding structure, Sandy Creek Watershed Structure No. 23, to meet current dam safety criteria in Georgia. The plan calls for the construction of a roller compacted concrete chute spillway on an existing dam. Works of improvement will be accomplished by providing financial and technical assistance through an eligible local sponsor.

The principal project measures are to:

1. Construction of a roller compacted concrete chute spillway. This construction is designed to bring the existing dam into compliance with current dam safety criteria in Georgia.
2. The measures will be planned and installed by developing a contract with the current operator of the dam.

Effects of Recommended Action

Construction of a roller compacted concrete chute spillway will bring Sandy Creek Watershed Structure No. 23 into compliance with current dam safety criteria. This will essentially eliminate the risk to loss of life for individuals in 5 homes and 1 road downstream. Additional effects will include continued protection against flooding, continued water quality benefits, continued fishing activities, continued recreational opportunities, protected land values, protected road and utility networks, and reduced maintenance costs for public infrastructure.

Wildlife habitat will not be disturbed during installation activities. No

wetlands, wildlife habitat, fisheries, prime farmland, or cultural resources will be destroyed or threatened by this project. Some 21 acres of wetland and wetland type wildlife habitat will be preserved. Fishery habitats will also be maintained.

No endangered or threatened plant or animal species will be adversely affected by the project.

There are no wilderness areas in the watershed.

Alternatives

Seven alternative plans of action were considered in project planning. No significant adverse environmental impacts are anticipated from installation of the selected alternative. Also, the planned action is the most practical, complete, and acceptable means of protecting life and property of downstream residents.

Consultation—Public Participation

Original sponsoring organizations include the Georgia Soil and Water Conservation Commission, Oconee River Soil and Water Conservation District and Jackson County. At the initiation of the planning process, meetings were held with representatives of the original sponsoring organizations to ascertain their interest and concerns regarding the Sandy Creek Watershed. The Georgia Soil and Water Conservation Commission agreed to serve as “lead sponsor” being responsible for leading the planning process with assistance from NRCS. As lead sponsor they also agreed to provide non-Federal cost-share, property rights, operation and maintenance, and public participation during, and beyond, the planning process.

An Interdisciplinary Planning Team provided for the “technical” administration of this project. Technical administration includes tasks pursuant to the NRCS nine-step planning process, and planning procedures outlined in the NRCS—National Planning Procedures Handbook. Examples of tasks completed by the Planning Team include, but are not limited to, Preliminary Investigations, Hydrologic Analysis, Reservoir Sedimentation Surveys, Economic Analysis, Formulating and Evaluating Alternatives, and Writing the Watershed Plan—Environmental Assessment. Data collected from partner agencies, databases, landowners, and others throughout the entire planning process, were presented at the public meeting on May 28, 2009. Informal discussions amongst planning team members, partner agencies, and landowners were conducted throughout the entire planning period.

Public Participation

A public meeting was held on May 28, 2009 to explain the Watershed Rehabilitation Program and to scope resource problems, issues, and concerns of local residents associated with the project area. Potential alternative solutions to bring Sandy Creek No. 23 into compliance with current dam safety criteria were also presented. Through a voting process, eleven meeting participants heard summaries of planning accomplishments to date, provided input on issues and concerns to be considered in the planning process, were made aware of results from the reservoir sedimentation survey, and identified which planning alternative (*i.e.* No Action, Decommission, Structural, Non-Structural) was most desirable.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant adverse local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the recommended plan of action on Sandy Creek Watershed Structure No. 23 is not required.

[FR Doc. E9–16791 Filed 7–14–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Sandy Creek Watershed Structure No. 15: Jackson County, GA

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of Availability of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Sandy Creek Watershed Structure No. 15, Jackson County, Georgia.

FOR FURTHER INFORMATION CONTACT: Cran Upshaw, Economist, Federal Building, 355 East Hancock Avenue, Athens, Georgia 30601, Telephone (706) 546–2277, e-mail cran.upshaw@ga.usda.gov.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, James E. Tillman, Sr., State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvement include upgrading an existing floodwater retarding structure.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the U.S. Environmental Protection Agency and to various Federal, State, and local agencies and interest parties. A limited number of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Cran Upshaw at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Signed in Athens, Georgia, on July 2, 2009.

James E. Tillman, Sr.,
State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under 10.916, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires inter-government consultation with State and local officials.)

Finding of No Significant Impact for Sandy Creek Watershed Structure No. 15, Jackson County, Georgia, July 3, 2009

Introduction

The Sandy Creek Watershed is a Federally assisted action authorized for planning under Public Law 106–472, the Watershed Rehabilitation Act, which amends Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 355 East Hancock Avenue, Athens, Georgia 30601.

Recommended Action

This document describes a plan for upgrading an existing floodwater retarding structure, Sandy Creek Watershed Structure No. 15 to meet current dam safety criteria in Georgia. The plan calls for the construction of a roller compacted concrete chute spillway on an existing dam. Works of improvement will be accomplished by providing financial and technical assistance through an eligible local sponsor.

The principal project measures are to:

1. Construction of a roller compacted concrete chute spillway. This construction is designed to bring the existing dam into compliance with current dam safety criteria in Georgia.
2. The measures will be planned and installed by developing a contract with the current operator of the dam.

Effects of Recommended Action

Construction of a roller compacted concrete chute spillway will bring Sandy Creek Watershed Structure No. 15 into compliance with current dam safety criteria. This will essentially eliminate the risk to loss of life for individuals in 2 homes and 4 roads downstream. Additional effects will include continued protection against flooding, continued water quality benefits, continued fishing activities, continued recreational opportunities, protected land values, protected road and utility networks, and reduced maintenance costs for public infrastructure.

Wildlife habitat will not be disturbed during installation activities. No wetlands, wildlife habitat, fisheries, prime farmland, or cultural resources will be destroyed or threatened by this project. Some 30 acres of wetland and wetland type wildlife habitat will be preserved. Fishery habitats will also be maintained.

No endangered or threatened plant or animal species will be adversely affected by the project.

There are no wilderness areas in the watershed.

Alternatives

Six alternative plans of action were considered in project planning. No significant adverse environmental impacts are anticipated from installation of the selected alternative. Also, the planned action is the most practical, complete, and acceptable means of protecting life and property of downstream residents.

Consultation—Public Participation

Original sponsoring organizations include the, Georgia Soil and Water

Conservation District, Oconee River Soil and Water Conservation District and Jackson County. At the initiation of the planning process, meetings were held with representatives of the original sponsoring organizations to ascertain their interest and concerns regarding the Sandy Creek Watershed. The Georgia Soil and Water Conservation Commission agreed to serve as “lead sponsor” being responsible for leading the planning process with assistance from NRCS. As lead sponsor they also agreed to provide non-federal cost-share, property rights, operation and maintenance, and public participation during, and beyond, the planning process.

An Interdisciplinary Planning Team provided for the “technical” administration of this project. Technical administration includes tasks pursuant to the NRCS nine-step planning process, and planning procedures outlined in the NRCS-National Planning Procedures Handbook. Examples of tasks completed by the Planning Team include, but are not limited to, Preliminary Investigations, Hydrologic Analysis, Reservoir Sedimentation Surveys, Economic Analysis, Formulating and Evaluating Alternatives, and Writing the Watershed Plan—Environmental Assessment. Data collected from partner agencies, databases, landowners, and others throughout the entire planning process, were presented at the public meeting on May 28, 2009. Informal discussions amongst planning team members, partner agencies, and landowners were conducted throughout the entire planning period.

Public Participation

A public meeting was held on May 28, 2009 to explain the Watershed Rehabilitation Program and to scope resource problems, issues, and concerns of local residents associated with the project area. Potential alternative solutions to bring Sandy Creek No. 15 into compliance with current dam safety criteria were also presented. Through a voting process, eleven meeting participants heard summaries of planning accomplishments to date, provided input on issues and concerns to be considered in the planning process, were made aware of results from the reservoir sedimentation survey, and identified which planning alternative (*i.e.*, No Action, Decommission, Structural, Non-Structural) was most desirable.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant

adverse local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the recommended plan of action on Sandy Creek Watershed Structure No. 15 is not required.

Dated: July 2, 2009.
James E. Tillman, Sr.,
State Conservationist.
[FR Doc. E9–16794 Filed 7–14–09; 8:45 am]
BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

South River Watershed Structure No. 4: Madison County, GA

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of Availability of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the South River Watershed Structure No. 4, Madison County, Georgia.

FOR FURTHER INFORMATION CONTACT: Cran Upshaw, Economist, Federal Building, 355 East Hancock Avenue, Athens, Georgia 30601, Telephone (706) 546–2277, e-mail cran.upshaw@ga.usda.gov.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, James E. Tillman, Sr., State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvement include upgrading an existing floodwater retarding structure.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the U.S. Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of the FONSI are available to fill single

copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Cran Upshaw at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Signed in Athens, Georgia, on July 2, 2009.

James E. Tillman, Sr.,
State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under 10.916, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires inter-government consultation with State and local officials).

Finding of No Significant Impact for South River Watershed Structure No. 4, Madison County, Georgia, July 3, 2009

Introduction

The South River Watershed is a Federally assisted action authorized for planning under Public Law 106-472, the Watershed Rehabilitation Act, which amends Public Law 83-566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 355 East Hancock Avenue, Athens, Georgia 30601.

Recommended Action

This document describes a plan for upgrading an existing floodwater retarding structure, South River Watershed Structure No. 4 to meet current dam safety criteria in Georgia. The plan calls for the construction of a roller compacted concrete spillway on an existing dam. Works of improvement will be accomplished by providing financial and technical assistance through an eligible local sponsor.

The principal project measures are to:

1. Construction of a roller compacted concrete spillway. This construction is designed to bring the existing dam into compliance with current dam safety criteria in Georgia.
2. The measures will be planned and installed by developing a contract with the current operator of the dam.

Effects of Recommended Action

Construction of a roller compacted concrete spillway will bring South River Watershed Structure No. 4 into compliance with current dam safety criteria. This will essentially eliminate the risk to loss of life for individuals in 2 homes and 5 roads downstream. Additional effects will include continued protection against flooding, continued water quality benefits, continued fishing activities, continued recreational opportunities, protected land values, protected road and utility networks, and reduced maintenance costs for public infrastructure.

Wildlife habitat will not be disturbed during installation activities. No wetlands, wildlife habitat, fisheries, prime farmland, or cultural resources will be destroyed or threatened by this project. Some 37 acres of wetland and wetland type wildlife habitat will be preserved. Fishery habitats will also be maintained.

No endangered or threatened plant or animal species will be adversely affected by the project.

There are no wilderness areas in the watershed.

Alternatives

Eight alternative plans of action were considered in project planning. No significant adverse environmental impacts are anticipated from installation of the selected alternative. Also, the planned action is the most practical, complete, and acceptable means of protecting life and property of downstream residents.

Consultation—Public Participation

Original sponsoring organizations include the Georgia Soil and Water Conservation Commission, Broad River Soil and Water Conservation District and Madison County. At the initiation of the planning process, meetings were held with representatives of the original sponsoring organizations to ascertain their interest and concerns regarding the South River Watershed. The Georgia Soil and Water Conservation Commission agreed to serve as "lead sponsor" being responsible for leading the planning process with assistance from NRCS. As lead sponsor they also agreed to provide non-Federal cost-share, property rights, operation and maintenance, and public participation during, and beyond, the planning process.

An Interdisciplinary Planning Team provided for the "technical" administration of this project. Technical administration includes tasks pursuant to the NRCS nine-step planning process,

and planning procedures outlined in the NRCS-National Planning Procedures Handbook. Examples of tasks completed by the Planning Team include, but are not limited to, Preliminary Investigations, Hydrologic Analysis, Reservoir Sedimentation Surveys, Economic Analysis, Formulating and Evaluating Alternatives, and Writing the Watershed Plan—Environmental Assessment. Data collected from partner agencies, databases, landowners, and others throughout the entire planning process, were presented at the public meeting on May 27, 2009. Informal discussions amongst planning team members, partner agencies, and landowners were conducted throughout the entire planning period.

Public Participation

A public meeting was held on May 27, 2009 to explain the Watershed Rehabilitation Program and to scope resource problems, issues, and concerns of local residents associated with the project area. Potential alternative solutions to bring South River No. 4 into compliance with current dam safety criteria were also presented. Through a voting process, eleven meeting participants heard summaries of planning accomplishments to date provided input on issues and concerns to be considered in the planning process, were made aware of results from the reservoir sedimentation survey, and identified which planning alternative (*i.e.* No Action, Decommission, Structural, Non-Structural) was most desirable.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant adverse local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the recommended plan of action on South River Watershed Structure No. 4 is not required.

[FR Doc. E9-16801 Filed 7-14-09; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Marbury Creek Watershed Structure No. 22: Barrow County, GA

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of Availability of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Marbury Creek Watershed Structure No. 22, Barrow County, Georgia.

FOR FURTHER INFORMATION CONTACT: Cran Upshaw, Economist, Federal Building, 355 East Hancock Avenue, Athens, Georgia 30601, Telephone (706) 546-2277, e-mail cran.upshaw@ga.usda.gov.

SUPPLEMENTAL INFORMATION: The Environmental Assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, James E. Tillman, Sr., State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvement include upgrading an existing floodwater retarding structure.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the U.S. Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of the FONSI is available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Cran Upshaw at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Signed in Athens, Georgia, on July 2, 2009.

James E. Tillman, Sr.,
State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under 10.916, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires inter-government consultation with State and local officials).

Finding of No Significant Impact for Marbury Creek Watershed Structure No. 22, Barrow County, Georgia, July 3, 2009

Introduction

The Marbury Creek Watershed is a federally assisted action authorized for planning under Public Law 106-472,

the Watershed Rehabilitation Act, which amends Public Law 83-566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 355 East Hancock Avenue, Athens, Georgia 30601.

Recommended Action

This document describes a plan for upgrading an existing floodwater retarding structure, Marbury Creek Watershed Structure No. 22, to meet current dam safety criteria in Georgia. The plan calls for the widening of the vegetative auxiliary spillway on an existing dam. Works of improvement will be accomplished by providing financial and technical assistance through an eligible local sponsor.

The principal project measures are to:

1. Widen the vegetative auxiliary spillway. This action is designed to bring the existing dam into compliance with current dam safety criteria in Georgia.

2. The measures will be planned and installed by developing a contract with the current operator of the dam.

Effects of Recommended Action

Widening the vegetative auxiliary spillway will bring Marbury Creek Watershed Structure No. 22 into compliance with current dam safety criteria. This will essentially eliminate the risk to loss of life for individuals in 1 home and 6 roads downstream. Additional effects will include continued protection against flooding, continued water quality benefits, continued fishing activities, continued recreational opportunities, protected land values, protected road and utility networks, and reduced maintenance costs for public infrastructure.

Wildlife habitat will not be disturbed during installation activities. No wetlands, wildlife habitat, fisheries, prime farmland, or cultural resources will be destroyed or threatened by this project.

Some 20 acres of wetland and wetland type wildlife habitat will be preserved. Fishery habitats will also be maintained.

No endangered or threatened plant or animal species will be adversely affected by the project.

There are no wilderness areas in the watershed.

Alternatives

Eight alternative plans of action were considered in project planning. No significant adverse environmental impacts are anticipated from installation of the selected alternative. Also, the planned action is the most practical, complete, and acceptable means of protecting life and property of downstream residents.

Consultation—Public Participation

Original sponsoring organizations include the Georgia Soil and Water Conservation Commission, Oconee River Soil and Water Conservation District and Barrow County. At the initiation of the planning process, meetings were held with representatives of the original sponsoring organizations to ascertain their interest and concerns regarding the Marbury Creek Watershed. The Georgia Soil and Water Conservation Commission agreed to serve as "lead sponsor" being responsible for leading the planning process with assistance from NRCS. As lead sponsor they also agreed to provide non-federal cost-share, property rights, operation and maintenance, and public participation during, and beyond, the planning process.

An Interdisciplinary Planning Team provided for the "technical" administration of this project. Technical administration includes tasks pursuant to the NRCS nine-step planning process, and planning procedures outlined in the NRCS-National Planning Procedures Handbook. Examples of tasks completed by the Planning Team include, but are not limited to, Preliminary Investigations, Hydrologic Analysis, Reservoir Sedimentation Surveys, Economic Analysis, Formulating and Evaluating Alternatives, and Writing the Watershed Plan—Environmental Assessment. Data collected from partner agencies, databases, landowners, and others throughout the entire planning process were presented at the public meeting on May 27, 2009. Informal discussions amongst planning team members, partner agencies, and landowners were conducted throughout the entire planning period.

Public Participation

A public meeting was held on May 27, 2009 to explain the Watershed Rehabilitation Program and to scope resource problems, issues, and concerns of local residents associated with the project area. Potential alternative solutions to bring Marbury Creek No. 22 into compliance with current dam safety

criteria were also presented. Through a voting process, eleven meeting participants heard summaries of planning accomplishments to date, provided input on issues and concerns to be considered in the planning process, were made aware of results from the reservoir sedimentation survey, and identified which planning alternative (*i.e.*, No Action, Decommission, Structural, Non-Structural) was most desirable.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant adverse local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the recommended plan of action on Marbury Creek Watershed Structure No. 22 is not required.

July 2, 2009.

James E. Tillman, Sr.,
State Conservationist.

[FR Doc. E9-16797 Filed 7-14-09; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods From July 1, 2009 Through June 30, 2010

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the national average value of donated foods or, where applicable, cash in lieu of donated foods, to be provided in school year 2010 (July 1, 2009 through June 30, 2010) for each lunch served by schools participating in the National School Lunch Program (NSLP), and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program (CACFP).

DATES: The rate in this notice is effective July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Michelle Waters, Program Analyst, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302-1594 or telephone (703) 305-2662.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under Nos.

10.555 and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act. This notice was reviewed by the Office of Management and Budget under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 2009 Through June 30, 2010

This notice implements mandatory provisions of sections 6(c) and 17(h)(1)(B) of the National School Lunch Act (the Act) (42 U.S.C. 1755(c) and 1766(h)(1)(B)). Section 6(c)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in the NSLP at 11.00 cents per meal. Pursuant to section 6(c)(1)(B), this amount is subject to annual adjustments on July 1 of each year to reflect changes in a three-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year (Price Index). Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in the CACFP. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under the NSLP (7 CFR part 210) and per lunch and supper under the CACFP (7 CFR part 226) shall be 19.5 cents for the period July 1, 2009 through June 30, 2010.

The Price Index is computed using five major food components in the Bureau of Labor Statistics Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy; processed fruits and vegetables; and fats and oils). Each component is weighted using the relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April, and May each year. The three-month average of the Price Index decreased by 5.5 percent from 182.01 for March, April, and May

of 2008, as previously published in the **Federal Register**, to 171.97 for the same three months in 2009. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 2009 through June 30, 2010 will be 19.50 cents per meal. This is a decrease of 1.25 cents from the school year 2009 (July 1, 2008 through June 30, 2009) rate.

Authority: Sections 6(c)(1)(A) and (B), 6(e)(1), and 17(h)(1)(B) of the National School Lunch Act, as amended (42 U.S.C. 1755(c)(1)(A) and (B) and (e)(1), and 1766(h)(1)(B)).

Dated: July 9, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9-16746 Filed 7-14-09; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Extension of Public Comment Period—Klamath National Forest Travel Management Draft Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of extension for public comment period.

SUMMARY: The Forest Service is extending the public comment period for the Travel Management Draft Environmental Impact Statements for the Klamath National Forest for an addition 15 days to August 4, 2009. The original notice called for comments to be submitted by July 20, 2009 (75 FR 27034, June 5, 2009).

DATES: Comments must be received in writing by August 4, 2009.

ADDRESSES: Send comments electronically to comments-pacificsouthwestklamath@fs.fed.us. Comments also may be submitted by mail to the Klamath National Forest, Attn: Jan Ford, 1312 Fairlane Road, Yreka, CA 96097, or by fax to (530) 841 4571. Comment sent via e-mail should use the subject line "Klamath NF Travel Management EIS."

Comments received in response to this solicitation, including names and addresses of those who comment, will become part of the public record for this proposed action.

Comments submitted anonymously will be accepted and considered; however, anonymous comments may limit the respondent's ability to participate in subsequent administrative review or judicial review. The public may inspect comments received on this

project at the Klamath National 1312 Fairlane Road, Yreka, CA 96097 on business days between 8:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jan Ford, Klamath National Forest, 1312 Fairlane Road, Yreka, CA 96097; jaford@fs.fed.us, or (530) 841-4483.

Dated: July 6, 2009.

Patricia A. Grantham,

Forest Supervisor, Klamath National Forest.
[FR Doc. E9-16700 Filed 7-14-09; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National School Lunch, Special Milk, and School Breakfast Programs, National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to the “national average payments,” the amount of money the Federal Government provides States for lunches, afterschool snacks and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; to the “maximum reimbursement rates,” the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and to the rate of reimbursement for a half-pint of milk served to non-needy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the National School Lunch and School Breakfast Programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for the Special Milk Program reflects changes in the Producer Price Index for Fluid Milk Products.

DATES: These rates are effective from July 1, 2009 through June 30, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. William Wagoner, Section Chief, School Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, VA 22302 or phone (703) 305-2590.

SUPPLEMENTARY INFORMATION:

Background

Special Milk Program for Children— Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to non-needy children in a school or institution that participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fluid Milk Products, published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 2009 through June 30, 2010, the rate of reimbursement for a half-pint of milk served to a non-needy child in a school or institution which participates in the Special Milk Program is 16.00 cents. This reflects a decrease of 12.67 percent in the Producer Price Index for Fluid Milk Products from May 2008 to May 2009 (from a level of 199.7 in May 2008 as previously published in the **Federal Register** to 174.4 in May 2009).

As a reminder, schools or institutions with pricing programs that elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs— Pursuant to sections 11 and 17A of the Richard B. Russell National School Lunch Act, (42 U.S.C. 1759a and 1766a), and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for lunches and afterschool snacks served to children participating in the National School Lunch Program and breakfasts served to children participating in the School Breakfast Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 2009 through June 30, 2010 reflect a 4.232 percent increase in the Consumer Price Index for All Urban Consumers during the 12-month period May 2008 to May 2009 (from a level of 213.967 in May 2008 as previously published in the **Federal Register** to 223.023 in May 2009). Adjustments to

the national average payment rates for all lunches served under the National School Lunch Program, breakfasts served under the School Breakfast Program, and afterschool snacks served under the National School Lunch Program are rounded down to the nearest whole cent.

Lunch Payment Levels— Section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. The Richard B. Russell National School Lunch Act provides two different section 4 payment levels for lunches served under the National School Lunch Program. The lower payment level applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment level applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these section 4 payments, section 11 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759(a)) provides special cash assistance payments to aid schools in providing free and reduced price lunches. The section 11 National Average Payment Factor for each reduced price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1757 and 1759a), maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates are to ensure equitable disbursement of Federal funds to school food authorities.

Afterschool Snack Payments in Afterschool Care Programs— Section 17A of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766a) establishes National Average Payments for free, reduced price and paid afterschool snacks as part of the National School Lunch Program.

Breakfast Payment Factors— Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for free and reduced price breakfasts served in schools determined to be in “severe need” because they serve a high percentage of needy children.

Revised Payments

The following specific section 4, section 11 and section 17A National Average Payment Factors and maximum reimbursement rates for lunch, the afterschool snack rates, and the breakfast rates are in effect from July 1, 2009 through June 30, 2010. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico and Guam use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors—In school food authorities which served less than 60 percent free and reduced price lunches in School Year 2007–08, the payments for meals served are:

Contiguous States—paid rate—25 cents, free and reduced price rate—25 cents, maximum rate—33 cents; *Alaska*—paid rate—41 cents, free and reduced price rate—41 cents, maximum rate—52 cents; *Hawaii*—paid rate—30 cents, free and reduced price rate—30 cents, maximum rate—38 cents.

In school food authorities which served 60 percent or more free and

reduced price lunches in School Year 2007–08, payments are: *Contiguous States*—paid rate—27 cents, free and reduced price rate—27 cents, maximum rate—33 cents; *Alaska*—paid rate—43 cents, free and reduced price rate—43 cents, maximum rate—52 cents; *Hawaii*—paid rate—32 cents, free and reduced price rate—32 cents, maximum rate—38 cents.

Section 11 National Average Payment Factors—*Contiguous States*—free lunch—243 cents, reduced price lunch—203 cents; *Alaska*—free lunch—394 cents, reduced price lunch—354 cents; *Hawaii*—free lunch—285 cents, reduced price lunch—245 cents.

Afterschool Snacks in Afterschool Care Programs—The payments are: *Contiguous States*—free snack—74 cents, reduced price snack—37 cents, paid snack—06 cents; *Alaska*—free snack—119 cents, reduced price snack—59 cents, paid snack—10 cents; *Hawaii*—free snack—86 cents, reduced price snack—43 cents, paid snack—07 cents.

School Breakfast Program Payments

For schools “not in severe need” the payments are: *Contiguous States*—free breakfast—146 cents, reduced price breakfast—116 cents, paid breakfast—26 cents; *Alaska*—free breakfast—233

cents, reduced price breakfast—203 cents, paid breakfast—38 cents; *Hawaii*—free breakfast—170 cents, reduced price breakfast—140 cents, paid breakfast—29 cents.

For schools in “severe need” the payments are: *Contiguous States*—free breakfast—174 cents, reduced price breakfast—144 cents, paid breakfast—26 cents; *Alaska*—free breakfast—279 cents, reduced price breakfast—249 cents, paid breakfast—38 cents; *Hawaii*—free breakfast—203 cents, reduced price breakfast—173 cents, paid breakfast—29 cents.

Payment Chart

The following chart illustrates the lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per lunch amount; the maximum lunch reimbursement rates; the reimbursement rates for afterschool snacks served in afterschool care programs; the breakfast National Average Payment Factors including “severe need” schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia, Virgin Islands, Puerto Rico and Guam are those specified for the contiguous States.

SCHOOL PROGRAMS MEAL, SNACK AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES

[Expressed in dollars or fractions thereof—effective from July 1, 2009–June 30, 2010]

National school lunch program*		Less than 60%	60% or more	Maximum rate
Contiguous states:				
Paid		0.25	0.27	0.33
Reduced Price		2.28	2.30	2.45
Free		2.68	2.70	2.85
Alaska:				
Paid		0.41	0.43	0.52
Reduced Price		3.95	3.97	4.20
Free		4.35	4.37	4.60
Hawaii:				
Paid		0.30	0.32	0.38
Reduced Price		2.75	2.77	2.93
Free		3.15	3.17	3.33
School breakfast program		Non-severe need	Severe need	
Contiguous States:				
Paid		0.26	0.26	
Reduced Price		1.16	1.44	
Free		1.46	1.74	
Alaska:				
Paid		0.38	0.38	
Reduced Price		2.03	2.49	
Free		2.33	2.79	
Hawaii:				
Paid		0.29	0.29	
Reduced Price		1.40	1.73	
Free		1.70	2.03	

Special milk program	All milk	Paid milk	Free milk
Pricing Programs Without Free Option	0.16	N/A	N/A.
Pricing Programs With Free Option	N/A	0.16	Average Cost Per ½ Pint of Milk.
Nonpricing Programs	0.16	N/A	N/A.

Afterschool snacks served in afterschool care programs	
Contiguous States:	
Paid	0.06
Reduced Price	0.37
Free	0.74
Alaska:	
Paid	0.10
Reduced Price	0.59
Free	1.19
Hawaii:	
Paid	0.07
Reduced Price	0.43
Free	0.86

* Payment listed for Free and Reduced Price Lunches include both section 4 and section 11 funds.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice has been determined to be not significant and was reviewed by the Office Management and Budget in conformance with Executive Order 12866.

National School Lunch, School Breakfast and Special Milk Programs are listed in the Catalog of Federal Domestic Assistance under No. 10.555, No. 10.553 and No. 10.556, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Authority: Sections 4, 8, 11 and 17A of the Richard B. Russell National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759a, 1766a) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773(b)).

Dated: July 9, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9–16745 Filed 7–14–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed New Fee Site; Federal Lands Recreation Enhancement Act

AGENCY: Humboldt-Toiyabe National Forest, USDA Forest Service.

ACTION: Notice.

SUMMARY: The Humboldt-Toiyabe National Forest is proposing to charge a \$10.00 fee at Bob Scott Campground. Fees are assessed based on the level of amenities and services provided, cost of operations and maintenance, market assessment and public comment. The fee is proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation, maintenance and improvements of this campground.

Amenities provided at Bob Scott campground include drinking water, flush toilets, garbage service, and sites with tables, grills and fire-rings. The proposed fee will allow continued operation and upkeep of these amenities, correction of sanitation and safety issues, repair and replacement of facilities when necessary, and generally improved conditions at the campground. Finally, these actions would improve the recreation experience.

An analysis of the campground shows that the proposed fees are reasonable and typical of similar sites in the area.

DATES: Comments will be accepted through November 13th 2009. New fees would begin May 2010.

ADDRESSES: Edward Monnig, Forest Supervisor, Humboldt-Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada 89431.

FOR FURTHER INFORMATION CONTACT:

Scott Lamoreux, Recreation Fee Coordinator, 775–352–1254. Information about proposed fee changes can also be found on the Intermountain Region Web site: <http://www.fs.fed.us/r4/recreation/rac/index.shtml>.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new

recreation fee areas are established. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: July 7, 2009.

Jeremiah C. Ingersoll,

Humboldt-Toiyabe National Forest Deputy Forest Supervisor.

[FR Doc. E9–16474 Filed 7–14–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1631]

Expansion of Foreign–Trade Zone 163, Ponce, Puerto Rico, 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, CODEZOL, C.D., grantee of Foreign–Trade Zone 163, submitted an application to the Board for authority to expand its zone to include an additional site (Site 10) in the Ponce, Puerto Rico area, adjacent to the Ponce Customs and Border Protection port of entry (FTZ Docket 58–2008, filed 10/08/08);

Whereas, notice inviting public comment was given in the **Federal Register** (73 FR 61780, 10/17/08; correction 73 FR 65583, 11/4/08), 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 163 is approved, subject to the FTZ Act and the Board’s regulations, including Section 400.28, and subject to a sunset provision that would terminate authority for Site 10 on June 30, 2014, if no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this 26th day of June 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. E9-16790 Filed 7-14-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1630]

Grant of Authority for Subzone Status, William Powell Company dba Starflo Corporation (Industrial Valve Warehousing and Distribution), Manning, South Carolina

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for “ the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board’s regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 21, has made application to the Board for authority to establish a special-purpose subzone at the industrial valve warehouse and distribution facility of the William Powell Company dba Starflo Corporation, located in Manning, South Carolina, (FTZ Docket 57-2008, filed 10/08/08);

Whereas, notice inviting public comment has been given in the **Federal Register** (73 FR 61781, 10/17/08) 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 grants authority for subzone status for activity related to industrial valve warehousing and distribution at the facility of William Powell Company dba Starflo Corporation, located in Manning, South Carolina (Subzone 21D) as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board’s regulations, including Section 400.28.

Signed at Washington, DC, this 26th day of June 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. E9-16792 Filed 7-14-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XQ21

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a joint meeting of the Standing and Special Reef Fish Scientific and Statistical Committee (SSC).

DATES: The meeting will convene at 9 a.m. on Wednesday, July 29, 2009 and conclude by 4 p.m.

ADDRESSES: The meeting will be held at the Quorum, 700 N. Westshore Blvd, Tampa, FL 33609; telephone: (813) 289-8200.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630.

SUPPLEMENTARY INFORMATION: The SSC will meet to review new information

presented to the Council by NOAA Fisheries on estimated impacts of mortality reduction on loggerhead sea turtles population dynamics, analyses of the cumulative impacts of Reef Fish Amendment 31 management alternatives on reducing sea turtle takes by reef fish longlines, and a recently published research paper that documents decreasing annual nest counts of loggerhead sea turtles on Florida beaches. The SSC may also review supplemental documents related to the above items. The SSC will evaluate the adequacy of this information for management action to reduce sea turtle takes, recommend a percent reduction in loggerhead sea turtle mortality from reef fish longlines, and will reevaluate its previous recommendations for Amendment 31 in light of this new information. Time permitting, the SSC may also review recent changes in the SEDAR process for conducting stock assessments, review the Council’s 5-year list of research priorities, and discuss holding future SSC meetings via web conferencing.

Copies of the agenda and other related materials can be obtained by calling (813) 348-1630.

Although other non-emergency issues not on the agenda may come before the SSCs for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the SSCs will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council’s intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O’Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: July 10 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9-16736 Filed 7-14-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XQ28

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Monkfish Oversight Committee on July 30, 2009 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, July 30, 2009 at 9 a.m.

ADDRESSES: *Meeting address:* The meeting will be held at the Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431-2300; fax: (603) 433-5649.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to continue finalizing the details of alternatives for consideration in the Draft

Environmental Impact Statement (DEIS) for Amendment 5 to the Monkfish Fishery Management Plan. The Monkfish Committee will discuss any issues and questions presented by the Plan Development Team and/or staff pertaining to the range of alternatives approved by the Council for consideration in Amendment 5. The Council approved considering several modifications to the existing management program, including changes to the days-at-sea (DAS) program and monkfish incidental catch limits, as well as approved for consideration several alternatives addressing the rules applicable to monkfish vessels that are also enrolled in groundfish sectors. Also under consideration in Amendment 5 are monkfish sectors and Individually Transferrable Quotas (ITQs) with several options for specific elements of those programs such as qualification criteria. Any of these items may be discussed as needed by the Committee.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other

auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978-465-0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 10, 2009

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9-16737 Filed 7-14-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT 5/27/2009 THROUGH 7/6/2009

Firm	Address	Date accepted for filing	Products
Rowley Spring and Stamping Corp.	210 Redstone Hill Road, Bristol, CT 06010.	6/2/2009	Rowley manufactures springs, progressive die stamping, wire forms, four slide stampings, assemblies, tape and reel packaging.
Steiner Technologies, Inc	180 Perinton Parkway, Fairport, NY 14450.	6/8/2009	Engineered metal cutting tools, primarily automatic back spot facing tools.
Boyd Flotation, Inc. d.b.a. Boyd Specialty Sleep, Inc.	2440 Alde Road, St. Louis, MO 63043.	6/26/2009	Specialty sleep mattresses: air beds, latex foam mattresses, memory foam mattresses, adjustable & flotation mattresses.
Carr Machine and Tool, Inc	1301 Jarvis Avenue, Elk Grove, IL 60007.	5/27/2009	Machined metal parts for the printing press, automotive, electrical, industrial, aerospace and medical industries.
Fashion Accents Corp	100 Nashua Street, Providence, RI 02904.	6/2/2009	Costume jewelry and earrings for sensitive skin. Also, imports miscellaneous accessories and home items for kitchen and dining.
Burle Industries, Inc	1000 New Holland Avenue, Lancaster, PA 17601.	6/19/2009	Power tubes and associated circuit components used in various capacities including cathode ray tubes.
Comdel, Inc.	11 Kondelin Road, Gloucester, MA 01930.	6/15/2009	Custom RF power suppliers and DC power suppliers.
Toyol America, Inc	17401 South Broadway, Lockport, IL 60441.	6/29/2009	Aluminum pigments, pastes, flakes, and powders.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT 5/27/2009 THROUGH 7/6/2009—Continued

Firm	Address	Date accepted for filing	Products
Max Machinery, Inc.	33A Healdsburg Avenue, Healdsburg, CA 95448.	6/25/2009	Precision flow measurement equipment.
Double E Parent, LLC	319 Manley Street, West, MA 02379.	6/25/2009	Core chuck and core shaft products as well as other related mechanical tools and accessories.
Worthen Industries, Inc.	3 East Spit Brook Road, Nashua, NH 03060.	6/29/2009	Industrial adhesives, coated fabric and paper and extruded film for various end uses.
Eldorado Artesian Springs, Inc	1783 Dogwood Street, Louisville, CA 80027.	6/19/2009	Natural spring water and enhanced vitamin water.
Hartford House, Inc.	126 Anderson Circle, Alto, GA 30510.	6/16/2009	Handcrafted furniture for both home and office.
Highland Craftsmen Inc.	534 Oak Avenue, Spruce Pine, NC 28777.	6/25/2009	Wood shingles.
Newmark Furniture Co., Inc. ...	300 Dewitt Avenue, Brooklyn, NY 11236.	6/25/2009	Custom wood interiors for residential homes including kitchen cabinets, vanities, libraries and paneling.
RAE Corporation.	P.O. Box 1206, Pryor, OK 74362.	6/29/2009	Air conditioning and refrigeration.
Norris International Group, LLC.	42156 N. 10th St., West Unit R, Lancaster, CA 93534.	7/6/2009	Optical anti-identity theft and counterfeit protection devices.
Performance Fibers, Inc.	338 Pea Ridge Road, New Hill, NC 27562.	7/1/2009	Industrial polyester yarns and tire yarns.
Penz Products, Inc.	1320 S. Merrifield Avenue, Mishawaka, IN 46544.	6/25/2009	Plastic and metal components.
QMI, Inc.	4258 Zarrow, Pryor, OK 74362.	6/25/2009	Custom converting, perforation machines.
Segue Manufacturing Services, LLC.	70 Industrial Avenue, Lowell, MA 01852.	6/29/2009	Full turnkey contract manufacturing solutions, utilizing low cost engineering, electro-mechanical design expertise, global sourcing, cable and harness manufacturing and in-house machining capabilities.
Tote Along Inc.	P.O. Box 1222, Miami, OK 74355.	6/24/2009	Soft luggage, garment bags, bags to store items.
J&M Plating, Inc.	4500 Kishwaukee St., Rockford, IL 61109.	5/27/2009	Heat treating, plating, sorting, specialty finishes and quality machine inspection services.
McNally Industries, LLC.	5445 DTC Parkway, Greenwood, CO 80111.	6/29/2009	Defense related equipment and aircraft components and parts for commercial aircraft.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: July 8, 2009.

William P. Kittredge,
Program Officer for TAA.

[FR Doc. E9-16765 Filed 7-14-09; 8:45 am]

BILLING CODE 3510-24-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Protocol for Categorical Exclusions Under the National Environmental Policy Act for Programs Funded by the American Recovery and Reinvestment Act

AGENCY: Corporation for National and Community Service.

ACTION: Notice of interim final action and request for comments.

SUMMARY: The Corporation for National and Community Service (the Corporation) has adopted an interim final protocol that categorically excludes national and community service programs funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) from the requirement of preparing environmental assessments or environmental impact statements under the National Environmental Policy Act, 42 U.S.C. 432 et seq. (NEPA), because the programs do not individually or cumulatively have a significant effect on the human environment. Notice of the

Corporation's protocol satisfies the requirements of the Council for Environmental Quality's (CEQ) NEPA regulations and facilitates reporting requirements under the Recovery Act. By adopting this protocol, the Corporation can better assure that urgently needed Recovery Act financial assistance is disbursed to eligible entities in a timely manner and that such funds are used and reported upon in accordance with the Recovery Act's NEPA compliance provision. While this protocol is immediately effective upon publication, all comments will be reviewed and given full consideration in determining whether amendments to it are appropriate.

DATES: Submit comments on or before August 14, 2009.

ADDRESSES: Irshad Abdal-Haqq, Associate General Counsel, Corporation for National and Community Service, 1201 New York Avenue, NW., Room 10906, Washington, DC 20525; telefax at (202) 606-3467; TDD at (202) 682-5496; or by electronic mail at iabdal-haqq@cns.gov.

FOR FURTHER INFORMATION CONTACT: Irshad Abdal-Haqq at (202) 606-6675.

SUPPLEMENTARY INFORMATION: Section 1609 of the Recovery Act requires the President to report to Congress every 90 days on the compliance with NEPA for projects and activities funded by the Recovery Act. To support this reporting requirement, agencies must, in turn, report to the CEQ on NEPA compliance for projects and activities funded by the Recovery Act. NEPA requires Federal agencies to prepare environmental assessments and environmental impact statements for major Federal actions that may "significantly affect the quality of the human environment." NEPA requirements apply to Federal projects, decisions, or actions, including grants, that might have an impact on the quality of the human environment. NEPA also established the CEQ, which issued regulations implementing NEPA's procedural provisions. Among other things, the CEQ NEPA regulations require Federal agencies to adopt implementing procedures to supplement the regulations, and to establish and use "categorical exclusions" to define categories of actions that do not individually or cumulatively have a significant effect on the human environment. A categorically excluded action does not require the preparation of an environmental assessment or environmental impact statement before it is carried out. The Corporation plans to develop and publish proposed NEPA procedures covering all of its programs in the near future. After considering comments submitted in response to this notice, this protocol for categorical exclusions will be included in the forthcoming proposed procedures.

Environmental Impact of Corporation Programs

Title VIII, Division A, of the Recovery Act provided additional funding to the Corporation's preexisting AmeriCorps grantees and to support VISTA programs. Among other things, the Corporation funds grants and activities to support national and community service activities that meet the nation's unmet human, educational, environmental, and public safety needs. The Corporation does not fund construction grants or other actions that would potentially have significant environmental effects. Therefore, Corporation-funded activities and programs that were in existence when the Recovery Act was enacted were not required to prepare environmental assessments or environmental impact statements as set out in the NEPA

regulations (40 CFR part 1500). Consequently, the interim final protocol adopted by the Corporation identifies activities carried out under programs authorized under the national service as being categorically excluded from having to prepare environmental assessments and environmental impact statements. Note, however, that the interim final protocol also includes a procedure for reviewing extraordinary circumstances involving a specific grantee's proposed service activities to ensure they do not have the potential for a significant impact on the environment and are therefore appropriately categorically excluded from further environmental review for NEPA purposes.

For the reasons set out above, the Corporation for National and Community Service adopts the following interim final protocol:

Protocol for the Categorical Exclusion of Activities Funded by the Corporation for National and Community Service

Purpose: Establishment of National Environmental Policy Act (NEPA) categorical exclusions for national and community service activities and programs supported by the Corporation for National and Community Service (Corporation) and a process for addressing extraordinary circumstances.

Categorical Exclusions

The Corporation follows the regulations of the Council on Environmental Quality (CEQ) in complying with the requirements of NEPA. Pursuant to those regulations, the Corporation determines the following classes of activities as being categorically excluded:

- Providing administrative and other support duties or planning or performing community service activities in any approved national and community service program authorized under the national services laws or the American Recovery and Reinvestment Act of 2009 (Recovery Act). These activities include: Tutoring and mentoring children and youth; working in afterschool programs; assisting out of work adults to find jobs; assisting with community development projects; managing community volunteer programs; providing health care support services; repairing or renovating housing; helping to erect homes for low-income families; and assisting with wildlife and land conservation programs.

Extraordinary Circumstances

The following types of activity require the review and approval of the

Corporation and may result in the requirement for an environmental assessment or environmental impact statement:

1. Any activity for which there is a reasonable likelihood of significant effects on public health, safety or the environment (direct, indirect or cumulative).

2. The imposition of uncertain or unique environmental risks that have not been pre-approved and reviewed under NEPA.

3. Greater scope or size than is normal for this category of action.

Process for Resolving Extraordinary Circumstances

An appropriate Corporation representative (usually a program officer or grant officer) will contact the prospective grantee to clarify the full scope and nature of a proposed activity in order to determine whether it could in fact have a significant impact on the environment. If the Corporation determines that a proposed activity could have a significant impact on the environment, the Corporation will work with the prospective grantee to prepare for the Corporation the necessary analyses in accordance with the CEQ NEPA regulations regarding environmental assessments and environment impact statements and include any appropriate mitigation conditions for inclusion in the grant or other agreement prior to making a decision to provide the funding.

Responsibilities

The Corporation's Chief Financial Officer or his or her authorized representative has the responsibility for assuring that all Corporation activities and programs, including those supported by the Recovery Act, are NEPA compliant. This includes coordinating the multidisciplinary review of a possible extraordinary circumstance, which involves individuals with legal, scientific, and other appropriate expertise, and working with prospective grantees in preparing appropriate NEPA analyses.

Dated: July 10, 2009.

William Anderson,

Acting Chief Financial Officer, Corporation for National and Community Service.

[FR Doc. E9-16905 Filed 7-14-09; 8:45 am]

BILLING CODE 6050--SS-P

DEPARTMENT OF DEFENSE**Department of the Army, Corps of Engineers**

RIN 0710-ZA04

Proposed Suspension and Modification of Nationwide Permit 21**AGENCY:** United States Army Corps of Engineers, Department of Defense.**ACTION:** Notice.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to take two actions concerning Nationwide Permit (NWP) 21, which authorizes discharges of dredged or fill material into waters of the United States for surface coal mining activities. First, the Corps proposes to modify NWP 21 to prohibit its use to authorize discharges of dredged or fill material into waters of the United States for surface coal mining activities in the Appalachian region of the following states: Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia until it expires on March 18, 2012. The proposed modification would enhance environmental protection of aquatic resources by requiring surface coal mining projects in the affected region to obtain individual permit coverage under the Clean Water Act (CWA), which includes increased public and agency involvement in the permit review process, including an opportunity for public comment on individual projects. The application of NWP 21 to surface coal mining activities in the rest of the United States would not be affected by this proposed modification.

Second, the Corps is proposing to suspend NWP 21 to provide an interim means of requiring individual permit reviews in Appalachia, while proposing to undertake the longer-term measure of modifying NWP 21 to prohibit its use to authorize discharges of dredged or fill material into waters of the United States associated with surface coal mining activities in the Appalachian region of these six States. The Corps is also proposing to suspend NWP 21 to provide immediate environmental protection while it evaluates the comments received in response to the proposal to modify NWP 21.

In accordance with the suspension and modification procedures provided in the NWP regulations, public comment is invited, and a public hearing may be requested. After evaluating all comments pertaining to the proposed suspension and modification that are received in response to this notice and any public hearings, the Corps will publish its

decisions concerning the NWP 21 suspension and modification in the **Federal Register**. If NWP 21 is suspended, the suspension would remain in effect until NWP 21 is modified or expires, or until the suspension is lifted.

DATES: Written comments, including requests for a public hearing, must be submitted on or before August 14, 2009.

ADDRESSES: You may submit comments, identified by docket number COE-2009-0032, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO (Attn: Ms. Desiree Hann), 441 G Street, NW., Washington, DC 20314-1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

We will not accept e-mailed or faxed comments. We will post all comments on <http://www.regulations.gov> under docket number COE-2009-0032.

Instructions: When submitting comments via <http://www.regulations.gov>, direct your comments to docket number COE-2009-0032. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that 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 www.regulations.gov or e-mail. The www.regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment.

If you submit an electronic comment by sending a CD-ROM to Corps Headquarters, we recommend that you submit those comments via overnight mail to ensure timely receipt. We also recommend 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 we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

FOR FURTHER INFORMATION CONTACT: Ms. Desiree Hann or Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC. Ms. Hann can be reached at 202-761-4560 and Mr. Olson can be reached at 202-761-4922.

SUPPLEMENTARY INFORMATION: Nationwide permit (NWP) 21 was first issued in 1982, pursuant to section 404(e) of the Clean Water Act, to authorize structures, work, and discharges associated with surface coal mining activities, provided those activities were authorized by the Department of the Interior, Office of Surface Mining, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Each time since 1982 that the Corps reissued its NWPs, it also reissued NWP 21, often with modifications that were made after considering comments received in response to the various proposals to reissue that NWP.

The current NWP 21 was published in the March 12, 2007, edition of the **Federal Register** (72 FR 11092) after going through public notice and comment and interagency review. This NWP authorizes "discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977." This NWP is currently scheduled to expire on March 18, 2012.

Since NWP 21 was first issued in 1982, surface coal mining practices have changed, and surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia have become more prevalent and have resulted in greater environmental impacts. Mountaintop surface coal

mining activities increased because many of the remaining coal seams in the Appalachian region were less accessible to non-surface coal mining techniques. Since the late 1990s, there have been increases in concerns regarding the individual and cumulative adverse effects of those activities on the human environment and the natural resources in this region, including streams and other aquatic resources.

On June 11, 2009, the Corps, the U.S. Department of the Interior, and the U.S. Environmental Protection Agency signed a Memorandum of Understanding (MOU) for implementing an Interagency Action Plan on Appalachian surface coal mining. A copy of this MOU is available at: <http://www.usace.army.mil/CECW/Pages/moumoas.aspx>. The MOU includes an Interagency Action Plan (IAP) that was developed to reduce the adverse environmental impacts of surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia, while assuring that future mining remains consistent with the Clean Water Act and the Surface Mining Control and Reclamation Act.

We are using the Appalachian Regional Commission's list of counties in Appalachia to clarify the geographic area subject to the proposed suspension and potential modification:

Kentucky: Adair, Bath, Bell, Boyd, Breathitt, Carter, Casey, Clark, Clay, Clinton, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Garrard, Green, Greenup, Harlan, Hart, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Menifee, Metcalfe, Monroe, Montgomery, Morgan, Nicholas, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe.

Ohio: Adams, Ashtabula, Athens, Belmont, Brown, Carroll, Clermont, Columbiana, Coshocton, Gallia, Guernsey, Harrison, Highland, Hocking, Holmes, Jackson, Jefferson, Lawrence, Mahoning, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, Trumbull, Tuscarawas, Vinton, and Washington.

Pennsylvania: Allegheny, Armstrong, Beaver, Bedford, Blair, Bradford, Butler, Cambria, Cameron, Carbon, Centre, Clarion, Clearfield, Clinton, Columbia, Crawford, Elk, Erie, Fayette, Forest, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lackawanna, Lawrence, Luzerne, Lycoming, McKean, Mercer, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Schuylkill, Snyder, Somerset, Sullivan,

Susquehanna, Tioga, Union, Venango, Warren, Washington, Wayne, Westmoreland, and Wyoming.

Tennessee: Anderson, Bledsoe, Blount, Bradley, Campbell, Cannon, Carter, Claiborne, Clay, Cocke, Coffee, Cumberland, De Kalb, Fentress, Franklin, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Lawrence, Lewis, Loudon, McMinn, Macon, Marion, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Smith, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White.

Virginia: Alleghany, Bath, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Floyd, Giles, Grayson, Henry, Highland, Lee, Montgomery, Patrick, Pulaski, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise/Norton, and Wythe.

West Virginia: All counties.

The IAP is intended to provide greater emphasis on protecting the aquatic and terrestrial environment of the Appalachian region. To accomplish this, the IAP lists several short-term actions to reduce the harmful environmental consequences of Appalachian surface coal mining in these six States, one of which commits the Corps to issue a public notice proposing to modify NWP 21 to prohibit its use in conjunction with surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia to authorize discharges of dredged or fill material into waters of the United States.

The proposed modification of NWP 21 in accordance with the IAP would result in surface coal mining activities in the Appalachian region of these six States being processed as individual permits. Using the individual permit process would provide more information for the Corps to consider for making decisions on these permit applications, because of increased public and agency involvement, such as the opportunity to comment on public notices for individual surface coal mining activities in Appalachia. This additional information could help improve the Corps' analysis of impacts to public interest review factors, including the aquatic environment and other relevant environmental factors within the Corps' Federal control and responsibility. This action would also be consistent with a recent decision of the United States District Court for the Southern District of West Virginia which directed the Corps to cease processing of NWP 21 PCNs in that District.

To provide more immediate environmental protection while the comments received in response to the proposal to modify NWP 21 are being evaluated, the Corps today is also proposing to suspend NWP 21 in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. After thorough consideration of the comments received in response to today's proposal to suspend NWP 21, we will decide whether to issue a "final" notice in the **Federal Register** suspending NWP 21. Should we decide to suspend, the suspension would temporarily prohibit the use of NWP 21 to authorize discharges of dredged or fill material into waters of the United States for surface coal mining activities in Appalachia, until the Corps makes a final determination on the modification of NWP 21.

The proposed suspension and modification of NWP 21 actions are being undertaken to respond to increased concerns regarding how adverse effects on the aquatic environment and other public interest review factors relevant to jurisdictional waters of the United States in the Appalachian region of these six States are being addressed for surface coal mining activities. The Corps now believes it would be more appropriate to evaluate these adverse effects through the individual permit process, with a full public interest review, rather than through NWP 21. The decision to authorize a particular surface coal mining activity under NWP 21 is based on an evaluation of not only the potential individual and cumulative adverse effects of the proposed activity on the aquatic environment, but also on the potential adverse effects on Corps' other public interest review factors listed at 33 CFR 320.4(a)(1), such as conservation, aesthetics, economics, land use, recreation, fish and wildlife values, energy needs, food and fiber production, and general considerations of property ownership, to the extent that those public interest factors are relevant to waters of the United States subject to CWA jurisdiction.

The June 11, 2009, MOU and IAP commit the Corps to reexamine the appropriateness of using NWP 21 to authorize discharges of dredged or fill material into waters of the United States for surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. We are seeking comment on whether NWP 21 should be suspended and/or modified in the Appalachian region of these six States, because of the effects that discharges of

dredged or fill material into waters of the United States associated with surface coal mining activities have on the aquatic environment and other public interest review factors, as they relate to jurisdictional waters of the United States.

In the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia, NWP 21 has been used to authorize surface coal mining activities that involve discharges of dredged or fill material into waters of the United States that have resulted in adverse environmental impacts that may be more than minimal on a cumulative basis. For this reason, the Corps now believes that impacts of these activities on jurisdictional waters of the United States, particularly cumulative impacts, would be more appropriately evaluated through the individual permit process, which entails increased public and agency involvement, including an opportunity for public comment on individual projects.

Proposed Suspension of NWP 21

The Corps regulations governing the issuance, modification, suspension, or revocation of NWPs are found at 33 CFR 330.5. According to those regulations, suspension is a short-term measure for quickly halting the use of an NWP in response to identified concerns about impacts to jurisdictional waters of the United States or other public interest review factors, while modification of an NWP is the long-term solution for addressing those concerns. The modification of an NWP is a rulemaking activity that requires the completion of additional tasks, such as the preparation of NEPA documentation and compliance with the requirements of the Administrative Procedure Act. According to these regulations, the Chief of Engineers cannot suspend an NWP until he or she has issued a notice soliciting public comment, and provided the opportunity for interested parties to request a public hearing (see 33 CFR 330.5(b)(2)(i)). The purpose of the proposed suspension is to provide additional protection to the aquatic environment until the Corps makes its decision on whether to modify NWP 21 or to retain NWP 21 in its current form. If use of NWP 21 is suspended for the Appalachian region, the suspension would remain in effect until NWP 21 is modified or expires, or until the suspension is lifted. We will publish our decision regarding the proposed suspension of NWP 21 in the **Federal Register**. If we decide to suspend NWP 21, that suspension cannot occur until

the effective date provided in that **Federal Register** notice.

Public Hearing

When proposing to suspend an NWP, the NWP regulations require the Corps to provide the opportunity for interested parties to request a public hearing (see 33 CFR § 330.5(b)(2)(i)). Requests for a public hearing must be submitted in writing to the address in the **ADDRESSES** section of this notice. Such requests must state the reason(s) for holding a public hearing. If we determine that a public hearing or hearings would assist in making a decision on the proposed suspension or modification of NWP 21, a 30-day advance notice will be published in the **Federal Register** to advise interested parties of the date(s) and location(s) for the public hearing(s). Any announcement of public hearings would also be posted as supporting material in the docket at <http://www.regulations.gov>.

Grandfathering

If NWP 21 is suspended for surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia, those activities that were verified by district engineers prior to the effective date of the suspension as being authorized by NWP 21 will continue to be authorized by that NWP, unless the district engineer takes action to modify, suspend or revoke a particular NWP authorization on a case-by-case basis in accordance with the procedures at 33 CFR 330.5(d). If NWP 21 is modified to prohibit its use to authorize surface coal mining activities in Appalachian region of those six States, then the “grandfather” provision at 33 CFR 330.6(b) would apply, giving each permittee 12 months (from the date the NWP is modified) to complete the authorized activity, unless the district engineer modifies, suspends, or revokes the NWP 21 authorization for that particular activity. To qualify for the grandfather provision at 33 CFR 330.6(b), the activity must have commenced construction, or be under contract to commence construction, before the effective date of the modification.

District engineers will continue to process NWP 21 pre-construction notifications (PCNs) for surface coal mining activities in Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia until a notice announcing the suspension decision is published in the **Federal Register**, and unless and

until a suspension goes into effect.¹ District engineers will carefully review those NWP 21 PCNs and will exercise discretionary authority to require an individual permit in accordance with the procedures at 33 CFR 330.5(d) in cases where the proposed surface coal mining activity presents the potential for more than minimal individual and/or cumulative adverse effects on the aquatic environment or other public interest review factors relevant to jurisdictional waters of the United States. As part of the review process for the NWP 21 PCNs, Corps staff will carefully consider any comments received from the appropriate regional offices of the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), and appropriate State agencies.

Pending the Corps’ final decision on the suspension of NWP 21, those entities proposing surface coal mining activities involving discharges of dredged or fill material into waters of the United States in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia may wish to consider whether it would be more prudent to request individual permits instead of submitting NWP 21 PCNs. The information required for the submittal of a complete application for a standard individual permit is different from the information required for the submittal of a complete NWP 21 PCN. Since NWP 21 could be suspended before a district reaches a decision on an NWP 21 PCN, the prospective permittee may choose to initially request an individual permit to avoid having to later submit a separate application for a standard individual permit, thereby saving his or her time and resources during the permit decision making process.

It is important to note that NWP 21 differs from most other NWPs in that it requires district engineers to issue written verifications before proposed activities are authorized by NWP 21 (see the “Notification” provision of NWP 21, as published in the March 12, 2007, issue of the **Federal Register** (72 FR 11184)). Unless an activity is authorized by NWP 21 through an NWP verification letter issued by the district engineer, the grandfathering provision at 33 CFR 330.6(b) does not apply.

If NWP 21 is suspended for surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and

¹ In accordance with the decision of the United States District Court for the Southern District of West Virginia (Civil Action No. 3:03-cv-2281), the Corps ceased processing NWP 21 PCNs in that District on March 31, 2009.

West Virginia, district engineers cannot issue NWP 21 verifications for those activities or accept NWP 21 PCNs for surface coal mining activities in the Appalachian region of those six States that are received after the effective date of the suspension. If the NWP 21 suspension goes into effect, requests for Department of the Army authorization for these activities will be processed through the individual permit process. This may require permit applicants to submit additional information for a complete application for an individual permit.

Modification of NWP 21

The suspension of an NWP is only a short-term measure for addressing concerns about the individual and cumulative adverse effects of surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia, while we consider the comments received in response to today's proposal to modify NWP 21 to prohibit its use to authorize discharges of dredged or fill material into waters of the United States for surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

The modification of NWP 21 is being proposed to address concerns about the adverse individual and cumulative effects of surface coal mining activities on the aquatic environment and other factors of the public interest relevant to jurisdictional waters in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. Evaluating these activities through the individual permit process will help provide more information for decision making, through the public notice and comment process. Comments on the proposed modification are to be submitted in accordance with the procedures described in the **ADDRESSES** section, above. The Corps will announce its decision on whether to modify NWP 21 in a separate **Federal Register** notice.

Water Quality Certification

Because the current version of NWP 21 authorizes discharges of dredged or fill material into waters of the United States for surface coal mining activities, State or Tribal water quality certification, or waiver thereof, was required by Section 401 of the Clean Water Act. However, given the fact that this **Federal Register** notice proposes to modify NWP 21 so that it could no longer be used to authorize discharges of dredged or fill material in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and

West Virginia, we believe that it is not necessary to request water quality certification from those States. Because the proposed modification would prohibit the use of NWP 21 to authorize surface coal mining activities only in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia, we believe it is not necessary for any state water quality certification agency to change the water quality certification decision issued in response to the reissuance of NWP 21 in March 2007. We are seeking comments from these six States to determine whether it is necessary for the Corps to request water quality certification for the proposed modification of NWP 21.

Section 307 of the Coastal Zone Management Act (CZMA)

This **Federal Register** notice serves as the Corps determination that the proposed modification of NWP 21 is, to the maximum extent practicable, consistent with State CZMA programs. States are requested to agree or disagree with the consistency determination following 33 CFR 330.4(d) for this NWP.

Ordinarily, when the Corps makes a CZMA consistency determination when the Corps proposes to issue or re-issue an NWP, that determination only applies to NWP authorizations for activities that are within, or that can affect, any land, water uses or natural resources of a State's coastal zone. NWP authorizations for activities that are not within or would not affect a State's coastal zone do not require a Corps CZMA consistency determination and thus are not contingent on a State's agreement with the Corps' consistency determination. Since the proposed modification of NWP 21 would make that NWP inapplicable to proposed surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia, the proposed modification of NWP 21 cannot authorize any activities that would affect the coastal zones of those States. Moreover, the geographic area that would be affected by the proposed modification to NWP 21 lies outside of the coastal zones of Ohio, Pennsylvania, and Virginia. Consequently, we believe that it is not necessary for these states to change the CZMA consistency determinations they issued in response to the reissuance of NWP 21 in March 2007.

Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, (63 FR 31855) regarding plain language, this preamble is written using plain language. The use of "we" in this notice refers to the Corps. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

The proposed modification of NWP 21 will not substantially change paperwork burdens on the regulated public because the requirements for a complete individual permit application and a complete NWP 21 PCN are similar.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. For the Corps Regulatory Program under Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the current OMB approval number for information collection requirements is maintained by the Corps of Engineers (OMB approval number 0710-0003, which expires on June 30, 2009).

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to review by OMB and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that

the proposed modification of NWP 21 rule is a “significant regulatory action” and the draft notice was submitted to OMB for review.

Executive Order 13132

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires the Corps to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” The proposed modification of NWP 21 does not have federalism implications. We do not believe that the proposed modification of NWP 21 will have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed modification of NWP 21 will not impose any additional substantive obligations on State or local governments. Therefore, Executive Order 13132 does not apply to this proposal.

Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed modification of NWP 21 on small entities, a small entity is defined as: (1) A small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed modification of NWP 21 on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. Although small entities will no longer be able to obtain authorizations for discharges of fill material associated

with surface coal mining activities in the Appalachian region under NWP 21, they may still obtain required Department of Army authorizations through individual permits. The application procedures for individual permits are similar to those for NWP 21 PCNs. Also, the amount of documentation required to make surface coal mining permit decisions in the Appalachian region is comparable for NWP 21 PCNs and individual permits. Extensive documentation is needed to document minimal adverse effect determinations for NWP 21 PCNs, which is analogous to the quantity of information for decision documents that are prepared for individual permits. Therefore, the proposed modification of NWP 21 will not impose substantially higher costs on small entities when considered in the context of total costs of surface coal mining projects generally. Therefore, there will not be a “significant” impact for a substantial number of small entities.

We are interested in the potential impacts of the proposed modification of NWP 21 on small entities and welcome comments on issues related to such impacts.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating a rule for which a written statement is needed, Section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law.

Moreover, section 205 allows an agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted. Before an agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal

governments, it must have developed, under Section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed modification of NWP 21 does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year, because the requirements for a complete individual permit application and a complete NWP 21 PCN are similar. Also, comparable amounts of documentation are needed to make minimal adverse effect determinations and individual permit decisions for surface coal mining activities decisions in the Appalachian region. Therefore, this proposal is not subject to the requirements of Sections 202 and 205 of the UMRA. For the same reasons, we have determined that the proposed modification of NWP 21 contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed modification of NWP 21 is not subject to the requirements of Section 203 of UMRA.

Executive Order 13045

Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), applies to any rule that:

(1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

The proposed modification of NWP 21 is not subject to this Executive Order because it is not economically significant as defined in Executive Order 12866. In addition, the proposed modification of NWP 21 does not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires agencies to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The phrase "policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." The proposed modification of NWP 21 does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Therefore, Executive Order 13175 does not apply to this proposal. However, in the spirit of Executive Order 13175, we specifically request comment from tribal officials on the proposed rule.

Environmental Documentation

A preliminary decision document, which includes a draft environmental assessment, has been prepared for the proposed modification of NWP 21. This preliminary decision document is available at: <http://www.regulations.gov> (docket ID number COE-2009-0032).

It is also available by contacting Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street, NW., Washington, DC 20314-1000.

Congressional Review Act

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. We will submit a report containing the final decision concerning the modification of NWP 21 and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal**

Register. The proposed modification of NWP 21 is not a "major rule" as defined by 5 U.S.C. 804(2).

Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

The proposed modification of NWP 21 is not expected to negatively impact human health or the environment of any community, and therefore is not expected to cause any disproportionately high and adverse human health or environmental impacts to minority or low-income communities. The purpose of the modification is to strengthen environmental protection for all communities by requiring surface coal mining projects in the Appalachian region to obtain authorization through individual permits.

Executive Order 13211

The proposed modification of NWP 21 is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia that involve discharges of dredged or fill material into waters of the United States can be authorized by individual permits.

Authority

We are proposing to modify NWP 21 under the authority of Section 404(e) of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*).

For the reasons set out in the preamble, the Corps proposes to modify Nationwide Permit 21 as follows:

21. *Surface Coal Mining Operations.* Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.

This nationwide permit does not authorize surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

Dated: July 10, 2009.

Approved By:

Michael G. Ensich,

Chief, Operations, Directorate of Civil Works.
[FR Doc. E9-16803 Filed 7-14-09; 8:45 am]

BILLING CODE 3710-92-P

DEPARTMENT OF EDUCATION**Notice of Proposed Information Collection Requests**

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 14, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice

containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 10, 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: Indian Education Professional Development Grants Program: GPRA and Service Payback Data Collection.

Frequency: Semi-Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,076.

Burden Hours: 8,580.

Abstract: The Office of Indian Education Professional Development (OIE PD) Grants program wishes to implement (1) a Semi-Annual Participant Report (SAPR), (2) a Participant Follow-Up Protocol, and (3) an Employment Verification survey. OIE PD grantees will submit participant contact and project service information on the SAPR twice a year. The OIE PD Grants program staff will use the Participant Follow-Up Protocol to collect employment and continuing education information from IE PD participants who are not in an approved and active deferment once they have exited the program. IE PD participants will initiate contact with IE PD staff within 6 months of exiting the PD

program and every 6 months thereafter for the length of their service payback period to report their employment and continuing education information. IE PD participants working in a local educational agency enrolling 5 percent or more of American Indian/Alaska Native students will give the Employment Verification form to their principal or LEA representative to complete. The OIE PD grants program participants will submit employment verification forms to employers, starting upon employment and continuing every 6 months thereafter. The information collected through the SAPR, the Participant Follow-Up Protocol, and the Employment Verification Form is necessary to (1) assess the performance of the IE PD program on its Government Performance Results Act (GPRA) measures, (2) determine if IE PD participants are fulfilling the terms of their service payback requirements, and (3) provide project-monitoring and compliance information to IE PD Grants program staff.

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 4082. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E9-16820 Filed 7-14-09; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

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DATES: Interested persons are invited to submit comments on or before September 14, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 10, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title: International Experiences with Technology in Education.

Frequency: One time.

Affected Public: Federal Government.
Reporting and Recordkeeping Hour Burden:

Responses: 25. *Burden Hours:* 87.

Abstract: The U.S. Department of Education is in the process of benchmarking its K12 educational technology policies and practices against the policies and practices in 25 competitor nations. The purpose is to understand how U.S. educational technology practices compare to other competitor nations. Data collected through surveys and follow up telephone interviews will help fill in gaps in information about (a) What data competitor nations are collecting, (b) where there are gaps between available data and U.S. national priorities, and (c) international rankings and comparisons for selected indicators. Data analysis will result in country profiles that will detail country-specific information regarding selected indicators, summary and comparison of data across countries, and analysis of what additional information would need to be collected to address emerging U.S. policy priorities. Respondents will be representatives of ministries of education in the 25 selected countries.

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 4092. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E9-16825 Filed 7-14-09; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information, Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 14, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 10, 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: Early Reading First: Grant Performance Report.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Federal Government; Not-for-profit; Private Sector; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 135.

Burden Hours: 3,005.

Abstract: In accordance with ESEA of 1965, as amended, Title I, Part B, Subpart 2, Early Reading First (ERF), section 1225 states that each eligible applicant receiving a grant under this subpart shall report annually to the Secretary regarding the eligible applicant's progress in addressing the purposes of this subpart. Each report shall include, at a minimum, a description of: (1) The research-based instruction, materials, and activities being used in the programs funded under the grant; and (2) the type of ongoing professional development provided to staff.

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 4086. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-401-0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E9-16821 Filed 7-14-09; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on the proposed three-year extension of the Oil and Gas Reserves System Survey Forms: Form EIA-23L

Annual Survey of Domestic Oil and Gas Reserves, Field Level Report; Form EIA-23S *Annual Survey of Domestic Oil and Gas Reserves, Summary Level Report*; and EIA-64A *Annual Report of the Origin of Natural Gas Liquids Production*.

DATES: Comments must be filed by September 14, 2009. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Mr. Steven Grape at U.S. Department of Energy, Energy Information Administration, Reserves and Production Division, 1999 Bryan Street, Suite 1110, Dallas, Texas 75201-6801. To ensure receipt of the comments by the due date, submission by e-mail (steven.grape@eia.doe.gov) or fax (214-720-6155) is recommended. Alternatively, Mr. Grape may be contacted by telephone at (214-720-6174).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Mr. Grape as listed above.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Current Actions
- III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93-275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95-91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This EIA-23 program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget

(OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

Operators of crude oil and natural gas wells are the target respondents of Form EIA-23. There are two versions of Form EIA-23. Field level information is requested from large and intermediate operators. Large operators (those that produce 1.5 million barrels or more of crude oil or 15 billion cubic feet or more of natural gas per year) and intermediate operators (those that produce at least 400,000 barrels of crude oil or 2 billion cubic feet of natural gas per year, but less than large operators) file Form EIA-23L, field level. Respondents report volumes of crude oil, associated-dissolved natural gas, non-associated natural gas, lease condensate, production, reserves, revisions to previous year reports, discoveries, extensions, sales, acquisitions, and non-producing reserves for each individual operated field without regard to interest ownership. A selected sample of small operators (those that produce less than intermediate operators) are requested to submit the less detailed Form EIA-23S, summary level. These operators provide production and available reserves information for crude oil, total natural gas, and lease condensate at a State or geographic subdivision level. The majority of small operators are not asked to report annually on Form EIA-23.

Operators of natural gas plants are the target respondents of the Form EIA-64A. The volumes of natural gas processed, natural gas liquids produced, resultant shrinkage of the natural gas, and natural gas used in processing are requested of all natural gas plant operators.

In response to Public Law 95-91 Section 657, estimates of U.S. oil and gas reserves are to be reported annually. Many U.S. government agencies have an interest in the definitions of proved oil and gas reserves and the quality, reliability, and usefulness of estimates of reserves. Among these are the Energy Information Administration (EIA), Department of Energy; Minerals Management Service (MMS), Department of Interior; Internal Revenue Service (IRS), Department of the Treasury; and the Securities and Exchange Commission (SEC). Each of these organizations has specific purposes for collecting, using, or estimating proved reserves. The EIA has a congressional mandate to provide accurate annual estimates of U.S. proved crude oil, natural gas, and natural gas liquids reserves, and presents annual reserves data in EIA Web reports to meet this requirement. The MMS maintains estimates of proved reserves to carry out their

responsibilities in leasing, collecting royalty payments, and regulating the activities of oil and gas companies on Federal lands and water, and is second only to the IRS in generating Federal revenue. For the IRS, proved reserves and occasionally probable reserves are an essential component of calculating taxes for companies owning or producing oil and gas. The SEC requires publicly traded petroleum companies to annually file a reserves statement as part of their 10-K filing. The basic purpose of the 10-K filing is to give the investing public a clear and reliable financial basis to assess the relative value, as a financial asset, of a company's reserves, especially in comparison to other similar oil and gas companies.

The Government also uses the resulting information to develop national and regional estimates of proved reserves of domestic crude oil, natural gas, and natural gas liquids to facilitate national energy policy decisions. These estimates are essential to the development, implementation, and evaluation of energy policy and legislation. Data are used directly in EIA web reports concerning U.S. crude oil, natural gas, and natural gas liquids reserves, and are incorporated into a number of other Web reports and analyses. Secondary reports that use the data include EIA's *Annual Energy Review*, *Annual Energy Outlook*, *Petroleum Supply Annual*, and *Natural Gas Annual*.

II. Current Actions

This notice is for a 3-year extension of Form EIA-23L *Annual Survey of Domestic Oil and Gas Reserves, Field Level Report*; Form EIA-23S *Annual Survey of Domestic Oil and Gas Reserves, Summary Level Report*; and EIA-64A *Annual Report of the Origin of Natural Gas Liquids Production*.

There are no changes being proposed to the current Forms EIA-23L, Form EIA-23S, and Form EIA-64A.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. (If the notice covers more than one form, add "Please indicate to which form(s) your comments apply.")

As a Potential Respondent to the Request for Information:

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility?

B. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

C. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

D. Can the information be submitted by the respondent by the due date?

E. *Public reporting burden for this collection is estimated to average:*

Form EIA-23S: 4 hours (small operators)

Form EIA-23L: 32 hours (intermediate operators); 160 hours (large operators)

Form EIA-64A: 6 hours (natural gas plant operators).

The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

F. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

G. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

H. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected:

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility?

B. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

C. Is the information useful at the levels of detail to be collected?

D. For what purpose(s) would the information be used? Be specific.

E. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et*

seq.), and the DOE Organization Act (42 U.S.C. 7101).

Issued in Washington, DC, July 9, 2009.

Stephanie Brown,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. E9-16822 Filed 7-14-09; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13473-000]

FFP Project 60, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 8, 2009.

On May 22, 2009, FFP Project 60, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Springfield Bend Hydrokinetic Project, to be located on the Mississippi River, in West Baton Rouge Parish, Louisiana and East Baton Rouge Parish, Louisiana.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Springfield Bend Hydrokinetic Project consists of: (1) 2,090 proposed 40 kilowatt Free Flow generating units having a total installed capacity of 83.6 megawatts; (2) a 2.3-mile-long, 69 kilovolt transmission line; and (3) appurtenant facilities. The proposed Springfield Bend Hydrokinetic Project would have an average annual generation of 366 gigawatt-hours.

Applicant Contact: Ramya Swaminathan, Vice President of Development, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; phone: (978) 226-1531.

FERC Contact: Kim Carter, 202-502-6486.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR

385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13473) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-16720 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13475-000]

FFP Project 64, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 8, 2009.

On May 22, 2009, FFP Project 64, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Palmetto Point Hydrokinetic Project, to be located on the Mississippi River, in Concordia Parish, Louisiana and Wilkinson County, Mississippi.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Palmetto Point Hydrokinetic Project consists of: (1) 5,069 proposed 40 kilowatt Free Flow generating units having a total installed capacity of 202.76 megawatts; (2) a 7-mile-long, 69 kilovolt transmission line; and (3) appurtenant facilities. The proposed Palmetto Point Hydrokinetic

Project would have an average annual generation of 888 gigawatt-hours.

Applicant Contact: Ramya Swaminathan, Vice President of Development, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; phone: (978) 226-1531.

FERC Contact: Kim Carter, (202) 502-6486.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13475) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-16721 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13481-000]

FFP Project 70, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 8, 2009.

On May 22, 2009, FFP Project 70, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Filter Bend Hydrokinetic Project, to be located on the Mississippi River, in East Carroll

Parish, Louisiana and Issaquena County, Mississippi.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Filter Bend Hydrokinetic Project consists of: (1) 3,802 proposed 40 kilowatt Free Flow generating units having a total installed capacity of 152.08 megawatts; (2) a 5-mile-long, 69 kilovolt transmission line; and (3) appurtenant facilities. The proposed Filter Bend Hydrokinetic Project would have an average annual generation of 666 gigawatt-hours.

Applicant Contact: Ramya Swaminathan, Vice President of Development, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; phone: (978) 226-1531.

FERC Contact: Kim Carter, 202-502-6486.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13481) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-16727 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13480-000]

FFP Project 69, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 8, 2009.

On May 22, 2009, FFP Project 69, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Breeze Point Hydrokinetic Project, to be located on the Mississippi River, in Concordia Parish, Louisiana and Wilkinson County, Mississippi.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Breeze Point Hydrokinetic Project consists of: (1) 4,942 proposed 40 kilowatt Free Flow generating units having a total installed capacity of 197.68 megawatts; (2) a 6.8-mile-long, 69 kilovolt transmission line; and (3) appurtenant facilities. The proposed Breeze Point Hydrokinetic Project would have an average annual generation of 866 gigawatt-hours.

Applicant Contact: Ramya Swaminathan, Vice President of Development, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; phone: (978) 226-1531.

FERC Contact: Kim Carter, 202-502-6486.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the

Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13480) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-16726 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13479-000]

FFP Project 63, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 8, 2009.

On May 22, 2009, FFP Project 63, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Fort Adams Hydrokinetic Project, to be located on the Mississippi River, in Concordia Parish, Louisiana and Wilkinson County, Mississippi.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Fort Adams Hydrokinetic Project consists of: (1) 2,693 proposed 40 kilowatt Free Flow generating units having a total installed capacity of 107.72 megawatts; (2) a 3.3-mile-long, 69 kilovolt transmission line; and (3) appurtenant facilities. The proposed Fort Adams Hydrokinetic Project would have an average annual generation of 472 gigawatt-hours.

Applicant Contact: Ramya Swaminathan, Vice President of Development, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; phone: (978) 226-1531.

FERC Contact: Kim Carter, 202-502-6486.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13479) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-16725 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13478-000]

FFP Project 68, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 8, 2009.

On May 22, 2009, FFP Project 68, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Davis Island Bend Hydrokinetic Project, to be located on the Mississippi River, in Tensas Parish, Louisiana and Warren County, Mississippi.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter

upon lands or waters owned by others without the owners' express permission.

The proposed Davis Island Bend Hydrokinetic Project consists of: (1) 3,675 proposed 40 kilowatt Free Flow generating units having a total installed capacity of 147 megawatts; (2) a 4.8-mile-long, 69 kilovolt transmission line; and (3) appurtenant facilities. The proposed Davis Island Bend Hydrokinetic Project would have an average annual generation of 644 gigawatt-hours.

Applicant Contact: Ramya Swaminathan, Vice President of Development, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; phone: (978) 226-1531.

FERC Contact: Kim Carter, (202) 502-6486.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13478) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-16724 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 13476-000]

FFP Project 65, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 8, 2009.

On May 22, 2009, FFP Project 65, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Jackson Point Hydrokinetic Project, to be located on the Mississippi River, in Concordia Parish, Louisiana and Adams County, Mississippi.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Jackson Point Hydrokinetic Project consists of: (1) 4,435 proposed 40 kilowatt Free Flow generating units having a total installed capacity of 177.40 megawatts; (2) a 6-mile-long, 69 kilovolt transmission line; and (3) appurtenant facilities. The proposed Jackson Point Hydrokinetic Project would have an average annual generation of 777 gigawatt-hours.

Applicant Contact: Ramya Swaminathan, Vice President of Development, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; *phone:* (978) 226-1531.

FERC Contact: Kim Carter, 202-502-6486.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the

Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13476) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-16722 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 13477-000]

FFP Project 67, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 8, 2009.

On May 22, 2009, FFP Project 67, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Bondurant Chute Hydrokinetic Project, to be located on the Mississippi River, in Tensas Parish, Louisiana and Claiborne County, Mississippi.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Bondurant Chute Hydrokinetic Project consists of: (1) 3,802 proposed 40 kilowatt Free Flow generating units having a total installed capacity of 152.08 megawatts; (2) a 5-mile-long, 69 kilovolt transmission line; and (3) appurtenant facilities. The proposed Bondurant Chute Hydrokinetic Project would have an average annual generation of 666 gigawatt-hours.

Applicant Contact: Ramya Swaminathan, Vice President of Development, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930; *phone:* (978) 226-1531.

FERC Contact: Kim Carter, 202-502-6486.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13477) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-16723 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 12662-002]

Renewable Resources, Inc.; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

July 8, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing.

b. *Project No.:* P-12662-002.

c. *Date Filed:* July 1, 2009.

d. *Applicant:* Renewable Resources, Inc.

e. *Name of Project:* Swift River Mill Hydroelectric Project.

f. *Location:* On the Pawcatuck River in Washington County, Rhode Island. The project would not occupy lands of the United States.

g. *Filed Pursuant to:* Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708

h. *Applicant Contact:* Edward Carapezza, P.O. Box 365, Hopkinton, RI 02833, (401) 207-2643

i. *FERC Contact:* Tom Dean, (202) 502-6041.

j. *Cooperating Agencies:* We are asking Federal, State, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* August 31, 2009.

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.

Additional study requests and requests for cooperating agency status 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 at (<http://www.ferc.gov>) under the "eFiling" link.

m. This application is not ready for environmental analysis at this time.

n. *Description of Project:* The Swift River Mill Project would consist of: (1) The existing 10-foot-high, 112-foot-long Swift River Mill dam impounding; (2) an existing 36-acre reservoir with a normal water surface elevation of 26 feet National Geodetic Vertical Datum; (3) an existing fish ladder facility; (4) an existing 8.5-foot-wide, 40-foot-long power canal, and an existing 10-foot-wide, 40-foot-long power canal leading to; (5) an existing 16.5-foot-wide, 100-foot-long power canal connecting; (6) an existing mill building containing two new turbine generating units with a total installed capacity of 360 kilowatts (kW) discharging water to; (7) an

existing 16-foot-wide, 40-foot-long tailrace; and (8) appurtenant facilities. Project power would be transmitted through a new underground 300-foot-long, 480 kilovolt transmission line.

In addition to above, the project would also consist of two new vortex water aerator turbine generating units with a combined installed capacity of 30 kW, one unit located on the west bank and one unit located on the east bank of the Pawcatuck River just downstream of the Swift River Mill dam. The project would have an average annual generation of about 2,870 megawatt-hours.

o. 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 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 for TTY, contact (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.

p. With this notice, we are initiating consultation with the Connecticut State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA. Staff intends to give at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application.

Issue Acceptance Letter or Deficiency Letter—October 2009.

Issue Scoping Document—January 2010.

Notice of application is ready for environmental analysis—February 2010.

Notice of the availability of the EA—July 2010.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-16719 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

July 07, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09-789-000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, L.P. under New Docket. Measurement Variance/Fuel Use Factors utilized by Iroquois during January 1, 2009–June 30, 2009.

Filed Date: 06/29/2009.

Accession Number: 20090629-5070.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09-809-000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Maritimes & Northeast Pipeline, LLC submits its rate case under section 4 of the Natural Gas Act.

Filed Date: 07/01/2009.

Accession Number: 20090706-0039.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09-812-000.

Applicants: Hardy Storage Company, LLC.

Description: Hardy Storage Co, LLC submits an Offer of Settlement and Stipulation and Agreement to revise the Hardy Maximum Daily Withdrawal Quantity limits set forth in section 4(b) of Hardy's Rate Schedule HSS.

Filed Date: 07/01/2009.

Accession Number: 20090706-0067.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09-813-000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits Substitute Fifth Revised Sheet 30.

Filed Date: 07/01/2009.

Accession Number: 20090706-0066.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–814–000.

Applicants: MIGC LLC.

Description: MIGC, LLC submits Second Revised Sheet 6 to FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 07/01/2009.

Accession Number: 20090706–0065.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–815–000.

Applicants: Enbridge Offshore Pipelines (UTOS) LLC.

Description: Enbridge Offshore Pipelines (UTOS) LLC submits Third Revised Sheet 10 et al. of its FERC Gas Tariff, Fifth Revised Volume 1, to be effective 8/1/09.

Filed Date: 07/01/2009.

Accession Number: 20090706–0068.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the

Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–16759 Filed 7–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

July 6, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–804–000.

Applicants: Gulf States Transmission Corporation.

Description: Gulf States Transmission Corporation submits Tenth Revised Sheet 35 *et al.* to be effective.

Filed Date: 07/02/2009.

Accession Number: 20090702–0082.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 14, 2009.

Docket Numbers: RP09–808–000.

Applicants: Enbridge Pipelines (Midla) L.L.C.

Description: Enbridge Pipelines (Midla) LLC submits Fourth Revised Sheet No. 1A *et al.* to FERC Gas Tariff, Fifth Revised Volume No. 1.

Filed Date: 07/01/2009.

Accession Number: 20090702–0177.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–810–000.

Applicants: Viking Gas Transmission Company.

Description: Viking Gas Transmission C submits Seventh Revised Sheet No. 0 *et al.* to FERC Gas Tariff, First Revised Volume No. 1.

Filed Date: 07/01/2009.

Accession Number: 20090702–0178.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09–811–000.

Applicants: Guardian Pipeline, L.L.C.
Description: Guardian Pipeline, LLC submits First Revised Sheet No. 223 to FERC Gas Tariff, First Revised Volume No. 1.

Filed Date: 07/02/2009.

Accession Number: 20090702–0179.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 14, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–16758 Filed 7–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission****Combined Notice of Filings #1**

July 1, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09-67-000.

Applicants: Wilton Wind II, LLC.

Description: Notice of Self Certification of Exempt Wholesale Generator Status of Wilton Wind II, LLC.

Filed Date: 07/01/2009.

Accession Number: 20090701-5082.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97-324-014; ER97-3834-021; ER00-1816-006; ER98-3026-011; ER05-1469-002; ER07-415-003; ER01-2317-008; ER08-1418-001.

Applicants: Detroit Edison Company, DTE Energy Trading, Inc., DTE River Rouge No. 1, LLC, DTE Edison America, Inc., DTE East China, LLC, DTE Pontiac North, LLC, Metro Energy, L.L.C., DTE Stoneman, LLC.

Description: The Detroit Edison Company *et al.* submits joint triennial market power update.

Filed Date: 06/29/2009.

Accession Number: 20090630-0005.

Comment Date: 5 p.m. Eastern Time on Friday, August 28, 2009.

Docket Numbers: ER97-4281-020; ER00-1259-009; ER02-1572-007; ER02-1571-007; ER00-3718-008.

Applicants: NRG Power Marketing LLC, Louisiana Generating LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, NRG Sterlington Power LLC.

Description: Request for Category 1 Seller Determination of NRG Power Marketing LLC, *et al.*

Filed Date: 06/30/2009.

Accession Number: 20090630-5324.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER98-855-011.

Applicants: Wisconsin Electric Power Company.

Description: Market Power Analysis/Triennial Market Power Updates of Wisconsin Electric Power Company.

Filed Date: 06/30/2009.

Accession Number: 20090630-5213.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: ER98-4515-010.

Applicants: Cadillac Renewable Energy LLC.

Description: Cadillac Renewable Energy LLC request for Category 1 Seller designation in the Central region pursuant to Section 35.36(a)(2) of the FERC's regulations and the regional schedule set forth in Order 697-A.

Filed Date: 06/30/2009.

Accession Number: 20090701-0012.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER99-2948-017; ER00-2917-016; ER00-2918-016; ER05-261-009; ER01-556-015; ER01-1654-018; ER05-728-009; ER02-2567-016; ER04-485-013; ER07-244-008; ER07-245-008; ER07-247-008.

Applicants: Baltimore Gas and Electric Company, Constellation Power Source Generation LLC, Calvert Cliffs Nuclear Power Plant, Inc., Constellation Energy Commodities Group, Handsome Lake Energy, LLC, Nine Mile Point Nuclear Station, LLC, Constellation NewEnergy, Inc., Constellation Energy Commodities Group M, R.E. Ginna Nuclear Power Plant, LLC, Raven One, LLC, Raven Two, LLC, Raven Three, LLC.

Description: Baltimore Gas and Electric Company *et al.* submits Order 697 & 697-A request for determination of Category 1 Seller status.

Filed Date: 06/30/2009.

Accession Number: 20090701-0072.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER00-3562-009; ER04-1221-004; ER03-49-006; ER99-970-008.

Applicants: Calpine Energy Services, L.P., Mankato Energy Center, LLC, Riverside Energy Center, LLC, RockGen Energy, LLC.

Description: Updated Market Power Analysis of Calpine Energy Services, L.P., *et al.*

Filed Date: 06/30/2009.

Accession Number: 20090630-5235.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: ER00-3614-012; ER01-1300-010.

Applicants: BP Energy Company, Whiting Clean Energy, Inc.

Description: Updated Market Power Analysis of BP Energy Company and Whiting Clean Energy, Inc.

Filed Date: 06/30/2009.

Accession Number: 20090630-5247.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: ER02-25-010; ER00-3751-008; ER08-1236-004.

Applicants: Troy Energy, LLC; ANP Funding I, LLC; IPA Trading, LLC.

Description: ANP Funding I, LLC *et al.* submits updated market power

analysis supporting their authorization to sell power at market-based rates.

Filed Date: 06/29/2009.

Accession Number: 20090630-0040.

Comment Date: 5 p.m. Eastern Time on Friday, August 28, 2009.

Docket Numbers: ER02-1213-011.

Applicants: Mirant Energy Trading, LLC.

Description: Mirant Energy Trading, LLC submits revised market based tariff and a request for Category 1 Seller status pursuant to Order 697.

Filed Date: 06/30/2009.

Accession Number: 20090701-0014.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER02-1437-007.

Applicants: Triton Power Michigan, LLC.

Description: Triton Power Michigan LLC Updated Market Power Analysis.

Filed Date: 06/30/2009.

Accession Number: 20090630-5310.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: ER03-345-013.

Applicants: New England Power Pool Participants Committee.

Description: New England Power Pool Participants Committee submits their thirteenth Semi-Annual Status Report on Load Response Programs.

Filed Date: 06/30/2009.

Accession Number: 20090701-0013.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER03-762-013; ER03-533-005.

Applicants: Alliant Energy Corporate Services, Inc.; Alliant Energy Neenah, LLC.

Description: Notice of change in status regarding market-based rates authority of Alliant Energy Corporate Services, Inc.

Filed Date: 06/29/2009.

Accession Number: 20090629-5077.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: ER04-318-008.

Applicants: Dominion Energy Kewaunee, Inc.

Description: Dominion Energy Kewaunee, Inc. Market Power Analyses for the Central Region.

Filed Date: 06/30/2009.

Accession Number: 20090630-5233.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: ER05-1372-002; ER05-1373-002; ER05-1374-002; ER05-1375-002; ER05-1376-002; ER99-2774-017.

Applicants: CinCap IV, LLC, CinCap V LLC, Cinergy Capital & Trading, Inc., Cinergy Power Investments, Inc., St.

Paul Cogeneration, LLC, Duke Energy Trading & Marketing, LLC.

Description: CinCap IV, LLC *et al.* submits Original Sheet 1 *et al.* to Rate Schedule FERC No 2 Superseding Rate Schedule FERC No 1, First Revised Volume 1.

Filed Date: 06/30/2009.

Accession Number: 20090701-0071.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER06-560-003.

Applicants: Credit Suisse Energy LLC.

Description: Credit Suisse Energy LLC, Notice of Non-Material Change in Status.

Filed Date: 06/30/2009.

Accession Number: 20090630-5311.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER07-1106-004; ER01-390-006.

Applicants: ArcLight Energy Marketing, LLC; Chandler Wind Partners, LLC.

Description: ArcLight Energy Marketing, LLC *et al.* submits its Order 697 compliance filing and Category 1 Seller Status.

Filed Date: 06/30/2009.

Accession Number: 20090701-0015.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER07-277-007.

Applicants: Invenergy Cannon Falls LLC.

Description: Triennial Report of Invenergy Cannon Falls LLC.

Filed Date: 06/30/2009.

Accession Number: 20090630-5194.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER07-671-006.

Applicants: Trigen-St. Louis Energy Corporation.

Description: Trigen-St. Louis Energy Corporation submits request for category 1 seller designation and revisions to its market based rate tariff.

Filed Date: 06/30/2009.

Accession Number: 20090701-0019.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER08-1297-003; ER01-1071-014; ER08-1293-003; ER08-1294-003; ER06-9-009; ER03-34-013; ER06-1261-008; ER03-1104-010; ER03-1105-010; ER08-197-007; ER06-1392-006; ER03-1103-005; ER98-2076-016; ER98-4222-015; ER08-250-004; ER09-989-002; ER09-988-002; ER09-832-001; ER08-1300-003; ER07-174-008; ER08-1296-003.

Applicants: Ashtabula Wind, LLC; Badger Windpower LLC; Crystal Lake Wind, LLC; Crystal Lake Wind II, LLC; FPL Energy Burleigh County Wind, LLC; FPL Energy Hancock County Wind,

LLC; FPL Energy Mower County, LLC; FPL Energy North Dakota Wind, LLC; FPL Energy North Dakota Wind, LLC; FPL Energy Oliver Wind II, LLC; FPL Energy Oliver Wind, LLC; FPL Energy South Dakota Wind, LLC; Hawkeye Power Partners, LLC; Lake Benton Power Partners II LLC; Langdon Wind, LLC; NextEra Energy Point Beach, LLC; NextEra Energy Duane Arnold, LLC; Story Wind, LLC; NextEra Energy Power Marketing, LLC; Osceola Windpower, LLC; Osceola Windpower II, LLC.

Description: NextEra Companies Triennial Market Power Update for the Central Region.

Filed Date: 06/30/2009.

Accession Number: 20090630-5327.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: ER08-237-006.

Applicants: Forward Energy LLC.

Description: Triennial Report of Forward Energy LLC.

Filed Date: 06/30/2009.

Accession Number: 20090630-5199.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: ER09-1117-000.

Applicants: NGP Blue Mountain I LLC.

Description: NGP Blue Mountains I LLC submits a supplement to its MBR application.

Filed Date: 06/19/2009.

Accession Number: 20090622-0166.

Comment Date: 5 p.m. Eastern Time on Monday, July 06, 2009.

Docket Numbers: ER09-1370-000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool Inc. submits Interim Large Generator Interconnection Agreement between SPP as Transmission Provider, Oklahoma Gas and Electric Company as Transmission Owner, and OG&E as Interconnection Customer.

Filed Date: 06/29/2009.

Accession Number: 20090630-0020.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: ER09-1371-000.

Applicants: Bank of America, N.A.

Description: Bank of America, N.A. submits notice of cancellation of its market based rate schedule, Electric Rate Schedule FERC No 1.

Filed Date: 06/29/2009.

Accession Number: 20090630-0018.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: ER09-1372-000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits an executed two-party Large Generating Facility Interconnection Agreement *etc.*

Filed Date: 06/29/2009.

Accession Number: 20090630-0019.

Comment Date: 5 p.m. Eastern Time on Monday, July 20, 2009.

Docket Numbers: ER09-1373-000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits Second Revised Sheet 32 *et al.* to FERC Electric Tariff, Fourth Revised Volume 1 to be effective 8/30/09.

Filed Date: 06/30/2009.

Accession Number: 20090630-0039.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER09-1375-000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits revised rate sheets to the Large Generation Interconnection Agreement *etc.*

Filed Date: 06/30/2009.

Accession Number: 20090630-0037.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER09-1376-000.

Applicants: Duke Energy Business Services, LLC.

Description: Duke Energy Business Services, LLC submits amended and restated interconnection agreement between the City of Loganport, Indiana and Duke Indiana.

Filed Date: 06/30/2009.

Accession Number: 20090630-0058.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER09-1377-000.

Applicants: WSPP Inc.

Description: WSPP Inc. submits revisions to reflect name changes for several other members, as well as the termination of two other memberships.

Filed Date: 06/30/2009.

Accession Number: 20090630-0057.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER09-1378-000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits revised rate sheets for the Small Generator Interconnection Agreement and the Service Agreement for Wholesale Distribution Service, *etc.*

Filed Date: 06/30/2009.

Accession Number: 20090701-0016.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER09-1379-000.

Applicants: Union Electric Company.

Description: Union Electric Co. submits a service agreement for Wholesale Distribution Service with the City of Jackson, Missouri.

Filed Date: 06/30/2009.
Accession Number: 20090701-0017.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER09-1380-000.
Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits a re-executed Service Agreement for Network Integration Transmission Service with Arkansas Electric Cooperative Corp *et al.*

Filed Date: 06/30/2009.
Accession Number: 20090701-0018.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER09-1384-000.
Applicants: Consolidated Edison Company of New York, Inc.

Description: Consolidated Edison Company of New York, Inc. submits amendments to Con Edison's Delivery Service Rate Schedule 96 *etc.*

Filed Date: 06/30/2009.
Accession Number: 20090701-0073.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER09-1385-000.
Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits Amendment 1 to the Amended and Restated Metered Subsystem Agreement between the ISO and the City of Anaheim, California.

Filed Date: 06/30/2009.
Accession Number: 20090701-0061.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic

service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,
 Deputy Secretary.

[FR Doc. E9-16756 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 7, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09-90-000.
Applicants: PPL Edgewood Energy, LLC.

Description: PPL Edgewood Energy, LLC *et al.* submits application for authorization pursuant to Section 203 of the Federal Power Act and Request for Expedited Action.

Filed Date: 07/02/2009.
Accession Number: 20090707-0030.
Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09-72-000.
Applicants: Prairie Breeze Wind Energy LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Prairie Breeze Wind Energy LLC.

Filed Date: 07/07/2009.
Accession Number: 20090707-5070.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 28, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96-1361-015; ER00-1770-021; ER01-202-010; ER02-453-012; ER04-472-009; ER05-1054-005; ER07-903-004; ER08-1336-002; ER09-886-002; ER98-3096-017; ER98-4138-011; ER99-2781-013.

Applicants: Atlantic City Electric Co.; Conectiv Energy Supply, Inc., Conectiv Atlantic Generation, LLC, Conectiv Delmarva Generation, Inc.; Potomac Power Resources, LLC; Conectiv Bethlehem, LLC; Fauquier Landfill Gas, LLC; Eastern Landfill Gas, LLC; Bethlehem Renewable Energy, LLC; Energy Systems North East, LLC; Conectiv Vineland Solar, LLC; Pepco Power Resources, LLC; Potomac Electric Power Company; Delmarva Power & Light Company.

Description: Atlantic City Electric Co. *et al.* submit an Amendment to Notification of Change in Status.

Filed Date: 07/01/2009.
Accession Number: 20090701-5300.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER98-4421-013; ER96-2350-030; ER99-3677-012; ER99-791-011; ER99-806-010; ER01-570-013.

Applicants: Consumers Energy Company; CMS Energy Resource Management Company; CMS Generation Michigan Power, L.L.C.; Grayling Generating Station Limited Partnership; Genesee Power Station Limited Partnership; Dearborn Industrial Generation, L.L.C.

Description: Consumers Energy Co *et al.* submits amended sheets to their MBR tariffs to reflect their Category 2 seller designation.

Filed Date: 06/30/2009.
Accession Number: 20090706-0060.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER01-313-011; ER01-424-011.

Applicants: California Independent System Operator Corporation; Pacific Gas and Electric Company.

Description: Informational Report of the California Independent System Operator Corporation.

Filed Date: 06/30/2009.
Accession Number: 20090630-5347.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER01-1305-016.
Applicants: Westar Generating, Inc.
Description: Westar Generating, Inc. 2008 Informational Filing.

Filed Date: 07/01/2009.
Accession Number: 20090701–5263.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER03–198–010.
Applicants: Pacific Gas and Electric Company.

Description: Notice of Non-Material Change in Status of Pacific Gas and Electric Company.

Filed Date: 07/06/2009.
Accession Number: 20090706–5156.
Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: ER06–1410–005; ER01–1570–002.

Applicants: Entergy Nuclear Palisades, LLC; Northern Iowa Windpower LLC.

Description: Entergy Nuclear Palisades, LLC *et al.* submits updated market power analysis to support the continued allowance of market based rates.

Filed Date: 06/30/2009.
Accession Number: 20090701–0154.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER08–750–001; ER08–751–001; ER08–752–001.

Applicants: Entergy Services, Inc.
Description: Compliance Refund Report of Entergy Services, Inc.

Filed Date: 07/02/2009.
Accession Number: 20090702–5185.
Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: ER09–335–005; ER05–1232–019; ER07–1117–010.

Applicants: J.P. Morgan Ventures Energy Corporation; BE KJ LLC

Description: Updated Market Power Analysis and Order Nos 697 and 697–A Compliance Filing of J.P. Morgan Ventures Energy Corporation, *et al.*

Filed Date: 06/30/2009.
Accession Number: 20090630–5340.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER09–405–001.
Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc.'s Second Report on Restitution Discussions.

Filed Date: 07/01/2009.
Accession Number: 20090701–5299.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER09–506–001.

Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff

pursuant to the Commission's 6/5/09 directive.

Filed Date: 07/02/2009.
Accession Number: 20090706–0053.
Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: ER09–754–001.
Applicants: Florida Power Corporation.

Description: Progress Energy Florida, Inc. submits a revised agreement with Seminole Electric Coop, Inc. for Supplemental Resale Service *etc.*, Rate Schedule FERC No 106.

Filed Date: 06/30/2009.
Accession Number: 20090701–0021.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER09–1141–001.
Applicants: J.P. Morgan Commodities Canada Corporation.

Description: J.P. Morgan Commodities Canada Corp. submits response to FERC's request regarding Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority *etc.*

Filed Date: 07/02/2009.
Accession Number: 20090706–0055.
Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: ER09–1286–002.
Applicants: Elizabethtown Energy, LLC.

Description: Elizabethtown submits First Substitute Original Sheet 1 *et al.* to FERC Electric Tariff, Original Volume 1.

Filed Date: 07/02/2009.
Accession Number: 20090706–0043.
Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: ER09–1287–002.
Applicants: Lumberton Energy, LLC.

Description: Lumberton Energy, LLC submits 2nd Supplement to the Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority and request for Expedited Consideration *etc.*

Filed Date: 07/02/2009.
Accession Number: 20090706–0044.
Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: ER09–1400–000.
Applicants: Milford Wind Corridor Phase I, LLC.

Description: Milford Wind Corridor Phase 1, LLC submits FERC Electric Tariff, Original Volume No. 1.

Filed Date: 07/06/2009.
Accession Number: 20090707–0104.
Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: ER09–1402–000.
Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits Second Revised Sheet 2 *et al.* to FERC Electric Tariff, Volume 5, to be effective 8/31/09.

Filed Date: 07/02/2009.
Accession Number: 20090706–0054.
Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: ER09–1403–000.
Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Company submits Second Revised Sheet 61 *et al.* to Fourth Revised Rate Schedule 90 *et al.* to be effective 9/1/09.

Filed Date: 07/02/2009.
Accession Number: 20090706–0052.
Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: ER09–1404–000.
Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co. submits revisions to the Restated Power Service Agreement with Alger Delta Cooperative Electric Association.

Filed Date: 07/02/2009.
Accession Number: 20090706–0051.
Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: ER09–1405–000.
Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Company submits certain tariff revisions to the Restated Power Service Agreement with the City of Crystal Falls, Michigan, to be effective 9/1/09.

Filed Date: 07/02/2009.
Accession Number: 20090706–0050.
Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: ER09–1406–000.
Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Company submits Third Revised Sheet 29 *et al.* to Second Revised Rate Schedule FERC No. 89 *et al.* to be effective 9/1/09.

Filed Date: 07/02/2009.
Accession Number: 20090706–0049.
Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: ER09–1407–000.
Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Company submits Second Revised Sheet 44 *et al.* to FERC Electric Tariff, Original Volume 9 to be effective 9/1/09.

Filed Date: 07/02/2009.
Accession Number: 20090706–0048.
Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: ER09–1408–000.
Applicants: ISO New England Inc. & New England Power.

Description: ISO New England Inc. *et al.* submits 3rd Revised Sheet 558 *et al.* to FERC Electric Tariff 3, Open Access

Transmission Tariff Section II.44—Scheduling and Curtailment Rules for Real-Time External Transactions.

Filed Date: 07/02/2009.

Accession Number: 20090706–0047.

Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: ER09–1409–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits a Transmission Interconnection Agreement for Points of Delivery dated 6/4/09 with Ephraim Light & Power Dept.

Filed Date: 07/02/2009.

Accession Number: 20090706–0046.

Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: ER09–1410–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits an updated Exhibit B to the Network Integration Transmission Service Agreement between PacifiCorp Transmission & PacifiCorp Energy etc.

Filed Date: 07/02/2009.

Accession Number: 20090706–0045.

Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: ER09–1411–000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits Original Service Agreement 2204 to FERC Electric Tariff, Sixth Revised Volume 1.

Filed Date: 07/06/2009.

Accession Number: 20090706–0057.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: ER09–1413–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits executed interconnection service agreements.

Filed Date: 07/06/2009.

Accession Number: 20090707–0102.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: ER09–1414–000; ER09–1414–001.

Applicants: GDF SUEZ Energy Marketing NA, Inc.

Description: GDF SUEZ Energy Marketing NA, Inc. submits application requesting the Commission make a finding that it qualifies as a Category 1 Seller in the Central, SPP, Southwest and Northwest Regions under ER09–1414.

Filed Date: 06/30/2009.

Accession Number: 20090707–0105.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–32–009; OA08–59–005; OA08–75–001; OA08–92–001.

Applicants: Entergy Services, Inc.

Description: Compliance Filing of Entergy Services, Inc.

Filed Date: 07/06/2009.

Accession Number: 20090706–5140.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

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call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–16755 Filed 7–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 6, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–86–000.

Applicants: PacifiCorp.

Description: PacifiCorp's Application for Approval of Acquisition of Transmission Line Pursuant to Section 203 of the Federal Power Act.

Filed Date: 07/02/2009.

Accession Number: 20090702–5165.

Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: EC09–87–000.

Applicants: Northwest Wind Partners, LLC.

Description: Application of Northwest Wind Partners, LLC for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Consideration and Confidential Treatment.

Filed Date: 07/02/2009.

Accession Number: 20090702–5176.

Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: EC09–88–000.

Applicants: RPL Holdings, Inc.

Description: RPL Holdings, Inc., MEG Development Company, LLC, et al. submit Application for Disposition of Jurisdictional Assets and Request for Expedited Consideration.

Filed Date: 07/06/2009.

Accession Number: 20090706–5074.

Comment Date: 5 p.m. Eastern Time on Monday, July 27, 2009.

Docket Numbers: EC09–89–000.

Applicants: MxEnergy Electric Inc.

Description: Application of MxEnergy Electric Inc. for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action.

Filed Date: 07/02/2009.

Accession Number: 20090702–5179.

Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09–67–000.

Applicants: Wilton Wind II, LLC.

Description: Notice of Self Certification of Exempt Wholesale Generator Status of Wilton Wind II, LLC.

Filed Date: 07/01/2009.

Accession Number: 20090701-5082.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: EG09-68-000.

Applicants: Orange Grove Energy, L.P.

Description: Notice of Self-Certification of Orange Grove Energy, L.P., as an Exempt Wholesale Generator.

Filed Date: 07/01/2009.

Accession Number: 20090701-5289.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: EG09-69-000.

Applicants: Elizabethtown Energy, LLC.

Description: Self Certification Notice of Exempt Wholesale Generator Status of Elizabethtown Energy, LLC.

Filed Date: 07/02/2009.

Accession Number: 20090702-5115.

Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: EG09-70-000.

Applicants: Lumberton Energy, LLC.

Description: Self Certification Notice of Exempt Wholesale Generator Status of Lumberton Energy, LLC.

Filed Date: 07/02/2009.

Accession Number: 20090702-5117.

Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: EG09-71-000.

Applicants: Milford Wind Corridor Phase I, LLC.

Description: Notice of Self-Certification of Milford Wind Corridor Phase I, LLC, as an Exempt Wholesale Generator.

Filed Date: 07/02/2009.

Accession Number: 20090702-5127.

Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96-780-022; ER01-1633-009; ER00-3240-012; ER03-1383-012.

Applicants: Southern Company Services, Inc.; Southern Company—Florida LLC; Oleander Power Project, L.P.

Description: Southern Companies submits change in status relating to the market-based rate authority.

Filed Date: 06/30/2009.

Accession Number: 20090701-0153.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER98-1643-013.

Applicants: Portland General Electric Company.

Description: Amended Notice of Non-Material Change in Status of Portland General Electric.

Filed Date: 06/30/2009.

Accession Number: 20090630-5345.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER98-2783-016; ER99-3822-016; ER01-140-012; ER07-842-006; ER09-629-003; ER99-4160-019; ER01-141-012; ER05-1266-010; ER01-1044-013; ER99-2157-013; ER03-42-017.

Applicants: Ontelaunee Power Operating Company, LLC, Dynegy Inc., Casco Bay Energy Company, LLC, Dynegy Power Marketing, Inc., Sithe/Independence Power Partners, L.P., Dynegy Kendall Energy, LLC, Rocky Road Power, LLC, Riverside Generating Company, LLC, Dynegy Roseton, L.L.C., Bridgeport Energy, LLC, Dynegy Marketing and Trade, LLC, Dynegy Danskammer, L.L.C.

Description: Notice of Change in Status of Bridgeport Energy, LLC, *et al.*

Filed Date: 06/30/2009.

Accession Number: 20090630-5344.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER00-1703-007.

Applicants: PPL EnergyPlus, LLC.

Description: PPL EnergyPlus, LLC submits request for a determination of Category 1 status for the Central Region *et al.*

Filed Date: 06/30/2009.

Accession Number: 20090701-0075.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER02-237-014.

Applicants: J. Aron & Company.

Description: J. Aron & Company submits updated market power analysis in compliance with the requirements of section 35.37.

Filed Date: 06/30/2009.

Accession Number: 20090701-0074.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: ER03-49-006.

Applicants: Calpine Energy Services, L.P., Mankato Energy Center, LLC, Riverside Energy Center, LLC, RockGen Energy, LLC.

Description: Updated Market Power Analysis of Calpine Energy Services, L.P., *et al.*

Filed Date: 06/30/2009.

Accession Number: 20090630-5235.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: ER04-318-008.

Applicants: Dominion Energy Kewaunee, Inc.

Description: Dominion Energy Kewaunee, Inc. Market Power Analyses for the Central Region.

Filed Date: 06/30/2009.

Accession Number: 20090630-5233.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: ER05-1232-019; ER09-355-002; ER07-1117-010.

Applicants: J.P. Morgan Ventures Energy Corporation, BE KJ LLC.

Description: Updated Market Power Analysis and Order Nos. 697 and 697-A Compliance Filing of J.P. Morgan Ventures Energy Corporation, *et al.*

Filed Date: 06/30/2009.

Accession Number: 20090630-5340.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: ER06-220-002; ER05-1282-002; ER06-215-002; ER06-221-002; ER06-222-002; ER06-223-002; ER06-224-002; ER06-225-002; ER06-686-002; ER07-1138-001.

Applicants: Bendwind, LLC; Storm Lake Power Partners I LLC; DeGreeffpa, LLC; Sierra Wind, LLC; Groen Wind, LLC; Larswind, LLC; TAIR Windfarm, LLC; Hillcrest Wind, LLC; DeGreeff DP, LLC; Jeffers Wind 20, LLC.

Description: Bendwind, LLC *et al.* submits a request for Category 1 Seller.

Filed Date: 06/30/2009.

Accession Number: 20090701-0156.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER08-912-006; ER09-32-003; ER09-33-003; ER09-279-002; ER09-30-003; ER09-31-003; ER03-296-022; ER07-242-013; ER03-951-022; ER09-282-002; ER02-2085-015; ER09-1284-001; ER05-481-020.

Applicants: Iberdrola Renewables, Inc.; Barton Windpower LLC; Barton Windpower II LLC; Buffalo Ridge I LLC; Elm Creek Wind, LLC; Famers city Wind, LLC; Flying Cloud Power Partners, LLC; MinnDakota Wind LLC; Moraine Wind LLC; Moraine Wind II LLC; Northern Iowa Windpower II LLC; Rugby Wind LLC; Trimont Wind I LLC.

Description: Iberdrola Renewables, Inc. *et al.* submit its triennial market power analysis.

Filed Date: 06/30/2009.

Accession Number: 20090701-0220.

Comment Date: 5 p.m. Eastern Time on Monday, August 31, 2009.

Docket Numbers: ER09-1364-000.

Applicants: Michigan Power Limited Partnership.

Description: Michigan Power Limited Partnership submits application for acceptance of initial tariff, waivers and blanket authority.

Filed Date: 06/30/2009.

Accession Number: 20090630-0056.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER09-1381-000.

Applicants: Allegheny Energy Supply Company, LLC.

Description: Allegheny Energy Supply Company, LLC submits request for authorization to make wholesale power sales to its affiliate, Potomac Edison Company, etc.

Filed Date: 06/30/2009.

Accession Number: 20090701-0057.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER09-1382-000.

Applicants: Allegheny Energy Supply Company, LLC.

Description: Allegheny Energy Supply Company, LLC submits request for authorization to make wholesale power sales to its affiliate, West Penn Power Company, etc.

Filed Date: 06/30/2009.

Accession Number: 20090701-0054.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER09-1383-000.

Applicants: Consumers Energy Company.

Description: Consumers Energy Company submits notice of cancellation.

Filed Date: 06/30/2009.

Accession Number: 20090701-0055.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER09-1385-001.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp. submits an errata to the filing of an amendment to non-conforming service agreement.

Filed Date: 07/01/2009.

Accession Number: 20090702-0180.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER09-1386-000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits for acceptance an Original Service Agreement 1825 *et al.* to FERC Electric Tariff, Fifth Revised Volume 1.

Filed Date: 07/01/2009.

Accession Number: 20090701-0219.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER09-1387-000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits for filing and acceptance of a Transmission Facilities Agreement *et al.*

Filed Date: 07/01/2009.

Accession Number: 20090701-0221.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER09-1388-000.

Applicants: Vermont Transco LLC.

Description: Vermont Transco, LLC submits updated Exhibit A for the 1991

Transmission Agreement, Fourth Revised Sheet 15 to FERC Rate Schedule 1, to be effective 7/1/09.

Filed Date: 07/01/2009.

Accession Number: 20090702-0090.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER09-1389-000.

Applicants: Duke Energy Business Services, LLC.

Description: Duke Energy Indiana, Inc. submits their Facilities Agreement with Duke Energy Business Services, LLC *et al.* designated as FERC Electric Rate Schedule 270, to be effective 9/1/09.

Filed Date: 07/01/2009.

Accession Number: 20090702-0091.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER09-1390-000.

Applicants: PJM Interconnection LLC

Description: PJM Interconnection, LLC submits notice of cancellation for a non-conforming Transmission Service Agreement 1494 to FERC Electric Tariff, Sixth Revised Volume 1.

Filed Date: 07/01/2009.

Accession Number: 20090702-0092.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER09-1391-000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits Notice of Cancellation of FERC Electric Rate Schedule 62 which consists of an Interconnection Agreement with Cornbelt Power Cooperative.

Filed Date: 07/01/2009.

Accession Number: 20090702-0093.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER09-1392-000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits Notice of Cancellation of FERC Electric Rate Schedule 67 which consists of an Interchange and Operating Agreement with Cedar Falls Utilities.

Filed Date: 07/01/2009.

Accession Number: 20090702-0094.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER09-1393-000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits a Network Integration Transmission Service Agreement and Network Operating and Interconnection Agreement with City of Pella, Iowa dated 6/30/09.

Filed Date: 07/01/2009.

Accession Number: 20090702-0095.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER09-1394-000.

Applicants: New England Power Pool.

Description: New England Power Pool submits Sheet 57 *et al.*, Second Restated NEPOOL Agreement.

Filed Date: 07/01/2009.

Accession Number: 20090702-0096.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER09-1395-000.

Applicants: New York Independent System Operator, Inc.

Description: Motion of the New York Independent System Operator, Inc to defer the effective date of certain previously accepted tariff revisions with respect to the installed capacity auctions for May and June 2009.

Filed Date: 07/01/2009.

Accession Number: 20090702-0097.

Comment Date: 5 p.m. Eastern Time on Friday, July 10, 2009.

Docket Numbers: ER09-1396-000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits revisions re: Excessive/deficient energy deployment charge.

Filed Date: 07/01/2009.

Accession Number: 20090702-0116.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER09-1397-000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits a Network Integration Transmission Service Agreement with Kansas Power Pool.

Filed Date: 07/01/2009.

Accession Number: 20090702-0115.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER09-1398-000.

Applicants: Southern California Edison Company.

Description: Otter Tail Corp submits a Common Facilities Agreement with Ashtabula Wind II, LLC.

Filed Date: 07/01/2009.

Accession Number: 20090702-0114.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER09-1399-000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Co of New Mexico submits Amendment One to Power Sale Agreement.

Filed Date: 07/01/2009.

Accession Number: 20090702-0182.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER09-1401-000.

Applicants: Duke Energy Ohio, Inc.

Description: Duke Energy Ohio, Inc submits first Revised Sheet No 1 to its FERC Electric Tariff, First Revised Volume No 2.

Filed Date: 06/30/2009.

Accession Number: 20090701-0056.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or

call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-16754 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

Monday, July 6, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96-200-217.

Applicants: CenterPoint Energy Gas Transmission Comp.

Description: CenterPoint Energy Gas Transmission Company, submits a negotiated rate agreements with Texas Eastern Transmission, LP.

Filed Date: 06/30/2009.

Accession Number: 20090701-0162.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP96-200-218.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Company submits two negotiated rate agreement with Laclede Energy Resources, Inc.

Filed Date: 07/01/2009.

Accession Number: 20090702-0113.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP96-200-219.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Company submits an amended negotiated rate agreements with Laclede Energy Resources, Inc.

Filed Date: 07/01/2009.

Accession Number: 20090702-0112.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP96-200-220.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Company submits two amended negotiated rate agreement with Petrohawk Energy Corporation.

Filed Date: 07/01/2009.

Accession Number: 20090702-0111.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP96-200-221.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Company submits a

negotiated rate agreement with Eagle Energy Partners I, LP, to be effective 7/1/09.

Filed Date: 07/01/2009.

Accession Number: 20090702-0110.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP96-200-222.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Company submits an amended negotiated rate agreement with Chesapeake Energy Marketing, Inc, to be effective 7/1/09.

Filed Date: 07/01/2009.

Accession Number: 20090702-0109.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP96-200-223.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Company submits an amended negotiated rate agreement with Chesapeake Energy Marketing, Inc.

Filed Date: 07/01/2009.

Accession Number: 20090702-0108.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP96-320-110.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits amendments to negotiated rate letter agreements executed by Gulf South and certain of its customers in relation to the East Texas to Mississippi Expansion Project etc.

Filed Date: 07/01/2009.

Accession Number: 20090702-0088.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP99-301-239.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits amendment to one Rate Schedule FTS-3 negotiated rate agreement between ANR and Wisconsin Power & Light Co.

Filed Date: 07/01/2009.

Accession Number: 20090702-0087.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP99-301-240.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits for filing and acceptance 1 Rate Schedule ETS negotiated rate service agreement with Wisconsin Power & Light Co (Contract 115957).

Filed Date: 07/01/2009.

Accession Number: 20090702-0099.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP00-426-049.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits First Revised Sheet 82 *et al.* to FERC Gas Tariff, Third Revised Volume 1.

Filed Date: 06/30/2009.

Accession Number: 20090701-0068.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Docket Numbers: RP09-61-007.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits amendments to interim negotiated rate agreements executed by Gulf Crossing and certain of its customer in relation to the Gulf Crossing Project.

Filed Date: 07/01/2009.

Accession Number: 20090702-0089.

Comment Date: 5 p.m. Eastern Time on Monday, July 13, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-16760 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS09-5-000]

Honeoye Storage Corporation; Notice of Filing

July 8, 2009.

Take notice that on April 14, 2009, Honeoye Storage Corporation (Honeoye) filed a request for waiver of its Standards of Conduct so that it may complete its posting and training, pursuant to the Commission's Order 717 issued October 16, 2008, *Standards of Conduct for Transmission Providers*, Order No. 717, 125 FERC ¶ 61,064.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that

enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on July 15, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-16715 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER95-1528-021; ER05-89-013; ER05-453-005; ER07-650-003; ER96-1088-048; ER03-674-014; ER01-2659-015]

Wisconsin Public Service Corporation, Upper Peninsula Power Company, Wisconsin River Power Company, Integrys Energy Services, Inc., WPS Power Development, LLC, Quest Energy, LLC, and Combined Locks Energy Center, LLC; Notice of Filing

July 8, 2009.

Take notice that on June 18, 2009, Wisconsin Public Service Corporation, Upper Peninsula Power Company, Wisconsin River Power Company, Integrys Energy Services, Inc., WPS Power Development, LLC, Quest Energy, LLC, and Combined Locks Energy Center, LLC submit their triennial power market update for renewal of their market-based rate authority in the Central Region.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on August 17, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-16718 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL09-52-001]

City of Riverside, CA; Notice of Filing

July 8, 2009.

Take notice that on July 2, 2009, the City of Riverside, California (Riverside) filed a revised version of Appendix I to its Transmission Owner Tariff, and a revised version of page 7 from Exhibit No. RPU-3—City of Riverside Transmission Revenue Requirement Calculations, which reflect a reduction of calculations in the proposed Transmission Revenue Requirement as a result of its Offer of Settlement filed on July 1, 2009 by Southern California Edison Company in Docket No. ER08-1343-000, *et al.* Riverside also requests any necessary waivers by the Commission to allow this filing to become effective July 1, 2009.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy

of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on July 23, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-16730 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM08-11-002]

North American Electric Reliability Corporation; Notice of Filing

July 8, 2009.

Take notice that on July 6, 2009, the North American Electric Reliability Corporation, in compliance with the directives in paragraphs 99 and 100 of the Commission's Order 722, issued on March 20, 2009, 126 FERC 61, 255 (2009), submitted the Western Electricity Coordinating Council's (WECC) proposed Violation Risk Factors ("VRFs") for the WECC Regional Difference Requirements to the Reliability Standards.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as

appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on August 5, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-16729 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM06-22-009]

North American Electric Reliability Corporation; Notice of Filing

July 8, 2009.

Take notice that on June 30, 2009, the North American Electric Reliability Corporation, in compliance with the directives in paragraphs 13-14 of the Commission's January 27, 2009 Order on Compliance Filing, 126 FERC 61,065 (2009), submitted modifications to Violation Risk Factors for four Requirements or Sub-Requirements in the Critical Infrastructure Protection ("CIP") Reliability Standards CIP-002-1 through CIP-009-1 that have been approved by the Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the

appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on July 29, 2009

Kimberly D. Bose,
Secretary.

[FR Doc. E9-16728 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09-1400-000]

Milford Wind Corridor Phase I, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

July 8, 2009.

This is a supplemental notice in the above-referenced proceeding of Milford Wind Corridor Phase I, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 28, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-16717 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09-1312-000; Docket No. ER09-1313-000]

Riverside Energy Center, LLC; RockGen Energy, LLC; Notice Suspending Due Date for Interventions, Protests and Comments

July 8, 2009.

On July 7, 2009, Riverside Energy Center, LLC and RockGen Energy, LLC (collectively the Applicants) filed a motion to hold the above-referenced proceedings in abeyance and to suspend the July 7, 2009 due date for filing comments and protests in this proceeding. The motion states that the Applicants and Interested Parties¹ from the of the approved 2005 Settlement Agreement in Docket Nos. ER04-1055-000 and ER04-1059-000,² are currently involved in informal settlement negotiations. The Applicants specifically request the Commission to hold the above-referenced proceeding in abeyance for a period of two months, until September 8, 2009, and to suspend the July 7, 2009 comment date for protests and comments. However, the Applicants seek to have the July 7, 2009 date remain in effect for submitting interventions during the current settlement negotiations. In the event the Applicants and Interested Parties do not settle, the Applicants request that the parties that have intervened as of the July 7, 2009 date should be afforded additional time to file protests and/or comments on the proposed revised rate schedules in the above-referenced proceedings and the Commission can then process and consider the filings in the usual manner. The Applicants also state that the Interested Parties and the Original Parties³ either support this motion or do not oppose this motion.

¹ *Interested Parties:* Alliant Energy Corporate Services, Inc. (AECS), American Transmission Company, LLC (ATCLLC), Madison Gas & Electric Company (MGE), Midwest Independent Transmission System Operator, Inc. (MISO), Wisconsin Public Power Inc. (WPPI), Wisconsin Public Service Corporation (WPSC); and Upper Peninsula Power Company (UPPCo).

² *Riverside Energy Center, LLC and RockGen Energy, LLC*, 111 FERC ¶ 61,429 (2005).

³ *Original Parties to the 2005 Settlement Agreement:* AECS on behalf of itself and its utility operating companies Interstate Power and Light Company and Wisconsin Power and Light Company; ATCLLC; Consumers Energy Company; The Detroit Edison Company; LG&E Energy LLC, on behalf of its utility operating companies, Louisville Gas and Electric Company and Kentucky Utilities Company; Madison Gas & Electric Co.; the MISO.; WPPI.; Wisconsin Electric Power Company; WPSC; and UPPCo.

Upon consideration, notice is hereby given that the previously established July 7, 2009 due date for filing interventions, protests and/or comments is hereby suspended. A new due date for interventions, protests and/or comments will be established upon further notice.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-16716 Filed 7-14-09; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2009-0123; FRL-8424-2]

Pentachloronitrobenzene (PCNB); Amendments to Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the amendments to terminate uses, voluntarily requested by the registrants and accepted by the Agency, of certain products containing the pesticide PCNB, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This order follows a March 30, 2009 **Federal Register** Notice of Receipt of Requests from the PCNB registrants to amend voluntarily certain of their PCNB product registrations. Specifically, the registrants requested to amend their registrations to terminate the following uses of PCNB: Golf course roughs; residential sites including lawns, yards, and ornamental plants and gardens around homes and apartments; grounds around day care facilities; school yards; parks (except industrial parks); playgrounds; and athletic fields (except professional and college fields). In the March 30, 2009 Notice, EPA indicated

that it would issue an order implementing the amendments to terminate uses, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests within this period. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice an order granting the requested amendments to terminate certain uses. Any distribution, sale, or use of the PCNB products subject to this order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective July 15, 2009.

FOR FURTHER INFORMATION CONTACT: Jill Bloom, Special Review and Reregistration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8019; fax number: (703) 308-7070; e-mail address: bloom.jill@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2009-0123. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

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

II. What Action is the Agency Taking?

This notice announces the amendments to terminate uses, as requested by registrants (Amvac Chemical Corporation and Chemtura Corporation), of certain of their end-use and manufacturing-use PCNB products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit. Since the registrants submitted their initial 6(f)(1) requests to amend their registrations to terminate uses, Chemtura requested the transfer of most of its PCNB registrations to Amvac, including all of those PCNB registrations for which Chemtura had requested amendment. The transfer was approved on April 23, 2009. Therefore, Amvac will be responsible for amending all of the following registrations in accordance with this order. Former and current EPA registration numbers are shown for all affected products.

TABLE 1.—PCNB PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES

Current EPA Registration Number	EPA Registration Number prior to transfer	Product type (manufacturing-use or end-use product)	Product Name (names of transferred products may be expected to change)
5481-8981	400-399	End-use	Terraclor 75W Wettable Powder
5481-8983	400-401	Manufacturing-use	Terraclor Technical
5481-8984	400-402	End-use	Terraclor 10% Granular, Revere 10% Granular
5481-8985	400-403	End-use	Greenback Lawn Fungicide
5481-8986	400-404	End-use	Turfcide Emulsifiable Fungicide
5481-8988	400-407	End-use	Turfcide 10% Granular

TABLE 1.—PCNB PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES—Continued

Current EPA Registration Number	EPA Registration Number prior to transfer	Product type (manufacturing-use or end-use product)	Product Name (names of transferred products may be expected to change)
5481-8990	400-414	Manufacturing-use	Terraclor 90% Dust Concentrate
5481-8991	400-453	End-use	Terraclor Flowable Fungicide
5481-8992	400-454	End-use	Turfcide 4F, Turfcide 400, Terraclor 400, Revere 4000
5481-8994	400-457	End-use	Turfcide 15G
5481-8995	400-458	End-use	Terraclor 15G
5481-8996	400-459	Manufacturing-use	Terrazan PCNB Technical 99%
5481-8997	400-460	End-use	Terrazan 24% Emulsifiable Concentrate
5481-8998	400-479	End-use	Turfcide WDG
5481-8999	400-504	Manufacturing-use	Terraclor Tech 96
5481-197	N/A	Manufacturing-use	Technical Grade PCNB 95%
5481-211	N/A	End-use	PCNB 10% Granules Soil Fungicide
5481-214	N/A	End-use	PCNB Soil and Turf Liquid Drench
5481-279	N/A	End-use	PCNB 75% Wettable Powder
5481-419	N/A	End-use	PCNB 75W Turf and Ornamental Soil Fungicide
5481-438	N/A	Manufacturing-use	PCNB
5481-441	N/A	End-use	PCNB 75 DG
5481-443	N/A	End-use	PCNB 2 Flowable Turf and Ornamental Soil Fungicide
5481-444	N/A	End-use	PCNB 10 G Turf and Ornamental Soil Fungicide
5481-450	N/A	End-use	PCNB 20% WDG Soil Fungicide
5481-453	N/A	End-use	PCNB 75 WSP
5481-457	N/A	End-use	Turfpro WSP Turf and Ornamental Soil Fungicide
5481-464	N/A	End-use	Par-Flo 6F
5481-465	N/A	End-use	Par-Flo
5481-471	N/A	End-use	Win-Flo 6F
5481-472	N/A	End-use	Win-Flo

Table 2 of this unit includes the name and address of record for the registrant of the products in Table 1 of this unit.

TABLE 2.—REGISTRANT OF AMENDED PCNB PRODUCTS

EPA Company Number	Company Name and Address
5481	Ambac Chemical Corporation, 4695 MacArthur Court, Suite 1250, Newport Beach, CA 92660

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the March 30, 2009 **Federal Register** notice (FRL-8405-9) announcing the Agency's receipt of the requests for voluntary amendments to terminate certain uses of PCNB.

IV. Order Terminating Certain PCNB Uses

Pursuant to FIFRA section 6(f), EPA hereby approves the requested amendments to terminate uses of the PCNB registrations identified in Table 1 of Unit II. Accordingly, the Agency orders that the PCNB product registrations identified in Table 1 of Unit II. are hereby amended to terminate the following uses: Golf course roughs; residential sites including lawns, yards, and ornamental plants and gardens around homes and apartments; grounds around day care facilities; school yards; parks (except industrial parks); playgrounds; and athletic fields (except professional and college fields). Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this notice includes the following existing stocks provisions.

Amvac Corporation will be permitted to sell or distribute existing stocks of the manufacturing-use products referenced in Table 1 of Unit II., with labels that are not revised per the requested amendments for termination of uses (i.e., "previously approved labeling"), until 6 months after the effective date of this order. Persons other than Amvac Corporation may continue to use existing stocks of the manufacturing-use products referenced in Table 1 of Unit II., with previously approved labeling, for formulation into end-use products until 18 months after the effective date of this order, provided such use is

consistent with the previously approved labeling for that product.

Amvac Corporation will be permitted to sell or distribute existing stocks of the end-use products referenced in Table 1 of Unit II., with previously approved labeling, until 18 months after the effective date of this order. Persons other than Amvac Corporation may sell or distribute existing stocks of the end-use products referenced in Table 1 of Unit II., with previously approved labeling, until 18 months after the effective date of this order. Users will be allowed to use existing stocks of the affected PCNB end-use products with previously approved labeling until such stocks are exhausted, provided such use is in a manner consistent with the previously approved labeling for that product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 2, 2009.

Peter Caulkins,

Acting Director, Special Review and Registration Division, Office of Pesticide Programs.

[FR Doc. E9-16812 Filed 7-14-09; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8928-5]

Cross-Media Electronic Reporting Rule State Authorized Program Revision/ Modification Approvals: State of Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval, under regulations for Cross-Media Electronic Reporting, of the State of Indiana's request to revise/modify programs to allow electronic reporting for certain of its EPA-authorized programs under title 40 of the CFR.

DATES: EPA's approval is effective on July 15, 2009 for the State of Indiana's EPA-authorized programs under 40 CFR parts 52, 60-63, 70, 123, 272, and 282; and on August 14, 2009 for the State of Indiana's Part 142 authorized program, if no timely request for a public hearing is received and accepted by the Agency.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW.,

Washington, DC 20460, (202) 566-1697, huffer.evi@epa.gov, or David Schwarz, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566-1704, schwarz.david@epa.gov. All requests for a hearing should be submitted to both of the above contacts.

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR, requires that State, Tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and get EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the State, Tribe, or local government will use to implement the electronic reporting. Additionally, in § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the State, Tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the State, Tribe or local government has sufficient legal authority to implement the electronic reporting components of its authorized programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On October 2, 2008, the State of Indiana Department of Environmental Management (IDEM) submitted an application for its eAuth electronic document receiving System for revision or modification of EPA-authorized programs under 40 CFR parts 52, 60-63, 70, 123, 142, 272, and 282. EPA reviewed IDEM's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this

notice of EPA's decision to approve Indiana's request for revision/modification to certain of its authorized programs is being published in the **Federal Register**.

Specifically, EPA has approved IDEM's request for revisions/modifications to the following of its authorized programs to allow electronic reporting under 40 CFR parts 51, 60-63, 70, 122-124, 141, 262, 264-266, 268, 270, and 280:

- *Part 52*—Approval and Promulgation of Implementation Plans;
- *Part 60*—Standards of Performance For New Stationary Sources;
- *Part 61*—National Emission Standards For Hazardous Air Pollutants;
- *Part 62*—Approval and Promulgation of State Plans for Designated Facilities and Pollutants;
- *Part 63*—National Emission Standards For Hazardous Air Pollutants For Source Categories;
- *Part 70*—State Operating Permit Programs;
- *Part 123*—State Program Requirements (National Pollutant Discharge Elimination System Permit Program);
- *Part 142*—National Primary Drinking Water Regulations Implementation;
- *Part 272*—Approved State Hazardous Waste Management Programs; and
- *Part 282*—Approved Underground Storage Tank Programs.

IDEM was notified of EPA's determination to approve its application with respect to the authorized programs listed above in a letter dated July 2, 2009.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of Indiana's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for hearings must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information:

(1) The name, address and telephone number of the individual, organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request;

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: July 2, 2009.

Lisa Schlosser,

Director, Office of Information Collection.

[FR Doc. E9-16839 Filed 7-14-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-R01-OW-2009-0103; FRL-8927-8]

Maine Marine Sanitation Device Standard—Notice of Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Determination.

SUMMARY: The Regional Administrator of the Environmental Protection Agency—New England Region, has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the coastal waters of Southern Mount Desert Island.

ADDRESSES: *Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket

materials are available electronically in <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ann Rodney, U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114-2023. *Telephone:* (617) 918-0538. *Fax number:* (617) 918-1505. *E-mail address:* rodney.ann@epa.gov.

SUPPLEMENTARY INFORMATION: On April 24, 2009, EPA published a notice that the State of Maine had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Mount Desert, Southwest Harbor, portions of Cranberry Isles, and Tremont. One comment was received on this petition. The response to this comment can be obtained utilizing the above contact information.

The petition was filed pursuant to Section 312(f)(3) of Public Law 92-500, as amended by Public Laws 95-217 and 100-4, for the purpose of declaring these waters a No Discharge Area (NDA).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

This Notice of Determination is for the waters of Southern Mount Desert Island. The NDA boundaries are as follows:

Waterbody/general area	From longitude	From latitude	To longitude	To latitude
From "Bass Harbor Head" in Tremont north following the shore to the bridge over the outlet stream of "Somes Pond" in Mount Desert.	68°20'14.35" W	44°13'16.42" N	68°20'0.79" W	44°21'46.16" N
Northeast following the shore to the bridge over "Kitteridge Brook" in the northernmost portion of "Somes Harbor" in Mount Desert.	68°20'0.79" W	44°21'46.16" N	68°19'45.68" W	44°22'5.07" N
East following the shore to the head of "Somes Sound" in Mount Desert.	68°19'45.68" W	44°22'5.07" N	68°18'36.0" W	44°21'49.83" N
South following the shore to the northern most portion of "Northeast Harbor" in Mount Desert.	68°18'36.0" W	44°21'49.83" N	68°17'1.48" W	44°18'8.08" N
East following the shore to the northernmost head of "Otter Cove" in Mount Desert.	68°17'1.48" W	44°18'8.08" N	68°12'6.47" W	44°19'22.25" N
South following the shore to "Otter Point" in Mount Desert	68°12'6.47" W	44°19'22.25" N	69°11'27.45" W	44°18'20.76" N

Waterbody/general area	From longitude	From latitude	To longitude	To latitude
South in a straight line across the water to navigational marker C "1" off "Baker Island" in Cranberry Isles.	69°11'27.45" W	44°18'20.76" N	68°11'16.54" W	44°14'16.84" N
West in a straight line across the water to "Bass Harbor Head" in Tremont.	68°11'16.54" W	44°14'16.84" N	68°20'14.35" W	44°13'16.42" N

The area includes the municipal waters of Mount Desert, Southwest Harbor, portions of Cranberry Isles, and Tremont.

The information submitted to EPA by the State of Maine certifies that there are six pumpout facilities located within this area. A list of the facilities, with

locations, phone numbers, and hours of operation is appended at the end of this determination.

Based on the examination of the petition and its supporting documentation, and discussions with the State and local officials, EPA has determined that adequate facilities for

the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this determination.

This determination is made pursuant to Section 312(f)(3) of Public Law 92-500, as amended by Public laws 95-217 and 100-4.

PUMPOUT FACILITIES WITHIN PROPOSED NO DISCHARGE AREA
[Southern Mount Desert Island]

Name	Location	Contact info.	Hours	Mean low water depth
Harbormaster	18 Harbor Dr., Mount Desert	207-276-5737, HF 16	8 a.m.-5 p.m., 7 days	10 ft.
Clifton Dock	Clifton Dock Rd., Mount Desert ..	207-967-2511, HF 9	8 a.m.-5 p.m., 7 days	10 ft.
Hinckley Company	130 Shore Rd., Southwest Har- bor.	207-244-5572, VHF 9	8 a.m.-5 p.m., 7 days	20 ft.
Great Harbor Marina	11 Apple Lane, Southwest Har- bor.	207-244-0117, VHF 9	9 a.m.-5 p.m., 7 days	10 ft.
Southwest Boat Marine Service ..	168 Clarke Point Rd., Southwest Harbor.	207-244-5525, VHF 9	9 a.m.-5 p.m., M-F	8 ft.
Downeast Diesel and Marine	174 Clarke Point Rd., Southwest Harbor.	207-244-5145, VHF 9	9 a.m.-5 p.m., M-F	8 ft.

Dated: June 22, 2009.
Ira W. Leighton,
Acting Regional Administrator, New England Region.
[FR Doc. E9-16838 Filed 7-14-09; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0935; FRL-8408-5]

Guidance for Submission of Probabilistic Human Health Exposure Assessments Science Policy; Notice of Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA announces the withdrawal of the pesticide science policy document "Guidance for Submission of Probabilistic Human Health Exposure Assessments to the Office of Pesticide Programs." This science policy document was developed to establish guidance for submission and review of probabilistic human health exposure assessments to the Agency's Office of Pesticide Programs.

This guidance has been superseded by EPA's "Guidance on Cumulative Risk Assessment of Pesticide Chemicals That Have a Common Mechanism of Toxicity," and by the "Guidance for Performing Aggregate Exposure and Risk Assessment."

FOR FURTHER INFORMATION CONTACT: David J. Miller, Health Effects Division, Office of Pesticide Programs (7509P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5352; fax number: (703) 305-5147; e-mail address: miller.davidj@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action, however, may be of interest to persons who produce or formulate pesticides or who register pesticide products. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person

listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2008-0935. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

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

II. Background

The Food Quality Protection Act of 1996 (FQPA) significantly amended the

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard (“a reasonable certainty of no harm”) for pesticide residues in foods to assure protection from unacceptable pesticide exposure and strengthened health protections for infants and children from pesticide risks.

During 1998 and 1999, EPA and the United States Department of Agriculture (USDA) established a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the Tolerance Reassessment Advisory Committee (TRAC), to address FFDCA issues and implementation. TRAC comprised more than 50 representatives of affected user, producer, consumer, public health, environmental, states, and other interested groups. The TRAC met from May 27, 1998, through April 29, 1999.

In order to continue the constructive discussions about FFDCA, EPA and USDA established, under the auspices of NACEPT, the Committee to Advise on Reassessment and Transition (CARAT). The CARAT provided a forum for a broad spectrum of stakeholders to consult with and advise the Agency and the Secretary of Agriculture on pest and pesticide management transition issues related to the tolerance reassessment process. The CARAT was intended to further the valuable work initiated by earlier advisory committees toward the use of sound science and greater transparency in regulatory decision-making, increased stakeholder participation, and reasonable transition strategies that reduce risks without jeopardizing American agriculture and farm communities.

As a result of the 1998 and 1999 TRAC process, EPA decided that the implementation process and related policies would benefit from providing notice and comment on major science policy issues. The TRAC identified nine science policy areas it believed were key to implementation of tolerance reassessment. EPA agreed to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In a notice published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL-6041-5), EPA described its intended approach. Since then, EPA has issued a series of draft and revised documents concerning the nine science policy issues. Publication of this notice is intended to update the public on the status of the science paper “Guidance for Submission of Probabilistic Human

Health Exposure Assessments to the Office of Pesticide Programs.”

III. Why this Policy is No Longer Needed

Historically, assessment of the potential health risks associated with exposure to pesticides has focused upon single pathways of exposure (e.g., from pesticide residues in food, water, or residential/non-occupational uses) for individual chemicals, and not on the potential for individuals to be exposed to multiple pesticides by all pathways concurrently. In 1996, the FQPA required EPA to consider potential human health risks from all pathways of dietary and non-dietary exposures to more than one pesticide acting through a common mechanism of toxicity.

The “Guidance for Submission of Probabilistic Human Health Exposure Assessments to the Office of Pesticide Programs” was issued in 1998; <http://www.epa.gov/fedrgstr/EPA-PEST/1998/November/Day-05/6021.pdf>. The “Guidance for Submission of Probabilistic Human Health Exposure Assessments” provided general guidance on the conduct of probabilistic risk assessments. The guidance was intended to be used chiefly by persons conducting human health exposure assessments for purposes of registration or reregistration of pesticides.

EPA is withdrawing the “Guidance for Submission of Probabilistic Human Health Exposure Assessments to the Office of Pesticide Programs” because it has been superseded by several other EPA policy and guidance documents. These include: (1) “General Principles for Performing Aggregate Exposure and Risk Assessments,” <http://www.epa.gov/pesticides/trac/science/aggregate.pdf>, and (2) “Guidance on Cumulative Risk Assessment of Pesticide Chemicals That Have a Common Mechanism of Toxicity,” http://epa.gov/pesticides/trac/science/cumulative_guidance.pdf.

The “General Principles for Performing Aggregate Exposure and Risk Assessments” focus upon describing principles to guide the way in which aggregate exposure and risk assessment may be performed when more extensive distributional data and more sophisticated exposure assessment, methods and tools are available.

The “Guidance on Cumulative Risk Assessment of Pesticide Chemicals That Have a Common Mechanism of Toxicity” provides guidance for OPP scientists for evaluating and estimating the potential human risks associated with such multi-chemical and multi-pathway exposures to pesticides.

The policies and guidance mentioned above reflect EPA’s most recent guidance, thus superseding the information in “Guidance for Submission of Probabilistic Human Health Exposure Assessments to the Office of Pesticide Programs.” While the information in the document we are withdrawing is not necessarily inaccurate, it is outdated.

This action is also responsive to the recommendations made by EPA’s Office of Inspector General during its review of EPA’s implementation of FQPA. In its report “Opportunities to Improve Data Quality and Children’s Health through the FQPA” issued January 10, 2006 <http://www.epa.gov/oig/reports/2006/20060110-2006-P-00009.pdf> the Office of Inspector General Recommended that EPA should update the status of its science policy issue papers. This **Federal Register** notice updates the public on the status of one of the science policy papers which has been superseded by other guidance.

List of Subjects

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

Dated: June 30, 2009.

James Jones,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.
[FR Doc. E9-16273 Filed 7-14-09; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2009-0467; FRL-8424-7]

Lead Wheel Balancing Weights; TSCA Section 21 Petition; Notice of Receipt and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA has received a petition under section 21 of the Toxic Substances Control Act (TSCA), and requests comments on issues raised by the petition. The petition was received from the Ecology Center of Ann Arbor, Michigan and the Sierra Club et al., (petitioners) on May 29, 2009. The petition requests that EPA establish regulations prohibiting the manufacture, processing, and distribution in commerce of lead wheel balancing weights. EPA must either grant or deny the petition within 90 days of filing.

DATES: Comments must be received on or before July 30, 2009

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2009-0467, by one of the following methods:

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

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2009-0467. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPPT-2009-0467. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Linter, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Mark Henshall, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-0523; e-mail address: henshall.mark@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to you if you manufacture, process, distribute or use lead wheel balancing weights or are an automobile tire retailer. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the

technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. TSCA Section 21

A. What is a TSCA Section 21 Petition?

Under section 21 of TSCA (15 U.S.C. 2620), any person can petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under TSCA section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth the facts that are claimed to establish

the necessity for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. A petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding within 60 days of either a denial or if EPA fails to grant or deny the expiration of the 90-day period.

B. What Criteria Apply to a Decision on a TSCA Section 21 Petition?

Section 21(b)(1) of TSCA requires that the petition "set forth the facts which it is claimed establish that it is necessary" to issue the rule or order requested. 15 U.S.C. 2620(b)(1). Thus, TSCA section 21 implicitly incorporates the statutory standards that apply to the requested actions. In addition, TSCA section 21 establishes standards a court must use to decide whether to order EPA to initiate rulemaking in the event of a lawsuit filed by the petitioner after denial of a TSCA section 21 petition. 15 U.S.C. 2620(b)(4)(B). Accordingly, EPA will refer to the standards in TSCA section 21 and in the provisions under which actions have been requested to evaluate this petition.

III. Summary of TSCA Section 21 Petition Received

A. What Action was Requested?

On May 29, 2009, EPA received a petition from the Ecology Center and the Sierra Club et al., petitioning EPA to establish regulations prohibiting the manufacture, processing, and distribution in commerce of lead wheel balancing weights ("wheel weights").

The petition and information submitted by the petitioner(s) is included in the docket at <http://www.regulations.gov>, under EPA-HQ-OPPT-2009-0467.

B. What Support Do the Petitioners Offer?

This petition incorporates by reference a previous petition submitted by the Ecology Center on May 13, 2005 (OPPT-2005-0032) (70 FR 35667, June 21, 2005) (FRL-7720-5), which requested a very similar action. In that petition, the Ecology Center asked EPA to prohibit the manufacturing, processing, distribution in commerce, and use and improper disposal of lead wheel balancing weights. EPA denied that petition on August 8, 2005.

The petitioners note that they have previously highlighted that automobiles

are a significant contributor of ongoing lead releases to the environment. The previous petition identified lead wheel balancing weight failure (weights falling off rims into roadways) as one of the largest ongoing releases of lead to the environment. The previous petition also noted that lead is consistently found to be in high concentrations on roadways and in end-of-life, vehicle waste (commonly called Auto Shredder Residue (ASR)). The petitioners also commented that lead wheel balancing weights are the second largest ongoing use of lead in vehicles and play a significant role in the release of lead to the environment.

The petitioners also note that on August 29, 2008 EPA announced its voluntary National Lead-Free Wheel Weight Initiative (NLFWWI). The Initiative's 40 charter members and four subsequent members include every new car manufacturer, four domestic lead wheel balancing weight producers (3M, Hennessy, Perfect, and Plombco), two leading tire manufacturers (Bridgestone Firestone and Goodyear) and major retailers (Bridgestone Firestone, Goodyear, Costco, Wal-Mart, and Sam's Club). These organizations committed in writing to:

- Identify the volume of lead to be eliminated.
- Reduce the use of lead for wheel balancing weights by December 31, 2011.
- Take responsibility for providing information, education, and outreach to the public, regarding the benefits of using lead-free wheel balancing weights.
- Properly collect and recycle used lead wheel balancing weights in their current inventory or acquired through normal business operation.
- Publicly endorse the NLFWWI and encourage the use of lead-free wheel balancing weights by others.

Petitioners cited EPA's National Lead-Free Wheel Weight Initiative web page which states:

- 12.5 million pounds of lead from wheel balancing weight is uncontrolled or unmanaged in the environment.
- 1.6 million pounds of lead is lost when wheel balancing weights fall off during normal driving conditions such as hitting a pot hole.
- 10.9 million pounds is sold or given to hobbyists for recreational purposes.

Petitioners estimate that no more than one-third of the lead wheel weight market would potentially be changed to lead-free due to the NLFWWI.

Petitioners also point to recent state actions to address wheel balancing weights. The petition notes that on April 28, 2009, the State of Washington instituted a ban on lead wheel balancing

weights effective January 1, 2011 and that California, Iowa, and Maine have similar proposals under consideration. The petition also stated that in 2008, Vermont banned lead wheel balancing weights on state-owned vehicles by January 1, 2010 and in new motor vehicles as of January 1, 2011.

IV. EPA Seeks Public Comment

Under TSCA section 21, EPA must either grant or deny a petition within 90 days. EPA is providing this opportunity for the public to comment on, or provide any additional information relevant to, the issues identified in the petition. In order for the Agency to consider such comments within the 90-day petition review period, EPA must receive the comments by July 30, 2009 (see **ADDRESSES**).

In particular, EPA seeks information on the following:

- Quantitative information, data and/or case examples (e.g., recent scientific and technical studies, including analytical data results, analyses of environmental impacts, and statistical analyses) associated with the potential environmental releases to the air, surface water, ground water, and soil (particularly regarding potential releases within 1 mile of roadways, and potential releases to particularly sensitive environments or human and ecological populations) from lead wheel balancing weights and the following alternatives to lead tire weights: Steel tire weights; zinc alloy wheel balancing weights; plastic metal composite wheel balancing weights; and tin wheel balancing weights.
- Quantitative information and data (scientific and technical studies, including analytical data results, analysis of environmental impacts, statistical analyses, etc.) associated with releases of lead to the air, surface water, ground water, and soil within 1 mile of roadways from wheel balancing weights and all other sources.
- Information on whether the following list of potential exposure routes associated with releases from lead (and other alternative material) wheel balancing weights is complete or accurate, and whether other possible exposure routes associated with such releases should be considered: Dust in and near roadways; dust from roadways migrating to residential front yards, being tracked into houses and inhaled and/or ingested by children; wheel balancing weights and/or particles swept up by municipal street cleaners being incinerated, leading to increased levels of lead in air; wheel balancing weights and/or particles swept up by municipal street cleaners and land

filled, leading to increased levels of lead in ground water; vapors from home smelting of used wheel balancing weights obtained from gas stations and small tire retailers; wheel balancing weights left on cars that may be collected and burned in electric arc furnaces, releasing lead vapor and particulate matter to the air; releases associated with auto shredder activities (e.g., residues released to air or water); and releases from roadways to streams resulting in potential exposures to aquatic and terrestrial species.

- Quantitative or anecdotal information on the current availability and suitability of lead-free wheel balancing weights as alternatives, in both original equipment and aftermarket settings, particularly any comparisons between lead-free and lead wheel balancing weights in terms of price, ease of installation, durability, and other attributes of performance and suitability.

In assessing the usability of any data or information that may be submitted, EPA plans to follow the guidelines in EPA's "A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information" (EPA 100B-03/001), referred to as the "Assessment Factors Document." The "Assessment Factors Document" was published in the **Federal Register** issue of July 1, 2003 (68 FR 39086) (FRL-7520-2) and is available on-line at <http://www.epa.gov/osa/spc/assess.htm>.

List of Subjects

Environmental protection, lead, wheel balancing weights, zinc.

Dated: July 6, 2009.

James Jones,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E9-16815 Filed 7-14-09; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-0837; FRL-8425-3]

Malathion; Product Cancellation Order and Amendments to Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations and amendments to terminate uses, voluntarily requested by the registrants and accepted by the Agency, of products containing the pesticide malathion, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a May 20, 2009 **Federal Register** Notice of Receipt of Requests from the malathion registrants to voluntarily cancel or to amend to terminate uses of certain malathion product registrations. These are not the last malathion products registered for use in the United States. In the May 20, 2009 Notice, EPA indicated that it would issue an order implementing the cancellations and amendments to terminate uses, unless the Agency received substantive comments within the 30 day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests within this period. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations and amendments to terminate uses. Any distribution, sale, or use of the malathion products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective July 15, 2009.

FOR FURTHER INFORMATION CONTACT: Eric Miederhoff, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-

0001; telephone number: (703) 347-8028; fax number: (703) 308-7070; e-mail address: miederhoff.eric@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2007-0837. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

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

II. What Action is the Agency Taking?

This notice announces the cancellations and amendments to terminate uses, as requested by registrants, of certain end-use malathion products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Tables 1 and 2 of this unit.

TABLE 1.—MALATHION PRODUCT CANCELLATIONS

Registration Number	Product Name	Company
228-68	Riverdale Malathion 5	Nufarm Americas, Inc.
228-93	Riverdale Bin Spray	Nufarm Americas, Inc.

TABLE 1.—MALATHION PRODUCT CANCELLATIONS—Continued

Registration Number	Product Name	Company
228-244	Riverdale 50% Malathion E.C.	Nufarm Americas, Inc.
228-252	Riverdale 4% Malathion Dust	Nufarm Americas, Inc.
228-274	Riverdale ULV Malathion	Nufarm Americas, Inc.
655-794	Prentox Malathion 57% EC	Prentiss, Inc.
5905-7	Fyfanon 5 LB Emulsion	Helena Chemical Company
5905-443	Helena Malathion 8 Insecticide	Helena Chemical Company
34704-3	Malathion 55 Insecticide Premium Grade	Loveland Products Inc.
34704-18	Malathion ULV Concentrate Insecticide	Loveland Products Inc.
34704-119	Clean Crop Malathion 8EC Insecticide	Loveland Products Inc.
34704-721	Niagara Malathion 5 Dust	Loveland Products Inc.

TABLE 2.—MALATHION PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES

Registration Number	Product Name	Company	Terminate Use
192-96	Dexol Malathion Insect Control	Value Garden Supply	Residential lawns (broadcast)
239-739	Ortho Malathion 50 Insect Spray	The Scotts Company LLC	Residential lawns (broadcast)
655-310	Malathion 95% Technical Premium	Prentiss, Inc.	Greenhouse food crops, Commercial/Institutional/Industrial premises/equipment (outdoor), sewer systems
655-598	Prentox Malathion 50% Emulsifiable Insecticide	Prentiss, Inc.	Commercial/Institutional/Industrial premises/equipment (outdoor)
655-777	Prentox 5 LB Malathion Spray	Prentiss, Inc.	Greenhouse food crops, Commercial/Institutional/Industrial premises/equipment (outdoor), lentils, manure piles, residential lawns (broadcast)
769-736	SMCP Malathion Mole Cricket Bait Insecticide	Value Garden Supply	Residential lawns (broadcast), golf course turf
769-620	AllPro Malathion 57% Premium Grade	Value Garden Supply	Lentils, greenhouse uses, sewage systems, fly control for outdoor building surfaces
769-621	SMCP Malathion EM-5	Value Garden Supply	Residential lawns (broadcast)
769-644	SMCP MV Fog Solution	Value Garden Supply	Animal premise uses for dairy and livestock barns, stables and pens, food processing plants, outdoor use as a crack and crevice treatment around dairies and stables
769-844	Pratt Malathion Spray	Value Garden Supply	Residential lawns (broadcast)
769-961	Pratt Malathion 80	Value Garden Supply	Dairy cattle (lactating and nonlactating), poultry houses, cowpea forage and hay, cranberry, plum
5905-250	Fyfanon 8 LB Emulsion	Helena Chemical Company	Lentils, cowpea
9779-5	Malathion 5	WinField Solutions	Lentils
10088-56	Malathion 57%	Athea Laboratories, Inc.	Ornamental lawns and turf
10163-21	Prokil Malathion 8	Gowan	Lentils, greenhouse uses
10163-152	Malathion Technical	Gowan	Greenhouse food use
19713-217	Drexel Malathion 5EC	Drexel Chemical Company	Lentils

TABLE 2.—MALATHION PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES—Continued

Registration Number	Product Name	Company	Terminate Use
19713-402	Drexel Malathion Technical	Drexel Chemical Company	Greenhouse food crops, uses around commercial and industrial buildings, sewage systems
34704-108	Clean Crop Malathion 57 EC	Loveland Products, Inc.	Lentils
34704-474	Cythion 8 Aquamul	Loveland Products, Inc.	Lentils
47000-107	Prozap Malathion	Chem-Tech Ltd.	Lentils, residential lawns (broadcast)
48273-26	Marman Malathion ULV	Nufarm	Lentils, greenhouse food uses
59144-1	Malathion 50% Insect Spray	Gro Tec, Inc.	Greenhouse uses
66330-220	Malathion 5 EC	Arysta LifeScience	Lentils, Greenhouse uses
66330-228	Malathion Technical	Arysta LifeScience	Greenhouse uses
66330-248	Malathion 8 EC	Arysta LifeScience	Greenhouse uses, lentils, Around the outside of buildings

Table 3 of this unit includes the names and addresses of record for all registrants of the products in Tables 1 and 2 of this unit, in sequence by EPA company number.

TABLE 3.— REGISTRANTS OF CANCELLED OR AMENDED MALATHION PRODUCTS

EPA Company Number	Company Name and Address
239	The Scotts Company LLC 14111 Scottslawn Road Marysville, OH 43041
655	Prentiss Incorporated 509 Tower Valley Drive Hillsboro, MO 63050
769, 192	Value Garden Supply 9100 W. Bloomington Freeway Suite 113 Bloomington, MN 55431
5905	Helena Chemical Company 7664 Moore Road Memphis, TN 38120
9779	WinField Solutions PO Box 64589 MS 5705 St. Paul, MN 55164-0589
10088	Athea Laboratories, Inc. PO Box 240014 Milwaukee, WI 53224

TABLE 3.— REGISTRANTS OF CANCELLED OR AMENDED MALATHION PRODUCTS—Continued

EPA Company Number	Company Name and Address
10163	Gowan PO Box 5569 Yuma, AZ 85366-5569
19713	Drexel Chemical Company 1700 Channel Avenue PO Box 13327 Memphis, TN 38113-0327
34704	Loveland Products, Inc. 7251 W 4th Street PO Box 1286 Greeley, CO 80632-1286
47000	Chem-Tech, Ltd. 4515 Fleur Dr. #303 Des Moines, IA 50321
48273, 228	Nufarm Americas, Inc. 150 Harvester Drive, Suite 200 Burr Ridge, IL 60527
59144	RegWest on behalf of Gro Tec, Inc. 30856 Rocky Road Greeley, CO 80631-9375
66330	Arysta Life Science North America 15401 Weston Parkway, Suite 150 Cary, NC 27513

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the May 20, 2009 **Federal Register** notice (74 FR 23708; FRL-8414-2) announcing the Agency's receipt of the requests for voluntary cancellations and amendments to terminate uses of malathion.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations and amendments to terminate uses of malathion registrations identified in Tables 1 and 2 of Unit II. Accordingly, the Agency orders that the malathion product registrations identified in Tables 1 and 2 of Unit II. are hereby canceled or amended to terminate the affected uses. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 of Unit II. in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this notice includes the following existing stocks provisions.

Registrants may sell or distribute existing stocks for 1 year from the effective date of cancellation. This policy is in accordance with the Agency's statement of policy as prescribed the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL-3846-4). Existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a special review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Malathion.

Dated: July 2, 2009.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9-16641 Filed 7-14-09; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8931-4]

EPA Science Advisory Board Staff Office; Notification of Two Public Teleconferences of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public teleconferences of the chartered SAB to conduct quality reviews of two draft SAB reports.

DATES: The teleconference dates will be Thursday, August 6, 2009 from 2 to 3:30 p.m. (Eastern Standard Time), and

Friday, August 28, 2009, from 2 p.m. to 3:30 p.m. (Eastern Standard Time).

ADDRESSES: The meetings will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning these public teleconferences should contact Mr. Thomas Miller, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 343-9982; fax (202) 233-0643; or e-mail at miller.tom@epa.gov. General information concerning the EPA Science Advisory Board can be found on the SAB Web site at <http://www.epa.gov/sab>.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA), notice is hereby given that the EPA Science Advisory Board (SAB) will hold public teleconferences to conduct two quality reviews of draft SAB committee reports. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background

(a) *SAB Quality Review of the Draft SAB Report on EPA's Economic Analysis Guidelines Update.* The Chartered SAB will conduct a quality review of the SAB Environmental Economics Advisory Committee (EEAC) draft report on EPA's Economic Analysis Guidelines Update from 2 p.m. to 3:30 p.m. on Thursday, August 6, 2009. EPA's National Center for Environmental Economics (NCEE) has requested SAB review of EPA's revised Guidelines for Preparing Economic Analyses. EPA last issued Guidelines for Preparing Economic Analyses in September 2000 to represent Agency policy on the preparation of economic analysis required by legislation and administrative orders. EPA received advice from the SAB in developing those Guidelines. Since 2000, there has been considerable new economic research and EPA has received new guidance from the Office of Management and Budget pertaining to the Agency's conduct of regulatory analysis. In response, NCEE has revised and updated the Guidelines and has requested SAB review. More information on this topic can be found

on the SAB Web site at http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Guidelines%20Review?OpenDocument.

(b) *SAB Quality Review of the Draft SAB Panel Report on the EPA Expert Elicitation White Paper.* The Chartered SAB will conduct a quality review of the draft report from its Expert Elicitation Advisory Panel from 2 p.m. to 3:30 p.m. on Friday, August 28, 2009. EPA's Office of the Science Advisor (OSA) has requested SAB review of an "Expert Elicitation (EE) Task Force White Paper." The White Paper discusses the potential utility of using expert elicitation to support EPA regulatory and non-regulatory analyses and decision-making, provides recommendations for expert elicitation "good practices," and describes steps for a broader application across EPA. OSA has asked the SAB to provide advice regarding the potential usefulness of expert elicitation, how to strengthen the scientific basis for its use, and the implications for possible implementation at EPA. More information on this topic can be found on the SAB Web site at http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Expert%20Elicitation%20White%20Paper?OpenDocument.

Availability of Meeting Materials: The agenda and other materials in support of these teleconferences will be placed on the SAB Web site at <http://www.epa.gov/sab> in advance of each meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider during these teleconferences. *Oral Statements:* In general, individuals or groups requesting time to make an oral presentation at a public SAB teleconference will be limited to three minutes, with no more than one-half hour for all speakers. To be placed on the public speakers list for the August 6, 2009 teleconference interested individuals should contact Mr. Thomas Miller, DFO, in writing (preferably by e-mail), by July 31 at the contact information provided above. Those interested in being placed on the public speakers list for the August 28, 2009 teleconference should contact Mr. Miller in the manner noted above by August 22, 2009. *Written Statements:* Written statements relevant to the August 6, 2009 teleconference should be received in the SAB Staff Office by July 31, 2009 so that the information may be made available to the SAB for their consideration prior to the teleconferences. Written statements

relevant to the August 28, 2009 teleconference should be received in the SAB Staff Office by August 20, 2009. Written statements should be supplied to the DFO via e-mail to miller.tom@epa.gov (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Thomas Miller at (202) 343-9982, or miller.tom@epa.gov. To request accommodation of a disability, please contact Mr. Miller, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: July 9, 2009.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9-16842 Filed 7-14-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8931-8]

Farm, Ranch, and Rural Communities Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92-463, EPA gives notice of a meeting of the Farm, Ranch, and Rural Communities Committee (FRRCC). The purpose of the FRRCC is to provide advice to the Administrator of EPA on environmental issues and programs that impact, or are of concern to, farms, ranches, and rural communities. The FRRCC is a part of EPA's efforts to expand cooperative working relationships with the agriculture industry and others who are interested in agricultural issues and to achieve greater progress in environmental protection.

The purpose of the meeting is to further advance: (1) Discussion of the impacts of Agency agriculture-related programs, policies, and regulations regarding climate change and renewable energy; (2) identification and development of a comprehensive environmental strategy for livestock

operations; and (3) development of a constructive approach or framework to address areas of common interest between sustainable agriculture and protection of the environment. A copy of the meeting agenda will be posted at <http://www.epa.gov/ocem/frcc>.

DATES: The Farm, Ranch, and Rural Communities Committee will hold an open meeting on Tuesday, August 25, 2009, from 8:30 a.m. (registration at 8 a.m.) until 6 p.m., and Thursday, August 27, 2009, from 8:30 a.m. until 1 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held at the Sheraton Grand Hotel, 1230 J Street, Sacramento, CA 95814, telephone: 916-447-1700. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT:

Alicia Kaiser, Designated Federal Officer, kaiser.alicia@epa.gov, 202-564-7273, US EPA, Office of the Administrator (1101A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make brief oral comments or provide written statements to the FRRCC should be sent to Alicia Kaiser, Designated Federal Officer, at the contact information above. All requests must be submitted no later than August 12, 2009.

Meeting Access: For information on access or services for individuals with disabilities, please contact Alicia Kaiser at 202-564-7273 or kaiser.alicia@epa.gov. To request accommodation of a disability, please contact Alicia Kaiser, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: July 8, 2009.

Alicia Kaiser,

Designated Federal Officer.

[FR Doc. E9-16841 Filed 7-14-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8931-3]

Casmalia Disposal Site; Notice of Proposed CERCLA Administrative De Minimis Settlement

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, as amended (CERCLA) and section 7003 of the Resource Conservation and Recovery Act (RCRA), the EPA and the State of California's Department of Toxic Substances Control (DTSC), Regional Water Quality Control Board, Central Coast Region (Regional Board) and Department of Fish and Game (DFG) (jointly referred to as the State Regulatory Entities), are hereby providing notice of a proposed administrative *de minimis* settlement concerning the Casmalia Disposal Site in Santa Barbara County, California (the Casmalia Disposal Site). Section 122(g) of CERCLA provides EPA with the authority to enter into administrative *de minimis* settlements. This settlement is intended to resolve the liabilities of 142 settling parties for the Casmalia Disposal Site under sections 106 and 107 of CERCLA and section 7003 of RCRA. These parties are identified below. Of these 142 parties, 100 have elected to resolve their liability with EPA and the State Regulatory Entities. An additional 42 parties have elected to resolve their liability only with the State Regulatory Entities at this time; 23 of these have previously settled with EPA. The parties that have settled with the State Regulatory Entities have also settled potential natural resource damage claims by the California Department of Fish and Game as the State Natural Resource Trustee ("State Trustee"). Most of those resolving their liability to the EPA have also elected to resolve their liability for response costs and potential natural resource damage claims by the United States Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA). The 100 parties settling with EPA and the State Regulatory Entities and State Trustee sent 19,762,737 lbs. of waste to the Casmalia Disposal Site, which represents 0.35% of total Site waste. This settlement requires these parties to pay over \$1.7 million to EPA. These parties and the additional 42 parties settling with only the State Regulatory Entities and State Trustee will pay a total of \$675,000 to the State Regulatory Entities and State Trustee. EPA is simultaneously publishing another **Federal Register** Notice relating to another settlement with *de minimis* parties that had received offers prior to the group of parties listed in this Notice.

Settling Parties: Parties that have elected to settle their liability with EPA and the State Regulatory Entities and State Natural Resource Trustee at this time are as follows: ABM Industries;

Ambassador Laundry; Ancon Marine Environmental & Transportation (f/k/a Ancon Environmental); Apple Computers; Applied Materials, Inc.; Asian Garden, LTD (f/k/a Bridgecreek Development Company); Authentic Specialty Foods, Inc.; Avis Budget Group, Inc (f/k/a Cendant Corporation); BAE Systems Technology Solutions and Services Inc. (f/k/a Vitro Corporation); Beneto, Inc.; Benjamin and/or Larry Seewack; Brazos Asset Management, Inc.; Burbank-Glendale-Pasadena Airport Authority; C. R. Bard, Inc.; Cal Tech Cabinets; Cal Western Paints, Inc.; CertainTeed Pacific Windows Corporation (f/k/a Marshall Aluminum Products); Charlestone Road Venture I/II; Chemex, Inc.; City of Oakland; City of Pasadena; Coastcast Corporation (f/k/a Western Metals Corporation); Colton-Wartsila, Inc.; Conrac Corporation/Mark IV Industries, Inc.; Cooper US, Inc. (f/k/a Procyon Technologies, Inc.); County of Sonoma; County of Yolo; Crest Car Wash Inc.; Cytec Engineered Materials, Inc.; D.H. Holdings Corp.; DeNaults Hardware; Dixon Hard Chrome, Inc.; Do Able Products; Inc., Electrolyzing, Inc.; EME, Inc.; Evergreen Oil; Farwest Corrosion Control; Flo-Kem, Inc.; Freeway Truck Parts; Furukawa Electric North America, Inc (a/k/a KSI Disc Products, Inc.); Garhauer Marine Corporation; Georgia Pacific Corporation; Gillespie Furniture Company; Gould Electronics, Inc.; Griffith Homes; Hasa Inc. (f/k/a Hasa Pool Chemical Inc.); Henkel of America, Inc. and Henkel Corporation; Hoke, Inc. as successor by merger GoRegulator, Inc (f/k/a Vemco Corporation); IdentiPHI, Inc. (f/k/a SSP Solutions, Inc./Litronic Industries); Indian Head Industries, Inc.; International Textile Group, Inc. (f/k/a Safety Components International, Inc.); Life Technologies Corporation, Successor in interest to Dexter Corporation/Mogul Corporation; Irvine Ranch Water District; Iversen Motors Company, Inc.; Lithonia West; Los Angeles West Mosquito Abatement District; Magnesium Alloy Products Company, Marmon Group, Inc.; McCormick Construction; McDonald's Corporation; Nalco Co.; National Oilwell Varco, LP; Nelco Products, Inc.; Oakite; Palace Plating; PB Fasteners; Penetone Corp.; Penske Truck Leasing Company LP; Pepsi Bottling Group; Philips Electronics; Plastics Research Corporation; Precision Castparts Corporation; Price Club (n/k/a Costco Wholesale); Quaker Chemical Corporation; Quinn Group, Inc.; Robert Mack Plumbing; Roberts Consolidated Industries Inc.; Safina Enterprises; Santa Maria Diesel Service; Santa Ynez Valley;

College Elementary School District; Seven-Up Bottling Company of San Francisco and Seven-Up/RC Bottling Company, Inc., collectively referred to as Cadbury Schweppes Americas Beverages; SF Recycling & Disposal, Inc (f/k/a SWETS); Sogem Precious Metals Corporation; Spreckels Sugar Company, Inc. (f/k/a Imperial Holly Corporation); Stevedoring Services of America; Taiyo Yuden USA Inc. (successor to Xentek, Inc.); Teradyne, Inc.; The Glidden Company; The Rouse Company (f/k/a Howard Hughes Properties); Thunderbolt Wood Treating Co.; Town Center Associates; Toyota of El Cajon; Triple A Machine Shop; Tusonix; UIS Inc.; Ventura Harbor Boatyard, Inc.; Vishay Intertechnology, Inc.; Vulcan Pipe & Engineering Company; Welch's Overall Cleaning Co., Inc.; and Westside Produce Company.

Parties that have elected to settle their liability with the State Regulatory Entities and State Natural Resource Trustee only at this time are as follows (parties with asterisks previously settled with EPA):

Aramark Uniform & Career Apparel, LLC/Aratex Services, Inc.; BJ Services Company*; Burch Ford; C P Auto Products; Calwest Galvanizing Corp.*; CDG Parts Distribution Corp.(fka Beck/Arnley World Parts Corp.); City & County of San Francisco*; City of Santa Ana; City of Santa Barbara*; City of Santa Barbara Redevelopment Agency*; Cognis Corp. as successor to Henkel Corp.*; Crompton Corp.*; Cyclo Chemical Corp.*; Danny's Jiffy Car Wash; Engel & Gray; Ferguson Enterprises, Inc.*; Ford Motor Co.*; Greif Bros.; Greyhound Lines, Inc.*; Hexion Specialty Chemicals, Inc. (fka Borden, Inc.)*; International Paper Co.; Lithographix Inc.; Masco Corp.*; Neutron Plating; Occidental Chemical*; OXY USA (fka Cities Services Oil & Gas)*; Pacific Wood Preserving Companies; Phibro-Tech, Inc., successor to Southern California Chemical Co., Inc.*; Photonics, Inc.; Reichhold, Inc., (f/k/a Reichhold Chemical)*; Rossco Inc.; Royal Gold, Inc., (fka Royal Resources, Inc.)*; Sanmina-SCI Corp.*; Shepherd Machinery Co.; Simon Levi; Solar Turbines Inc.*; Southern California Graphics; Tecrim; The Black & Decker Corp.*; Triton Oil and Gas Corp.*; Tyco Electronics Corp.*; and Val G. Ramos.

DATES: EPA and the State Regulatory Entities will receive written comments relating to the settlement until August 14, 2009. The EPA and State Regulatory Entities will consider all comments they receive during this period, and may modify or withdraw consent to the

settlement if any comments disclose facts or considerations indicating that the settlement is inappropriate, improper, or inadequate.

Public Meeting: In accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area. The deadline for requesting a public meeting is July 29, 2009. Requests for a public meeting may be made by contacting Karen Goldberg by e-mail at goldberg.karen@epa.gov, or by facsimile at (415) 947-3570. If a public meeting is requested, information about the date and time of the meeting will be published in the local newspaper, *The Santa Maria Times*, and will be sent to persons on the EPA's Casmalia Site mailing list. To be added to the mailing list, please contact: Jackie Lane at (415) 972-3236 or by e-mail at lane.jackie@epa.gov. A copy of the settlement document may be obtained by calling (415) 369-0559 extension 10, and leaving a message with your name, phone number, and mailing address or e-mail address.

ADDRESSES: Written comments should be addressed to Karen Goldberg, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street (mail code RC-3), San Francisco, California 94105-3901, or may be faxed to her at (415) 947-3570 or sent by e-mail to goldberg.karen@epa.gov. A copy of the comments should be sent to: Caroline Rudolph, Project Coordinator, DTSC, 8800 Cal Center Drive, Sacramento, CA 95826.

FOR FURTHER INFORMATION CONTACT: Additional information about the Casmalia Disposal Site and about the proposed settlement may be obtained on the EPA-maintained Casmalia Web site at: <http://www.epa.gov/region09/casmalia> or by calling Karen Goldberg at (415) 972-3951, who will direct any questions relating to the State Regulatory Entities to the appropriate State officials.

Dated: July 2, 2009.

Keith Takata,

Director, Superfund Division, Region IX.

[FR Doc. E9-16845 Filed 7-14-09; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Economic Inclusion (Come-IN); Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of Open Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Economic Inclusion, which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on initiatives to expand access to banking services by underserved populations.

DATES: Thursday, July 30, 2009, from 8:45 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

FOR FURTHER INFORMATION: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898-7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will be focused on prize-linked savings and issues and challenges related to reaching out to underserved and low- and moderate-income consumers. The agenda may be subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562-6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting.

This ComE-IN meeting will be Webcast live via the Internet at: <http://www.vodium.com/goto/fdic/advisorycommittee.asp>. This service is free and available to anyone with the following systems requirements: <http://www.vodium.com/home/sysreq.html>. Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash. Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed Internet connection is recommended. The ComE-IN meeting videos are made

available on-demand approximately two weeks after the event.

Dated: July 10, 2009.

Robert E. Feldman,

Committee Management Officer, Federal Deposit Insurance Corporation.

[FR Doc. E9-16775 Filed 7-14-09; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL ELECTION COMMISSION**Sunshine Act Notices**

DATE AND TIME: Tuesday, July 14, 2009, 10:30 a.m. Wednesday, July 15, 2009, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. § 437g. Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, July 16, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

DRAFT ADVISORY OPINION 2009-13: The Black Rock Group, by William J. McGinley, Esq. Report of the Audit Division on Edwards for President. Final Rule on Transfer of Motor Voter Regulations to the EAC. Presidential Debates Rulemaking Petitions—Suggested Disposition.

PROPOSED RULE OF AGENCY PROCEDURES: Notice to Respondents in Non-Complaint Generated Matters.

PROPOSED RULE OF AGENCY PROCEDURES: Notice to Named Respondents of Additional Material Facts or Additional Potential Violations.

PROPOSED RULE OF AGENCY PROCEDURES: Notice to Potential Respondents in Enforcement.

PROPOSED RULE OF AGENCY PROCEDURES: Modification of Procedural Rules for Probable Cause Hearings.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should

contact Mary Dove, Commission Secretary, at (202) 694-1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694-1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9-16701 Filed 7-14-09; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM**Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 7, 2009.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *FA Capital, LLC and Community Bank Investors of America, L.P., both of Richmond, Virginia;* to retain control of 7.08 percent and to acquire up to 7.80 percent of the voting shares of Commonwealth Bankshares, Inc.,

Norfolk, Virginia, and thereby acquire shares of Bank of the Commonwealth, Norfolk, Virginia.

B. Federal Reserve Bank of Kansas City (Todd Offerbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Tri-Valley Bank Shares, Inc., Lincoln, Nebraska*; to become a bank holding company by acquiring 100 percent of the voting shares of Tri-Valley Bank, Talmage, Nebraska.

Board of Governors of the Federal Reserve System, July 10, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9-16739 Filed 7-14-09; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information

collection plans, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden 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.

Proposed Project Survey of Evidence-Based Practices in State Medicaid Plans: Coverage Structures, Access and Challenges—NEW

The Substance Abuse and Mental Health Services Administration (SAMHSA) is conducting a survey to gather information about current and planned State Medicaid activities and policies related to six mental health/substance abuse evidence-based practices (EBPs). This survey is part of a five-year project to increase attention to and understanding of Medicaid mental health and substance abuse service issues among State Medicaid and Mental Health/Substance Abuse Directors, as well as improve the effectiveness of State Medicaid mental health services.

The purpose of the survey is to determine the overall management and delivery of mental health and substance abuse services within Medicaid and the use of six specific evidence-based practices. The information provided through the survey will be vital to increasing awareness and understanding of Medicaid mental health/substance abuse evidence-based practice activities. This information will also be used to develop numerous products to help State Medicaid and Mental Health/Substance Abuse Directors adopt, deliver, and refine existing policies about mental health and substance abuse EBPs.

A survey will be sent to the director of each State Medicaid office in the 50 States and the District of Columbia, with responses expected over a four-week period. The survey contains a total of 116 questions on the overall management and delivery of mental health and substance abuse services within Medicaid and on the implementation of six EBPs within the State Medicaid program. However, respondents will complete part or all of the survey, depending on how many of the six EBPs are being implemented in their State. The survey will be sent electronically to State Medicaid Directors, and they may respond by e-mail or facsimile. To reduce burden, prior to administering the survey several survey questions will be pre-completed based on existing information, as available.

Below is the table of the estimated total burden hours:

Respondent	Number of respondents	Number of responses per respondent	Average burden hour	Total burden hours
State Medicaid Directors	51	1	1	51

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7-1044, One Choke Cherry Road, Rockville, MD 20857 and e-mail her a copy at summer.king@samhsa.hhs.gov. Written comments should be received within 60 days of this notice.

Dated: July 10, 2009.

Dennis O. Romero,

Deputy Executive Officer and Deputy Director, Office of Program Services.

[FR Doc. E9-16768 Filed 7-14-09; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Child Care and Development Fund (CCDF) Financial Report, Form ACF-696 (States and Territories).

OMB No.: 0970-0163.

Description: States and Territories use the Financial Report Form ACF-696 for reporting Child Care and Development Fund (CCDF) expenditures. Authority to collect and report this information is

found in Section 658G of the Child Care and Development Block Grant Act of 1990, as revised. In addition to the Program Reporting Requirements set forth in 45 CFR Part 98, Subpart H, the regulations at 45 CFR 98.65(g) and 98.67(c)(1) authorize the Secretary to require financial reports as necessary.

The form provides specific data regarding claims and provides a mechanism for States to request Child Care grant awards and to certify the availability of State matching funds. Failure to collect this data would seriously compromise ACF's ability to monitor Child Care and Development Fund expenditures. This information is also used to estimate outlays and may

be used to prepare ACF budget submissions to Congress.

The American Recovery and Reinvestment Act (ARRA) of 2009, (Pub. L. 111-5) provides an additional \$2 billion for the Child Care and Development Fund to help States, Territories, and Tribes provide child care assistance to low income working families. CCDF Program Instruction (CCDF-ACF-PI-2009-03) provided guidance on ARRA spending requirements.

Section 1512 of the ARRA legislation requires recipients to report quarterly spending and performance data on the

public Web site, "Recovery.gov". Federal agencies are required to collect ARRA expenditure data and performance data and these data must be clearly distinguishable from the regular CCDF (non-ARRA) funds. To ensure transparency and accountability, the ARRA authorizes Federal agencies and grantees to track and report separately on expenditures from funds made available by the stimulus bill. Office of Management and Budget (OMB) guidance implementing the ARRA legislation indicates that agencies requiring additional information for

oversight should rely on existing authorities and reflect these requirements in their award terms and conditions as necessary, following existing procedures. Therefore, to capture ARRA expenditures, the ACF-696 has been modified (by the addition of a column) for reporting ARRA expenditure data. In addition, a new data element will ask States and Territories to estimate the number of child service months funded with ARRA dollars. The collection will not duplicate other information.

Respondents: States and Territories.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CCDF State and Territory Plan	56	4	5	1,120

Estimated Total Annual Burden Hours: 1,120.

Additional Information:

ACF is requesting that OMB grant a 90 day approval for this information collection under procedures for emergency processing by July 15, 2009. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690-7275.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17 Street, NW., Washington, DC 20503, FAX (202) 395-6974.

Dated: June 6, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9-16477 Filed 7-14-09; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2009-N-0296]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions in FDA's food labeling regulations and on Form FDA 3570, "Model Small Business Nutrition Labeling Exemption Notice," which small businesses may use to claim the small business exemption from nutrition labeling.

DATES: Submit written or electronic comments on the collection of information by September 14, 2009.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA-710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-796-3794.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques,

when appropriate, and other forms of information technology.

Food Labeling Regulations—21 CFR Parts 101, 102, 104, and 105 (OMB Control Number 0910–0381)—Extension

FDA regulations require food producers to disclose to consumers and others specific information about themselves or their products on the label or labeling of their products. Related regulations require that food producers retain records establishing the basis for the information contained in the label or labeling of their products and provide those records to regulatory officials. Finally, certain regulations provide for the submission of food labeling petitions to FDA. FDA's food labeling regulations under parts 101, 102, 104, and 105 (21 CFR parts 101, 102, 104, and 105) were issued under the authority of sections 4, 5, and 6 of the Fair Packaging and Labeling Act (the FPLA) (15 U.S.C. 1453, 1454, and 1455) and under sections 201, 301, 402, 403, 409, 411, 701, and 721 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 331, 342, 343, 348, 350, 371, and 379e). Most of these regulations derive from section 403 of the act, which provides that a food product shall be deemed to be misbranded if, among other things, its label or labeling fails to bear certain required information concerning the food product, is false or misleading in any particular, or bears certain types of unauthorized claims. The disclosure requirements and other collections of information in the regulations in parts 101, 102, 104, and 105 are necessary to ensure that food products produced or sold in the United States are in compliance with the labeling provisions of the act and the FPLA.

Section 101.3 of FDA's food labeling regulations requires that the label of a food product in packaged form bear a statement of identity (i.e., the name of the product), including, as appropriate, the form of the food or the name of the food imitated. Section 101.4 prescribes requirements for the declaration of ingredients on the label or labeling of food products in packaged form. Section 101.5 requires that the label of a food product in packaged form specify the name and place of business of the manufacturer, packer, or distributor and, if the food producer is not the manufacturer of the food product, its connection with the food product. Section 101.9 requires that nutrition information be provided for all food products intended for human consumption and offered for sale, unless an exemption in § 101.9(j) applies to the product. Section 101.9(g)(9) also

provides for the submission to FDA of requests for alternative approaches to nutrition labeling. Finally, § 101.9(j)(18) provides for the submission to FDA of notices from firms claiming the small business exemption from nutrition labeling. FDA has developed Form FDA 3570 to assist small businesses in claiming the small business exemption from nutrition labeling. The form contains all the elements required by § 101.9(j)(18).

Section 101.10 requires that restaurants provide nutrition information, upon request, for any food or meal for which a nutrient content claim or health claim is made. Section 101.12(b) provides the reference amount that is used for determining the serving sizes for specific products, including baking powder, baking soda, and pectin. Section 101.12(e) provides that a manufacturer that adjusts the reference amount customarily consumed (RACC) of an aerated food for the difference in density of the aerated food relative to the density of the appropriate nonaerated reference food must be prepared to show FDA detailed protocols and records of all data that were used to determine the density-adjusted RACC. Section 101.12(g) requires that the label or labeling of a food product disclose the serving size that is the basis for a claim made for the product if the serving size on which the claim is based differs from the RACC. Section 101.12(h) provides for the submission of petitions to FDA to request changes in the reference amounts defined by regulation.

Section 101.13 requires that nutrition information be provided in accordance with § 101.9 for any food product for which a nutrient content claim is made. Under some circumstances, § 101.13 also requires the disclosure of other types of information as a condition for the use of a nutrient content claim. For example, under § 101.13(j), if the claim compares the level of a nutrient in the food with the level of the same nutrient in another "reference" food, the claim must also disclose the identity of the reference food, the amount of the nutrient in each food, and the percentage or fractional amount by which the amount of the nutrient in the labeled food differs from the amount of the nutrient in the reference food. It also requires that when this comparison is based on an average of food products, this information must be provided to consumers or regulatory officials upon request. Section 101.13(q)(5) requires that restaurants document and provide to appropriate regulatory officials, upon request, the basis for any nutrient

content claims they have made for the foods they sell.

Section 101.14(d)(2) and (d)(3) provides for the disclosure of nutrition information in accordance with § 101.9 and, under some circumstances, certain other information as a condition for making a health claim for a food product. Section 101.15 provides that, if the label of a food product contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label shall appear thereon in both the foreign language and in English. Section 101.22 contains labeling requirements for the disclosure of spices, flavorings, colorings, and chemical preservatives in food products. Section 101.22(i)(4) sets forth reporting and recordkeeping requirements pertaining to certifications for flavors designated as containing no artificial flavor. Section 101.30 specifies the conditions under which a beverage that purports to contain any fruit or vegetable juice must declare the percentage of juice present in the beverage and the manner in which the declaration is to be made. Section 102.33 specifies the common or usual name for beverages that contain fruit or vegetable juice.

Section 101.36 requires that nutrition information be provided for dietary supplements offered for sale, unless an exemption in § 101.36(h) applies. Section 101.36(f)(2) cross-references the provisions in § 101.9(g)(9) for the submission to FDA of requests for alternative approaches to nutrition labeling. Also, § 101.36(h)(2) cross-references the provisions in § 101.9(j)(18) for the submission of small business exemption notices. As noted previously, FDA has developed Form FDA 3570 to assist small businesses in claiming the small business exemption from nutrition labeling. The form contains all the elements required by § 101.36(h)(2).

Section 101.36(e) permits the voluntary declaration of the quantitative amount and the percent of Daily Value of a dietary ingredient on a "per day" basis in addition to the required "per serving" basis, if a dietary supplement label recommends that the dietary supplement be consumed more than once per day.

Section 101.42 requests that food retailers voluntarily provide nutrition information for raw fruits, vegetables, and fish at the point of purchase, and § 101.45 contains guidelines for providing such information. Also, § 101.45(c) provides for the submission of nutrient databases and proposed nutrition labeling values for raw fruit,

vegetables, and fish to FDA for review and approval.

Sections 101.54, 101.56, 101.60, 101.61, and 101.62 specify information that must be disclosed as a condition for making particular nutrient content claims. Section 101.67 provides for the use of nutrient content claims for butter, and cross-references requirements in other regulations for ingredient declaration (§ 101.4) and disclosure of information concerning performance characteristics (§ 101.13(d)). Section 101.69 provides for the submission of a petition requesting that FDA authorize a particular nutrient content claim by regulation. Section 101.70 provides for the submission of a petition requesting that FDA authorize a particular health claim by regulation. Section 101.77(c)(2)(ii)(D) requires the disclosure of the amount of soluble fiber per serving in the nutrition labeling of a food bearing a health claim about the relationship between soluble fiber and a reduced risk of coronary heart disease. Section 101.79(c)(2)(iv) requires the disclosure of the amount of folate per serving in the nutrition labeling of a food bearing a health claim about the relationship between folate and a reduced risk of neural tube defects.

Section 101.100(d) provides that any agreement that forms the basis for an exemption from the labeling requirements of section 403(c), (e), (g), (h), (i), (k), and (q) of the act be in writing and that a copy of the agreement

be made available to FDA upon request. Section 101.100 also contains reporting and disclosure requirements as conditions for claiming certain labeling exemptions (e.g., § 101.100(h)).

Section 101.105 specifies requirements for the declaration of the net quantity of contents on the label of a food in packaged form and prescribes conditions under which a food whose label does not accurately reflect the actual quantity of contents may be sold, with appropriate disclosures, to an institution operated by Federal, State, or local government. Section 101.108 provides for the submission to FDA of a written proposal requesting a temporary exemption from certain requirements of §§ 101.9 and 105.66 for the purpose of conducting food labeling experiments with FDA's authorization.

Regulations in part 102 define the information that must be included as part of the statement of identity for particular foods and prescribe related labeling requirements for some of these foods. For example, § 102.22 requires that the name of a protein hydrolysate shall include the identity of the food source from which the protein was derived.

Part 104, which pertains to nutritional quality guidelines for foods, cross-references several labeling provisions in part 101 but contains no separate information collection requirements.

Part 105 contains special labeling requirements for hypoallergenic foods,

infant foods, and certain foods represented as useful in reducing or maintaining body weight.

The disclosure and other information collection requirements in the previously mentioned regulations are placed primarily upon manufacturers, packers, and distributors of food products. Because of the existence of exemptions and exceptions, not all of the requirements apply to all food producers or to all of their products. Some of the regulations affect food retailers, such as supermarkets and restaurants.

The purpose of the food labeling requirements is to allow consumers to be knowledgeable about the foods they purchase. Nutrition labeling provides information for use by consumers in selecting a nutritious diet. Other information enables a consumer to comparison shop. Ingredient information also enables consumers to avoid substances to which they may be sensitive. Petitions or other requests submitted to FDA provide the basis for the agency to permit new labeling statements or to grant exemptions from certain labeling requirements. Recordkeeping requirements enable FDA to monitor the basis upon which certain label statements are made for food products and whether those statements are in compliance with the requirements of the act or the FPLA.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—TOTAL ESTIMATED ANNUAL BURDEN¹

21 CFR Section and Part/Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
101.3, 101.22, 102 and 104	25,000	1.03	25,750	.5	12,875
101.4, 101.22, 101.100, 102, 104 and 105	25,000	1.03	25,750	1	25,750
101.5	25,000	1.03	25,750	0.25	6,438
101.9, 101.13(n), 101.14(d)(3), 101.62, and 104	25,000	1.03	25,750	4	103,000
101.9(g)(9) and 101.36(f)(2)	12	1	12	4	48
101.9(j)(18) and 101.36(h)(2)/Form FDA 3570	10,000	1	10,000	8	80,000
101.10	300,000	1.5	450,000	0.25	112,500
101.12(b)	29	2.3	67	1	67
101.12(e)	25	1	25	1	25
101.12(g)	5,000	1	5,000	1	5,000
101.12(h)	5	1	5	80	400
101.13(d)(1) and 101.67	200	1	200	1	200

TABLE 1.—TOTAL ESTIMATED ANNUAL BURDEN¹—Continued

21 CFR Section and Part/Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
101.13(j)(2), 101.13(k), 101.54, 101.56, 101.60, 101.61, and 101.62	5,000	1	5,000	1	5,000
101.13(q)(5)	300,000	1.5	450,000	0.75	337,500
101.14(d)(2)	300,000	1.5	450,000	0.75	337,500
101.15	160	10	1,600	8	12,800
101.22(i)(4)	25	1	25	1	25
101.30 and 102.33	1,500	5	7,500	1	7,500
101.36	300	40	12,000	4	48,000
101.36(e)	125	13	1,625	0.25	406
101.42 and 101.45	1,000	1	1,000	0.5	500
101.45(c)	5	4	20	4	80
101.69	3	1	3	25	75
101.70	5	1	5	80	400
101.79(c)(2)(i)(D)	1,000	1	1,000	0.25	250
101.79(c)(2)(iv)	100	1	100	0.25	25
101.100(d)	1,000	1	1,000	1	1,000
101.105 and 101.100(h)	25,000	1.03	25,750	0.5	12,875
101.108	1	1	1	40	40
Total					1,110,279

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—TOTAL ESTIMATED ANNUAL BURDEN¹

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
101.12(e)	25	1	25	1	25
101.13(q)(5)	300,000	1.5	450,000	0.75	337,500
101.14(d)(2)	300,000	1.5	450,000	0.75	337,500
101.22(i)(4)	25	1	25	1	25
101.100(d)(2)	1,000	1	1,000	1	1,000
101.105(t)	100	1	100	1	100
Total					676,150

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated annual reporting and recordkeeping burdens are based on agency communications with industry and FDA's knowledge of and experience with food labeling and the submission of petitions and requests to the agency. Where an agency regulation implements an information collection requirement in the act or the FPLA, only any

additional burden attributable to the regulation has been included in FDA's burden estimate.

No burden has been estimated for those requirements where the information to be disclosed is information that has been supplied by FDA. Also, no burden has been estimated for information that is

disclosed to third parties as a usual and customary part of a food producer's normal business activities. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information. Under 5 CFR 1320.3(b)(2), the time, effort, and

financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

In this request for extension of OMB approval under the PRA, FDA is combining the burden hours associated with OMB control numbers 0910-0395 (collection entitled "Food Labeling: Nutrition Labeling of Dietary Supplements on a 'Per Day' Basis") and 0910-0515 (collection entitled "Food Labeling: Trans Fatty Acids in Nutrition Labeling") with the burden hours approved under OMB control number 0910-0381 (collection entitled "Food Labeling Regulations").

Dated: July 8, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9-16869 Filed 7-14-09; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Child Care and Development Fund (CCDF) Financial Report, Form ACF-696T (Tribes)

OMB No.: 0970-0195.

Description: Tribes use the Financial Report Form ACF-696T to report Child Care and Development Fund (CCDF) expenditures. Authority to collect and report this information is found in Section 6580 of the Child Care and Development Block Grant Act of 1990, as revised. In addition to the Program Reporting Requirements set forth in 45 CFR Part 98, Subpart H, the regulations at 45 CFR 98.65(g) and 98.67(c)(1) authorize the Secretary to require financial reports as necessary.

Tribal grantees submit the ACF-696T report on an annual basis on behalf of the Tribal Lead Agency administering the Child Care and Development Fund (CCDF).

The American Recovery and Reinvestment Act (ARRA) of 2009, (Pub. L. 111-5) provides an additional \$2 billion for the Child Care and Development Fund to help States, Territories, and Tribes provide child

care assistance to low income working families. CCDF Program Instruction (CCDF-ACF-PI-2009-03) provided guidance on ARRA spending requirements.

Section 1512 of the ARRA legislation requires recipients to report quarterly spending and performance data on the public Web site, "Recovery.gov". Federal agencies are required to collect ARRA expenditure data and performance data and these data must be clearly distinguishable from the regular CCDF (non-ARRA) funds. To ensure transparency and accountability, the ARRA requires Federal agencies and grantees to track and report separately on expenditures from funds made available by the stimulus bill. Office of Management and Budget (OMB) guidance implementing the ARRA legislation indicates that agencies requiring additional information for oversight should rely on existing authorities and reflect these requirements in their award terms and conditions as necessary, following existing procedures. Therefore, to capture ARRA expenditures, the ACF 696T has been modified (by the addition of two columns) for reporting ARRA data. In addition, a new data element will ask Tribes to estimate the number of child service months funded with ARRA dollars. The collection will not duplicate other information.

Respondents: Tribal CCDF Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CCDF Tribal Plan	232	1	8	1,856

Estimated Total Annual Burden Hours: 1,856.

Additional Information:

ACF is requesting that OMB grant a 90-day approval for this information collection under procedures for emergency processing by July 15, 2009. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690-7275.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 Street, NW.,

Washington, DC. 20503, FAX (202) 395-6974.

Dated: June 6, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9-16478 Filed 7-14-09; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-09-09CC]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is soliciting public comment on the specific aspects of the proposed information collection described below. To request more information on the proposed projects or to obtain a copy of the data collection

plans and instruments, call 404-639-5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333; or send an e-mail to omb@cdc.gov.

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 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. Written comments should be received within 60 days of this notice.

Proposed Project

CDC American Recovery and Reinvestment Act of 2009 (ARRA) Performance Progress Report—New—Office of the Chief Operating Officer (OCCO), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The American Recovery and Reinvestment Act of 2009 was signed into law on February 17, 2009, Public Law 111-5 ("Recovery Act"). The purpose of this proposed data collection is to collect quarterly performance information for all CDC grants and cooperative agreements funded under the Recovery Act. This will allow CDC to receive reports on recipient performance measures as set forth in the applicable Funding Opportunity Announcement (FOA) and Notice of Grant Award. This requirement is in addition to the reporting requirements of Section 1512 of the Recovery Act, set forth by the Office of Management and Budget (OMB) under the data collection

instrument titled "Standard Data Elements for Reports under Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (Grants, Cooperative Agreements and Loans)."

The form CDC proposes to use is a modified Performance Progress Report (SF-PPR) which was successfully piloted by the Administration for Children and Families (ACF). CDC intends to use this modified form for quarterly standard reporting of performance measures set forth in the applicable FOA and Notice of Grant Award for all CDC Recovery Act funded grants and cooperative agreements. In addition to allowing for uniformity of information collection, this format will support systematic electronic collection and submission of information. The form contains identifying data elements and a section for a performance narrative.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Recipients using CDC ARRA Performance Progress Report	405	4	1.5	2430

Dated: July 8, 2009.
Maryam I. Daneshvar,
Acting Reports Clearance Officer, Centers for Disease Control and Prevention.
 [FR Doc. E9-16772 Filed 7-14-09; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2009-D-0283]

Draft Guidance for Industry on Postmarketing Studies and Clinical Trials; Implementation of the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Postmarketing Studies and Clinical Trials—Implementation of Section 505(o) of the Federal Food, Drug, and Cosmetic Act." The Food and Drug Administration

Amendments Act of 2007 (FDAAA) added new provisions to the Federal Food, Drug, and Cosmetic Act (the act) authorizing FDA to require certain postmarketing studies and clinical trials for prescription drugs and biological products approved under the act or the Public Health Service Act (the PHS Act). This draft guidance provides information on the implementation of the new provisions and a description of the types of postmarketing studies and clinical trials that will generally be required under the new legislation (postmarketing requirements (PMRs)) and the types that will generally be agreed-upon commitments (postmarketing commitments (PMCs)) because they do not meet the new statutory criteria for required postmarketing studies and clinical trials.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by October 13, 2009.

ADDRESSES: Submit written requests for single copies of this draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993-0002; or the Office of Communication, Outreach and Development (HFM-40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448. The draft guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 301-827-1800. Send one self-addressed adhesive label to assist the office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Nancy Clark, Center for Drug Evaluation and Research, Food and Drug

Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6144, Silver Spring, MD 20993-0002, 301-796-5400; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-827-6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Postmarketing Studies and Clinical Trials—Implementation of Section 505(o) of the Federal Food, Drug, and Cosmetic Act." In the past, FDA has used the term "PMC" to refer to studies (including clinical trials), conducted by an applicant after FDA has approved a drug for marketing or licensing, that were intended to further refine the safety, efficacy, or optimal use of a product, or to ensure consistency, and reliability of product quality. These commitments were either agreed upon by FDA and the applicant or, in certain circumstances, required by FDA. Prior to the passage of FDAAA, FDA required PMCs in the following situations:

- Subpart H and subpart E accelerated approvals, which require postmarketing studies to demonstrate clinical benefit (21 CFR 314.510 and 601.41);
- Deferred pediatric studies, where studies are required under the Pediatric Research Equity Act (PREA) (21 CFR 314.55(b) and 601.27(b)); and
- Animal Efficacy Rule approvals, where studies to demonstrate safety and efficacy in humans are required at the time of use (21 CFR 314.610(b)(1) and 601.91(b)(1)).

Title IX, section 901 of FDAAA (Public Law 110-85) amended the act by adding new section 505(o) (21 U.S.C. 355(o)). Section 505(o) of the act authorizes FDA to require certain postmarketing studies or clinical trials for prescription drug and biological products approved under section 505 of the act or section 351 of the PHS Act (42 U.S.C. 262). Section 505(o)(3)(B) of the act states that postmarketing studies and clinical trials may be required for one of three purposes:

- To assess a known serious risk related to the use of the drug;
- To assess signals of serious risk related to the use of the drug; or
- To identify an unexpected serious risk when available data indicates the potential for a serious risk.

This draft guidance provides information on the implementation of new section 505(o) of the act. The draft guidance also describes which types of postmarketing studies and clinical trials

will be required (PMRs) under section 505(o) of the act and which types will be agreed-upon commitments because they do not meet the statutory criteria for required studies and trials (PMCs).

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the implementation of section 901 of FDAAA on postmarketing studies and clinical trials. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. 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.

III. Paperwork Reduction Act of 1995

This draft guidance provides information on the implementation of section 901 of FDAAA. The collections of information requested in the draft guidance would be submitted under 21 CFR 314.80, 314.81, and 601.70. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and are approved under OMB control numbers 0910-0230, 0910-0001, and 0910-0338. Section VI of the draft guidance refers to procedures in the guidance entitled "Formal Dispute Resolution: Appeals Above the Division Level," which contains collections of information approved under OMB control number 0910-0430.

IV. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, or <http://www.regulations.gov>.

Dated: July 2, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9-16867 Filed 7-14-09; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-1998-D-0021 (formerly Docket No. 1998D-0514)]

Guidance for Industry on Abbreviated New Drug Applications: Impurities in Drug Substances; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "ANDAs: Impurities in Drug Substances," which is a revision of a guidance for industry of the same name that published in November 1999. The guidance provides recommendations for applicants on what chemistry, manufacturing, and controls (CMC) information to include regarding the reporting, identification, and qualification of impurities in drug substances produced by chemical synthesis when submitting original abbreviated new drug applications (ANDAs); drug master files (DMFs), including type II DMFs; and ANDA supplements for changes in the synthesis or processing of a drug substance.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Lawrence Yu, Center for Drug Evaluation and Research (HFD-600), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240-276-9310.

SUPPLEMENTARY INFORMATION:**I. Background**

FDA is announcing the availability of a revised guidance for industry entitled "ANDAs: Impurities in Drug Substances." The guidance provides revised recommendations on what CMC information to include regarding the reporting, identification, and qualification of impurities in drug substances produced by chemical synthesis when submitting: (1) Original ANDAs; (2) DMFs, including type II DMFs; and (3) ANDA supplements for changes in the synthesis or processing of a drug substance. The guidance also provides recommendations for establishing acceptance criteria for impurities in drug substances.

In November 1999, FDA published the first version of this guidance. In 2003, the International Conference on Harmonisation made changes to recommendations on impurities in drug substances for new drug applications in the guidance for industry entitled "Q3A Impurities in New Drug Substances" (Revision 1) (Q3A(R)). As a result of these changes, FDA began an effort to revise this guidance for ANDAs. FDA has revised the guidance to update information on listing impurities, setting acceptance criteria, and qualifying impurities (thresholds and procedures) in ANDAs to make it consistent with Q3A(R).

On January 31, 2005 (70 FR 4857), FDA announced the availability of the draft revision for public comment. The comment period closed on May 2, 2005. A number of comments were received, which the agency considered carefully as it began the process of finalizing the guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on impurities in drug substances for generic drugs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such an approach satisfies the requirements of the applicable statutes and regulations.

II. 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.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in 21 CFR part 314 have been approved under OMB Control No. 0910-0001.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <http://www.regulations.gov>.

Dated: July 7, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9-16868 Filed 7-14-09; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention (CDC)****Board of Scientific Counselors, Coordinating Office for Terrorism Preparedness and Emergency Response (BSC, COTPER)**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), CDC announces the following meeting of the aforementioned committee:

Times and Dates: 12 p.m.-5:15 p.m., August 13, 2009; 9 a.m.-3:30 p.m., August 14, 2009.

Place: CDC, 1600 Clifton Road, NE., Global Communications Center, Building 19, Auditorium B3, Atlanta, Georgia 30333.

Status: Open to the public for observation and comment, limited only by the space available. The meeting room accommodates approximately 50 people. Visitors to the CDC campus must be processed in accordance with established Federal policies and procedures and should pre-register for the meeting as described in Additional Information for visitors. Public comment periods are planned for both meeting days.

Purpose: This Board is charged with advising the Secretary of HHS and Director of CDC concerning strategies and goals for the programs and research within COTPER, monitoring the strategic direction and focus of the Divisions, and conducting peer review of scientific programs. For additional information about the COTPER BSC, please visit: <http://emergency.cdc.gov/cotper/science/counselors.asp>.

Matters To Be Discussed: A program response to the Board's recommendations from the external peer review of the fiscal allocation process; a briefing on the findings of the external peer review of COTPER's Division of Select Agents and Toxins; status updates on other external peer reviews of COTPER activities and programs; and a discussion of external peer review topics for fiscal year 2010. Agenda items are subject to change as priorities dictate.

Additional Information For Visitors: All visitors are required to present a valid form of picture identification issued by a State, Federal or international government. To expedite the security clearance process for visitors to the CDC Roybal campus, all visitors must pre-register by submitting the following information by e-mail or phone (see Contact Person for More Information) no later than 12 noon (EDT) on Monday, July 27, 2009:

- Full Name,
- Organizational Affiliation,
- Complete Mailing Address,
- Citizenship, and
- Phone Number or E-mail Address.

For foreign nationals or non-U.S. citizens, pre-approval is required. Please contact the BSC Coordinator (see Contact Person for More Information) in advance of the posted pre-registration deadline for additional security requirements that must be met.

Contact Person for More Information: Matthew Jennings, BSC Coordinator, COTPER, CDC, 1600 Clifton Rd., NE., Mailstop D-44, Atlanta, GA 30333, *Telephone:* (404) 639-7357; *Facsimile:* (404) 639-7977; *E-mail:* COTPER.BSC.Questions@cdc.gov.

The Director, Management Analysis and Service Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and Agency for Toxic Substances and Disease Registry.

Dated: July 7, 2009.

Elaine L. Baker,

Director, Management Analysis and Service Office, Centers for Disease Control and Prevention.

[FR Doc. E9-16771 Filed 7-14-09; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Type 1 Diabetes TrialNet: Clinical Centers.

Date: August 3, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Blvd, Bethesda, MD 20817.

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892-5452. (301) 594-7791. goterrobinsonc@extra.nidk.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 8, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-16694 Filed 7-14-09; 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 Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Grand Opportunities Meeting I—ARRA.

Date: July 21–22, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Kan Ma, PhD, Scientific Review Administrator, EP Review Branch, NIH/NIAMS, One Democracy Plaza, Suite 800, Bethesda, MD 20892-4872. (301) 594-4952. mak2@mail.nih.gov.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Grand Opportunities Meeting II—ARRA.

Date: July 23–24, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Gaithersburg Washingtonian, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Charles H. Washabaugh, PhD, Scientific Review Administrator, Review Branch, NIAMS/NIH, 6701 Democracy Blvd., Room 816, Bethesda, MD 20892. (301) 451-4838. washabac@mail.nih.gov.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, New Faculty Recruitment Core Grants (P30) ARRA.

Date: July 28, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Eric H. Brown, PhD, Scientific Review Officer, EP Review Branch,

NIH/NIAMS, 6701 Democracy Blvd., Room 1068, MSC 4874, Bethesda, MD 20892-4874. (301) 435-0815. browneri@mail.nih.gov.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Phase II Clinical Trials Related to Fractures.

Date: July 30, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Eric H. Brown, PhD, Scientific Review Officer, EP Review Branch, NIH/NIAMS, 6701 Democracy Blvd., Room 1068, MSC 4874, Bethesda, MD 20892-4874. (301) 435-0815. browneri@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 7, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9-16693 Filed 7-14-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY**U.S. Citizenship and Immigration Services****Agency Information Collection Activities: File No. OMB-5; Extension of an Existing Information Collection; Comment Request**

ACTION: 60-Day Notice of Information Collection Under Review; File No. OMB-5, Notice of Immigration Pilot Program; OMB Control No. 1615-0061.

The Department 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 September 14, 2009.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Officer, 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 make sure to add OMB Control No. 1615-0061 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 an existing information collection.

(2) *Title of the Form/Collection:* Notice of Immigration Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* File No. OMB-5; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected will be used by USCIS to determine which regional centers should participate in the immigration pilot program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 40 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,000 annual burden hours.

If you need a copy of the information collection, 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: July 10, 2009.

Stephen Tarragon,

*Deputy Chief, Regulatory Products Division,
U.S. Citizenship and Immigration Services,
Department of Homeland Security.*

[FR Doc. E9-16799 Filed 7-14-09; 8:45 am]

BILLING CODE 9111-97-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-467 and 731-TA-1164-1165 (Preliminary)]

Narrow Woven Ribbons With Woven Selvage From China and Taiwan

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-467 and 731-1164-1165 (Preliminary) under section 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 and Taiwan of narrow woven ribbons with woven selvage, provided for in subheading 5806.32 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by August 24, 2009. The Commission's views are due at Commerce within five business days thereafter, or by August 31, 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:* July 9, 2009.

FOR FURTHER INFORMATION CONTACT:

Nathanael Comly (202-205-3174), 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 July 9, 2009, by Berwick Offray LLC and its wholly-owned subsidiary Lion Ribbon Company, Inc., Berwick, PA.

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 July 30, 2009, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Nathanael Comly (202-205-3174) not later than July 27, 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 August 4, 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: July 9, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9-16747 Filed 7-14-09; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA-421-7]

Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China

Determination

On the basis of information developed in the subject investigation, the United States International Trade Commission (Commission) determined, pursuant to section 421(b)(1) of the Trade Act of 1974,¹ that certain passenger vehicle and light truck tires² from the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products¹ (74 FR 30321, June 25, 2009).

Recommendation on Proposed Remedy²

Chairman Shara L. Aranoff and Commissioners Charlotte R. Lane, Irving A. Williamson, and Dean A. Pinkert propose that the President, for a three-year period, impose a duty, in addition to the current rate of duty, on imports of certain passenger vehicle and light truck tires from China as follows: 55 percent *ad valorem* in the first year, 45 percent *ad valorem* in the second year, and 35 percent *ad valorem* in the third year. They further propose that, if applications are filed, the President direct the U.S. Department of Labor and the U.S. Department of Commerce to provide expedited consideration of Trade Adjustment Assistance for firms and/or workers that are affected by subject imports.

Background

The Commission instituted this investigation effective April 24, 2009 following receipt of a petition filed by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Pittsburgh, PA.

¹ Vice Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun made a negative determination.

² Vice Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun, having made a negative determination regarding market disruption, were not eligible to vote on a proposed remedy.

Notice of the institution of the Commission's investigation and of the scheduling of a public hearing to be held in connection therewith was given by posting a copy of the notice on the Commission's Web site (<http://www.usitc.gov>) and by publishing the notice in the **Federal Register** of April 29, 2009 (74 FR 19593). The hearing was held on June 2, 2009 in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

The views of the Commission are contained in USITC Publication 4085 (July 2009), entitled *Certain Passenger Vehicle and Light Truck Tires from China: Investigation No. TA-421-7*.

Issued: July 9, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9-16749 Filed 7-14-09; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 National Fluid Power Association Technology Roadmap Joint Development Process

Notice is hereby given that, on May 21, 2009, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Fluid Power Association Technology Roadmap Joint Development Process ("NFPA Technology Roadmap") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: Bimba Manufacturing, Monee, IL; Bosch Rexroth, Hoffman Estates, IL; Caterpillar, Joliet, IL; Center for Compact and Efficient Fluid Power, Minneapolis, MN; Deltrol Fluid Products, Bellwood, IL; Eaton Corporation, Eden Prairie, MN; Enfield Technologies, Trumbull, CT; Festo Corporation, Hauppauge, NY; Gates Corporation, Denver, CO; HUSCO International, Waukesha, WI; Lynch

Fluid Controls, Mississauga, Ontario, Canada; Moog, East Aurora, IL; National Fluid Power Association, Milwaukee, WI; Pall Aeropower, Fort Myers, FL; Parker Hannifan, Cleveland, OH; Poclain Hydraulics, Sturtevant, WI; Quality Control, Chicago, IL; ROSS Controls, Troy, MI; Sauer-Danfoss, Ames, IA; Schmalz, Raleigh, NC; and Sun Hydraulics, Sarasota, FL.

The general area of NFPA's planned activity is the joint development of an action plan to identify and prioritize research and development projects in the fluid power industry, specifically, research investments, capability developments, and skills acquisitions needed to achieve advancement in hydraulics and pneumatics technology to meet future fluid power needs. For more information concerning the joint activities, please contact Eric Lanke, CAE, Executive Director of the National Fluid Power Association at 3333 N. Mayfair Rd., Suite 211, Milwaukee, WI 53222.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9-16688 Filed 7-14-09; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on May 28, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Novartis Institutes for BioMedical Research, Inc., Cambridge, MA; AstraZeneca UK Limited, Westminster, London, UNITED KINGDOM; Glaxo Group, Ltd., Brentford, Middlesex, UNITED KINGDOM; Pfizer, Inc., New York, NY; Accelrys Inc., San Diego, CA; ChemTment, Amston, CT; ChemAxon Ltd., Budapest, HUNGARY; BioXpr,

Namur, BELGIUM; The Edge Software Consultancy Ltd., Guildford, Surrey, UNITED KINGDOM; and GGA Software Services LLC, Cambridge, MA.

The general area(s) of Pistoia Alliance, Inc.'s planned activity are to: (a) Streamline non-competitive elements of the pharmaceutical drug discovery workflow by the specification of common business terms, relationships and processes and to facilitate the development and adoption of open, accessible data standards, taxonomies, ontologies and Web-service descriptions (the "Specifications"); (b) promote such specifications and solutions worldwide; (c) provide for testing and conformity assessment of implementations in order to ensure and/or facilitate compliance with Specifications; (d) operate a branding program based upon distinctive trademarks to create high customer awareness of, demand for, and confidence in products designed in compliance with Specifications; and (e) undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9-16697 Filed 7-14-09; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association

Notice is hereby given that, on June 5, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), DVD Copy Control Association ("DVD CCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Continental Automotive GmbH, Wetzlar, GERMANY; DVS Korea Co., Ltd., Kyungi-do, REPUBLIC OF KOREA; East European Authoring and Encoding Centre Ltd., Sofia, BULGARIA; Ever Best Industrial (H.K.) Limited, Kowloon, HONG KONG-CHINA; Everbest Technology Development Ltd., North

Point, HONG KONG-CHINA; Forword Electronics Co., Ltd., Taichung City, TAIWAN; Hong Kong ASA Multimedia Co., Ltd., Kowloon, HONG KONG-CHINA; Orbit Corporation, Los Angeles, CA; Tecunion Electronics Technology Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Ultra Source Technology Corp., Hong Kong, HONG KONG-CHINA; Unicorn Information Systems Co., Ltd., Seoul, REPUBLIC OF KOREA; Willette Acquisition Corp. dba Allied Vaughn, Minneapolis, MN; and Zhejiang Tianle Digital Electric Co., Ltd., Zhejiang, PEOPLE'S REPUBLIC OF CHINA have been added as parties to this venture.

Also, Beautiful Enterprise Co., Ltd., Kowloon, HONG KONGCHINA; Cinea, Inc., Richmond, VA; Dicientia A/S, Sakskobing, DENMARK; Evatone, Inc., Clearwater, FL; Hewlett-Packard Company, Cupertino, CA; KalosNett Co., Ltd., Seoul, REPUBLIC OF KOREA; Kawai Musical Instruments Nfg. Co., Ltd., Shizouka, JAPAN; New York Nickel LLC, Bohemia, NY; Pinnacle Systems, GmbH, Braunschweig, GERMANY; Protect Software GmbH, Dortmund, GERMANY; Protocall Technologies Incorporated, Commack, NY; ScientificAtlanta, Inc., Lawrenceville, GA; and Zhongshan Tomel Audio & Video Products Co., Ltd., Guangdong, PEOPLE'S REPUBLIC OF CHINA have withdrawn as parties to this venture. In addition, Homenema Disk Inc. has changed its name to Homenema Technology Inc., Taipei Hsien, TAIWAN.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notifications disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on March 6, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 20, 2009 (74 FR 17985).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9-16698 Filed 7-14-09; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on June 10, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Media Workflow Association Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Floral Systems, Gainesville, FL; StorerTV, Mequon, WI; Matt Beard (individual member), Maud, UNITED KINGDOM; and John Luff (individual member), Sewickley, PA have been added as parties to this venture. Also, Digital Vision, London, UNITED KINGDOM; Nielsen, Westport, CT; SecurePath Technology LLC, Los Angeles, CA; and Rick Turbeville (individual member), Waynesboro, VA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on March 24, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 24, 2009 (74 FR 18748).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9-16699 Filed 7-14-09; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement: Subject Matter Experts Meetings on Organizational Culture and Performance

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups, or individuals to enter into a cooperative agreement for a 12-month period to begin in September, 2009. Work under this cooperative agreement will involve organizing up to four meetings of subject matter experts to assist NIC and the corrections field in ongoing work in the area of organizational culture and performance. Likely topics for the meetings include improving methods for evaluating organizational culture assessments using focus groups, the use of staff surveys in correctional agencies, culture change in correctional systems, and culture assessment and change in community corrections agencies.

DATES: Applications must be received by 4 p.m. (EDT) on Friday, August 14, 2009. Selection of the successful applicant and notification of review results to all applicants: September 15, 2009.

ADDRESSES: Mailed applications must be sent to Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, call (202) 307-3106, extension 0 for pickup.

Faxed or e-mailed applications will not be accepted. Electronic applications can be submitted via <http://www.grants.gov>.

FOR FURTHER INFORMATION CONTACT: A copy of this announcement can be downloaded from the NIC Web site at <http://www.nic.gov/cooperativeagreements>.

All technical or programmatic questions concerning this announcement should be directed to Pamela Davison. She can be reached by calling 1-800-995-6423 ext 0484 or by e-mail at pdavison@bop.gov.

SUPPLEMENTARY INFORMATION: The recipient of the award under this

cooperative agreement will organize and coordinate all logistical details for up to four meetings of subject matter experts in various aspects of organizational culture and performance as it applies to corrections. All expenses for these meetings, expected to last up to two days for up to 10 people, will be provided out of the funding awarded under this agreement. Participants for each meeting will be identified by NIC, and the location of the meetings will be determined by NIC based on the geographic distribution of the participants, but will take place within the contiguous 48 States.

The recipient of this award will assist NIC in locating an appropriate venue and coordinating local arrangements at the site, including meeting rooms, food, and beverage services. The recipient will also assist participants in arranging travel and lodging, and in reimbursing costs in conformity with Federal guidelines. Some participants may also be eligible to receive up to \$500 per day for their participation. For each meeting, one or two white papers may be prepared by individual participants to form the basis for discussion of the selected topic. Additional days, up to \$500 per day, may be paid to eligible authors of white papers. (Note that the payment of these daily rates are to be provided out of the funding awarded under this agreement.)

With input from NIC, the recipient will prepare each meeting agenda, participant lists, white papers, handouts, and supplementary materials, duplicate them in sufficient quantities, and deliver them to the venue. With input from NIC, the recipient will also supply or arrange for a facilitator for some meetings to be paid out of the funding awarded under this agreement. The recipient will also provide a note taker for each meeting.

Deliverables: By the end of the project, the recipient of this award will deliver the following products: (1) Detailed notes of the proceedings of each meeting, including transcriptions of any other written material produced during the meeting, such as the contents of flip charts; (2) Each of the white papers produced for the meetings, edited to be suitable for distribution to corrections practitioners and delivered in NIC's standard format; and (3) a summary report providing an overview of the meetings, their major themes, and any recommendations for the field.

Required Expertise: Successful applicants should have the organizational capacity to carry out all the tasks listed above, including demonstrated experience in organizing meetings of the size and type described.

Preference will also be given to applicants with a record of working with similar subject matter expert groups in criminal justice.

Application Requirements:

Applications should be concisely written, typed double spaced and reference the "NIC Opportunity Number" and Title provided in this announcement. Please limit the program narrative text to 20 double spaced, numbered pages. The application package must include: a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (e.g., July 1 through June 30), a program narrative responding to the requirements in this announcement, a description of the qualifications of the applicant(s), an outline explaining projected costs, and the following forms: OMB Standard Form 424, Application for Federal Assistance, OMB Standard Form 424A, Budget Information—Non Construction Programs, OMB Standard Form 424B, Assurances—Non Construction Programs (these forms are available at <http://www.grants.gov>) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (available at <http://www.nicic.org/Downloads/PDF/certif-frm.pdf>).

Applications may be submitted in hard copy, or electronically via <http://www.grants.gov>. If submitted in hard copy, there must be one, unbound original plus three copies of the full proposal (program and budget narratives, application forms and assurances). The original should have the applicant's signature in blue ink.

Authority: Public Law 93-415.

Funds Available: Up to \$100,000 is available for this project, subject to available funding, but preference will be given to applicants who provide the most cost efficient solutions in accomplishing the scope of work. Determination will be made based on best value to the Government, not necessarily the lowest bid. Funds may only be used for the activities that are directly related to the project.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual or team with expertise in the described areas.

This project will be a collaborative venture with the NIC Research and Evaluation Division.

Review Considerations: Applications received under this announcement will be subject to the NIC Review Process.

The criteria for the evaluation of each application will be as follows:

Organizational (75%)

Does the applicant have the necessary capacity and staff with the skills, knowledge, and expertise to demonstrate a high level of competency to carry out the tasks? Are the proposed project management and staffing plans realistic and sufficient to complete the project? Has the organization had past experience in organizing similar events in the criminal justice area?

Budget (25%)

Is the proposed budget realistic, provide sufficient cost detail/narrative, and represent good value relative to the anticipated results? Is there evidence that the applicant has proposed the most cost effective way of performing the work? Are there any innovative strategies proposed to contain costs?

Note: NIC will not award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1-800-333-0505 (if you are a sole proprietor, you would dial 1-866-705-5711 and select option 1).

Registration in the CCR can be done online at the CCR Web site: <http://www.ccr.gov>. A CCR Handbook and work sheet can also be reviewed at the Web site.

Publications produced under this award must follow the "Guidelines for Preparing and Submitting Manuscripts for Publication" as found in the *General Guidelines for Cooperative Agreements* which will be included in the award package.

Number of Awards: One.

NIC Opportunity Number: 09PEI30. This number should appear as a reference line in the cover letter, where the opportunity number is requested on the Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.602. **Executive Order 12372:** This program is not subject to the provisions of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Correction.

[FR Doc. E9-16744 Filed 7-14-09; 8:45 am]

BILLING CODE 4410-36-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before August 14, 2009.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail:* Standards-Petitions@dol.gov.

2. *Facsimile:* 1-202-693-9441.

3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202-693-9447 (Voice), barron.barbara@dol.gov (E-mail), or 202-693-9441 (Telefax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M-2009-015-C.

Petitioner: Utah American Energy, Inc., P.O. Box 910, East Carbon, Utah 84520.

Mine: Lila Canyon Mine, MSHA I.D. No. 42-02241, located in Emery County, Utah.

Regulation Affected: 30 CFR 75.350(a) (Belt air course ventilation).

Modification Request: The petitioner requests site specific relief from application of the existing standard to permit the use of return air in the belt air course. The petitioner states that: (a) Relief from the standard will only be in effect during the underground development process, to establish a ventilation breakout to the surface; and (b) relief from the standard will only be applicable to the underground "Rock Slope" area and will terminate upon establishing the ventilation breakout in the coal seam to the surface. The petitioner proposes to: (1) Install an atmospheric monitoring system (AMS) incorporating diesel discriminating (carbon monoxide and nitric oxide) sensors for early warning fire detection in the primary escapeway (intake) entry and the belt entry; (2) have the air in the monitoring entry(s) at a velocity of at least 50 feet per minute and have definite and distinct movement in the designated direction. The velocity measurements will be determined at locations in the entry which are representative of the cross-sectional areas found through the entry and not at locations where the entry is abnormally high (e.g. belt drives) or low (e.g. under overcasts); (3) determine the correct carbon monoxide ambient, alert, and alarm levels upon implementation of this site specific petition with the carbon monoxide ambient level at 5

ppm, and the alert and alarm levels at 10 ppm and 15 ppm respectively above the ambient; (4) incorporate time delays in the AMS, when a demonstrated need exists, to account for non-fire related carbon monoxide alert and alarm sensor signals; with time delays limited to three minutes. The length of any time delays or other techniques or methods that eliminate or reduce the need for time delays will be specified and approved in the mine ventilation plan; (5) the AMS will activate an alarm signal if the total concentration on uncorrected carbon monoxide measured by any sensor exceeds or is equal to 50 ppm. The concentration will represent all the carbon monoxide present in the sensor's atmosphere which includes carbon monoxide from diesel engines; (6) the methane monitoring system will be capable of providing both audible and visual signals on both the working section and at a manned location on the surface of the mine where personnel will be on duty at all times when miners are underground. When the methane level is 1.0 volume per centum, the monitoring system will initiate alarm signals; (7) design and install the methane monitoring system to de-energize the belt conveyor drive units when the methane level is 1.0 volume per centum. A trained person at the surface location will have two-way communication with the working section; (8) an AMS will be operating and a designated AMS operator will be on duty at a location on the surface of the mine where audible and visual signals from the AMS will be seen or heard and the AMS operator can promptly respond to these signals, whenever personnel are underground; (9) provide visual and audible signals at the designated surface location for any interruption of circuit continuity and any electrical malfunction of the system and have the signals at a sufficient magnitude to be seen or heard by the AMS operator; (10) provide sensors to detect carbon monoxide, nitric oxide, or methane that will be visually examined at least once each shift when belts are operated as part of a production shift; and (11) when a malfunction, alert, or alarm signal is received at the designated surface, the sensor(s) that are activated will be identified and the AMS operator will promptly notify appropriate personnel, including the "responsible person(s)" as referenced in 30 CFR 75.1501 on the affected working section(s) and in the affected areas where mechanized mining equipment is being installed or removed. In addition, an immediate investigation of the cause of the signal shall begin and the

required actions set forth in this site specific petition will be taken. Persons may review a complete description of the petitioner's alternative procedures at the MSHA address listed in this notice. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners by the existing standard.

Docket Number: M-2009-016-C.

Petitioner: RoxCoal, Inc., 1576 Stoystown Road, P.O. Box 149, Friedens, Pennsylvania 15541.

Mine: Augustus Mine, MSHA I.D. No. 36-08636; Geronimo Mine, MSHA I.D. No. 36-08645; Horning Mine, MSHA I.D. No. 36-09666; Kimberly Run Mine, MSHA I.D. No. 36-09549; Miller Mine, MSHA I.D. No. 36-08622; Quecreek #1 Mine, MSHA I.D. No. 36-08746; Roytown Mine, MSHA I.D. No. 36-09260, all located in Somerset County, Pennsylvania.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of battery-powered non-permissible surveying equipment in or inby the last crosscut. The petitioner states that: (1) All non-permissible electronic surveying equipment used in or inby the last open crosscut will be examined prior to use to ensure the equipment is being maintained in a safe operating condition; (2) the equipment will be examined by a qualified person at intervals not to exceed 7 days; (3) results of the examinations will be recorded in the weekly examination electrical equipment book. The examinations will include: (i) Checking the instrument for any physical damage and the integrity of the case; (ii) removing the battery and inspecting for corrosion; (iii) inspecting the contact points to ensure a secure connection to the battery; (iv) reinserting the battery and powering up and shutting down to ensure proper connections; and (v) checking the battery compartment cover to ensure that it is securely fastened; (4) a qualified person will continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in or inby the last open crosscut or in the return; (5) non-permissible surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent methane; (6) when 1.0 percent or more of methane is detected while the equipment is being used, the equipment will be de-energized immediately and will be withdrawn outby the last open crosscut; (7) non-permissible surveying

equipment will not be used where float coal dust is in suspension; (8) batteries contained in the surveying equipment will be changed out or charged in fresh air outby the last open crosscut; (9) qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of surveying equipment. The equipment will not be put into service initially until MSHA has inspected the equipment and determined that it is in compliance with all of the above terms and conditions; and (10) within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit to the District Manager proposed revisions for its part 48 training plan. The training plan will specify initial and refresher training. The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners by the standard.

Docket Number: M-2009-017-C.

Petitioner: RoxCoal, Inc., 1576 Stoystown Road, P.O. Box 149, Friedens, Pennsylvania 15541.

Mine: Augustus Mine, MSHA I.D. No. 36-08636; Geronimo Mine, MSHA I.D. No. 36-08645; Horning Mine, MSHA I.D. No. 36-09666; Kimberly Run Mine, MSHA I.D. No. 36-09549; Miller Mine, MSHA I.D. No. 36-08622; Quecreek #1 Mine, MSHA I.D. No. 36-08746; Roytown Mine, MSHA I.D. No. 36-09260, all located in Somerset County, Pennsylvania.

Regulation Affected: 30 CFR 75.507-1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements; equipment)

Modification Request: The petitioner requests a modification of the existing standard to permit the use of battery-powered non-permissible surveying equipment in return airways, including, but not limited to portable battery operated mine transits, total station surveying equipment, distance meters, and lap top computers. The petitioner states that: (1) All non-permissible electronic surveying equipment used in or inby the last open crosscut will be examined prior to use to ensure the equipment is being maintained in a safe operating condition; (2) the equipment will be examined by a qualified person at intervals not to exceed 7 days; (3) results of the examinations will be recorded in the weekly examination electrical equipment book. The examinations will include: (i) Checking

the instrument for any physical damage and the integrity of the case; (ii) removing the battery and inspecting for corrosion; (iii) inspecting the contact points to ensure a secure connection to the battery; (iv) reinserting the battery and powering up and shutting down to ensure proper connections; and (v) checking the battery compartment cover to ensure that it is securely fastened; (4) a qualified person will continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in or inby the last open crosscut or in the return; (5) non-permissible surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent methane; (6) when 1.0 percent or more of methane is detected while the equipment is being used, the equipment will be de-energized immediately and will be withdrawn out of the return; (7) non-permissible surveying equipment will not be used where float coal dust is in suspension; (8) batteries contained in the surveying equipment will be changed out or charged in fresh air out of the return; (9) qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of surveying equipment. The equipment will not be put into service initially until MSHA has inspected the equipment and determined that it is in compliance with all of the above terms and conditions; and (10) within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit to the District Manager proposed revisions for its part 48 training plan. The training plan will specify initial and refresher training. The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners by the standard.

Docket Number: M-2009-018-C.

Petitioner: R & K Coal Company, Inc., 642 Suedberg Road, Pine Grove, Pennsylvania 17963.

Mine: No. 1 Slope Mine, MSHA I.D. No. 36-09138, located in Daupin County, Pennsylvania.

Regulation Affected: 30 CFR 75.1200(d) & (i) (Mine map).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of cross-sections instead of contour lines through the intake slope at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope. In addition, the

petitioner proposes to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined, except when these veins are interconnected to other veins beyond the 100-foot limit, through rock tunnels. The petitioner states that: (1) Contour lines provide no useful information due to the steep pitch encountered in mining anthracite coal veins, and their presence would make portions of the map illegible; (2) use of cross-sections in lieu of contour lines has been practiced since the late 1800's and provide critical information about the spacing between veins and the proximity to other mine workings, which fluctuate considerably; (3) the mine workings above and below are usually inactive and abandoned, and therefore not subject to changes during the life of the mine; (4) all mapping for mines above and below is researched by petitioner's contract engineer for the presence of interconnecting rock tunnels between veins in relation to the mine; and (5) a hazard analysis is done when mapping indicates that prior mining was conducted on a vein above or below. When research exhausts the availability of mine mapping, the vein will be considered to be mined and flooded and appropriate precautions will be taken under 30 CFR 75.388, where possible. The petitioner further states that where potential hazards exist and in-mine drilling capabilities limit penetration, surface boreholes will be drilled to intercept the mine workings and results will be analyzed prior to mining in the affected area. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the existing standard.

Docket Number: M-2009-019-C.

Petitioner: Sidney Coal Co., Inc., d/b/a Process Energy Mining Co., 115 North Big Creek Road, P.O. Box 299, Sidney, Kentucky 41564.

Mine: Mine No. 1, MSHA I.D. No. 15-19097, located in Pike County, Kentucky.

Regulation Affected: 30 CFR 75.380(d)(3) (Escapeways; bituminous and lignite mines).

Modification Request: The petitioner requests a modification of the existing standard to permit a primary escapeway over an overcast for the limited distance of 24 feet. The petitioner proposes to have a minimum of 36 inches of clearance above the location of the overcast instead of the minimum of 51-1/2 inches. The areas of the primary escapeway leading up to and away from the proposed overcast will have a minimum height of 6 feet. Ramps will

be provided on the inby and outby sides of the overcast to provide easy access to the top of the overcast. A wheeled dolly, suitable to place a stretcher carrying a disabled miner, will be located on top of the overcast at all times. The dolly will be used to transport a disabled miner from the inby side of the top of the overcast to the outby side of the top of the overcast, a distance of approximately 24 feet, which leads to the mechanically operated escape capsule. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners by the standard.

Docket Number: M-2009-004-M.

Petitioner: Arch Materials, LLC, 4438 State Route 276, Batavia, Ohio 45103.

Mine: Batavia Mine, MSHA I.D. No. 33-04578, located in Clermont County, Ohio.

Regulation Affected: 30 CFR 49.2(c) (Availability of mine rescue teams).

Modification Request: The petitioner requests a modification of the existing standard to permit the services of Central Kentucky Mine Rescue Team (CKMRT) as the mine rescue provider for the Batavia Mine. The petitioner states that: (1) The CKMRT, also known as Eastwood Fire District Fire Fighting and Rescue Team is located in Eastwood, Kentucky within the required travel distance proposed by MSHA; (2) the rescue team consists of professional firefighters, and several career miners, who have had experience in underground mines; (3) the rescue team has extensive mine training in accordance with 30 CFR 49.8, not limited to, firefighting, evacuation, and rescue; and (4) the team is on duty 24 hours per day, seven days per week, and will be able to provide immediate response to any mine emergency. The petitioner further states that the Central Kentucky Mine Rescue Team has worked closely with the Arch Materials, LLC, and are prepared for the conditions of the Batavia Mine. The team has traveled to the Batavia Mine and observed the mine facility and operations. The petitioner asserts that the proposed alternative method will not reduce the safety of the miners at the Batavia Mine, but will increase the safety of the miners, and that the proposed alternative method is adequate and will properly cover Batavia Mine in the event of an emergency.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. E9-16741 Filed 7-14-09; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before August 14, 2009.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail:* Standards-Petitions@dol.gov.
2. *Facsimile:* 1-202-693-9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, *Attention:* Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, *Attention:* Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202-693-9447 (Voice), barron.barbara@dol.gov (E-mail), or 202-693-9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR §§ 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M-2009-015-C.

Petitioner: UtahAmerican Energy, Inc., P.O. Box 910, East Carbon, Utah 84520.

Mine: Lila Canyon Mine, MSHA I.D. No. 42-02241, located in Emery County, Utah.

Regulation Affected: 30 CFR 75.350(a) (Belt air course ventilation).

Modification Request: The petitioner requests site specific relief from application of the existing standard to permit the use of return air in the belt air course. The petitioner states that: (a) Relief from the standard will only be in effect during the underground development process, to establish a ventilation breakout to the surface; and (b) relief from the standard will only be applicable to the underground "Rock Slope" area and will terminate upon establishing the ventilation breakout in the coal seam to the surface. The petitioner proposes to: (1) Install an atmospheric monitoring system (AMS) incorporating diesel discriminating (carbon monoxide and nitric oxide) sensors for early warning fire detection in the primary escapeway (intake) entry and the belt entry; (2) have the air in the monitoring entry(s) at a velocity of at least 50 feet per minute and have definite and distinct movement in the designated direction. The velocity measurements will be determined at locations in the entry which are representative of the cross-sectional areas found through the entry and not at locations where the entry is abnormally high (e.g. belt drives) or low (e.g. under overcasts); (3) determine the correct carbon monoxide ambient, alert, and alarm levels upon implementation of this site specific petition with the carbon monoxide ambient level at 5

ppm, and the alert and alarm levels at 10 ppm and 15 ppm respectively above the ambient; (4) incorporate time delays in the AMS, when a demonstrated need exists, to account for non-fire related carbon monoxide alert and alarm sensor signals; with time delays limited to three minutes. The length of any time delays or other techniques or methods that eliminate or reduce the need for time delays will be specified and approved in the mine ventilation plan; (5) the AMS will activate an alarm signal if the total concentration on uncorrected carbon monoxide measured by any sensor exceeds or is equal to 50 ppm. The concentration will represent all the carbon monoxide present in the sensor's atmosphere which includes carbon monoxide from diesel engines; (6) the methane monitoring system will be capable of providing both audible and visual signals on both the working section and at a manned location on the surface of the mine where personnel will be on duty at all times when miners are underground. When the methane level is 1.0 volume per centum, the monitoring system will initiate alarm signals; (7) design and install the methane monitoring system to de-energize the belt conveyor drive units when the methane level is 1.0 volume per centum. A trained person at the surface location will have two-way communication with the working section; (8) an AMS will be operating and a designated AMS operator will be on duty at a location on the surface of the mine where audible and visual signals from the AMS will be seen or heard and the AMS operator can promptly respond to these signals, whenever personnel are underground; (9) provide visual and audible signals at the designated surface location for any interruption of circuit continuity and any electrical malfunction of the system and have the signals at a sufficient magnitude to be seen or heard by the AMS operator; (10) provide sensors to detect carbon monoxide, nitric oxide, or methane that will be visually examined at least once each shift when belts are operated as part of a production shift; and (11) when a malfunction, alert, or alarm signal is received at the designated surface, the sensor(s) that are activated will be identified and the AMS operator will promptly notify appropriate personnel, including the "responsible person(s)" as referenced in 30 CFR 75.1501 on the affected working section(s) and in the affected areas where mechanized mining equipment is being installed or removed. In addition, an immediate investigation of the cause of the signal shall begin and the

required actions set forth in this site specific petition will be taken. Persons may review a complete description of the petitioner's alternative procedures at the MSHA address listed in this notice. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners by the existing standard.

Docket Number: M-2009-016-C.

Petitioner: RoxCoal, Inc., 1576 Stoystown Road, P.O. Box 149, Friedens, Pennsylvania 15541.

Mine: Augustus Mine, MSHA I.D. No. 36-08636; Geronimo Mine, MSHA I.D. No. 36-08645; Horning Mine, MSHA I.D. No. 36-09666; Kimberly Run Mine, MSHA I.D. No. 36-09549; Miller Mine, MSHA I.D. No. 36-08622; Quecreek #1 Mine, MSHA I.D. No. 36-08746; Roytown Mine, MSHA I.D. No. 36-09260, all located in Somerset County, Pennsylvania.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of battery-powered non-permissible surveying equipment in or inby the last crosscut. The petitioner states that: (1) All non-permissible electronic surveying equipment used in or inby the last open crosscut will be examined prior to use to ensure the equipment is being maintained in a safe operating condition; (2) the equipment will be examined by a qualified person at intervals not to exceed 7 days; (3) results of the examinations will be recorded in the weekly examination electrical equipment book. The examinations will include: (i) Checking the instrument for any physical damage and the integrity of the case; (ii) removing the battery and inspecting for corrosion; (iii) inspecting the contact points to ensure a secure connection to the battery; (iv) reinserting the battery and powering up and shutting down to ensure proper connections; and (v) checking the battery compartment cover to ensure that it is securely fastened; (4) a qualified person will continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in or inby the last open crosscut or in the return; (5) non-permissible surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent methane; (6) when 1.0 percent or more of methane is detected while the equipment is being used, the equipment will be de-energized immediately and will be withdrawn outby the last open crosscut; (7) non-permissible surveying

equipment will not be used where float coal dust is in suspension; (8) batteries contained in the surveying equipment will be changed out or charged in fresh air outby the last open crosscut; (9) qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of surveying equipment. The equipment will not be put into service initially until MSHA has inspected the equipment and determined that it is in compliance with all of the above terms and conditions; and (10) within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit to the District Manager proposed revisions for its part 48 training plan. The training plan will specify initial and refresher training. The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners by the standard.

Docket Number: M-2009-017-C.

Petitioner: RoxCoal, Inc., 1576 Stoystown Road, P.O. Box 149, Friedens, Pennsylvania 15541.

Mine: Augustus Mine, MSHA I.D. No. 36-08636; Geronimo Mine, MSHA I.D. No. 36-08645; Horning Mine, MSHA I.D. No. 36-09666; Kimberly Run Mine, MSHA I.D. No. 36-09549; Miller Mine, MSHA I.D. No. 36-08622; Quecreek #1 Mine, MSHA I.D. No. 36-08746; Roytown Mine, MSHA I.D. No. 36-09260, all located in Somerset County, Pennsylvania.

Regulation Affected: 30 CFR 75.507-1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of battery-powered non-permissible surveying equipment in return airways, including, but no limited to portable battery operated mine transits, total station surveying equipment, distance meters, and lap top computers. The petitioner states that: (1) All non-permissible electronic surveying equipment used in or inby the last open crosscut will be examined prior to use to ensure the equipment is being maintained in a safe operating condition; (2) the equipment will be examined by a qualified person at intervals not to exceed 7 days; (3) results of the examinations will be recorded in the weekly examination electrical equipment book. The examinations will include: (i) Checking

the instrument for any physical damage and the integrity of the case; (ii) removing the battery and inspecting for corrosion; (iii) inspecting the contact points to ensure a secure connection to the battery; (iv) reinserting the battery and powering up and shutting down to ensure proper connections; and (v) checking the battery compartment cover to ensure that it is securely fastened; (4) a qualified person will continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in or inby the last open crosscut or in the return; (5) non-permissible surveying equipment will not be used if methane is detected in concentrations at or above 1.0 percent methane; (6) when 1.0 percent or more of methane is detected while the equipment is being used, the equipment will be de-energized immediately and will be withdrawn out of the return; (7) non-permissible surveying equipment will not be used where float coal dust is in suspension; (8) batteries contained in the surveying equipment will be changed out or charged in fresh air out of the return; (9) qualified personnel engaged in the use of surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of surveying equipment. The equipment will not be put into service initially until MSHA has inspected the equipment and determined that it is in compliance with all of the above terms and conditions; and (10) within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit to the District Manager proposed revisions for its part 48 training plan. The training plan will specify initial and refresher training. The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners by the standard.

Docket Number: M-2009-018-C.

Petitioner: R & K Coal Company, Inc., 642 Suedberg Road, Pine Grove, Pennsylvania 17963.

Mine: No. 1 Slope Mine, MSHA I.D. No. 36-09138, located in Daupin County, Pennsylvania.

Regulation Affected: 30 CFR 75.1200(d) & (i) (Mine map).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of cross-sections instead of contour lines through the intake slope at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope. In addition, the

petitioner proposes to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined, except when these veins are interconnected to other veins beyond the 100-foot limit, through rock tunnels. The petitioner states that: (1) Contour lines provide no useful information due to the steep pitch encountered in mining anthracite coal veins, and their presence would make portions of the map illegible; (2) use of cross-sections in lieu of contour lines has been practiced since the late 1800's and provide critical information about the spacing between veins and the proximity to other mine workings, which fluctuate considerably; (3) the mine workings above and below are usually inactive and abandoned, and therefore not subject to changes during the life of the mine; (4) all mapping for mines above and below is researched by petitioner's contract engineer for the presence of interconnecting rock tunnels between veins in relation to the mine; and (5) a hazard analysis is done when mapping indicates that prior mining was conducted on a vein above or below. When research exhausts the availability of mine mapping, the vein will be considered to be mined and flooded and appropriate precautions will be taken under 30 CFR 75.388, where possible. The petitioner further states that where potential hazards exist and in-mine drilling capabilities limit penetration, surface boreholes will be drilled to intercept the mine workings and results will be analyzed prior to mining in the affected area. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the existing standard.

Docket Number: M-2009-019-C.

Petitioner: Sidney Coal Co., Inc., d/b/a Process Energy Mining Co., 115 North Big Creek Road, P.O. Box 299, Sidney, Kentucky 41564.

Mine: Mine No. 1, MSHA I.D. No. 15-19097, located in Pike County, Kentucky.

Regulation Affected: 30 CFR 75.380(d)(3) (Escapeways; bituminous and lignite mines).

Modification Request: The petitioner requests a modification of the existing standard to permit a primary escapeway over an overcast for the limited distance of 24 feet. The petitioner proposes to have a minimum of 36 inches of clearance above the location of the overcast instead of the minimum of 51 1/2 inches. The areas of the primary escapeway leading up to and away from the proposed overcast will have a minimum height of 6 feet. Ramps will

be provided on the inby and outby sides of the overcast to provide easy access to the top of the overcast. A wheeled dolly, suitable to place a stretcher carrying a disabled miner, will be located on top of the overcast at all times. The dolly will be used to transport a disabled miner from the inby side of the top of the overcast to the outby side of the top of the overcast, a distance of approximately 24 feet, which leads to the mechanically operated escape capsule. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners by the standard.

Docket Number: M-2009-004-M.

Petitioner: Arch Materials, LLC, 4438 State Route 276, Batavia, Ohio 45103.

Mine: Batavia Mine, MSHA I.D. No. 33-04578, located in Clermont County, Ohio.

Regulation Affected: 30 CFR 49.2(c) (Availability of mine rescue teams).

Modification Request: The petitioner requests a modification of the existing standard to permit the services of Central Kentucky Mine Rescue Team (CKMRT) as the mine rescue provider for the Batavia Mine. The petitioner states that: (1) The CKMRT, also known as Eastwood Fire District Fire Fighting and Rescue Team is located in Eastwood, Kentucky within the required travel distance proposed by MSHA; (2) the rescue team consists of professional firefighters, and several career miners, who have had experience in underground mines; (3) the rescue team has extensive mine training in accordance with 30 CFR 49.8, not limited to, firefighting, evacuation, and rescue; and (4) the team is on duty 24 hours per day, seven days per week, and will be able to provide immediate response to any mine emergency. The petitioner further states that the Central Kentucky Mine Rescue Team has worked closely with the Arch Materials, LLC, and are prepared for the conditions of the Batavia Mine. The team has traveled to the Batavia Mine and observed the mine facility and operations. The petitioner asserts that the proposed alternative method will not reduce the safety of the miners at the Batavia Mine, but will increase the safety of the miners, and that the proposed alternative method is adequate and will properly cover Batavia Mine in the event of an emergency.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. E9-16740 Filed 7-14-09; 8:45 am]

BILLING CODE 4510-43-P

NATIONAL SCIENCE FOUNDATION (NSF)

National Science Board Ad Hoc Committee on Nominations for the NSB Class of 2010–2016; Sunshine Act Meetings; Notice

The National Science Board's *ad hoc* Committee on Nominations for the NSB Class of 2010–2016, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Tuesday, July 28, 2009 at 2 p.m.

SUBJECT MATTER: Nominations for the National Science Board Class of 2016.

STATUS: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Please refer to the National Science Board Web site (<http://www.nsf.gov/nsb>) for information or schedule updates, or contact: Kim Silverman, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Ferrante,
Writer-Editor.

[FR Doc. E9–16862 Filed 7–13–09; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Committee on Strategy and Budget; Sunshine Act Meetings; Notice

The National Science Board's Committee on Strategy and Budget, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Friday, July 24, 2009 at 1 p.m.

SUBJECT MATTER: Discussion of future NSF budgets.

STATUS: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National

Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Please refer to the National Science Board Web site (<http://www.nsf.gov/nsb>) for information or schedule updates, or contact: Jennie Moehlmann, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Ferrante,

Writer-Editor.

[FR Doc. E9–16861 Filed 7–13–09; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 14, 2009. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:* Charles D. Amsler, Jr., Department of Biology, University of Alabama, Birmingham, AL 35294–1170. Permit Application No. 2010–007.

Activity for Which Permit Is Requested

Take and Introduce Non-indigenous Species into Antarctica. The applicant plans to collect a number of filamentous brown algal endophytes for identification and additional extract bioassays back in the States. The applicant will use previously collected Antarctic macro algae in culture to perform feeding bioassays where amphipods are offered algae from culture and extract bioassays where the effects of secondary metabolites extracted from large macro algae are measured on algae from culture. Spores will be released from cultured endophytic algae and to expose macrophytes to cell-free extracts to test for oxidative burst defenses in the macrophytes. The experiments will be conducted to gain a better understanding of epiphytic and endophytic algae (both filamentous macroalgae and diatoms) with larger macroalgae and with mesoherbivores such as amphipods.

Location

Palmer Station, Anvers Island, Antarctica.

Dates

January 2, 2010 to July 31, 2011.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E9–16691 Filed 7–14–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Meetings; Sunshine Act

Agenda

TIME AND DATE: 9:30 a.m., Tuesday, July 28, 2009.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC, 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED: 8132 Aircraft Accident Report—Crash of Cessna 500, N113SH, Following an In-Flight Collision With Large Birds, Oklahoma City, Oklahoma, March 4, 2008

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314-6305 by Friday, July 24, 2009.

The public may view the meeting via a live or archived Web cast by accessing a link under "News & Events" on the NTSB home page at <http://www.nts.gov>.

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314-6410.

Dated: Friday, July 10, 2009.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. E9-16864 Filed 7-13-09; 11:15 am]

BILLING CODE 7533-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of July 13, 20, 27, August 3, 10, 17, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of July 13, 2009

There are no meetings scheduled for the week of July 13, 2009.

Week of July 20, 2009—Tentative

There are no meetings scheduled for the week of July 20, 2009.

Week of July 27, 2009—Tentative

There are no meetings scheduled for the week of July 27, 2009.

Week of August 3, 2009—Tentative

There are no meetings scheduled for the week of August 3, 2009.

Week of August 10, 2009—Tentative

There are no meetings scheduled for the week of August 10, 2009.

Week of August 17, 2009—Tentative

There are no meetings scheduled for the week of August 17, 2009.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415-1292. Contact person for more information: Rochelle Baval, (301) 415-1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet

at: <http://www.nrc.gov/about-nrc/policy-making/schedule.html>.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301-492-2279, TDD: 301-415-2100, or by e-mail at rohn.brown@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969), or send an e-mail to darlene.wright@nrc.gov.

Dated: July 9, 2009.

Rochelle C. Baval,

Office of the Secretary.

[FR Doc. E9-16912 Filed 7-13-09; 4:15 pm]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. C2009-1; Order No. 235]

Complaint of GameFly, Inc.

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission has initiated a case to address allegations of undue discrimination and other issues raised by GameFly, Inc. (GameFly) in a formal complaint related to sending and receiving DVDs. Accepting the case will provide an opportunity for review of pertinent issues.

DATES: 1. Joint prehearing conference memorandum is due July 20, 2009.

2. Notices of intervention are due July 22, 2009.

3. A prehearing conference will be held July 23, 2009 (10 a.m.).

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: The Complaint of GameFly, Inc. (Complaint)

was filed on April 23, 2009. The Complaint asserts several claims that concern unreasonable discrimination and other undue preferences allowed by the United States Postal Service in violation of the law. In support of its Complaint, GameFly, Inc. (GameFly) alleges that the Postal Service extended preferential services and inequitable rates to certain high volume rival mailers who similarly use First-Class Mail to send and receive DVDs.

GameFly specifically contends its pieces are being processed through the automated letter mail processing equipment that continues to cause damage, and that the favored high volume DVD mailers are not suffering the high level of broken DVDs. It further alleges that ever since it resorted to higher cost flat rates and inserts to reduce breakage, it is still suffering more damage than these other mailers, while it is also paying the additional ounce postage charges and more for the flats shape of its pieces.

The Answer of the United States Postal Service (Answer) in response to the Complaint was filed on May 26, 2009, together with a Motion of the United States Postal Service for Partial Dismissal of Complaint (Motion for Partial Dismissal). The Answer denied that the Postal Service's updated policy favors special handling by hand for inbound pieces, even though some exceptions arise in the field. The Motion for Partial Dismissal asserts that GameFly's reliance upon 39 U.S.C. 404(b) for jurisdiction appears misplaced. On June 2, 2009, GameFly, under a Motion of GameFly, Inc. for Leave to File Reply to Requests of the USPS for Disposition of Complaint (Motion for Leave), filed a Reply of GameFly, Inc. to Requests of the USPS for Disposition of Complaint (Reply).

For the reasons explained below, the Commission concludes it has jurisdiction over the dispute, grants GameFly's Motion for Leave, and, upon a review of the pleadings, denies the Postal Service's Motion for Partial Dismissal. The Commission also concludes that the Complaint raises material issues of fact and law, and shall begin proceedings to hear the issues involved. 39 U.S.C. 3662(b).

I. The GameFly Complaint

GameFly claims that the rates and services extended to some high volume DVD mailers violate 39 U.S.C. 101(d), 403(c), 404(b) and 3622(b)(8), which prohibit undue discrimination. Complaint at 1. It explains that it, like many other businesses that rent DVDs to consumers, uses a two-way DVD mailer. *Id.* at 3. It distributes game DVDs to

subscribers via First-Class Mail, and subscribers usually return the DVDs to GameFly in prepaid mailers via First-Class Mail Business Reply Mail (BRM). *Id.*

The Complaint alleges that the DVD is small enough so that when it is mailed in a lightweight mailer, the combined mailpiece can qualify as a one-ounce letter. *Id.* at 4. However, when the DVDs were enclosed in lightweight mailers without protective inserts, the company experienced breakage of DVDs in the mail. *Id.* GameFly alleges that the “breakage occurs during the processing of DVD mailers on Postal Service automated mail processing equipment” for letters. *Id.* at 5. To reduce breakage, GameFly began to insert cardboard protectors into its DVD mailers in 2002. *Id.*

While reducing breakage, the protectors “increased the size and weight of the mailpieces * * * to * * * two-ounce flats.” *Id.* This raised GameFly’s postal rates for this higher total weight. *Id.* at 6. In 2007, the rising postal rates on flats led GameFly to test other mailpiece designs without a protector to reduce breakage at less cost, but these tests did not succeed. *Id.* The Postal Service also declined GameFly’s request to reduce rates as to the second ounce. *Id.* at 7.

GameFly contends that “the Postal Service failed to stop breaking GameFly DVDs” despite charging the higher rates for flats. *Id.* at 5. On account of the higher postage for flats, surcharges for the extra ounce, and certain other losses for theft, GameFly claims that it has incurred “greatly increased mailing costs,” that on average are almost 88 cents per piece more than the postage for a one-ounce letter. *Id.* at 6–7.

GameFly alleges that the Postal Service gave preferential treatment for certain high volume movie DVD mailers who also faced significant DVD breakage.¹ It claims that “the Postal Service has adopted a practice of manually culling out the DVD mailers of two high volume shippers of DVDs, Netflix and Blockbuster, for special processing.”²

GameFly asserts that the Postal Service’s practice of giving manual processing to DVDs from certain high

volume mailers has continued since the OIG Report. Complaint at 9. It alleges that, despite its requests, the Postal Service has declined to give GameFly’s DVD mailers processing on terms and conditions comparable to those offered to the two high volume mailers. *Id.* It alleges that Blockbuster is a rival that is entering the market for game DVD mailpieces. *Id.*

Counts I and II assert undue discrimination under sections 3662(a) and 403(c).³ Under counts III and IV, GameFly contests postal rates charged for DVDs entered by GameFly as First-Class flats as inequitable, in violation of 39 U.S.C. 404(b).⁴ Each of the counts includes the first 39 paragraphs of the Complaint. GameFly requests relief, following a hearing, in an order that prescribes the same rates and terms of service that the Postal Service provides to Netflix and Blockbuster. *Id.* at 13.

II. The Postal Service’s Answer and Motion for Partial Dismissal

The Postal Service responds to the Complaint with a timely answer, which denies most of the material allegations directly, and adds certain affirmative allegations. The Postal Service also denies any preferential practices of unfair rules, inequitable rates, or processing standards, as well as any liability, losses, causation, and injury. *See, e.g.,* Answer at paras. 2, 12, 16, and 19. It separately submits a Motion for Partial Dismissal to assert that the Commission lacks jurisdiction to hear counts that assert violations of 39 U.S.C. 404(b). Motion for Partial Dismissal at 1.

Aside from its Motion for Partial Dismissal, addressed below, the Postal Service alleges that it does not have a “policy” of manually processing mail entered by other high volume DVD mailers for delivery to or from its customers. Answer at para. 49. The Postal Service explains that while it has no current practice of manually culling incoming DVDs, it admits that “some culling of the incoming DVDs (returns from customers) may * * * occur despite the change in policy.” *Id.* at para. 37. It also denies that “any significant volume of outgoing DVD mail pieces (from the mailer to the customer) are processed manually.” *Id.*; *see also* para. 38.

The Postal Service urges that its procedures for letter sorting streams and flat sorting streams are justifiably different. *Id.* at para. 39. It asserts that mailpieces very close to the size of the envelopes that complainant currently uses would typically not be extracted as a flat. *Id.* at para. 22. It explains that each mailer’s mailpiece design controls the processing of the mailpiece. *See, e.g.,* Answer at paras. 12, 17, 23.

The Motion for Partial Dismissal explains that the Commission’s jurisdiction to hear complaints is “narrowly specified” in a quoted portion of 39 U.S.C. 3662(a). The Postal Service mainly assails paragraphs 53 and 55 of the Complaint. It observes that the Complaint improperly alleges that the Postal Service practices have violated 39 U.S.C. 404(b). Motion for Partial Dismissal at 2. The Postal Service submits that “subsection [404(b)] is not one of the specific provisions * * * that are identified in subsection 3662(a).” *Id.* Nor is the cited statute in chapter 36. *Id.* On these grounds, it contends that a “complaint filed under subsection 3662(a) alleging a violation of subsection 404(b) fails to state a cause of action for which the Commission may grant relief.” *Id.*

III. Commission Analysis

The Postal Service’s Motion for Partial Dismissal aims at eliminating allegations by GameFly under 39 U.S.C. 404(b), and particularly defeating counts III and IV. *See id.* at 2. Section 404(b) mainly empowers the Governors “to establish reasonable and equitable classes of mail and reasonable and equitable rates of postage” consistently with chapter 36. 39 U.S.C. 404(b). Section 404(b) is not included in the grounds for complaints listed in section 3662.

GameFly asserts, by its Reply, that section 3662(a) incorporates section 101(d). Reply at 5–6. It adds that “[b]y operation of Sections 401(2) and 101(d), the substantive standard of section 404(b) thus is clearly justifiable in a complaint filed under section 3662(a).” *Id.* at 6. Section 101(d) is included in the grounds for complaints listed in section 3662(a).

In view of these contentions, it is appropriate to explore whether the counts are properly based upon statutory authority that satisfies the usual notice pleading requirements. Each count includes by reference the first 39 paragraphs of the Complaint. *See* Complaint at paras. 52 and 54. Thus, each count properly may be read to assert a violation under sections

¹ *Id.* at 8–9. GameFly cites a report from 2007 that allegedly found that most of the two-way DVD mailpieces from one unnamed high volume DVD rental company received manual processing. *See* Complaint at 8, para. 36, *citing* USPS Office of Inspector General, Audit Report No. MS-AR-08-001, Review of Postal Service First-Class Permit Reply Mail (November 8, 2007) (OIG Report).

² *Id.* at 8; *see also* OIG Report at 5, n.9. The term “culling” usually refers to removing, by hand, non-letter mail from letter mail, and non-machinable mailpieces from automation rate pieces.

³ The Postal Service’s Motion for Partial Dismissal, discussed below, does not separately challenge GameFly’s first two counts, raised under section 403(c), either based upon any defect of pleading or jurisdiction.

⁴ Count III asserts the rates are unfair because the Postal Service processes the same DVDs on letter-sorting equipment, unless the mailer also pays second-ounce postage. Count IV asserts that they are unfair because the Postal Service fails to process the DVDs on flats-sorting equipment.

101(d) and 403(c), unless the allegations otherwise fail to state a colorable claim.⁵

The Postal Service's dismissal motion overlooks that the contested counts expressly include other allegations based upon section 101(d). Each count plainly has at least one clear statutory basis upon which to seek recourse. Thus, despite its apparent reliance on section 404(b) at the very end of the counts, GameFly still satisfies the standards of pleading statutory authority at this juncture. See Complaint at 1, *citing* 39 U.S.C. 101(d), and 403(c). The Commission has determined that the Postal Service's Motion for Partial Dismissal must therefore be denied.

The Commission finds that the pleadings raise issues of both law and fact relevant to whether or not the actions, or inactions, of the Postal Service violate 39 U.S.C. 101(d) or 403(c), either by (a) Rising to the level of undue discrimination or preferences among users of the mails, or (b) charging rates inequitably among such mailers. 39 U.S.C. 3662(b).

IV. Prehearing Conference and Public Representation

A prehearing conference is scheduled for July 23, 2009 at 10 a.m. in the Commission's hearing room.

GameFly and the Postal Service must meet and confer at least two weeks before the conference date to consider the appropriate scope and timeframes for discovery. Discussion should separately address each of the categories mentioned in the Complaint. See Complaint at para. 41. They shall jointly prepare a prehearing conference memorandum that identifies relevant undisputed facts. They shall offer suggestions, and be prepared to discuss the proper scope of discovery and the dates to complete discovery and to present their cases. They are urged to stipulate to an orderly process that streamlines the discovery schedule so as to reduce the need for motions on any special challenges. Where a mutually acceptable process cannot be agreed to, GameFly and the Postal Service shall fashion a joint statement clarifying areas of contention. The joint prehearing conference memorandum, with any related proposed stipulations, must be filed no later than July 20, 2009.

⁵ See Complaint at para. 2 (the rates and services offered to high volume DVD mailers violate sections 101(d) and 403(c), which prohibit undue discrimination, and inequitable rates and practices.); see also Answer at para. 2; and see generally Docket No. C2001-1, Order Partially Denying Motion of United States Postal Service to Dismiss Complaint and Notice of Formal Proceedings, March 20, 2001, at 9 n.11.

V. Opportunity for Intervention

Except as otherwise specified above, any interested person may file a notice of intervention, consistent with the Commission's rules of practice, as a full or limited participant. See 39 CFR 3001.20 and 3001.20a. The notice of intervention shall be filed using the Internet (filing online) at the Commission's Web site (<http://www.prc.gov>) unless a waiver is obtained for hard-copy filing. See 39 CFR 3001.9(a) and 3001.10(a). Notices of intervention are due no later than July 22, 2009.

Pursuant to 39 U.S.C. 505, E. Rand Costich and John Klingenberg are appointed to serve as officers of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

VI. Ordering Paragraphs

It is ordered:

1. The Commission finds that the Complaint by GameFly, Inc., filed April 23, 2009, regarding violations of law by the Postal Service, raises material issues of fact and shall begin proceedings in this Complaint.

2. The Motion of GameFly, Inc. for Leave to File Reply to Request of the United States Postal Service for Disposition of Complaint, filed June 2, 2009, is granted.

3. The Motion of the United States Postal Service for Partial Dismissal of Complaint, filed May 26, 2009, is denied.

4. The Commission will sit *en banc* in this proceeding.

5. The deadline for filing any notices of intervention is July 22, 2009. Notices shall indicate whether the intervening party intends to participate in the hearing and the nature of that participation.

6. A prehearing conference will be held in the Commission's hearing room on July 23, 2009 at 10 a.m. At least two weeks before the conference, the parties shall meet and confer on discovery. They shall prepare a joint prehearing conference memorandum that must be filed no later than July 20, 2009.

7. The Commission appoints E. Rand Costich and John Klingenberg as Public Representative to represent the interests of the general public in this proceeding.

8. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Judith M. Grady,
Secretary.

[FR Doc. E9-16782 Filed 7-14-09; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket No. CP2009-41; Order No. 237]

New Competitive Postal Product

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Commission is noticing a recently filed Postal Service request to add an additional Inbound Direct Entry Contract to the Competitive Product List. The Postal Service has also filed a related contract. This notice addresses procedural steps associated with these filings.

DATES: Comments are due July 10, 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 29, 2009, the Postal Service filed a notice, pursuant to 39 U.S.C. 3633 and 39 CFR 3015.5, announcing that it has entered into an additional Inbound Direct Entry Contract (IDE), which it states fits within the previously established Inbound Direct Entry Contracts.¹ The Postal Service states that the instant constant is functionally equivalent to previously submitted IDE contracts and is supported by the Governors' Decision 08-6 filed in Docket No. MC2008-6.² Notice at 2.

The Notice also references Order No. 105 which established the individual IDE contracts in Dockets Nos. CP2008-14 and CP2008-15 as functionally equivalent and added the contracts to the competitive product list as one product under the IDE classification.³ The IDE service allows the Postal Service to provide foreign postal administrations with the ability to ship sacks of parcels that are pre-labeled for direct entry into the Postal Service's mail stream, in exchange for applicable domestic postage plus a sack handling

¹ Notice of United States Postal Service of Filing of Functionally Equivalent Inbound Direct Entry Contracts, Negotiated Service Agreement, June 29, 2009 (Notice).

² See Docket No. MC2008-6, Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Direct Entry Contracts with Foreign Postal Administrations (Governors' Decision No.08-6), May 6, 2008.

³ See PRC Order No. 105, Order Concerning Prices Under Inbound Direct Entry Contracts with Certain Foreign Postal Administrations, September 4, 2008, at 8 (Order 105).

fee. The core of the service is the sack handling and entry as domestic mail and it is not dependent on the underlying domestic mail services. The Postal Service states that the instant contract is functionally equivalent to the IDE contracts previously submitted, fits within the Mail Classification Schedule (MCS) language included as Attachment A to Governors' Decision No. 08-6 and should be included within the IDE Contracts product. Notice at 2.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. The contract is with P&T Express Mail Service Joint Stock Company (VNPE). VNPE is established under the auspices of the Vietnam Post and Telecommunications Group, the public postal administration for Vietnam, responsible for Vietnam's compliance with international obligations relative to Express Mail Service. The Postal Service 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. *Id.*, Attachments 1 and 2 respectively.⁴

The Postal Service will notify the customer of the effective date of the contract within 30 days after receiving all regulatory approvals. The contract term is 1 year from the effective date. The contract is subject to automatic renewal after the 1 year term unless the parties determine otherwise. *Id.*, Attachment 1.

The Notice advances reasons why the instant IDE contract fits within the Mail Classification Schedule language for IDE contracts. The Postal Service states that the instant contract is functionally equivalent to the IDE contracts filed previously because it shares similar cost and market characteristics and therefore, the contracts should be classified as a single product. *Id.* at 3-4. It states that in Governors' Decision No. 08-6, a pricing formula and classification system were established to ensure that each contract meets the statutory and regulatory requirements of 39 U.S.C. 3633. The Postal Service states that the costs of each contract must conform to a common description and the contract language of the MCS prescribes that each IDE contract must cover its attributable costs. *Id.*

The Postal Service reports that the instant contract covers the same domestic services as those in Docket

Nos. CP2008-14 and CP2008-15 except for the addition of the Priority Mail small flat rate box. It asserts that in "almost all substantive respects," the instant IDE contract resembles the contracts in CP2008-14 and CP2008-15. *Id.* at 4. The Postal Service contends that even though fees or the underlying domestic services offered may be different, these distinctions do not affect the contracts' functional equivalence because the total costs associated with IDE Contracts are volume variable and the basic service offered of handling inbound sacks in the domestic mail stream is the same. *Id.* Other changes include language to update changes in policies and product structures and terms to clarify the applicability of Postal Service export requirements. *Id.*

The Postal Service also affirms the instant contract has material differences reflected in the language of this agreement compared to other IDE contracts. *Id.* These differences include: (1) The 1 year term of the instant contract is subject to automatic renewal which differs from the contracts in CP2008-14 and CP2008-15 which are automatically renewed unless terminated; (2) Priority Mail small flat rate box has been added as a domestic mail type which Vietnam Post can access via IDE service while other included domestic mail services included are the same as in previous contracts but have updated rate structures;⁵ (3) terms are included which express the parties' wish to explore future opportunities for volume based discounts which the Postal Service states does not represent a new commitment; (4) terms that clarify charges for non-conforming size or weight items, and Delivery Confirmation charges for First-Class Mail parcel items; (5) language which explains the need for a permit application fee; (6) terms which address changes to IDE customer payment requirements upon detention or seizure of mail by Customs and Border Protection; and (7) terms to explain the use of the Centralized Trust Account payment method as applicable to Vietnam's financial regulatory requirements which were not offered in the contract for CP2008-14. *Id.* at 5-6.

The Postal Service maintains that these differences only add detail or amplify processes included in previous IDE contracts and do not affect the fundamental service being offered or the

essential structure of the contracts. *Id.* at 7. It asserts that the contracts are substantially equivalent in all pertinent respects. *Id.*

The Postal Service maintains that certain portions of the contract and certified statement required by 39 CFR 3015.5(c)(2), related financial information, portions of the certified statement which contain costs and pricing as well as the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2-3.

II. Notice of Filing

The Commission establishes Docket No. CP2009-41 for consideration of the matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the instant contract is consistent with the policies of 39 U.S.C. 3632, 3622, or 3642. Comments are due no later than July 10, 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 this docket.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket No. CP2009-41 for consideration of the issues raised in this docket.

2. Comments by interested persons in these proceedings are due no later than July 10, 2009.

3. 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.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

Dated: July 1, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9-16584 Filed 7-14-09; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket No. R2009-4; Order No. 236]

Postal Service Price Changes

AGENCY: Postal Regulatory Commission.

ACTION: Approval of price changes.

DATES: Implementation is scheduled for July 19, 2009.

⁴ Attachment 1 was revised by Notice of United States Postal Service of Filing Erratum to Attachment 1 to Notice of United States Postal Service of Filing Functionally Equivalent Inbound Direct Entry Contracts Negotiated Service Agreement, June 30, 2009.

⁵ The Postal Service states that the other domestic mail services are the same as in Docket Nos. CP2008-14 and CP2008-15, but the instant contract reflects the updated Priority Mail rate structure based on the price adjustments for competitive products in Docket CP2009-8.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, 202-789-6924 or stephen.sharfman@prc.gov.

SUMMARY: This document discusses the Commission's consideration and approval of a Postal Service request to reduce prices for a component of the mail stream referred to as Standard Mail high density flats. The approval means that the Postal Service may implement the planned price reductions.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 27843 (June 11, 2009).

I. Introduction

On June 1, 2009, the Postal Service filed a notice with the Commission 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 (decrease) 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.

In Order No. 220, the Commission established Docket No. R2009-4 to consider matters raised by the Postal Service's filing, appointed a public representative, and afforded interested persons an opportunity to comment on specific issues as well as any other matters related to the Postal Service's filing.² In particular, the Commission sought comment on whether the price cap and unused rate adjustment authority were applicable to this overall price decrease.

On June 5, 2009, Chairman's Information Request No. 1 was issued.³ CHIR No. 1 sought information from the Postal Service with respect to price adjustment authority and annual limitation calculations. The Postal Service filed its response to the Chairman's Information Request on June 12, 2009.⁴

This case raises the issue of how the Commission should address a rate decrease in a period of deflation. The

Postal Service's proposal was not opposed by any commenter. The Commission finds the Postal Service's proposal to be appropriate given the unique factual circumstances of this case. The Commission will initiate one or more rulemakings to consider revising its rules to address issues concerning application of the price cap and calculation of rate adjustment authority.

II. Postal Service Request

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. Request at 2. After taking these concerns 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.* As a result, the Postal Service seeks to change the current rates for Standard Mail High Density flats. It asserts that the proposed reduced rates could potentially avoid diversion of large mail volumes from the postal system. *Id.* at 5.

The Postal Service's proposal reduces prices for the Standard Mail High Density flats price categories for both commercial and nonprofit mailpieces. *Id.* at 2. The 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.

III. Comments

Several parties filed comments in this case: Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc., the Public Representative, and Newspaper Association of America.⁵ In addition, the Postal Service responded to questions posed in Order No. 220

concerning the Request.⁶ The parties' comments are summarized below.

Valpak comments. Valpak argues that the Commission's rules should apply to price decreases, and that the Commission did not intend to permit all types of rate decreases without any Commission review. In support, it cites to the Commission's rules which, for the most part, discuss the price cap in terms of "adjustments" rather than increases or decreases. Valpak Comments at 2. Valpak submits that in the current "abnormal economic circumstances" application of the Commission's rules can create "strange results." *Id.* It believes that the proper response may be to modify the Commission's rules on this subject. The better approach here, according to Valpak, would have been for the Postal Service to file a motion to waive the filing requirements or request another type of one-time relief. *Id.* at 4.

Public Representative comments. First, the Public Representative points out that the Postal Service does not provide any support or estimate for its claim that the request "could potentially avoid diversion of large volumes" of High Density flat mail. Public Representative Comments at 1-2. Second, the Public Representative contends, based on the text of 39 U.S.C. 3622(d)(1), that the price cap does not apply to price decreases. Such an application would be "illogical," according to the Public Representative. He notes that the PAEA does not include any provision suggesting that a rate decrease must be at least as great as the drop in consumer price index. He also discusses Congress' purpose in creating the price cap limitation—to create a ceiling to ensure against unreasonable price increases—a concern that is not present when rates are decreasing. *Id.* at 3-8.

Third, the Public Representative contends that in the absence of a price increase calculation, the Postal Service's unused rate adjustment authority is not required or needed. In support of this conclusion, he cites certain Commission rules which he believes demonstrate that the annual limitation and unused rate adjustment authority only apply to rate increases. With respect to whether the Postal Service can waive unused rate adjustment authority, he believes this issue is "moot" because this rate decrease does not generate any unused rate adjustment authority since consumer prices have decreased. *Id.* at 8-9.

⁶ Response of the United States Postal Service to Order No. 220 (Postal Service Comments), June 22, 2009.

¹ United States Postal Service Notice of Market-Dominant Price Adjustment, June 1, 2009 (Request).

² PRC Order No. 220, Notice and Order Concerning Price Adjustment for Standard Mail High Density Flats, June 4, 2009 (Order No. 220).

³ Chairman's Information Request No. 1, June 5, 2009 (CHIR No. 1).

⁴ Response of the United States Postal Service to Chairman's Information Request No. 1, June 12, 2009.

⁵ Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments Regarding Price Adjustment for Standard Mail High Density Flats (Valpak Comments), Public Representative Comments in Response to Notice of Price Adjustment for Standard Mail High Density Flats (Public Representative Comments), Comments of the Newspaper Association of America on Notice of Market-Dominant Price Adjustment (NAA Comments), all filed June 22, 2009.

NAA comments. NAA supports the Postal Service's proposed adjustment to Standard Mail High Density Flats rates because it will encourage retained mail volume and discourage a migration of customers out of the mailstream. NAA Comments at 1.

Postal Service comments. The Postal Service believes that applying the price cap to a price decrease is not required under the language or purpose of section 3622. Postal Service Comments at 2–3. First, it argues that section 3622(d)(1)(A) uses the word “increase,” and that the section is supposed to apply only to limit the Postal Service's flexibility with respect to increases. *Id.* at 3. Second, it believes that the legislative history of the PAEA indicates that Congress was concerned about capping the extent to which the Postal Service could increase prices, not decrease prices. *Id.* at 4. Third, it cites to Commission rule 3010.22(a) which generally discusses price adjustments in terms of “increases.”⁷

The Postal Service notes that section 3622(d)(1)(A) does not foreclose the Commission from adjusting the Postal Service's authority due to mid-cycle price decreases. *Id.*⁸ However, it submits that the Commission should not adjust the Postal Service's pricing authority due to the unique factual circumstances present in this case, where the partial-year annual limitation applicable to the proposed adjustment is negative. *Id.* at 2, 5. Applying the price cap would require the Postal Service to utilize a large portion of its unused price adjustment authority for Standard Mail to effectuate the decrease. This would, according to the Postal Service “create a perverse incentive for the Postal Service not to implement mid-year price decreases in order to respond to market conditions, during an environment of declining CPI-U” by, in effect, “penaliz[ing] the Postal Service for making a mid-cycle price decrease in

order to respond to market conditions, by requiring that the Postal Service give up a large portion of its unused price adjustment authority.” *Id.* at 2–3, *see also Id.* at 5.

The Postal Service also suggests that even if a mid-year decrease during a period of declining CPI-U does not implicate the Postal Service's price adjustment authority, the other provisions of section 3622 (such as sections 3622(b), (c), and (e)), still apply, and the Commission can make a determination on such issues under rule 3010.13(j).

With respect to the issue of waiver, the Postal Service states that it does not view a price adjustment that is outside the price cap structure as presenting a question as to whether it can “waive” price adjustment authority because, in such circumstances, there no authority is being generated that would be eligible to be waived.

IV. Commission Analysis

Impact on the price cap. The Postal Service considers this price adjustment to be outside the Commission's current rules because the proposed High Density flat price adjustments are decreases and were not part of the regular annual price adjustment. Request at 3. The Postal Service states that it “is not claiming any new unused rate adjustment authority as a result of this price decrease.” *Id.*⁹ In its comments, the Postal Service elaborates on its position. It believes that application of the price cap to this situation would “requir[e] the Postal Service [to] give up a large portion of its unused price adjustment authority.” Postal Service Comments at 5. In support of this statement, the Postal Service points to its calculation in response to CHIR No. 1 which shows a reduction to the Postal Service's unused rate adjustment authority as a result of this case.¹⁰

However, this position does not take into consideration the fact that any adjustment to the Postal Service's unused rate adjustment authority as a result of this case would also “reset” the

cap calculation. In other words, if the unused rate adjustment authority is changed as a result of this case, the cap calculation going forward would also be “reset.” The negative change in CPI-U for the last five months of last year would have already been taken into account by the resetting of the cap calculation. Therefore, a future rate increase could be larger than it otherwise could have been if the cap calculation and unused rate adjustment authority were not reset as a result of this proceeding. Indeed, the change in unused rate adjustment authority as a result of this proceeding would be offset by the negative change in CPI-U that would have to be taken into account as a result of this proceeding. *See* Library Reference PRC-R2009-4-LR-1 for an example of this mathematical phenomenon. This balancing occurs whether or not the change in CPI-U is positive or negative.

The Commission believes that the larger issue with respect to this proposed rate change is the impact that the one decimal place rounding constraint found in 39 CFR 3010.21 and 3010.22 potentially could have on the rate adjustment authority altered as a result of this proceeding. If the Commission alters the Postal Service's unused rate adjustment authority as a result of this proceeding, depending on how CPI-U changes in the upcoming months, proper application of 39 CFR 3010.22 could result in a lower amount of Postal Service's rate adjustment authority for the next regular annual price adjustment due to rounding. *See* Library Reference PRC-R2009-4-LR-1 for an example of this calculation. This potential problem would not occur if the unused rate adjustment authority and annual limitation calculation were rounded to the same number of digits. If the Postal Service continues to exercise its pricing flexibility in a similar manner in the future (small increases or decreases in rates), this rounding problem could become more pernicious.

In addition to these problems, an issue is whether the procedures of 39 CFR part 3010 used for calculating rate adjustment authority are applicable to rate decreases. The Commission's rules do not directly address such a situation. The Commission's rules are designed for price adjustment proposals during periods of inflation. However, as noted above, this case has highlighted some problems with the application of the Commission's current rules in unforeseen factual circumstances. Accordingly, the Commission will accept the Postal Service's approach here based on the unique facts of this

⁷ The Postal Service notes that the Commission may wish to consider the need for additional rules concerning the effect of mid-year price adjustments that consist entirely of a decrease on the Postal Service's price adjustment authority. *Id.* at 7.

⁸ *See also* Postal Service Comments at 3, 4–5 (“Thus, while the Commission must apply the price cap structure of section 3622(d) to price adjustments that include increases to prices (*i.e.*, either a price adjustment that consists solely of price increases, or a price adjustment that includes increases to some prices and decreases to others), it is not required to do so with respect to price adjustments consisting solely of a decrease in prices.”); (“While the statute clearly does not require that the price cap structure established by section 3622(d) apply to a mid-year decrease, this does not mean that the statute affirmatively forecloses the Commission from decided that the Postal Service's price adjustment authority may in certain circumstances be altered as a result of such a decrease.”).

⁹ The Postal Service submits that the unused price adjustment authority for Standard Mail should remain at 0.081 percent. *Id.* at 3 (*citing* PRC Order No. 191, Order Reviewing Postal Service Market Dominant Price Adjustment, May 16, 2009).

¹⁰ The Postal Service's Notice and Response of the United States Postal Service to Chairman's Information Request No. 1 use a “before rates” unused price adjustment authority for Standard Mail of 0.081 percent. *See, e.g.*, Notice at 3. This before rates unused price adjustment authority is incorrect. The proper before rates unused price adjustment authority is 0.103 percent which is found in Order No. 201, Order Approving Revisions in Amended Notice of Market Dominant Price Adjustment at 4, April 9, 2009.

particular situation. Moreover, no commenters voiced opposition to the Postal Service's suggested approach.

Nonetheless, the issues raised by the Postal Service's filing need to be addressed on a holistic basis. Therefore, the Commission will be initiating a rulemaking to solicit public comment on how a rate decrease should affect the cap calculation and unused rate adjustment authority in the future, as well as how to deal with the rounding issue discussed above.

The Commission's action in this case should not be construed as a finding that the Commission does not have authority under either the PAEA or its rules to apply the compliance cap calculation or adjust the Postal Service's unused rate adjustment authority in cases where there is a rate decrease. As the Postal Service correctly notes, "[w]hile the statute clearly does not require that the price cap structure established by section 3622(d) apply to a mid-year decrease, this does not mean that the statute affirmatively forecloses the Commission from deciding that the Postal Service's price adjustment authority may in certain circumstances be altered as a result of such a decrease." The Commission's determination that the price cap should not apply in this case is limited to the narrow, unique factual situation at issue here.

The rates resulting from this proceeding will be used as the base rates for the next cap calculation for the Standard Mail class. The unused rate adjustment authority for the Standard Mail class remains at 0.103.

Objectives and factors. Pursuant to the Commission's rules, 39 CFR 3010.14(b)(7), the Postal Service addresses how this proposed rate adjustment helps achieve the objectives of 39 U.S.C. 3622(b) and takes into account the factors of 39 U.S.C. 3622(c). The Postal Service lists and discusses what it considers the relevant objectives and factors of 39 U.S.C. 3622 to the proposed price adjustment. *Id.* at 4–8. It believes that, at most, the price reductions will cause only a modest decrease in Postal Service revenues, and could potentially avoid diversion to non-postal delivery of large volumes of mail currently paying High Density flats prices.

The Commission finds that, under the circumstances of this case, the objectives and factors in 39 U.S.C. 3622(b) and (c) appear to be satisfied by explanations and data in the Request.

Workshare discounts. 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 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 provided 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 proposed 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.

The Commission finds that the rate changes have only a minor effect on the passthroughs approved just a few months ago and they do not cause any of the affected "passthroughs" to exceed 100 percent. Thus, the requirements of section 3622(e) are satisfied here.¹¹

Preferred rates. 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 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.

As the current commercial/nonprofit price ratio is not altered as a result of the proposed price adjustment, the Commission finds that the required 60 percent differential will be maintained.

V. Ordering Paragraphs

A full review of the United States Postal Service Notice of Market-Dominant Price Adjustment with respect to Standard Mail High Density flats, filed June 1, 2009, has been

¹¹ As the Postal Service notes, the Commission is currently considering whether the relationship between High Density and Saturation mailpieces is to be considered "worksharing" for purposes of 39 U.S.C. 3622(e) in Docket No. RM2009–3.

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 High Density flats rate adjustment.

2. The rates resulting from this proceeding will be used as the base rates for the next cap calculation for the Standard Mail class.

3. The unused rate adjustment authority for the Standard Mail class remains at 0.103.

4. The Secretary of the Commission will arrange for publication of this Order in the **Federal Register**.

Issued: July 1, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–16783 Filed 7–14–09; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 206(3)–2; SEC File No. 270–216; OMB Control No. 3235–0243.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 206(3)–2, (17 CFR 275.206(3)–2) which is entitled "Agency Cross Transactions for Advisory Clients," permits investment advisers to comply with section 206(3) of the Investment Advisers Act of 1940 (the "Act") (15 U.S.C. 80b–6(3)) by obtaining a client's blanket consent to enter into agency cross transactions (*i.e.*, a transaction in which an adviser acts as a broker to both the advisory client and the opposite party to the transaction), provided that certain disclosures are made to the client. Rule 206(3)–2 applies to all registered investment advisers. In relying on the rule, investment advisers must provide certain disclosures to their clients. Advisory clients can use the

disclosures to monitor agency cross transactions that affect their advisory account. The Commission also uses the information required by Rule 206(3)-2 in connection with its investment adviser inspection program to ensure that advisers are in compliance with the rule. Without the information collected under the rule, advisory clients would not have information necessary for monitoring their adviser's handling of their accounts and the Commission would be less efficient and effective in its inspection program.

The information requirements of the rule consist of the following: (1) Prior to obtaining the client's consent appropriate disclosure must be made to the client as to the practice of, and the conflicts of interest involved in, agency cross transactions; (2) at or before the completion of any such transaction the client must be furnished with a written confirmation containing specified information and offering to furnish upon request certain additional information; and (3) at least annually, the client must be furnished with a written statement or summary as to the total number of transactions during the period covered by the consent and the total amount of commissions received by the adviser or its affiliated broker-dealer attributable to such transactions.

The Commission estimates that approximately 631 respondents use the rule annually, necessitating about 32 responses per respondent each year, for a total of 20,192 responses. Each response requires an estimated 0.5 hours, for a total of 10,096 hours. The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study of the cost of Commission rules and forms.

This collection of information is found at (17 CFR 275.206(3)-2) and is necessary in order for the investment adviser to obtain the benefits of Rule 206(3)-2. The collection of information requirements under the rule is mandatory. Information subject to the disclosure requirements of Rule 206(3)-2 does not require submission to the Commission; and, accordingly, the disclosure pursuant to the rule is not kept confidential. Commission-registered investment advisers are required to maintain and preserve certain information required under Rule 206(3)-2 for five (5) years. The long-term retention of these records is necessary for the Commission's inspection program to ascertain compliance with the Act.

An agency may not conduct or sponsor, and a person is not required to

respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the 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 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.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 60 days of this notice.

Dated: July 9, 2009.

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-16712 Filed 7-14-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60266; File No. SR-BATS-2009-022]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BATS Rule 11.9, Entitled "Orders and Modifiers"

July 9, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on July 6, 2009, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6)(iii) thereunder,⁵ which renders it effective

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6)(iii).

upon filing with the Commission. 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 make modifications to the existing technology that it provides to a User that wishes to avoid trading against orders from that same User ("Member Match Trade Prevention" or "MMTP"). The text of the proposed rule change is available from the Exchange's Web site at <http://www.batstrading.com>, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant 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 offer Member Match Trade Prevention, or MMTP, to Exchange Users pursuant to proposed Rule 11.9(f).⁶

Background

The proposed MMTP modifiers are designed to prevent two orders with the same Unique Identifier (as defined below) from executing against each other. The Exchange proposes adding four MMTP modifiers that will be implemented and can be set at the market participant identifier ("MPID"), the Exchange Member identifier or the Exchange Sponsored Participant identifier level (any such identifier, a "Unique Identifier").⁷ With one

⁶ The Exchange currently offers a basic form of match prevention by allowing a User to request a setting for their connections that prevents incoming orders from interacting with resting orders if both orders originate from the same MPID. The proposed rule expands the functionality offered to Users by providing additional options for match prevention.

⁷ Any Exchange Member that has an MPID issued by FINRA is identified in the Exchange's internal

exception, described below, the MMTP modifier on the incoming order controls the interaction between two orders marked with MMTP modifiers from the same Unique Identifier. The four new MMTP modifiers are discussed more thoroughly below.

MMTP Cancel Newest (“MCN”)

An incoming order marked with the MCN modifier will not execute against opposite side resting interest marked with any MMTP modifier originating from the same Unique Identifier. The incoming order marked with the MCN modifier will be cancelled back to the originating User. The resting order marked with an MMTP modifier, which otherwise would have interacted with the incoming order from the same Unique Identifier, will remain on the BATS Book.

MCN Example 1: An order to buy 500 shares @ \$22.00 is marked with any of the four MMTP modifiers and becomes a resting order on the BATS Book. Subsequently, an order to sell 500 shares @ \$22.00 is entered with the same Unique Identifier and marked with the MCN modifier.

MCN Result 1: The incoming sell order for 500 shares @ \$22.00 marked with the MCN modifier is cancelled back to the originating User. The resting buy order for 500 shares at \$22.00 marked with one of the four MMTP modifiers remains on the BATS Book.

MCN Example 2: An order to buy 500 shares @ \$22.00 is marked with any of the four STP modifiers and becomes a resting order on the BATS Book. Subsequently, an order to sell 700 shares @ \$22.00 is entered with the same Unique Identifier and marked with the MCN modifier.

MCN Result 2: The incoming sell order for 700 shares @ \$22.00 marked with the MCN modifier is cancelled back to the originating User. The resting buy order for 500 shares at \$22.00 marked with one of the four MMTP modifiers remains on the BATS Book.

MCN Example 3: An order to buy 500 shares @ \$22.00 is marked with any of the four MMTP modifiers and becomes a resting order on the BATS Book. Subsequently, an order to sell 400 shares @ \$22.00 is entered with the same Unique Identifier and marked with the MCN modifier.

MCN Result 3: The incoming sell order for 400 shares @ \$22.00 marked with the MCN modifier is cancelled back to the originating User. The resting

buy order for 500 shares at \$22.00 marked one of the four MMTP modifiers remains on the BATS Book.

MMTP Cancel Oldest (“MCO”)

An incoming order marked with the MCO modifier will not execute against opposite side resting interest marked with any MMTP modifier originating from the same Unique Identifier. The resting order marked with the MMTP modifier, which otherwise would have interacted with the incoming order by the same Unique Identifier, will be cancelled back to the originating User. The incoming order marked with the MCO modifier will remain on the BATS Book.

MCO Example 1: An order to buy 500 shares @ \$22.00 is marked with any of the four MMTP modifiers and becomes a resting order in the BATS Book. Subsequently, an order to sell 500 shares @ \$22.00 is entered with the same Unique Identifier and marked with the MCO modifier.

MCO Result 1: The resting buy order for 500 shares at \$22.00 marked with one of the four MMTP modifiers is cancelled back to the originating User. The incoming sell order for 500 shares @ \$22.00 marked with the MCO modifier is entered in the BATS Book.

MCO Example 2: An order to buy 500 shares @ \$22.00 is marked with any of the four MMTP modifiers and becomes a resting order in the BATS Book. Subsequently, an order to sell 700 shares @ \$22.00 is entered with the same Unique Identifier and marked with the MCO modifier.

MCO Result 2: The resting buy order for 500 shares at \$22.00 marked with one of the four MMTP modifiers is cancelled back to the originating User. The incoming sell order for 700 shares @ \$22.00 marked with the MCO modifier is entered on the BATS Book.

MCO Example 3: An order to buy 500 shares @ \$22.00 is marked with any of the four MMTP modifiers and becomes a resting order in the BATS Book. Subsequently, an order to sell 400 shares @ \$22.00 is entered with the same Unique Identifier and marked with the MCO modifier.

MCO Result 3: The resting buy order for 500 shares at \$22.00 marked with one of the four MMTP modifiers is cancelled back to the originating User. The incoming sell order for 400 shares @ \$22.00 marked with the MCO modifier is entered on the BATS Book.

MMTP Decrement and Cancel (“MDC”)

An incoming order marked with the MDC modifier will not execute against opposite side resting interest marked with any MMTP modifier originating

from the same Unique Identifier. If both orders are equivalent in size, both orders will be cancelled back to the originating User. If the orders are not equivalent in size, the equivalent size will be cancelled back to the originating User and the larger order will be decremented by the size of the smaller order, with the balance remaining on the BATS Book; provided, however, that if the resting order is marked with any MMTP modifier other than MDC, and the incoming order is smaller in size than the resting order, then both orders will be cancelled back to the originating User.

MDC Example 1: An order to buy 500 shares @ \$22.00 is marked with any of the four MMTP modifiers and becomes a resting order on the BATS Book. Subsequently, an order to sell 500 shares @ \$22.00 is entered with the same Unique Identifier and marked with the MDC modifier.

MDC Result 1: The resting buy order for 500 shares at \$22.00 marked with one of the four MMTP modifiers is cancelled back to the originating User. The incoming sell order for 500 shares @ \$22.00 marked with the MDC modifier is cancelled back to the originating User.

MDC Example 2: An order to buy 500 shares @ \$22.00 is marked with any of the four MMTP modifiers and becomes a resting order in the BATS Book. Subsequently, an order to sell 700 shares @ \$22.00 is entered with the same Unique Identifier and marked with the MDC modifier.

MDC Result 2: The resting buy order for 500 shares at \$22.00 marked with one of the four MMTP modifiers is cancelled back to the originating User. The equivalent portion, 500 shares, of the incoming sell order marked with the MDC modifier is cancelled back to the originating User. The remaining portion, 200 shares, is entered on the BATS Book.

MDC Example 3: An order to buy 500 shares @ \$22.00 is marked with an MDC modifier and becomes a resting order in the BATS Book. Subsequently, an order to sell 400 shares @ \$22.00 is entered with the same Unique Identifier and marked with the MDC modifier.

MDC Result 3: 400 of the 500 shares on the resting buy order at \$22.00 marked with one of the four MMTP modifiers are cancelled back to the originating User. The outstanding 100 shares remain on the BATS Book. The incoming sell order for 400 shares @ \$22.00 marked with the MDC modifier is cancelled back to the originating User.

MDC Example 4: An order to buy 500 shares @ \$22.00 is marked with any MMTP modifier other than MDC and

systems by that MPID. Each Exchange Member that does not already have an MPID and each Sponsored Participant is issued an identifier that is specific to the Exchange and allows the Exchange to determine the User for each order and trade.

becomes a resting order in the BATS Book. Subsequently, an order to sell 400 shares @ \$22.00 is entered with the same Unique Identifier and marked with the MDC modifier.

MDC Result 4: The resting buy order for 500 shares at \$22.00 marked with a MMTP modifier other than MDC is cancelled back to the originating User. The incoming sell order for 400 shares @ \$22.00 marked with the MDC modifier is cancelled back to the originating User.

MMTP Cancel Both ("MCB")

An incoming order marked with the MCB modifier will not execute against opposite side resting interest marked with any MMTP modifier originating from the same Unique Identifier. The entire size of both orders will be cancelled back to the originating User.

MCB Example 1: An order to buy 500 shares @ \$22.00 is marked with any of the four MMTP modifiers and becomes a resting order in the BATS Book. Subsequently, an order to sell 500 shares @ \$22.00 is entered with the same Unique Identifier and marked with the MCB modifier.

MCB Result 1: The resting buy order for 500 shares at \$22.00 marked with one of the four MMTP modifiers is cancelled back to the originating User. The incoming sell order for 500 shares @ \$22.00 marked with the MCB modifier is cancelled back to the originating User.

MCB Example 2: An order to buy 500 shares @ \$22.00 is marked with any of the four MMTP modifiers and becomes a resting order in the BATS Book. Subsequently, an order to sell 700 shares @ \$22.00 is entered with the same Unique Identifier and marked with the MCB modifier.

MCB Result 2: The resting buy order for 500 shares at \$22.00 marked with one of the four MMTP modifiers is cancelled back to the originating User. The incoming order to sell 700 shares @ \$22.00 marked with the MCB modifier is cancelled back to the originating User.

MCB Example 3: An order to buy 500 shares @ \$22.00 is marked with any of the four MMTP modifiers and becomes a resting order in the BATS Book. Subsequently, an order to sell 400 shares @ \$22.00 is entered with the same Unique Identifier and marked with the MCB modifier.

MCB Result 3: The resting buy order for 500 shares at \$22.00 marked with one of the four MMTP modifiers is cancelled back to the originating User. The incoming order to sell 400 shares @ \$22.00 marked with the MCB modifier is cancelled back to the originating User.

Additional Discussion

MMTP modifiers are intended to prevent interaction between the same Unique Identifier. MMTP modifiers must be present on both the buy and the sell order in order to prevent a trade from occurring and to effect a cancel instruction. MMTP modifiers are available for orders entered in either an agency or principal capacity. An incoming MMTP order cannot cancel through resting orders that have price and/or time priority. When an order with an MMTP modifier is entered it will first interact with all available interest in accordance with the execution process described in Exchange Rules 11.12 and 11.13. If there is a remaining balance on the order after trading with all orders with higher priority, it may then interact with an opposite side MMTP order in accordance with the rules established above. Incoming MMTP orders that are priced through the price of a resting MMTP order may cancel the resting order as long as no other non-MMTP orders have priority.

The Exchange believes that adding this functionality will allow Exchange Users to better manage order flow and prevent undesirable executions with themselves or the potential for (or the appearance of) "wash sales" that may occur as a result of the velocity of trading in today's high speed marketplace. Many Exchange Users have multiple connections into the Exchange due to capacity and speed related demands. Orders routed by the same User via different connections may, in certain circumstances, trade against each other. The new MMTP modifiers provide Users the opportunity to prevent these potentially undesirable trades occurring under the same Unique Identifier on both the buy and sell side of the execution. The Exchange also believes that this functionality will allow firms to better internalize agency order flow which in turn may decrease the costs to its customers. The Exchange notes that the MMTP modifiers do not alleviate, or otherwise exempt, broker-dealers from their best execution obligations. As such, broker-dealers using the MMTP modifiers will be obligated to internally cross agency orders at the same price, or a better price than they would have received had the orders been executed on the Exchange. Additionally, the MMTP modifiers will assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act ("ERISA") that preclude and/or limit managing broker-dealers of such accounts from trading as

principal with orders generated for those accounts. Finally, the Exchange notes that offering the MMTP modifiers will streamline certain regulatory functions by reducing false positive results that may occur on Exchange generated wash trading surveillance reports when orders are executed under the same Unique Identifier. For these reasons, the Exchange believes the MMTP modifiers offer users enhanced order processing functionality that may prevent potentially undesirable executions without negatively impacting broker-dealer best execution obligations.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and in particular, with the requirements of Section 6(b) of the Act.⁸ Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,⁹ because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. This functionality will allow firms to better manage order flow and prevent undesirable executions against themselves.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Changes Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay as well as the five business-day pre-filing requirement so that the benefits of this functionality to BATS market participants expected from the rule change will not be delayed. The Commission believes that waiving the 30-day operative delay¹² to make this functionality available without delay is consistent with the protection of investors and the public interest.¹³ Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2009-022 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-BATS-2009-022. 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 5552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2009-022 and should be submitted on or before August 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-16713 Filed 7-14-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60262; File No. SR-NYSEArca-2009-63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rules 7.31(x) and 7.31(kk)

July 8, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on July 2, 2009, NYSE Arca, Inc. ("NYSE Arca" 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 the self-regulatory organization. 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 NYSE Arca Equities Rule 7.31(x) and 7.31(kk) in order to amend the functionality of Primary Only Orders and Primary Sweep Orders (collectively "PO and PSO orders") routed to the New York Stock Exchange LLC ("NYSE") [sic] The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ The Commission is also waiving the five business-day pre-filing requirement.

¹⁴ 14 17 CFR 200.30-3(a)(12).

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 Arca Equities Rule 7.31(x) and 7.31(kk) to offer Users⁴ additional execution opportunities for their PO and PSO orders routed to the NYSE. Currently, if PO or PSO orders routed to the NYSE are not marked immediate-or-cancel ("IOC"), the orders are not returned to the entering party but remain at the NYSE, until executed or cancelled. For PO and PSO orders routed to the NYSE, this executed or cancelled functionality is accomplished by marking the order as Do-Not-Ship ("DNS"), a designation specific to the NYSE, which according to NYSE rules, prevents the NYSE from routing the order to away market centers.⁵ The Exchange proposes to offer Users the opportunity to override this DNS designation on PO and PSO orders routed to the NYSE. Where Users choose to override the DNS designation, PO and PSO orders routed to the NYSE will remain at the NYSE until executed, routed away, or cancelled.

Whereas the current functionality satisfies both the User's and the Exchange's obligations pursuant to Regulation NMS, offering this additional functionality for PO and PSO orders routed to the NYSE will enhance execution opportunities by expanding access to available liquidity.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁶ of the Securities Exchange Act of 1934 (the "Exchange Act"), in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed functionality for PO and PSO orders

routed to the NYSE will enhance execution opportunities for Exchange Users by expanding their access to available 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.

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 proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)⁸ of the Act and subparagraph (f)(6) of Rule 19b-4 thereunder.⁹

A proposed rule change filed under Rule 19b-4(f)(6)¹⁰ normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed rule change does not introduce new or novel functionality, but that the Exchange is merely offering its Users certain order type functionality for PO and PSO orders consistent with other current

order types eligible for routing to or entry on the NYSE.¹²

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow implementation of execution opportunities for Exchange Users without delay.¹³ Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2009-63 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-NYSEArca-2009-63. 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

⁴ NYSE Arca Equities Rule 1.1(yy). The term "User" shall mean any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Arca Marketplace pursuant to Rule 7.29.

⁵ See NYSE Rule 13, stating that an order marked DNS "will be immediately and automatically cancelled if compliance with Exchange rules or federal securities laws requires that all or part of such order be routed to another market center for execution."

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² See SR-NYSEArca-2009-63, Item 7.

¹³ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78(c)(f).

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-NYSEArca-2009-63 and should be submitted on or before August 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-16711 Filed 7-14-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60267; File No. SR-Phlx-2009-42]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 2 Thereto Relating to Complex Orders

July 9, 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 26, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On July 2, 2009, the Exchange filed Amendment No. 1 to the proposed rule change. On July 7, 2009, Phlx filed Amendment No. 2 to the proposed rule change and withdrew Amendment No. 1. 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 assess a \$.01 per contract fee for Complex Orders³ in equity options that are directed to specialists, Streaming Quote Traders ("SQTs")⁴ and Remote Streaming Quote Traders ("RSQTs")⁵ by a member or member organization and are executed electronically as part of a Complex Order.

While changes to the Exchange's fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after July 1, 2009.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

³ A Complex Order is composed of two or more components and is priced as a single order (a "Complex Order Strategy") on a net debit or credit basis. See Exchange Rule 1080, Commentary .08. For a complete description of the Exchange's Complex Order System. [sic] See also Securities Exchange Act Release No. 58361 (August 14, 2008), 73 FR 49529 (August 21, 2008) (SR-Phlx-2008-50).

⁴ An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

⁵ An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to assess a \$.01 per contract fee for Complex Orders⁶ in equity options that are directed to specialists, Streaming Quote Traders ("SQTs")⁷ and Remote Streaming Quote Traders ("RSQTs") ("Directed Participants" or "Directed Specialists, RSQTs, or SQTs")⁸ by a member or member organization ("Order Flow Provider" or "OFF"),⁹ and executed electronically on the Exchange's electronic trading platform for options, the Phlx XL II system.¹⁰ The \$.01 per contract rate would be assessed to the Direct [sic] Participants, in lieu of the equity options transactions fees of \$.22 per contract side for Registered Option Traders ("ROT") (on-floor) and \$.21 per contract side for specialists on contracts executed electronically as part of a Complex Order.¹¹ This fee assessment would not apply to single sided Directed Orders¹² pursuant to

⁶ A Complex Order is composed of two or more components and is priced as a single order (a "Complex Order Strategy") on a net debit or credit basis. See Exchange Rule 1080, Commentary .08. For a complete description of the Exchange's Complex Order System. [sic] See also Securities Exchange Act Release No. 58361 (August 14, 2008), 73 FR 49529 (August 21, 2008) (SR-Phlx-2008-50).

⁷ An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

⁸ See Exchange Rule 1080(l), " * * * The term 'Directed Specialist, RSQT, or SQT' means a specialist, RSQT, or SQT that receives a Directed Order." A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. See Exchange Rule 1014.

⁹ See Exchange Rule 1080(l), " * * * The term 'Order Flow Provider' ('OFF') means any member or member organization that submits, as agent, customer orders to the Exchange."

¹⁰ See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

¹¹ In addition the Exchange notes that currently Registered Option Traders (on-floor) and specialists that exceed 4.5 million contracts ("Volume Threshold") in a given month are assessed \$.01 per contract on contract volume above the Volume Threshold instead of the applicable options transaction charges.

¹² See Exchange Rule 1080(l), " * * * The term 'Directed Order' means any customer order (other than a stop or stop-limit order as defined in Rule 1066) to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider, as defined below. To qualify as a Directed Order, an order must be delivered to the Exchange via AUTOM." See also See [sic]

Continued

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Exchange Rule 1080(l). Customers who are on the contra-side of a trade involving Directed Orders would not be subject to a fee. Also, Complex Orders in index and foreign currency options would not be subject to this assessment, but will continue to be assessed the option transaction charges in effect on the Exchange for simple orders for all participants. The Exchange proposes this amendment in order to create incentives for specialists, SQTs and RSQTs that receive directed order flow to provide liquidity in Complex Orders sent to the Exchange for execution and to encourage directed order flow.

Currently, the Exchange assesses an equity option transaction charge of \$.08 per contract side for specialists and ROTs, including SQTs and RSQTs, on contracts executed electronically as part of a Complex Order in equity options. Market participants other than specialists and ROTs are assessed the applicable current equity option transaction charge. Complex Orders are currently assessed on a net debit/credit basis and are billed on a per contract side basis, regardless of the manner in which the order was delivered to the Exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁴ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. Specifically, the Exchange believes that this proposal is equitable because it would apply evenly to specialists, SQTs and RSQTs transacting with Complex Orders sent to the Exchange for execution, in that any specialist, SQT or RSQT may act as a Directed Participant and receive the \$.01 per contract fee. Also, the Exchange believes this proposal will increase liquidity in Complex Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32) (The Exchange replaced the terms AUTOM and AUTO-X with the Phlx XL System, such that references to both terms refer to Phlx XL.)

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁵ and paragraph (f)(2) of Rule 19b-4¹⁶ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2009-42 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-Phlx-2009-42. 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

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

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-Phlx-2009-42 and should be submitted on or before August 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-16714 Filed 7-14-09; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 6694]

Wilberforce Pamphlet Publication

AGENCY: Department of State

ACTION: Notice of publication of pamphlet required by section 202 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457.

SUMMARY: Section 202 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA), Public Law 110-457, mandated that the Secretary of State, in consultation with the Secretary of Homeland Security, the Attorney General, and the Secretary of Labor, develop an information pamphlet on legal rights and resources for aliens applying for employment- or education-based nonimmigrant visas. This notice announces the publication of this pamphlet on the Web site of the Bureau of Consular Affairs of the Department of State at: http://travel.state.gov/visa/questions/questions_4413.html.

DATES: The WWTVPRA Pamphlet is effective June 22, 2009.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Kurland, Jr., Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520-0106. (202) 663-1260, e-mail (KurlandLB@state.gov).

¹⁷ 17 CFR 200.30-3(a)(12).

SUPPLEMENTARY INFORMATION: Section 202 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (WWTVPRA), Public Law 110–457, mandated that the Secretary of State, in consultation with the Secretary of Homeland Security, the Attorney General, and the Secretary of Labor, develop an information pamphlet on legal rights and resources for aliens applying for employment- or education-based nonimmigrant visas. Working closely with the Department of Homeland Security (DHS), the Department of Justice (DOJ), the Department of Labor (DOL), and the Department of Health and Human Services (HHS), and in consultation with non-governmental organizations (NGOs) with expertise on the legal rights of workers and victims of severe forms of trafficking in persons, the Department of State has completed this pamphlet, which is posted online at <http://Travel.State.gov/> and which will shortly be posted on the Web sites of U.S. embassies and consulates worldwide. The pamphlet, to be distributed to applicants applying for certain employment- or education-based nonimmigrant visa classifications, as provided in the WWTVPRA, notifies nonimmigrant workers in the United States of their rights and gives them resources in the event they fall victim to abuse or human trafficking. The pamphlet represents a major step in the Department's efforts to combat human trafficking and labor rights violations. The Department of State has sent the pamphlet to its partners at DHS, DOJ, DOL, and HHS and would like to let all agencies, NGOs, foreign labor brokers, and other interested persons know that the information is now available and may be copied and provided to other parties.

Dated: July 7, 2009.

Janice L. Jacobs,

*Assistant Secretary for Consular Affairs,
Department of State.*

[FR Doc. E9–16805 Filed 7–14–09; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Proposed Measure and Opportunity for Public Comment Pursuant to Section 421 of the Trade Act of 1974: Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China

AGENCY: Office of the United States
Trade Representative.

ACTION: Notice of proposed measure;
request for comments.

SUMMARY: The United States International Trade Commission (ITC) has determined, pursuant to section 421(b)(1) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2451(b)(1)), that certain passenger vehicle and light truck tires¹ from the People's Republic of China (China) are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products. Pursuant to section 421(h)(1) of the Trade Act, the United States Trade Representative (USTR) is publishing notice of proposed restrictions with respect to imports of Chinese tires. USTR invites domestic producers, importers, exporters, and other interested parties to submit their views and evidence on the appropriateness of the proposed restrictions and whether they would be in the public interest. USTR also invites interested parties to participate in a public hearing (if one is requested).

DATES: Requests for USTR to hold a public hearing are due by July 27, 2009. Written comments and requests to testify at any public hearing are also due by July 27, 2009. If USTR receives a request to hold a public hearing, the hearing will be held on August 7, 2009.

ADDRESSES: Requests and written comments should be submitted electronically via the Internet at <http://www.regulations.gov>, docket number USTR–2009–0017. If you are unable to provide on-line submissions, please contact Sandy McKinzy, Legal Technician, at (202) 395–9483 to arrange for an alternative method of transmission.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments and holding of a public hearing, contact Sandy McKinzy, Legal Technician, USTR, telephone (202) 395–9483. Other questions should be addressed to Terrence J. McMartin, Office of China Affairs, USTR, telephone (202) 395–3900, or María L. Pagán, Office of General Counsel, USTR, telephone (202) 395–7305.

SUPPLEMENTARY INFORMATION:

¹ For purposes of its investigation, the ITC considered certain passenger vehicle and light truck tires to consist of new pneumatic tires, of rubber, from China, of a kind used on motor cars (except racing cars) and on-the-highway light trucks, vans, and sport utility vehicles, provided for in subheadings 4011.10.10, 4011.10.50, 4011.20.10, and 4011.20.50 of the Harmonized Tariff Schedule of the United States (hereafter “Chinese tires”).

1. The ITC Investigation and Section 421

Following receipt of a petition filed on April 20, 2009, by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (“USW”), the ITC instituted investigation No. TA–421–7, under section 421 of the Trade Act (19 U.S.C. 2451) to determine whether Chinese tires are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. The ITC made an affirmative market disruption determination on June 18, 2009, and transmitted a report on its determination, as well as its remedy proposals, to USTR on July 9, 2009. The views of the ITC, including its remedy proposals, and the ITC staff report, are available on the ITC's Web site (<http://www.usitc.gov>) and are contained in USITC Publication 4085 (July 2009), entitled “Certain Passenger Vehicle and Light Truck Tires from China.” A copy of that publication can be obtained from the ITC after July 30, 2009, by e-mailing pubrequest@usitc.gov, calling (202) 205–2000, or writing to the Office of the Secretary, 500 E Street, SW., Washington, DC 20436. Requests may also be faxed to (202) 205–2104.

Following an affirmative determination by the ITC, and pursuant to Section 421(h) of the Trade Act, USTR is required to make a recommendation to the President concerning what action, if any, the President should take to remedy the market disruption. Within 15 days after receiving USTR's recommendation, the President is required to provide import relief unless the President determines that providing such relief is not in the national economic interest of the United States or, in extraordinary cases, that taking action would cause serious harm to the national security of the United States. (Section 421(k).) Before making a recommendation, USTR is required to publish notice of any measures it may propose and provide an opportunity to comment.

2. Proposed Measure and Opportunity for Comment

The ITC recommended that the President impose an additional duty for three years on imports of Chinese tires as follows: 55 percent *ad valorem* in the first year, 45 percent *ad valorem* in the second year, and 35 percent *ad valorem* in the third year. The ITC further recommended that, if applications are

filed, the President direct the Department of Commerce and the Department of Labor to provide expedited consideration of trade adjustment assistance for workers and/or firms affected by imports of Chinese tires. USTR proposes this remedy for further consideration by domestic producers, importers, exporters, and other interested parties, and invites any of these parties to submit their views and evidence on the appropriateness of the proposed remedy and whether it would be in the public interest. In addition, USTR invites comments on other possible actions, including: imposing an additional duty on imports of Chinese tires at a rate, and/or for a period, different from the ITC recommendation; imposing a tariff-rate quota on imports of Chinese tires; imposing a quota on imports of Chinese tires; an import monitoring mechanism; or no import relief (pursuant to a determination under Section 421(k) of the Trade Act regarding the national economic interest or national security). In commenting on other possible actions, interested parties are requested to address the appropriateness of any other proposed action and how it would be in the public interest, and address: (i) The short- and long-term effects the proposed action is likely to have on the domestic passenger vehicle and light truck tires industry, other domestic industries, and downstream consumers, and (ii) the short- and long-term effects that not taking the proposed action is likely to have on the domestic passenger vehicle and light truck tires industry, its workers, and on other domestic industries or communities.

USTR will inform parties that have submitted comments and/or requested to testify at any public hearing if a hearing is to be held. In addition, information on any public hearing may be obtained by contacting Sandy McKinzy, Legal Technician, at (202) 395-9483. If a public hearing is requested, it will be held on August 7, 2009, at 9:30 a.m. in Rooms 1 and 2, 1724 F Street, NW., Washington, DC. Requests to testify must include the following information: (1) Name, address, telephone number, fax number, and firm or affiliation of the person wishing to testify; and (2) a brief summary of the comments to be presented.

3. Requirements for Submissions

To submit requests or comments via <http://www.regulations.gov>, enter docket number USTR-2009-0017 on the home page and click "go". The site will provide a search-results page listing all documents associated with this docket.

Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Send a Comment or Submission." (For further information on using the <http://www.regulations.gov> Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.)

The <http://www.regulations.gov> Web site provides the option of making submissions by filling in a "General Comments" field, or by attaching a document. We expect that most submissions will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" followed by (as appropriate) "Written Comments", "Request for Public Hearing", or "Request to Testify" in the "General Comments" field.

Submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) are preferred. If you use an application other than those, please identify the application in your submission. For any document submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters "BC", and the file name of the public version should begin with the character "P". The "P" or "BC" should be followed by the name of the submitter. If you submit comments that contain no business confidential information, the file name should begin with the character "P", followed by the name of the submitter. Submissions should not attach a separate cover letter; rather, information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

We strongly urge submitters to use electronic filing. If on-line submission is impossible, please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

Eric G. Altbach,

Deputy Assistant United States Trade Representative for China Affairs.

[FR Doc. E9-16824 Filed 7-14-09; 8:45 am]

BILLING CODE 3190-W9-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) During the Week Ending July 4, 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-2009-0152.

Date Filed: June 30, 2009.

Due Date for Answers, Conforming Applications, or Motions To Modify Scope: July 21, 2009.

Description: Application of MJet GmbH requesting a foreign air carrier permit to the full extent authorized by the Air Transport Agreement between the United States and the European Community and the Member States of the European Community to enable it to engage in: (i) Foreign charter air transportation of persons and property 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; (ii) foreign charter air transportation of persons and property between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) other charters; and (iv) transportation authorized by any additional route rights made available to European Community carriers in the future. MJet further requests exemption authority to the extent necessary to enable it to provide the services described above pending issuance of a foreign air carrier permit and such additional or other relief.

Docket Number: DOT-OST-2009-0153.

Date Filed: June 30, 2009.

Due Date for Answers, Conforming Applications, or Motions To Modify Scope: July 21, 2009.

Description: Application of Swiss Air Ambulance Ltd requesting a foreign air carrier permit to the full extent authorized by the Air Transport Agreement between the Government of the United States of America and the Government of Switzerland in order to engage in: (i) Charter foreign air transportation of persons and property between points behind Switzerland via Switzerland and intermediate points to a point or points in the United States and beyond, and (ii) fifth freedom charter service pursuant to the prior approval requirements. Swiss Air Ambulance further requests exemption authority to the extent necessary to enable it to provide the services described above pending issuance of a foreign air carrier permit and such additional or other relief as the Department may deem necessary or appropriate.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9-16761 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-9X-P

21 days after the filing of the application.

Docket Number: DOT-OST-2009-0150.

Date Filed: June 29, 2009.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote Number S 086. Departure Control Guidelines for Secure Flight (RPs 1707b, 1708, 1715, 1719 and 1719b).

Intended effective date: 1 June 2009.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E9-16752 Filed 7-14-09; 8:45 am]

4910-9X-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

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

ACTION: List of Applications for Modification of Special Permits

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of

transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before July 30, 2009.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue, Southeast, Washington DC or at <http://fdms.gov>.

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 7, 2009.

Delmer F. Billings,

Director, Office of Hazardous Materials Special Permits and Approvals.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending July 4, 2009

The following Agreements were filed with the Department of Transportation under Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within

MODIFICATION SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
4884-M	Praxair, Inc. Danbury, CT	49 CFR 175.3; 178.61; 173.304; 173.201; 173.202; 173.302; 173.323.	To modify the special permit to authorize transportation of certain gases, corrosive liquids, and materials that are dangerous when wet in non-DOT specification cylinders similar to a DOT-4BW except that the cylinder is manufactured from stainless steel.
10945-M	Structural Composites Industries, LLC, Pomona, CA.	49 CFR 173.302(a); 173.304(a); 175.3.	To modify the special permit to authorize liner materials qualification as written in ISO 11119-1 & 2; bonfire test in horizontal position as an alternative to the currently required vertical position; and delay marking of hydro static test until the date that the cylinders are shipped from manufacturer to user.
11494-M	ARC Automotive, Inc. Knoxville, TN.	49 CFR 173.301(h); 173.302; 173.306.	(3) To modify the (d) testing requirements of 7.b.
11536-M	Boeing Company, The Los Angeles, CA.	49 CFR 173.102 Spec. Prov. 101; 173.24(g); 173.62; 173.202; 173.304; 175.3.	To modify the special permit to authorize the transportation in commerce of Class 9 materials.
12087-M	LND, Inc. Oceanside, NY	49 CFR 172.101, Co. 9; 173.306; 175.3.	To modify the special permit to authorize a piece of equipment as a strong outer packaging.

MODIFICATION SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
12283-M	Interstate Battery of Alaska Anchorage, AK.	49 CFR 173.159(c)(1); 173.159(c).	Permit to authorize the removal of the wording for disposal or remanufacture allowing batteries to be shipped to remote villages.
12296-M	Clean Earth Systems, Inc. Tampa, FL.	49 CFR 173.12(b)(2)(i)	To modify the special permit to authorize an additional mode of transportation.
13306-M	Ecolab, Inc. St. Paul, MN	49 CFR 172.3 12(a); 173.24a(a)(1); 173.22a.	To renew and modify the special permit to authorize a new specially-designed combination packaging consisting of two plastic inner receptacles having a side closure not oriented in the upward direction for use in transporting Organic peroxide, Division 5.2.
13736-M	ConocoPhillips Anchorage, AK.	49 CFR 172.101 Table, Col. (9B).	To modify the special permit to authorize an increase in the capacity from 350 to 4500 U.S. gallons for bulk containers.
14576-M	Structural Composites Industries (SCI) Pomona, CA.	49 CFR 173.302a and 173.304a.	To modify the special permit to authorize an increase in the maximum water volume from 250 liters to 450 liters and to remove the specific requirements for minimum water volume of 250 liters.
13736-M	ConocoPhillips Anchorage, AK.	49 CFR 172.101 Table, Col. (9B).	To modify the special permit to authorize an
14736-M	U.S. Department of Defense Scott Air Force Base, IL.	49 CFR 172.101 Table Column (9B) and (10A) and §173.227.	To reissue the special permit originally issued on an emergency basis to authorize transportation in commerce of Nitric acid, red fuming in alternative packaging.
14811-M	Worthington Cylinders of Canada Corp. Tilbury, Ontario, Canada.	49 CFR 173.30 1(a)(1), 173.301(a)(2) and 173.302a(a)(1).	To reissue the special permit originally issued on an emergency basis to authorize the manufacture, marking, sale and use of a non-DOT specification cylinder conforming with DOT Specification 3AA except an alternative flattening test is authorized.
14821-M	Matheson Tri-Gas, Inc. Basking Ridge, NJ.	49 CFR 173.40(e)	To reissue the special permit originally issued on an emergency basis to authorize transportation in commerce of certain manifolded DOT specification 3A and 3AA cylinders containing a material toxic by inhalation in Hazard Zone B.

[FR Doc. E9-16514 Filed 7-14-09; 8:45 am]
 BILLING CODE 4909-60-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: The FAA assigned the Aviation Rulemaking Advisory Committee (ARAC) a new task to develop maintenance requirements for aircraft used in commercial air tour operations. This is in response to National Transportation Safety Board (NTSB) recommendations. This notice is to inform the public of the new ARAC activity and solicit membership to a new Commercial Air Tour Maintenance (CATM) Working Group to support ARAC on this new task.

FOR FURTHER INFORMATION CONTACT: Frank Wiederman, Air Carrier

Maintenance Branch, AFS-330, Federal Aviation Administration, 950 L'Enfant Plaza, SW., 5th Floor, Washington, DC 20024; telephone (202) 385-6443, facsimile (202) 385-6474; e-mail frank.wiederman@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA established ARAC to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on 14 CFR part 136—Commercial Air Tours and National Parks Air Tour Management.

In March 2007, a helicopter, operating under part 135 as an air tour flight, crashed while trying to land in Hawaii. Due to this crash, NTSB, on June 12, 2008, issued two safety recommendations to the FAA that identify the need for a maintenance quality assurance system and maintenance training for commercial air tour operations. The two safety recommendations are as follows:

1. A-08-32: Require that all air tour operators (14 CFR parts 91 and 135) establish and maintain a system for continuously analyzing the performance and effectiveness of their inspection and maintenance program to ensure that all maintenance is performed with the utmost regard for quality and safety.

2. A-08-33: Require air tour operators to provide formal, model specific helicopter maintenance training for their mechanics to ensure an adequate level of competency.

FAA's review of NTSB's safety recommendations further identifies the need for a required inspection program for all commercial air tour operations.

Current FAA regulations require that air carriers operating under parts 121 and 135 (with aircraft type certificated for a passenger seating configuration, excluding any pilot seat, of ten seats or more) for the purpose of conducting air tours are required to have a maintenance quality assurance system, a maintenance training program and a required inspection program. However, similar requirements do not exist for aircraft operated under parts 91 and 135 (with aircraft type certificated for a passenger seating configuration,

excluding any pilot seat, of 9 or fewer seats). This task is intended to address these differences.

The objective of the Commercial Air Tour Maintenance (CATM) Working Group is to recommend a maintenance quality assurance system, a maintenance training program and a required inspection program for operators and air carriers that conduct air tours and operate under parts 91 and 135 (with aircraft type certificated for a passenger seating configuration, excluding any pilot seat, of 9 or fewer seats).

The Task

ARAC is tasked to develop recommendations for a maintenance quality assurance system, a maintenance training program and a required inspection program for operators and air carriers that conduct air tours and who operate under parts 91 and 135 (aircraft type certificated for a passenger seating configuration, excluding any pilot seat, of 9 or fewer seats).

ARAC will be supported by the CATM Working Group who will:

1. Review NTSB's June 12, 2008 letter to the FAA to understand the facts and analysis of the accident findings that lead to issuing safety recommendations A-08-32 and A-08-33. The letter is found at http://www.nts.gov/recs/letters/2008/A08_32_35.pdf. (Note: Included in NTSB's letter are safety recommendations A-08-34 and A-08-35. These are not part of this ARAC tasking.)

2. Review Advisory Circulars (AC) 120-79 and 120-16E for available guidance on developing and implementing a maintenance quality assurance system, maintenance training program and required inspection program. A copy of these ACs are at: [http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/c83d3e4ceb74e1df86256d1600587657/\\$FILE/AC120-79.pdf](http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/c83d3e4ceb74e1df86256d1600587657/$FILE/AC120-79.pdf) and [http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/d505ffc06aecc27e862574c6005480a2/\\$FILE/AC%20120-16E.pdf](http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/d505ffc06aecc27e862574c6005480a2/$FILE/AC%20120-16E.pdf).

3. Develop a report containing recommendations for rulemaking and explain the reason and safety benefits for each recommendation and will present the findings at the next ARAC Executive Committee meeting.

If a Notice of Proposed Rulemaking (NPRM) is published for public comment as a result of the recommendations from this tasking, the FAA may ask ARAC to review the comments received and provide a recommended response to them.

Schedule: The tasks must be completed no later than 12 months after the first working group meeting.

ARAC Acceptance of Task

ARAC accepted the task and assigned the task to the CATM Working Group. The working group serves as staff to ARAC and assists in the analysis of assigned tasks. ARAC must review and approve the working group's recommendations. If ARAC accepts the working group's recommendations, it will send them to the FAA. The FAA will submit the recommendations it receives to the agency's Rulemaking Management Council to address the availability of resources and prioritization.

Working Group Activity

The Commercial Air Tour Maintenance (CATM) Working Group must comply with the procedures adopted by ARAC. As part of the procedures, the working group must:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan for consideration at the next ARAC Executive Committee meeting held following publication of this notice.
2. Give a detailed conceptual presentation of the proposed recommendations prior to proceeding with the work stated in item 3 below.
3. Draft the appropriate documents and required analyses and/or any other related materials or documents.
4. Provide a status report at each meeting of the ARAC Executive Committee.

Participation in the Working Group

The CATM Working Group will be composed of technical experts having an interest in the assigned task. A working group member need not be a representative or a member of the full committee.

If you have expertise in the subject matter and wish to become a member of the working group, write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire. Describe your interest in the task and state the expertise you would bring to the working group. We must receive all requests by September 14, 2009. The Executive Committee and the FAA will review the requests and advise you whether or not your request is approved.

If you are chosen for membership on the working group, you must represent your aviation community segment and actively participate in the working group by attending all meetings, and providing written comments when

requested to do so. You must devote the resources necessary to support the working group in meeting any assigned deadlines. You must keep your management chain and those you may represent advised of working group activities and decisions to ensure the proposed technical solutions don't conflict with your sponsoring organization's position when the subject is presented to ARAC for approval. Once the working group has begun deliberations, members will not be added or substituted without the approval of the FAA and the working group chair.

The Secretary of Transportation determined the formation and use of ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC are open to the public. Meetings of the CATM Working Group will not be open to the public, except to the extent individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on July 10, 2009.

Pamela Hamilton-Powell,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. E9-16788 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35218]

Meridian Southern Railway, LLC—Construction of Connecting Track Exemption—in Lauderdale County, MS

Meridian Southern Railway, LLC (MDS) has filed a verified notice of exemption under 49 CFR 1150.36 to construct approximately 1,910 feet of track in Lauderdale County, MS. The track to be constructed will extend from the existing MDS track near Interchange Road to a yard track (designated Number 4 track) in the existing Norfolk Southern Railway Company (NS) rail yard near NS milepost 3.2 in Meridian, MS. The track to be constructed will connect MDS to the NS main line, whereas MDS currently connects only to the Kansas City Southern Railway Company main line. The connection will be constructed within existing rail rights-of-way (owned either by MDS or NS) and within an acquired railroad easement.

Since MDS acquired its rail line in 2000,¹ MDS has served several major customers on the line, including the Marshall Durbin Poultry complex at Waynesboro, the Hood Lumber Company at Waynesboro, Georgia Pacific at Meridian, and Atlas Roofing at Meridian. MDS also serves a number of smaller customers including Bazor Lumber Company in Quitman, Scotch Plywood in Waynesboro, Culbreth Timber Company in Quitman, and Southwood Door Company in Quitman. MDS anticipates that the proposed connecting track will provide these existing shippers and consignees with improved access to the national rail system by the addition of a routing option with more efficient flow and adding price competition. MDS anticipates that the proposed connection will encourage increased shipments from existing customers and foster new economic development in the East Mississippi area served by MDS.

Construction is proposed to begin no earlier than 90 days after the filing of this notice of exemption.

MDS has certified that it has complied with the Board's environmental rules at 49 CFR 1105 and with the pre-filing notice requirements at 49 CFR 1150.36(c)(1).

MDS has submitted environmental and historic reports required under 49 CFR 1105.7 and 1105.8. Under 49 CFR 1150.36(c)(3), the Board's Section of Environmental Analysis (SEA) will generally issue an environmental assessment (EA) 15 days after the **Federal Register** notice, here by July 30, 2009. However, under 49 CFR 1150.36(c)(10), a stay of the effective date may be issued if an informed decision on environmental issues cannot be made prior to September 23, 2009.² Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20523-0001) or by calling SEA, at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339. Comments on environmental and historic preservation matters must be filed within 30 days after the EA becomes available to the public.

On completion of the environmental review, the Board will issue a decision addressing those matters and making

the exemption effective at that time, if appropriate, subject to any necessary conditions, thereby allowing construction to begin.

This exemption will be effective on September 23, 2009, unless stayed. Petitions to stay that do not involve environmental issues must be filed by July 24, 2009. Petitions for reconsideration must be filed by August 4, 2009.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term "solid waste" is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Any original and 10 copies of all pleadings, referring to STB Finance Docket No. 35218, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Kevin M. Shays, K&L Gates LLP, 1601 K Street, NW., Washington, DC 20006.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: July 8, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. E9-16636 Filed 7-10-09; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35256]

Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Continuance in Control Exemption—Temple & Central Texas Railway, Inc.

Patriot Rail, LLC (PRL) and its subsidiaries Patriot Rail Holdings LLC (PRH) and Patriot Rail Corp. (Patriot), have filed a verified notice of exemption to continue in control of Temple & Central Texas Railway, Inc. (TC), upon TC's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption for TC to operate about 7.7 miles of unmarked rail line owned by the City of Temple, in Bell County, TX. See STB Finance Docket No. 35255, *Temple & Central Texas Railway, Inc.—Operation Exemption—City of Temple, TX*.

The parties intend to consummate the transaction on or after August 1, 2009.

PRL is a noncarrier limited liability company that owns not less than 51 percent of the equity interests in PRH, which owns 100 percent of the stock of Patriot. Patriot is a noncarrier holding company that owns 100 percent of the stock of TC and 5 Class III railroad subsidiaries: Tennessee Southern Railroad Company (TSRR), Rarus Railway Company (Rarus), Utah Central Railway Company (Utah), Sacramento Valley Railroad, Inc. (SAVR), and The Louisiana and North West Railroad Company (L&NW).

PRL, PRH, and Patriot state that each has successfully managed short line railroads for more than a decade and that they intend to use that experience and expertise and their purchasing power to effect operating efficiencies for TC, to improve service to shippers, and to make TC a financially viable railroad.

The parties represent that: (1) The rail line to be operated by TC does not connect with any other railroads in the corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the rail lines with any other railroad in the corporate family;¹ and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not

¹ See *Meridian Southern Railway, LLC—Acquisition and Operation—Lines of Kansas City Southern Railway Company*, STB Finance Docket No. 33854 (STB served Aug. 29, 2000).

² See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989).

¹ TSRR's lines are located in Tennessee and Alabama, Rarus' lines are located in Montana, Utah's lines are located in Utah, SAVR's lines are located in California, and L&NW's lines are located in Arkansas and Louisiana.

automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than July 22, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35256, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: July 9, 2009.

By the Board.

Rachel D. Campbell,
Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. E9-16616 Filed 7-14-09; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: August 6, 2009, 12 noon to 3 p.m., Eastern Daylight Time.

PLACE: This meeting will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827-4565 to receive the toll free number and pass code needed to participate in these meetings by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827-4565.

Issued on: July 9, 2009.

Larry W. Minor,
Associate Administrator for Policy and Program Development.

[FR Doc. E9-16902 Filed 7-13-09; 11:15 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

[Dockets No. FAA-2007-29320 and FAA-2008-0221]

Operating Limitations at John F. Kennedy International Airport and Newark Liberty International Airport

ACTION: Notice of limited waiver of the slot usage requirement.

SUMMARY: This action announces a limited waiver of the minimum usage requirements that apply to Operating Authorizations at John F. Kennedy International Airport (JFK) and Newark Liberty International Airport (EWR) for nonstop flights to or from Mexico. This policy is effective from April 27, 2009, through September 12, 2009.

DATES: Effective Date: effective upon publication.

FOR FURTHER INFORMATION CONTACT: James Tegtmeier, Associate Chief Counsel for the Air Traffic Organization; telephone—(202) 267-8323; e-mail—james.tegtmeier@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

On May 1, the Air Transport Association (ATA) requested a partial waiver of the minimum slot usage requirements at JFK and EWR. The ATA requested relief for flights between points in Mexico and JFK or EWR, citing the recent incidence of H1N1 influenza that has affected the number of airline passengers traveling to and from cities in Mexico. ATA also cites actions by the U.S. Centers for Disease Control and Prevention (CDC), the World Health Organization, and the Mexican government to address the H1N1 outbreak, which have limited passenger demand for flights to Mexico.

According to ATA, demand had fallen by approximately 50 percent and future bookings were “vastly reduced.” ATA represented that the relief is necessary to address an unexpected and extraordinary disruption of travel demand and service. ATA sought a waiver of the minimum usage requirements on flights to and from Mexico, as well as to and from any other country to which the CDC recommends against unnecessary travel. The CDC issued such a recommendation regarding non-essential travel to and from Mexico on April 27. The CDC withdrew its recommendation on May 15, narrowing its travel-related, precautionary advice to the population that is at risk for complications from the virus.

Under the FAA's orders limiting scheduled operations at the airports, slots must be used at least 80 percent of the time or they will be withdrawn and will not receive historic precedence for the following scheduling season.¹ The FAA may grant a waiver from the minimum usage requirements in highly unusual and unpredictable conditions that are beyond the control of the carrier and affect carrier operations for a period of five consecutive days or more.

Statement of Policy

The FAA has determined that the circumstances surrounding the outbreak of the H1N1 flu meet the criteria for a limited waiver of the applicable minimum slot usage requirements. On April 27, the CDC issued a Travel Health Warning recommending against non-essential travel to Mexico. The CDC downgraded this warning on May 15 to a Travel Health Precaution, urging travelers to take steps to protect against contracting the H1N1 flu and to consider postponing travel if the traveler is in a population that is at risk for complications from the virus.

We have evaluated the effect of the CDC recommendations on carriers that conduct scheduled service to affected airports. Our review of carrier schedules at JFK, EWR, and other airports shows that carriers have cancelled flights or adjusted frequencies for various dates through the summer season. Many carriers have also adopted policies to allow limited flexibility for passengers to change or cancel reservations for Mexico flights. Carriers are assessing demand to determine when or if to restore flights to points in Mexico. At the same time, overall demand for flights in the New York City area remains strong, and several carriers are seeking slots for new or expanded service. As a result, carriers that have cancelled service to Mexico could use the slots to serve other markets or to enter into agreements to have other carriers use their slots for a period of time.

The FAA has decided to grant the waiver until September 12, because many carriers have significant schedule changes during that month. This would also afford affected carriers a period of time to arrange for the continued use of the operating authority at or above the minimum use threshold, either by adding service to unaffected locations or by leasing or trading the operating authority to another carrier that can conduct such service. This slot usage waiver applies only to nonstop flights

¹ 73 FR 8,737, 8,737-38, 8,739 (Feb. 14, 2008) (JFK); 73 FR 29,550, 29,554-55 (May 21, 2008).

scheduled between JFK or EWR and a point in Mexico during the effective dates of this policy and only to flights that were available for sale prior to April 27, 2009.

Carriers must identify to the FAA's Slot Administration Office the dates for which the waiver is requested and provide the flight number, origin/destination airport, scheduled time of operation, and the slot identification number. By August 14, carriers should identify qualified cancelled flights for the period from April 27 through August 2. Beginning August 3, carriers must provide advance notice of cancellations to the FAA Slot Administration Office in order to obtain a waiver. Information should be provided to the Slot Administration Office by e-mail at 7-awa-slotadmin@faa.gov or by facsimile at (202) 267-7277.

Issued in Washington, DC on July 7, 2009.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. E9-16512 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35255]

Temple & Central Texas Railway, Inc.— Operation Exemption—City of Temple, TX

Temple & Central Texas Railway, Inc. (TC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate about 7.7 miles of unmarked rail line (the line) owned by the City of Temple (the City), in Bell County, TX.¹ TC states that it intends to interchange traffic with BNSF Railway Company (BNSF).²

This transaction is related to a concurrently filed verified notice of exemption for Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp. to continue in control of TC upon TC's becoming a Class III rail carrier. See STB Finance Docket No. 35256, *Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Continuance in Control Exemption—Temple & Central Texas Railway, Inc.*

¹ There are no mileposts on the line. The City constructed the line as part of the development of an industrial park in the Temple Reinvestment Zone and has licensed TC to provide operations over the line.

² TC states there are no interchange commitments or paper barriers in the license and operating agreement, nor will there be any interchange commitments or paper barriers in the interchange agreement with BNSF.

The transaction is expected to be consummated on or after August 1, 2009.

TC certifies that its projected annual revenues as a result of the transaction will not result in TC becoming a Class II or Class I rail carrier and further certifies that its projected annual revenue will not exceed \$5 million.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term "solid waste" is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than July 22, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35255, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: July 9, 2009.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9-16633 Filed 7-14-09; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-1998-4334; FMCSA-2000-7918; FMCSA-2001-9561; FMCSA-2003-14223; FMCSA-2003-14504; FMCSA-2005-20027; FMCSA-2005-20560; FMCSA-2006-25246; FMCSA-2007-26653]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 28 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 8, 2009. Comments must be received on or before August 14, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-1998-4334; FMCSA-2000-7918; FMCSA-2001-9561; FMCSA-2003-14223; FMCSA-2003-14504; FMCSA-2005-20027; FMCSA-2005-20560; FMCSA-2006-25246; FMCSA-2007-26653, using any of the following methods.

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

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* 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.

- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your

comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)–366–4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.” The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 28 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 28 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Glenn A. Babcock, Jr.
JeanPierre Brefort
Joey E. Buice
James T. Butler, Jr.
Paul W. Dawson
Lois E. De Souza
James M. Eads
Jay E. Finney
Steven A. Garrity
Waylon E. Hall
Gary D. Hallman
John R. Hughes
Edward J. Kasper
Jeffrey M. Kimsey
Richard L. Leonard

Donald R. McCracken
William F. Nickel, IV
Gerald L. Phelps, Jr.
Thomas G. Raymond
Robert A. Reyna
Tim M. Seavy
Boyd D. Stamey
Randy D. Stanley
Harry J. Stoever
Lee T. Taylor
James M. Tayman, Sr.
Scott C. Teich
John E. Terrell

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 28 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 66 FR 41656; 68 FR 44837; 70 FR 41811; 72 52421; 65 FR 66286; 66 FR 13825; 68 FR 13360; 70 FR 12265; 68 FR 10300; 65 FR 7546; 72 FR 44915; 66 FR 33990; 66 FR 30502; 68 FR 10301; 68 FR 19596; 70 FR 25878; 72 FR 28093; 68 FR 19598; 68 FR 33570; 70 FR 2701; 70 FR 16887; 70 FR 17504; 70 FR 30997; 72 FR 9397; 72 FR 182; 72 FR 8417; 72 FR

36099). Each of these 28 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by August 14, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 28 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent

with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: July 7, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9-16593 Filed 7-14-09; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 8, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13, on or after the publication date of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 14, 2009 to be assured of consideration.

Bureau of Public Debt (BPD)

OMB Number: 1535-0138.

Type of Review: Revision.

Title: New Treasury Direct.

Forms: 5444, 5511, 5512, 5446.

Description: The information is requested to establish a new account and process transactions.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 97,000 hours.

Clearance Officer: Judi Owens (304) 480-8150, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106.

OMB Reviewer: Shagufta Ahmed (202) 395-7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA, Clearance Officer.

[FR Doc. E9-16787 Filed 7-14-09; 8:45 am]

BILLING CODE 4810-39-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 9, 2009

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 14, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1510-0073.

Type of Review: Extension.

Form: 111.

Title: ETA Financial Agency Agreement.

Description: This application will collect a financial institution's identifying information, confirm a financial institution's commitment to offering the ETA, identify a point of contact for the ETA Program and determine date when institutions will offer ETAs.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 10 hours.

Clearance Officer: Wesley Powe (202) 874-7662, Financial Management Service, Room 135, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: Shagufta Ahmed (202) 395-7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9-16789 Filed 7-14-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entities Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of 25 newly-designated individuals and entities whose property and interests in property are blocked pursuant to Executive Order 12978 of October 21, 1995, "Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers."

DATES: The designation by the Acting Director of OFAC of the 25 individuals and entities identified in this notice pursuant to Executive Order 12978 is effective on July 9, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622-2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622-0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the "Order"). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned

or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On July 9, 2009, the Director of OFAC, in consultation with the Attorney General and Secretary of State, as well as the Secretary of Homeland Security, designated 25 individuals and entities whose property and interests in property are blocked pursuant to the Order.

The list of additional designees is as follows:

1. FLOREZ UPEGUI, Francisco Antonio (a.k.a. "Don Pacho"); c/o FLOREZ HERMANOS LTDA., Medellin, Colombia; c/o CANALES VENECIA LTDA., Envigado, Antioquia, Colombia; Calle 4 Sur No. 43B-60, Medellin, Colombia; DOB 10 May 1950; Citizen Colombia; Nationality Colombia; Cedula No. 8308988 (Colombia); Passport AG708213 (Colombia); (INDIVIDUAL) [SDNT].

2. FLOREZ UPEGUI, Elkin de Jesus, c/o FLOREZ HERMANOS LTDA., Medellin, Colombia; c/o INVERSIONES FLOREZ Y FLOREZ Y CIA S.C.A., Medellin, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 70660660 (Colombia); (INDIVIDUAL) [SDNT].

3. FLOREZ UPEGUI, Carlos Jairo, c/o FLOREZ HERMANOS LTDA., Medellin, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 70660584 (Colombia); (INDIVIDUAL) [SDNT].

4. VELASQUEZ RODRIGUEZ, Ruth Cecilia, c/o CANALES VENECIA LTDA., Envigado, Antioquia, Colombia; c/o FLOREZ HERMANOS LTDA., Medellin, Colombia; c/o INVERSIONES FLOREZ Y FLOREZ Y CIA S.C.A., Medellin, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 32335973 (Colombia); (INDIVIDUAL) [SDNT].

5. VELEZ TRUJILLO, Jairo de Jesus, c/o CANALES VENECIA LTDA., Envigado, Antioquia, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 70410564 (Colombia); (INDIVIDUAL) [SDNT].

6. ACOSTA SERNA, Oscar Alonso, Colombia; DOB 15 Aug 1971; POB Argelia, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 10141319 (Colombia); Passport AK253066 (Colombia); (INDIVIDUAL) [SDNT].

7. ACOSTA SERNA, Robinson Duvan, Mz 1 cs 12 B. Santiago Londono, Colombia; DOB 26 Apr 1977; POB Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 10002061 (Colombia); Passport AJ418881 (Colombia); (INDIVIDUAL) [SDNT].

8. HARB, Chekri Mahmoud (a.k.a. "Shekry Harb"); c/o VARIEDADES HARB SPORT, Medellin, Colombia; c/o

COMERCIAL JINAN S.A., Guatemala, Guatemala; c/o ALMACEN FUTURO NO. 1, Medellin, Colombia; Carrera 50 A, No 76-s-169, Torre 3, Apto. 319, Medellin, Colombia; DOB 25 Aug 1961; POB Lebanon; Citizen Colombia; Nationality Lebanon; Cedula No. 256820 (Colombia); (INDIVIDUAL) [SDNT].

9. RINCON ORDONEZ, Jorge Enrique, Transversal 24 No. 87-15, Apto. 7000, Bogota, Colombia; DOB 09 Dec 1957; POB Armenia; Citizen Colombia; Nationality Colombia; Cedula No. 7526915 (Colombia); Passport AJ842281 (Colombia); (INDIVIDUAL) [SDNT].

10. VARELA BUSTOS, Fernando, B. Centro Not El Dovia Valle DRM, Colombia; DOB 02 Feb 1959; Citizen Colombia; Nationality Colombia; Cedula No. 0071622765 (Colombia); (INDIVIDUAL) [SDNT].

11. DOUGHERTY MONROY, Jose Rodrigo, 5ta Calle 3-56, Zona 14, Colonia El Campo, Guatemala City, Guatemala; DOB 08 May 1971; POB Guatemala; Passport 008130004 (Guatemala); (INDIVIDUAL) [SDNT].

12. GONZALEZ HOYOS, Carlos Enrique, Colombia; DOB 13 Jul 1968; Citizen Colombia; Nationality Colombia; Cedula No. 0018594926 (Colombia); (INDIVIDUAL) [SDNT].

13. CANAS PULIDO, Ramon Alberto, Cra 29 #9 B 64, Cali, Colombia; DOB 02 Aug 1981; Citizen Colombia; Nationality Colombia; Cedula No. 16930747 (Colombia); Passport AK139726 (Colombia); (INDIVIDUAL) [SDNT].

14. MADRID FRANCO, Cecilia, Calle 3 sur No. 53-90, Medellin, Colombia; DOB 31 Mar 1962; Citizen Colombia; Nationality Colombia; Cedula No. 31885071 (Colombia); Passport AJ525603 (Colombia); (INDIVIDUAL) [SDNT].

15. DIB EL MALT, Abdul Naser, Calle 85 No. 12-10, Oficina 213 y/o Local 3, Colombia; DOB 20 Aug 1967; Citizen Colombia; Nationality Lebanon; Passport 0218186 (Lebanon); Cedula No. 276392 (Colombia); (INDIVIDUAL) [SDNT].

16. ALVARADO, Imad Abdul Rahim, Lebanon; DOB 26 Jan 1970; Citizen Colombia; Nationality Colombia; Cedula No. 0005629133 (Colombia); (INDIVIDUAL) [SDNT].

17. ABDUL RAHIM, Ali Mohamad, Trsv 44, No. 45a-19, Colombia; DOB 16 Sep 1968; Citizen Colombia; Nationality Lebanon; Cedula No. 310221 (Colombia); Passport 1505015 (Lebanon); (INDIVIDUAL) [SDNT].

18. HENAO JARAMILLO, Mario Alberto, Colombia; DOB 04 Sep 1966; Cedula No. 98519014 (Colombia); (INDIVIDUAL) [SDNT].

19. KADDOURA, Ali Ahmad, Colombia; DOB 11 Jul 1964; Nationality

Lebanon; Cedula No. 199740 (Colombia); (INDIVIDUAL) [SDNT].

20. FLOREZ HERMANOS LTDA. (a.k.a. HOSTERIA LAS DOS PALMAS); Carrera 65 No. 34-35, Medellin, Colombia; NIT # 8000902368 (Colombia); (ENTITY) [SDNT].

21. INVERSIONES FLOREZ Y FLOREZ Y CIA S.C.A. (a.k.a. FLOREZ Y FLOREZ Y CIA S.C.A.); Carrera 65 No. 34-35, Medellin, Colombia; NIT # 811036947-7 (Colombia); (ENTITY) [SDNT].

22. CANALES VENECIA LTDA. (a.k.a. CANALVE LTDA.); Carrera 42 No. 40CSur-18, Envigado, Antioquia, Colombia; NIT # 8110469899 (Colombia); (ENTITY) [SDNT].

23. ALMACEN FUTURO NO. 1, Carrera 50A No. 83-165, Oficina 402, Medellin, Colombia; NIT # 6070026706 (Colombia); (ENTITY) [SDNT].

24. VARIEDADES HARB SPORT, Cra. 50A # 83-165, Ofc. 402, Medellin, Colombia; NIT # 6070026706 (Colombia); (ENTITY) [SDNT].

25. COMERCIAL JINAN S.A., 20 Calle No. 16-36, Proyecto 4-4, Zona 6, Guatemala, Guatemala; NIT # 4151952-3 (Guatemala); (ENTITY) [SDNT].

Dated: July 9, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9-16784 Filed 7-14-09; 8:45 am]

BILLING CODE 4811-45-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of four individuals and three entities whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers*.

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN List") of the entities and individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on June 26, 2009.

FOR FURTHER INFORMATION CONTACT:

Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622-2420.

SUPPLEMENTARY INFORMATION:**Electronic and Facsimile Availability**

This document and additional information concerning OFAC are available from OFAC's Web site (<http://www.treas.gov/ofac>) via facsimile through a 24-hour fax-on demand service, tel.: (202) 622-0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701-1706) ("IEEPA"), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the "Order"). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On June 26, 2009, the Director of OFAC removed from the SDN List the three entities and four individuals listed below, whose property and interests in property were blocked pursuant to the Order.

The listing of the unblocked entities and individuals follows:

Administracion De Recursos Financieros E.U. (a.k.a. AFIN E.U.), Calle 20N No. 6AN-19 ofc. 67-68, Cali, Colombia; NIT # 805013294-5 (Colombia) [SDNT]

Asesorias Ocupacionales LTDA., Carrera 66 No. 11-129, Cali, Colombia; NIT # 800040728-6 (Colombia) [SDNT]

Promotores De Bienes Raices S.A. (a.k.a. Promobienes S.A.), Calle 20N No. 6AN-19 ofc. 67, Cali, Colombia; NIT # 805001651-1 (Colombia) [SDNT]

Ramirez Rivera, Gustavo, c/o Unidad Cardiovascular LTDA., Cali, Colombia; Avenida 4 Oeste No. 6-103, Cali, Colombia; Calle 25 N No. 5BN-16, Cali, Colombia; DOB 05 Apr 1968; POB Medellin, Colombia; Cedula No. 16281514 (Colombia); Passport AJ077853 (Colombia) (individual) [SDNT]

Valero Jimenez, Alejandro, c/o Unidad Cardiovascular LTDA., Cali, Colombia; Transversal 18 No. 102-42 apto. 401, Bogota, Colombia; 826 SW Canary Terrace, Port St. Lucie, FL 34953; c/o Administracion De Recursos Financieros E.U., Cali, Colombia; c/o Promotores De Bienes Raices S.A., Cali, Colombia; DOB 25 Oct 1967; POB Cali, Colombia; Cedula No. 16746340 (Colombia); Passport P059298 (Colombia) (individual) [SDNT]

Valero Sanchez, Francisco Javier, c/o Asesorias Ocupacionales LTDA., Cali, Colombia; c/o Unidad Cardiovascular LTDA., Cali, Colombia; c/o Promotores De Bienes Raices S.A., Cali, Colombia; Cedula No. 2436976 (Colombia) (individual) [SDNT]

Zuluaga Alzate, Diana Patricia, c/o Orlando Sabogal Zuluaga E Hijos & CIA S EN C, Ansermanuevo, Valle, Colombia; Avenida 17A No. 19-27, Barrio San Jose, Cucuta, Norte de Santander, Colombia; Carrera 3 No. 11-99, Cartago, Valle, Colombia; Paseo 5 de Julio, Barrio Libertad, San Antonio, Tachira, Venezuela; Calle 14 No. 30-153, Medellin, Antioquia, Colombia; Calle 30 No. 3B-45, La Campina, Pereira, Risaralda, Colombia; citizen Colombia; nationality Colombia; Cedula No. 25246532 (Colombia) (individual) [SDNT]

Dated: June 26, 2009.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E9-16427 Filed 7-14-09; 8:45 am]

BILLING CODE 4811-45-P

DEPARTMENT OF VETERANS AFFAIRS
Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment to System of Records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled "Health Administration Center Civilian Health and Medical Program Records—VA" (54VA16) as set forth in the

Federal Register 68 FR 53784. VA is amending the system of records by revising the System Location; Categories of Individuals Covered by the System; Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses; Safeguards, System Manager(s) and Address; and Notification Procedure. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than August 14, 2009. If no public comment is received, the amended system will become effective August 14, 2009.

ADDRESSES: Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245-2492.

SUPPLEMENTARY INFORMATION: The system location has been amended to reflect the address change of the VA Health Administration Center (HAC), Denver, Colorado. Categories of Individuals Covered by the System has been amended to include dependents of veterans who receive community fee for service benefits and to reflect that records are maintained on all health care providers who provide care under the programs administered by HAC. Routine Uses of Records Maintained in the System, including Categories of Users and the Purposes of Such Uses has been amended. The introductory paragraph was reworded to indicate compliance with VA's statutory requirements governing confidentiality of certain medical records.

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for

a purpose that is compatible with the purpose for which VA collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, or to provide a benefit to VA, or disclosure is required by law.

Additional language was added in the Safeguards section to clarify how types of records are controlled at the Health Administration Center. The system manager(s) and address has been updated to reflect the correct title for the official responsible for policies and procedures and the new address for the Health Administration Center. The new address is also reflected in the paragraph on Notification Procedure.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Routine use 25 was added to disclose identifying information, including social security number, of veterans, spouse(s) of veterans, and dependents of veterans, may be disclosed to other Federal agencies for purposes of conducting computer matches, to obtain information to determine or verify eligibility of veterans who are receiving VA medical care under relevant sections of Title 38, U.S.C. This routine use has been added to allow VA to conduct computer matching activities with other Federal agencies where necessary to assist VA in determining or verifying eligibility for certain benefits.

Routine use 26 was added to disclose information to other Federal agencies that may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs. This routine use permits disclosures by the Department to report a suspected incident of identity theft and provide information and/or documentation related to or in support of the reported incident.

Routine use 27 was added so that VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm

to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

Approved: June 26, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

54VA16

SYSTEM NAME:

"Health Administration Center Civilian Health and Medical Program Records—VA."

SYSTEM LOCATION:

Records are maintained at the Health Administration Center (HAC), 3773 Cherry Creek North Drive, Denver, Colorado 80209.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by the system include the following:

1. Dependents of veterans who seek health care under 38 U.S.C. 1781, 1802, 1803, 1813 and Public Law 103-446, section 107.
2. Veterans seeking health care services in a foreign country under 38 U.S.C. 1724.
3. Veterans or dependents receiving community fee for service benefits at VA expense under Title 38 U.S.C 1703, 1725 and 1728.
4. Health care providers treating individuals who receive care under 38 U.S.C. 1703, 1724, 1725, 1728, 1781, 1803, 1813, and Public Law 103-446 section 107.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in the system include medical benefit application and eligibility information concerning the veteran and, when applicable, their spouse and/or dependent(s), other health insurance information, correspondence concerning individuals

and documents pertaining to claims for medical services, information related to claims processing and third party liability recovery actions taken by VA and/or TRICARE. The record may include the name, address and other identifying information concerning health care providers, services provided, amounts claimed and paid for health care services, medical records, and treatment and payment dates. Additional information may include veteran, spouse and/or dependent identifying information (e.g., name, address, social security number, VA claims file number, date of birth), and military service information concerning the veteran sponsor (e.g., dates, branch and character of service, medical information).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, sections 501(a), 501(b), 1703, 1724, 1725, 1728, 1781, 1802, 1803, 1813, and Public Law 103-446 section 107.

PURPOSE(S):

Records may be used for purposes of establishing and monitoring eligibility to receive VA benefits and processing medical claims for payment for eligible beneficiaries and veterans.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR Parts 160 and 164, i.e., individually identifiable health information, and 38 U.S.C. 7332, i.e., medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR Parts 160 and 164 permitting disclosure.

1. Eligibility and claim information from this system of records may be disclosed verbally or in writing. For example, disclosure may be made via correspondence, call service center or by interactive Web page, in response to an inquiry made by the claimant, claimant's guardian, claimant's next of kin or person with whom the claimant has a meaningful relationship, health care provider, trading partner or contractor. Purposes of these disclosures are to assist the provider or claimant in obtaining reimbursement for claimed medical services, to facilitate billing processes, to verify beneficiary eligibility for requested services, and to provide payment information regarding

claimed services. Eligibility or entitlement information disclosed may include the name, authorization number (social security number), effective dates of eligibility, reasons for any period of ineligibility, and other health insurance information of the named individual. Claim information disclosed may include payment information such as payment identification number, date of payment, date of service, amount billed, amount paid, name of payee, or reasons for non-payment.

2. Statistical and other data to Federal, State, and local government agencies and national health organizations to assist in the development of programs that will be beneficial to health care recipients, to protect their rights under the law, and to ensure that they are receiving all health benefits to which they are entitled.

3. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature, and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, Tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

4. A record from this system of records may be disclosed to a Federal agency upon its request for use in the issuance of a security clearance, the investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting Agency's decision on the matter.

5. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

6. Disclosure may be made to National Archives and Records Administration and to General Services Administration in records management inspections conducted under authority of 44 U.S.C.

7. Any relevant information in this system of records may be disclosed to attorneys, insurance companies, employers, and to courts, boards, or commissions; such disclosures may be made only to the extent necessary to aid the VA in preparation, presentation, and prosecution of claims authorized under Federal, State, or local laws, and regulations promulgated thereunder.

8. Any information in this system of records may be disclosed to the United States Department of Justice or United States Attorneys in order to prosecute or defend litigation involving or pertaining to the United States, or in which the United States has an interest.

9. Any information in this system of records may be disclosed to a Federal agency or party to an administrative proceeding being conducted by a Federal agency, in order for VA to respond to and comply with the issuance of an order by that Federal agency requiring production of the information.

10. Any information in this system of records may be disclosed to a State or municipal grand jury, a State or municipal court or a party in litigation, or to a State or municipal administrative agency functioning in a quasi-judicial capacity or a party to a proceeding being conducted by such agency, provided that any disclosure of claimant information made under this routine use must comply with the provisions of 38 CFR 1.511.

11. Any information concerning the claimant's indebtedness to the United States by virtue of a person's participation in a benefits program administered by VA, including personal information obtained from other Federal agencies through computer matching programs, may be disclosed to any third party, except consumer reporting agencies, in connection with any proceeding for the collection of any amount owed to the United States. Purposes of these disclosures may be to assist VA in collection of costs of services provided individuals not entitled to such services and to initiate legal actions for prosecuting individuals who willfully or fraudulently obtain Title 38 benefits without entitlement. This disclosure is consistent with 38 U.S.C. 5701(b)(6).

12. Any relevant information from this system of records may be disclosed to TRICARE, the Department of Defense (DoD) and the Defense Eligibility Enrollment Reporting System (DEERS) to the extent necessary to determine eligibility for the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) or TRICARE benefits, to develop and

process CHAMPVA or TRICARE claims, and to develop cost-recovery actions for claims involving individuals not eligible for the services or claims involving potential third party liability.

13. The name and address of a veteran or dependent, and other information as is reasonably necessary to identify such individual, may be disclosed to a consumer reporting agency for the purpose of locating the individual or obtaining a consumer report to determine the ability of the individual to repay an indebtedness to the United States by virtue of the individual's participation in a benefits program administered by VA, provided that the requirements of 38 U.S.C. 5701(g)(2) have been met.

14. The name and address of a veteran or dependent, and other information as is reasonably necessary to identify such individual, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the individual's indebtedness to the United States by virtue of the individual's participation in a benefits program administered by VA, may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the requirements of 38 U.S.C. 5701(g)(4) have been met.

15. In response to an inquiry about a named individual from a member of the general public, disclosure of information may be made from this system of records to report the amount of VA monetary benefits being received by the individual. This disclosure is consistent with 38 U.S.C. 5701(c)(1).

16. The name and address of a veteran or dependent may be disclosed to another Federal agency or to a contractor of that agency, at the written request of the head of that agency or designee of the head of that agency, for the purpose of conducting government research necessary to accomplish a statutory purpose of that agency.

17. Any information in this system of records relevant to a claim of a veteran or dependent, such as the name, address, the basis and nature of a claim, amount of benefit payment information, medical information and military service and active duty separation information may be disclosed at the request of the claimant to accredited service organizations, VA approved claim agents and attorneys acting under a declaration of representation, so that these individuals can aid claimants in the preparation, presentation and prosecution of claims under the laws administered by VA. The name and

address of a claimant will not, however, be disclosed to these individuals under this routine use if the claimant has not requested the assistance of the accredited service organization, claims agent or an attorney.

18. Any information in this system, including medical information, the basis and nature of claim, the amount of benefits and personal information may be disclosed to a VA Federal fiduciary or a guardian ad litem in relation to his or her representation of a claimant only to the extent necessary to fulfill the duties of the VA Federal fiduciary or the guardian ad litem.

19. The individual's name, address, social security number and the amount (excluding interest) of any indebtedness which is waived under 38 U.S.C. 3102, compromised under 4 CFR Part 103, otherwise forgiven, or for which the applicable statute of limitations for enforcing collection has expired, may be disclosed to the Treasury Department, Internal Revenue Service, as a report of income under 26 U.S.C. 61(a)(12).

20. The name of a veteran or dependent, other information as is reasonably necessary to identify such individual, and any other information concerning the individual's indebtedness by virtue of a person's participation in a benefits program administered by VA, may be disclosed to the Treasury Department, Internal Revenue Service, for the collection of Title 38, U.S.C. benefit overpayments, overdue indebtedness, and/or costs of services provided to an individual not entitled to such services, by the withholding of all or a portion of the person's Federal income tax refund.

21. The name, date of birth and social security number of a veteran, spouse or dependent, and other identifying information as is reasonably necessary may be disclosed to Social Security Administration and Centers for Medicare & Medicaid Services, Department of Health and Human Services, for the purpose of validating social security numbers and Medicare information.

22. The name and address of any health care provider in this system of records who has received payment for claimed services on behalf of a veteran and beneficiary may be disclosed in response to an inquiry from a member of the general public who requests assistance in locating medical providers who accept VA payment for health care services.

23. Relevant information from this system of records may be disclosed to individuals, organizations, private or public agencies, *etc.*, with whom VA has a contract or agreement to perform

such services as VA may deem practicable for the purposes of laws administered by VA in order for the contractor or subcontractor to perform the services of the contract or agreement.

24. Relevant information from this system of records may be disclosed to an accrediting Quality Review and Peer Review Organization in connection with the review of claims or other review activities associated with VA Health Administration Center accreditation to professionally accepted claims processing standards.

25. Identifying information, including social security number, of veterans, spouse(s) of veterans, and dependents of veterans, may be disclosed to other Federal agencies for purposes of conducting computer matches, to obtain information to determine or verify eligibility of veterans who are receiving VA medical care under relevant sections of Title 38, U.S.C.

26. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

27. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically, in paper folders, magnetic discs, and magnetic tape. Paper documents may be scanned/digitized and stored for viewing electronically.

RETRIEVABILITY:

Paper records are retrieved by name or VA claims file number or social security number of the veteran sponsor. Computer records are retrieved by name or social security number of the veteran sponsor, spouse, and/or dependent, or VA claims file number of the veteran sponsor.

SAFEGUARDS:

Working spaces and record storage areas at HAC are secured during all business and non-business hours. All entrance doors require an electronic pass card for entry. The HAC Security Officer issues electronic pass cards. HAC staff control visitor entry by door release and escort. The building is equipped with an intrusion alarm system monitored by HAC security staff during business hours and by a security service vendor during non-business hours. Electronic/Digital records are stored in an electronic controlled storage filing area. Paper records in work areas are stored in locked file cabinets or locked rooms. Access to record storage areas is restricted to VA employees on a "need-to-know" basis. Access to the computer room is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated Data Processing (ADP) peripheral devices are generally placed in secure areas or are otherwise protected. Authorized VA employees may access information in the computer system by a series of individually unique passwords/codes.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with record disposition authority approved by the Archivist of the United States. Paper records that are scanned and digitized for viewing electronically are destroyed after they have been scanned onto optical disks, and the electronic copy determined to be an accurate and complete copy of the paper record scanned.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures: Chief Business Officer (16), Department of Veterans Affairs, Veterans Health Administration, VA

Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Official Maintaining the System: Director, Health Administration Center, Department of Veterans Affairs, P.O. Box 469060, Denver, CO 80246-9060.

NOTIFICATION PROCEDURE:

Any individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request to Director, VA Health Administration Center, P.O. Box 469060, Denver, Colorado 80246-9060, or apply in

person to the Director, VA Health Administration Center, 3773 Cherry Creek North Drive, Colorado 80209. Inquiries should include the veteran sponsor's full name and social security and VA claims file numbers, and the spouse or dependent's name, social security number and return address.

RECORD ACCESS PROCEDURE:

An individual who seeks access to records maintained under his or her name in this system may write or visit the Director, VA Health Administration Center.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

The veteran sponsor, spouse and/or dependent, military service departments, private medical facilities and health care professionals, electronic trading partners, contractors, DoD, TRICARE, DEERS, other Federal agencies, VA Regional Offices, Veterans Benefits Administration (VBA) automated record systems, and VA Medical Centers.

[FR Doc. E9-16751 Filed 7-14-09; 8:45 am]

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Federal Register

**Wednesday,
July 15, 2009**

Part II

Environmental Protection Agency

40 CFR Parts 50 and 58

**Primary National Ambient Air Quality
Standard for Nitrogen Dioxide; Proposed
Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 58

[EPA-HQ-OAR-2006-0922; FRL-8926-3]

RIN 2060-AO19

Primary National Ambient Air Quality Standard for Nitrogen Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Based on its review of the air quality criteria for oxides of nitrogen and the primary national ambient air quality standard (NAAQS) for oxides of nitrogen as measured by nitrogen dioxide (NO₂), EPA proposes to make revisions to the primary NO₂ NAAQS in order to provide requisite protection of public health. Specifically, EPA proposes to supplement the current annual standard by establishing a new short-term NO₂ standard based on the 3-year average of the 99th percentile (or 4th highest) of 1-hour daily maximum concentrations. EPA proposes to set the level of this new standard within the range of 80 to 100 ppb and solicits comment on standard levels as low as 65 ppb and as high as 150 ppb. EPA also proposes to establish requirements for an NO₂ monitoring network that will include monitors within 50 meters of major roadways. In addition, EPA is soliciting comment on an alternative approach to setting the standard and revising the monitoring network. Consistent with the terms of a consent decree, the Administrator will sign a notice of final rulemaking by January 22, 2010.

DATES: Comments must be received on or before September 14, 2009. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before August 14, 2009.

Public Hearings: EPA intends to hold public hearings on this proposed rule in August 2009 in Los Angeles, California and Arlington, VA. These will be announced in a separate **Federal Register** notice that provides details, including specific times and addresses, for these hearings.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2006-0922 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- **E-mail:** a-and-r-Docket@epa.gov.
- **Fax:** 202-566-9744
- **Mail:** Docket No. EPA-HQ-OAR-2006-0922, Environmental Protection

Agency, Mail code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

- **Hand Delivery:** Docket No. EPA-HQ-OAR-2006-0922, Environmental Protection Agency, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2006-0922. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov>

or in hard copy at the Air and Radiation Docket and Information Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Air and Radiation Docket and Information Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Dr. Scott Jenkins, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C504-06, Research Triangle Park, NC 27711; telephone: 919-541-1167; fax: 919-541-0237; e-mail: jenkins.scott@epa.gov.

SUPPLEMENTARY INFORMATION:

General Information

What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for Preparing Your Comments.** When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—the agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns, and suggest alternatives.

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- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Availability of Related Information

A number of the documents that are relevant to this rulemaking are available through EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) Web site at http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_index.html. These documents include the Integrated Review Plan and the Health Assessment Plan, available at http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_cr_pd.html, the Integrated Science Assessment (ISA), available at <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=194645>, and the Risk and Exposure Assessment (REA), available at http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_cr_rea.html. These and other related documents are also available for inspection and copying in the EPA docket identified above.

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I. Background

A. Legislative Requirements

Two sections of the Clean Air Act (Act or CAA) govern the establishment and revision of the NAAQS. Section 108 of the Act directs the Administrator to identify and list air pollutants that meet certain criteria, including that the air pollutant “in his judgment, cause[s] or contribute[s] to air pollution which may reasonably be anticipated to endanger public health and welfare” and “the presence of which in the ambient air results from numerous or diverse mobile or stationary sources.” 42 U.S.C. 217408(a)(1)(A) & (B). For those air pollutants listed, section 108 requires the Administrator to issue air quality criteria that “accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in ambient air * * *” 42 U.S.C. 7408(2).

Section 109(a) of the Act directs the Administrator to promulgate “primary” and “secondary” NAAQS for pollutants for which air quality criteria have been issued. 42 U.S.C. 7409(1). Section 109(b)(1) defines a primary standard as one “the attainment and maintenance of which in the judgment of the Administrator, based on [the air quality] criteria and allowing an adequate margin of safety, are requisite to protect the public health.”¹ 42 U.S.C. 7409(b)(1). A secondary standard, in turn, must “specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on [the air quality] criteria, is requisite to protect the public

¹ The legislative history of section 109 indicates that a primary standard is to be set at “the maximum permissible ambient air level * * * which will protect the health of any [sensitive] group of the population,” and that for this purpose “reference should be made to a representative sample of persons comprising the sensitive group rather than to a single person in such a group.” S. Rep. No. 91–1196, 91st Cong., 2d Sess. 10 (1970).

welfare from any known or anticipated adverse effects associated with the presence of such pollutant in the ambient air.”² 42 U.S.C. 7409(b)(2).

The requirement that primary standards include an adequate margin of safety is intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It is also intended to provide a reasonable degree of protection against hazards that research has not yet identified. *Lead Industries Association v. EPA*, 647 F.2d 1130, 1154 (D.C. Cir. 1980), *cert. denied*, 449 U.S. 1042 (1980); *American Petroleum Institute v. Costle*, 665 F.2d 1176, 1186 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 1034 (1982). Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, in selecting primary standards that include an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollutant levels that may pose an unacceptable risk of harm, even if the risk is not precisely identified as to nature or degree.

In addressing the requirement for a margin of safety, EPA considers such factors as the nature and severity of the health effects involved, the size of the at-risk population(s), and the kind and degree of the uncertainties that must be addressed. The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment. *Lead Industries Association v. EPA*, *supra*, 647 F.2d at 1161–62.

In setting standards that are “requisite” to protect public health and welfare, as provided in section 109(b), EPA's task is to establish standards that are neither more nor less stringent than necessary for these purposes. In so doing, EPA may not consider the costs of implementing the standards. *Whitman v. American Trucking Associations*, 531 U.S. 457, 471, 475–76 (2001).

Section 109(d)(1) of the Act requires the Administrator to periodically undertake a thorough review of the air quality criteria published under section 108 and the NAAQS and to revise the criteria and standards as may be appropriate. 42 U.S.C. 7409(d)(1). The

Act also requires the Administrator to appoint an independent scientific review committee composed of seven members, including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies, to review the air quality criteria and NAAQS and to “recommend to the Administrator any new standards and revisions of existing criteria and standards as may be appropriate under section 108 and subsection (b) of this section.” 42 U.S.C. 7409(d)(2). This independent review function is performed by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board.

B. Related NO₂ Control Programs

States are primarily responsible for ensuring attainment and maintenance of ambient air quality standards once EPA has established them. Under section 110 of the Act, 42 U.S.C. 7410, and related provisions, States are to submit, for EPA approval, State implementation plans (SIPs) that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants involved. The States, in conjunction with EPA, also administer the prevention of significant deterioration program that covers these pollutants. *See* 42 U.S.C. 7470–7479. In addition, Federal programs provide for nationwide reductions in emissions of these and other air pollutants under Title II of the Act, 42 U.S.C. 7521–7574, which involves controls for automobile, truck, bus, motorcycle, nonroad engine and equipment, and aircraft emissions; the new source performance standards under section 111 of the Act, 42 U.S.C. 7411; and the national emission standards for hazardous air pollutants under section 112 of the Act, 42 U.S.C. 7412.

Currently there are no areas in the United States that are designated as nonattainment of the NO₂ NAAQS. If the NO₂ NAAQS is revised as a result of this review, however, some areas could be classified as non-attainment. Certain States would then be required to develop SIPs that identify and implement specific air pollution control measures to reduce ambient NO₂ concentrations to attain and maintain the revised NO₂ NAAQS, most likely by requiring air pollution controls on sources that emit oxides of nitrogen (NO_x)³.

While NO_x is emitted from a wide variety of source types, the top three categories of sources of NO_x emissions are on-road mobile sources, electricity generating units, and non-road mobile sources. EPA anticipates that NO_x emissions will decrease substantially over about the next 20 years as a result of the ongoing implementation of mobile source emissions standards. In particular, Tier 2 NO_x emission standards for light-duty vehicle emissions began phasing into the fleet beginning with model year 2004, in combination with low-sulfur gasoline fuel standards. For heavy-duty engines, new NO_x standards are phasing in between the 2007 and 2010 model years, following the introduction of ultra-low sulfur diesel fuel. Lower NO_x standards for nonroad diesel engines, locomotives, and certain marine engines are becoming effective throughout the next decade. In future decades, these lower-NO_x vehicles and engines will become an increasingly large fraction of in-use mobile sources, effecting large NO_x emission reductions.

C. Review of the Air Quality Criteria and Standards for Oxides of Nitrogen

On April 30, 1971, EPA promulgated identical primary and secondary NAAQS for NO₂ under section 109 of the Act. The standards were set at 0.053 parts per million (ppm) (53 ppb), annual average (36 FR 8186). EPA completed reviews of the air quality criteria and NO₂ standards in 1985 and 1996 with decisions to retain the standard (50 FR 25532, June 19, 1985; 61 FR 52852, October 8, 1996).

EPA initiated the current review of the air quality criteria for oxides of nitrogen and the NO₂ primary NAAQS on December 9, 2005 (70 FR 73236) with a general call for information. EPA's draft Integrated Review Plan for the Primary National Ambient Air Quality Standard for Nitrogen Dioxide (EPA, 2007a) was made available in February 2007 for public comment and was discussed by the CASAC via a publicly accessible teleconference on May 11, 2007. As noted in that plan, NO_x includes multiple gaseous (*e.g.*, NO₂, NO) and particulate (*e.g.*, nitrate) species. Because the health effects

criteria [for oxides of nitrogen] shall include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.” By contrast, within the air pollution research and control communities, the terms “oxides of nitrogen” and “nitrogen oxides” are restricted to refer only to the sum of NO and NO₂, and this sum is commonly abbreviated as NO_x. The category label used by this community for the sum of all forms of oxidized nitrogen compounds including those listed in Section 108(c) is NO_y.

² EPA is currently conducting a separate review of the secondary NO₂ NAAQS jointly with a review of the secondary SO₂ NAAQS.

³ In this document, the terms “oxides of nitrogen” and “nitrogen oxides” (NO_x) refer to all forms of oxidized nitrogen (N) compounds, including NO, NO₂, and all other oxidized N-containing compounds formed from NO and NO₂. This follows usage in the Clean Air Act Section 108(c): “Such

associated with particulate species of NO_x have been considered within the context of the health effects of ambient particles in the Agency's review of the NAAQS for particulate matter (PM), the current review of the primary NO₂ NAAQS is focused on the gaseous species of NO_x and does not consider health effects directly associated with particulate species.

The first draft of the Integrated Science Assessment for Oxides of Nitrogen-Health Criteria (ISA) and the Nitrogen Dioxide Health Assessment Plan: Scope and Methods for Exposure and Risk Assessment (EPA, 2007b) were reviewed by CASAC at a public meeting held on October 24–25, 2007. Based on comments received from CASAC and the public, EPA developed the second draft of the ISA and the first draft of the Risk and Exposure Assessment to Support the Review of the NO₂ Primary National Ambient Air Quality Standard (Risk and Exposure Assessment (REA)). These documents were reviewed by CASAC at a public meeting held on May 1–2, 2008. Based on comments received from CASAC and the public at this meeting, EPA released the final ISA in July of 2008 (EPA, 2008a). In addition, comments received were considered in developing the second draft of the REA, which was released for public review and comment in two parts. The first part of this document, containing chapters 1–7, 9 and appendices A and C as well as part of appendix B, was released in August, 2008. The second part of this document, containing chapter 8 (describing the Atlanta exposure assessment) and a completed appendix B, was released in October of 2008. This document was the subject of CASAC reviews at public meetings on September 9 and 10, 2008 (for the first part) and on October 22, 2008 (for the second part). In preparing the final REA (EPA, 2008b), EPA considered comments received from the CASAC and the public at those meetings.

In the course of reviewing the second draft REA, CASAC expressed the view that the document would be incomplete without the addition of a policy assessment chapter presenting an integration of evidence-based considerations and risk and exposure assessment results. CASAC stated that such a chapter would be “critical for considering options for the NAAQS for NO₂” (Samet, 2008a). In addition, within the period of CASAC's review of the second draft REA, EPA's Deputy Administrator indicated in a letter to the chair of CASAC, addressing earlier CASAC comments on the NAAQS review process (Henderson, 2008), that the risk and exposure assessment will

include “a broader discussion of the science and how uncertainties may effect decisions on the standard” and “all analyses and approaches for considering the level of the standard under review, including risk assessment and weight of evidence methodologies” (Peacock, 2008, p.3; September 8, 2008).

Accordingly, the final REA included a new policy assessment chapter. This policy assessment chapter considered the scientific evidence in the ISA and the exposure and risk characterization results presented in other chapters of the REA as they relate to the adequacy of the current NO₂ primary NAAQS and potential alternative primary NO₂ standards. In considering the current and potential alternative standards, the final REA document focused on the information that is most pertinent to evaluating the basic elements of national ambient air quality standards: indicator, averaging time, form⁴, and level. These elements, which together serve to define each standard, must be considered collectively in evaluating the health protection afforded. CASAC discussed the final version of the REA, with an emphasis on the policy assessment chapter, during a public teleconference held on December 5, 2008. Following that teleconference, CASAC offered comments and advice on the NO₂ primary NAAQS in a letter to the Administrator (Samet, 2008b).

The schedule for completion of this review is governed by a judicial order resolving a lawsuit filed in September 2005, concerning the timing of the current review. The order that now governs this review, entered by the court in August 2007 and amended in December 2008, provides that the Administrator will sign, for publication, notices of proposed and final rulemaking concerning the review of the primary NO₂ NAAQS no later than June 26, 2009 and January 22, 2010, respectively.

This action presents the Administrator's proposed decisions on the current primary NO₂ standard. Throughout this preamble a number of conclusions, findings, and determinations proposed by the Administrator are noted. While they identify the reasoning that supports this proposal, they are not intended to be final or conclusive in nature. The EPA invites general, specific, and/or technical comments on all issues involved with this proposal, including all such proposed judgments,

⁴ The “form” of a standard defines the air quality statistic that is to be compared to the level of the standard in determining whether an area attains the standard.

conclusions, findings, and determinations. Further, EPA invites specific comments from CASAC on the proposed approach of establishing a new 1-hour NO₂ standard in conjunction with a revised monitoring network that includes a substantial number of monitors placed near major roads. In addition to requesting comment on the overall approach, EPA invites specific comment on the level, or range of levels, appropriate for such a standard, as well as on the rationale that would support that level or range of levels.

II. Rationale for Proposed Decisions on the Primary Standard

This section presents the rationale for the Administrator's proposed decision to revise the existing NO₂ primary standard by supplementing the current annual standard with a 1-hour standard and to specify the standards to the nearest parts per billion (ppb). As discussed more fully below, this rationale takes into account: (1) Judgments and conclusions presented in the ISA and the REA; (2) CASAC advice and recommendations, as reflected in discussions of drafts of the ISA and REA at public meetings, in separate written comments, and in CASAC's letter to the Administrator (Samet, 2008b); and (3) public comments received at CASAC meetings during the development of the ISA and the REA.

In developing this rationale, EPA has drawn upon an integrative synthesis of the entire body of evidence on human health effects associated with the presence of NO₂ in the air. As discussed below, this body of evidence addresses a broad range of health endpoints associated with exposure to NO₂. In considering this entire body of evidence, EPA focuses in particular on those health endpoints for which the ISA finds associations with NO₂ to be causal or likely causal (*see* section II.B below). This rationale also draws upon the results of quantitative exposure and risk assessments.

As discussed below, a substantial amount of new research has been conducted since the last review of the NO₂ NAAQS, with important new information coming from epidemiologic studies in particular. The newly available research studies evaluated in the ISA have undergone intensive scrutiny through multiple layers of peer review and opportunities for public review and comment. While important uncertainties remain in the qualitative and quantitative characterizations of health effects attributable to exposure to ambient NO₂, the review of this

information has been extensive and deliberate.

The remainder of this section discusses the rationale for the Administrator's proposed decisions on the primary standard. Section II.A presents a discussion of NO₂ air quality, including discussion of the NO₂ concentration gradients that can exist around roadways, and the current NO₂ monitoring network. Section II.B includes an overview of the scientific evidence related to health effects associated with NO₂ exposure. This overview includes discussion of the health endpoints and at-risk populations considered in the ISA. Section II.C discusses the approaches taken by EPA to assess exposures and health risks associated with NO₂, including a discussion of key uncertainties associated with the analyses. Section II.D presents the approach that is being used in the current review of the NO₂ NAAQS with regard to consideration of the scientific evidence and exposure/risk-based results related to the adequacy of the current standard and potential alternative standards. Sections II.E and II.F discuss the scientific evidence and the exposure/risk-based results specifically as they relate to the current and potential alternative standards, including discussion of the Administrator's proposed decisions on the standard. Section II.G summarizes the Administrator's proposed decisions with regard to the NO₂ primary NAAQS.

A. Characterization of NO₂ Air Quality

1. Current patterns of NO₂ Air Quality

The size of the State and local NO₂ monitoring network has remained relatively stable since the early 1980s, and currently has approximately 400 monitors reporting data to EPA's Air Quality System (AQS) database.⁵ At present, there are no minimum monitoring requirements for NO₂ in 40 CFR part 58 Appendix D, other than a requirement for EPA Regional Administrator approval before removing any existing monitors, and that any ongoing NO₂ monitoring must have at least one monitor sited to measure the

⁵ It should be noted that the ISA Section 2.4.1 references a different number of active monitors in the NO₂ network. The discrepancy between the ISA numbers and the number presented here is due to differing metrics used in pulling data from AQS. The ISA only references SLAMS, NAMS, and PAMS sites with defined monitoring objectives, while the Watkins and Thompson, 2008 value represents all NO₂ sites reporting data at any point during the year. These differences in numbers of active monitors per year also explain why the Watkins and Thompson 2008 document characterized the NO₂ network size as relatively stable since the early 1980s.

maximum concentration of NO₂ in that area (though, as discussed below monitors in the current network do not measure peak concentrations associated with on-road mobile sources that can occur near major roadways because the network was not designed for this purpose). EPA removed the specific minimum monitoring requirements for NO₂ of two monitoring sites per area with a population of 1,000,000 or more in the 2006 monitoring rule revisions (71 FR 61236), based on the fact that there were no NO₂ nonattainment areas at that time, coupled with trends evidence showing an increasing gap between national average NO₂ concentrations and the current annual standard. Additionally, the minimum requirements were removed to provide State, local, and Tribal air monitoring agencies flexibility in meeting higher priority monitoring needs for pollutants such as ozone and PM_{2.5}, or implementing the new multi-pollutant sites (NCore network) required by the 2006 rule revisions, by allowing them to discontinue lower priority monitoring. There are requirements in 40 CFR part 58 Appendix D for NO₂ monitoring as part of the Photochemical Assessment Monitoring Stations (PAMS) network. However, of the approximately 400 NO₂ monitors currently in operation, only about 10 percent may be due to the PAMS requirements.

An analysis of the approximately 400 monitors comprising the current NO₂ monitoring network (Watkins and Thompson, 2008) indicates that the current NO₂ network has largely remained unchanged in terms of size and target monitor objective categories since it was introduced in the May 10, 1979 monitoring rule (44 FR 27571). The review of the current network found that the assessment of concentrations for general population exposure and maximum concentrations at neighborhood and larger scales were the top objectives. A review of the distribution of listed spatial scales of representation shows that only approximately 3 monitors are described as microscale, representing an area on the order of several meters to 100 meters, and approximately 23 monitors are described as middle scale, which represents an area on the order of 100 to 500 meters. This low percentage of smaller spatially representative scale sites within the network of approximately 400 monitoring sites indicates that the majority of monitors have, in fact, been sited to assess area-wide exposures on the neighborhood, urban, and regional scales, as would be expected for a network sited to support

the current annual NO₂ standard and PAMS objectives. The current network does not include monitors placed near major roadways and, therefore, monitors in the current network do not necessarily measure the maximum concentrations that can occur on a localized scale near these roadways (as discussed in the next section). It should be noted that the network not only accommodates NAAQS related monitoring, but also serves other monitoring objectives such as support for photochemistry analysis, ozone modeling and forecasting, and particulate matter precursor tracking.

2. NO₂ Air Quality and Gradients Around Roadways

On-road and non-road mobile sources account for approximately 60% of NO_x emissions (ISA, table 2.2-1) and traffic-related exposures can dominate personal exposures to NO₂ (ISA section 2.5.4). While driving, personal exposure concentrations in the cabin of a vehicle could be substantially higher than ambient concentrations measured nearby (ISA, section 2.5.4). For example, mean in-vehicle NO₂ concentrations have been reported to be 2 to 3 times higher than non-traffic ambient concentrations (ISA, sections 2.5.4 and 4.3.6). In addition, estimates presented in the REA suggest that on/near roadway NO₂ concentrations could be approximately 40% (REA, compare Tables 7-11 and 7-13) or 80% (REA, section 7.3.2) higher on average than concentrations away from roadways and that roadway-associated environments could be responsible for the large majority of 1-hour peak NO₂ exposures (REA, Figures 8-17 and 8-18). Because monitors in the current network are not sited to measure peak roadway-associated NO₂ concentrations, individuals who spend time on and/or near major roadways could experience NO₂ concentrations that are considerably higher than indicated by monitors in the current area-wide NO₂ monitoring network.

Research suggests that the concentrations of on-road mobile source pollutants such as NO_x, carbon monoxide (CO), directly emitted air toxics, and certain size distributions of particulate matter (PM), such as ultrafine PM, typically display peak concentrations on or immediately adjacent to roads (ISA, section 2.5). This situation typically produces a gradient in pollutant concentrations, with concentrations decreasing with increasing distance from the road, and concentrations generally decreasing back to near area-wide ambient levels, or typical upwind urban background

levels, within several hundred meters downwind. While this general concept is applicable to almost all roads, the actual characteristics of the gradient and the distance that the mobile source pollutant signature from an individual road can be differentiated from background or upwind concentrations are heavily dependent on factors including traffic volumes, local topography, roadside features, meteorology, and photochemical reactivity conditions (Baldauf, *et al.*, 2009; Beckerman *et al.*, 2008; Clements *et al.*, 2008; Hagler *et al.*, 2009; Janssen *et al.*, 2001; Rodes and Holland, 1980; Roorda-Knape *et al.*, 1998; Singer *et al.*, 2004; Zhou and Levy, 2007).

Because NO₂ in the ambient air is due largely to the atmospheric oxidation of NO emitted from combustion sources (ISA, section 2.2.1), elevated NO₂ concentrations can extend farther away from roadways than the primary pollutants also emitted by on-road mobile sources. More specifically, review of the technical literature suggests that NO₂ concentrations may return to area-wide or typical urban background concentrations within distances up to 500 meters of roads, though the actual distance will vary with topography, roadside features, meteorology, and photochemical reactivity conditions (Baldauf *et al.*, 2009; Beckerman *et al.*, 2008; Clements *et al.*, 2008; Gilbert *et al.* 2003; Rodes and Holland, 1980; Singer *et al.*, 2004; Zhou and Levy, 2007). Efforts to quantify the extent and slope of the concentration gradient that may exist from peak near-road concentrations to the typical urban background concentrations must consider the variability that exists across locations and for a given location over time. As a result, we have identified a range of concentration gradients in the technical literature which indicate that, on average, peak NO₂ concentrations on or immediately adjacent to roads may typically be between 30 and 100 percent greater than concentrations monitored in the same area but farther away from the road (ISA, Section 2.5.4; Beckerman *et al.*, 2008; Gilbert *et al.*, 2003; Rodes and Holland, 1980; Roorda-Knape *et al.*, 1998; Singer *et al.*, 2004). This range of concentration gradients has implications for revising the NO₂ primary standard and for the NO₂ monitoring network (*see* sections II.F.4 and III).

B. Health Effects Information

In the last review of the NO₂ NAAQS, the 1993 NO_x Air Quality Criteria Document (1993 AQCD) (EPA, 1993) concluded that there were two key

health effects of greatest concern at ambient or near-ambient concentrations of NO₂ (ISA, section 5.3.1). The first was increased airway responsiveness in asthmatic individuals after short-term exposures. The second was increased respiratory illness among children associated with longer-term exposures to NO₂. Evidence also was found for increased risk of emphysema, but this appeared to be of major concern only with exposures to NO₂ at levels much higher than then current ambient levels (ISA, section 5.3.1). Controlled human exposure and animal toxicological studies provided qualitative evidence for airway hyperresponsiveness and lung function changes while epidemiologic studies provided evidence for increased respiratory symptoms with increased indoor NO₂ exposures. Animal toxicological findings of lung host defense system changes with NO₂ exposure provided a biologically-plausible basis for the epidemiologic results. Subpopulations considered potentially more susceptible to the effects of NO₂ exposure included persons with preexisting respiratory disease, children, and the elderly. The epidemiologic evidence for respiratory health effects was limited, and no studies had considered endpoints such as hospital admissions, emergency department visits, or mortality (ISA, section 5.3.1).

As discussed below, evidence published since the last review generally has confirmed and extended the conclusions articulated in the 1993 AQCD (ISA, section 5.3.2). The epidemiologic evidence has grown substantially with the addition of field and panel studies, intervention studies, time-series studies of endpoints such as hospital admissions, and a substantial number of studies evaluating mortality risk associated with short-term NO₂ exposures. While not as marked as the growth in the epidemiologic literature, a number of recent toxicological and controlled human exposure studies also provide insights into relationships between NO₂ exposure and health effects. The body of evidence that has become available since the last review focuses the current review on NO₂-related respiratory effects at lower ambient and exposure concentrations.

The ISA, along with its associated annexes, provides a comprehensive review and assessment of the scientific evidence related to the health effects associated with NO₂ exposures. For these health effects, the ISA characterized judgments about causality with a hierarchy that contains five levels (ISA, section 1.3): sufficient to infer a causal relationship, sufficient to

infer a likely causal relationship (*i.e.*, more likely than not), suggestive but not sufficient to infer a causal relationship, inadequate to infer the presence or absence of a causal relationship, and suggestive of no causal relationship. Judgments about causality were informed by a series of aspects that are based on those set forth by Sir Austin Bradford Hill in 1965 (ISA, Table 1.3–1). These aspects include strength of the observed association, availability of experimental evidence, consistency of the observed association, biological plausibility, coherence of the evidence, temporal relationship of the observed association, and the presence of an exposure-response relationship. A summary of each of the five levels of the hierarchy is provided in Table 1.3–2 of the ISA.

Judgments made in the ISA about the extent to which relationships between various health endpoints and exposure to NO₂ are likely causal have been informed by several factors. As discussed in the ISA in section 1.3, these factors include the nature of the evidence (*i.e.*, controlled human exposure, epidemiological, and/or toxicological studies) and the weight of evidence. The weight of evidence takes into account such considerations as biological plausibility, coherence of the evidence, strength of associations, and consistency of the evidence. Controlled human exposure studies provide directly applicable information for determining causality because these studies are not limited by differences in dosimetry and species sensitivity, which would need to be addressed in extrapolating animal toxicology data to human health effects, and because they provide data relating health effects specifically to NO₂ exposures, in the absence of the co-occurring pollutants present in ambient air. Epidemiologic studies provide evidence of associations between NO₂ concentrations and more serious health endpoints (*e.g.*, hospital admissions and emergency department visits) that cannot be assessed in controlled human exposure studies. For these studies the degree of uncertainty introduced by confounding variables (*e.g.*, other pollutants) affects the level of confidence that the health effects being investigated are attributable to NO₂ exposures alone and/or in combination with co-occurring pollutants.

In using a weight of evidence approach to inform judgments about the degree of confidence that various health effects are likely to be caused by exposure to NO₂, confidence increases with the number of studies consistently reporting a particular health endpoint,

with increasing support for the biological plausibility of the health effects, and with the strength and coherence of the evidence. Conclusions regarding biological plausibility, consistency, and coherence of evidence of NO₂-related health effects are drawn from the integration of epidemiologic studies with controlled human exposure studies and with mechanistic information from animal toxicological studies. As discussed below, the weight of evidence is strongest for respiratory morbidity endpoints (*e.g.*, respiratory symptoms, hospital admissions, and emergency department visits) associated with short-term (*e.g.*, 1 to 24 hours) NO₂ exposures.

For epidemiologic studies, strength of association refers to the magnitude of the association and its statistical strength, which includes assessment of both effect estimate size and precision. In general, when associations yield large relative risk estimates, it is less likely that the association could be completely accounted for by a potential confounder or some other bias. Consistency refers to the persistent finding of an association between exposure and outcome in multiple studies of adequate power in different persons, places, circumstances and times. Based on the information presented in the ISA and summarized below in sections II.B.1–II.B.3, this section discusses judgments concerning the extent to which relationships between various health endpoints and ambient NO₂ exposures have been judged in the ISA to be likely causal.

As noted above, this section is devoted to discussion of health effects associated with NO₂ exposure, as assessed in the ISA. Section II.B.1 below

discusses respiratory morbidity associated with short-term exposure to NO₂. The specific endpoints considered in this section are respiratory-related emergency department visits and hospital admissions, respiratory symptoms, lung host defense and immunity, airway responsiveness, airway inflammation, and lung function. Section II.B.2 discusses mortality and cardiovascular effects associated with short-term exposures. Section II.B.3 discusses effects that have been associated with long-term NO₂ exposures including respiratory morbidity, mortality, cancer, cardiovascular effects, and reproductive/developmental effects. Section II.B.4 discusses the potential NO₂-related impacts on public health.

1. Adverse Respiratory Effects and Short-Term Exposure to NO₂

The ISA concluded that, taken together, recent studies provide scientific evidence that is sufficient to infer a likely causal relationship between short-term NO₂ exposure and adverse effects on the respiratory system (ISA, section 5.3.2.1). This determination was based on consideration of the broad array of relevant scientific evidence, as well as the uncertainties associated with that evidence. Specifically, this determination is supported by the large body of recent epidemiologic evidence as well as findings from human and animal experimental studies.

In considering the uncertainties associated with the epidemiologic evidence, the ISA (section 5.4) noted that it is difficult to determine “the extent to which NO₂ is independently

associated with respiratory effects or if NO₂ is a marker for the effects of another traffic-related pollutant or mix of pollutants.” On-road vehicle exhaust emissions are a nearly ubiquitous source of combustion pollutant mixtures that include NO_x and can be an important contributor to NO₂ levels in near-road locations. Although this complicates efforts to quantify specific NO₂-related health effects, a number of epidemiologic studies have evaluated associations with NO₂ in models that also include co-occurring pollutants such as PM, O₃, CO, and/or SO₂. The evidence summarized in the ISA indicates that NO₂ associations generally remain robust in these multi-pollutant models and supports a direct effect of short-term NO₂ exposure on respiratory morbidity (*see* ISA Figures 3.1–7, 3.1–10, 3.1–11 and Figures 1 through 3 below). The plausibility and coherence of these effects are also supported by epidemiologic studies of indoor NO₂ as well as experimental (*i.e.*, toxicologic and controlled human exposure) studies that have evaluated host defense and immune system changes, airway inflammation, and airway responsiveness (*see* subsequent sections of this proposal and the ISA, section 5.3.2.1). The ISA (section 5.4) concluded that the robustness of epidemiologic findings to adjustment for co-pollutants, coupled with data from animal and human experimental studies, support a determination that the relationship between NO₂ and respiratory morbidity is likely causal, while still recognizing the relationship between NO₂ and other traffic related pollutants.

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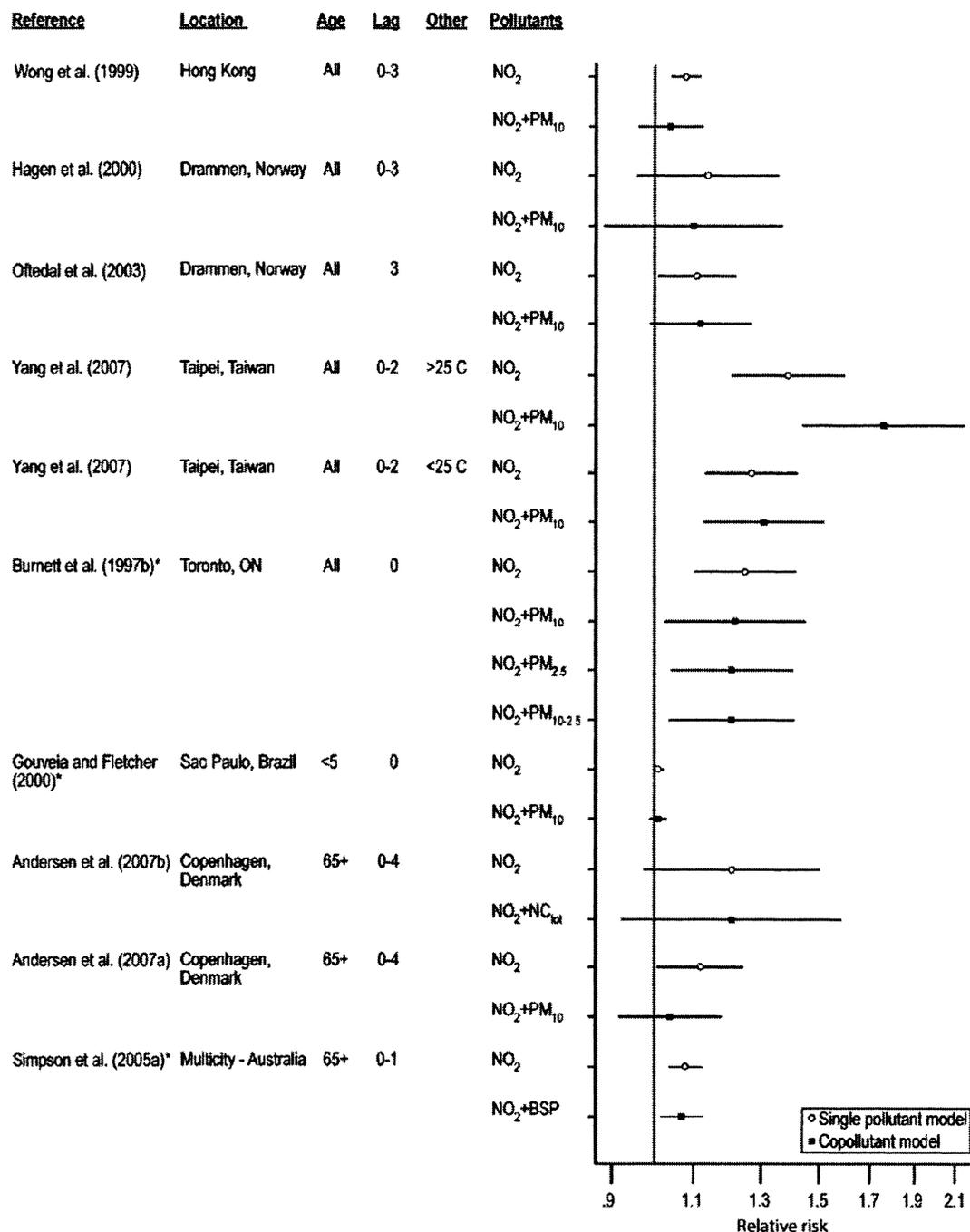


Figure 1. Relative risks and 95% confidence intervals for hospital admissions or emergency department visits for all respiratory causes, standardized from 2-pollutant models adjusted for particle concentration (ISA, Figure 3.1-10).

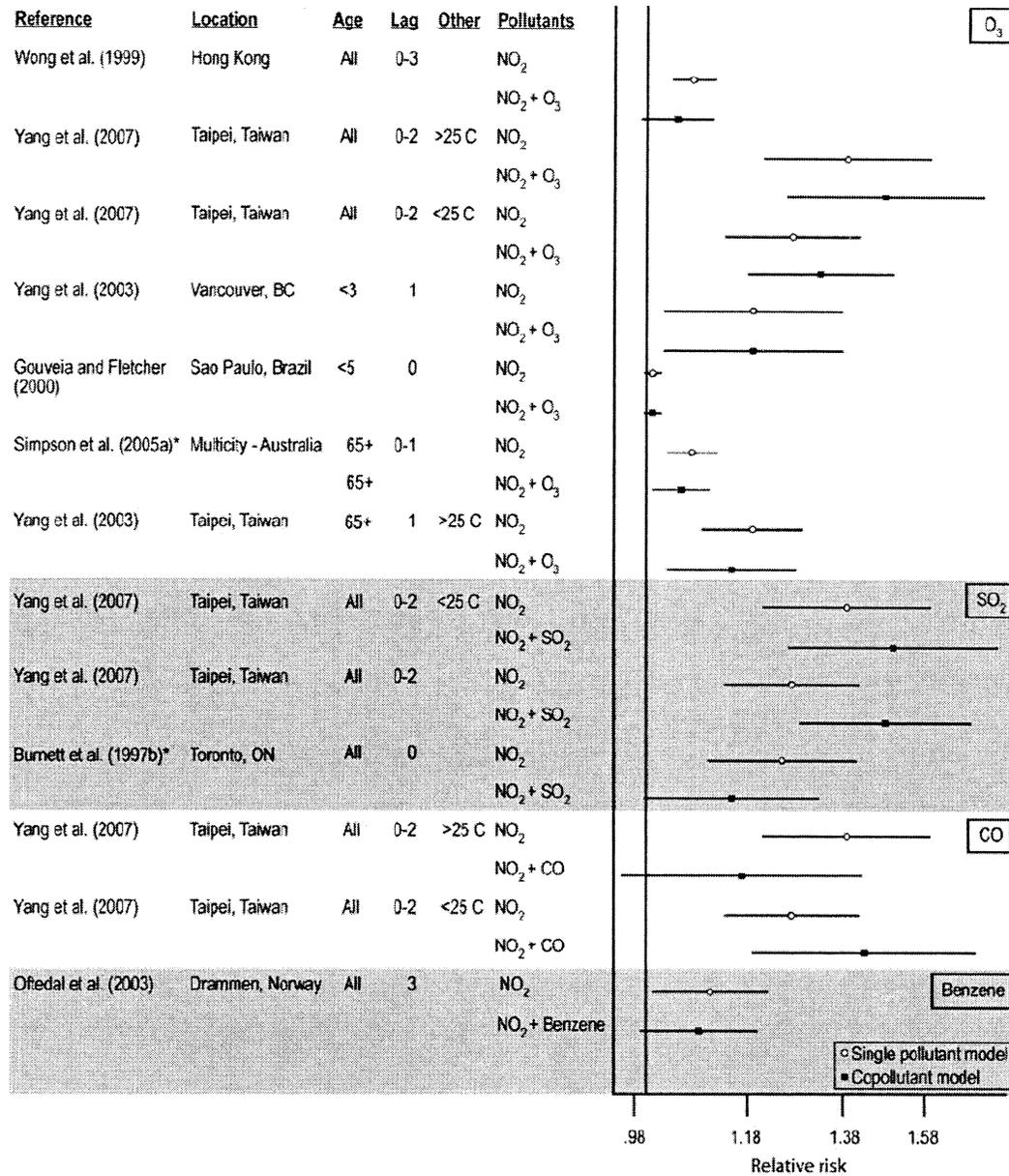


Figure 2. Relative risks and 95% confidence intervals for hospital admissions or emergency department visits for all respiratory causes, standardized from 2-pollutant models adjusted for gaseous pollutant concentration (ISA, Figure 3.1-11).

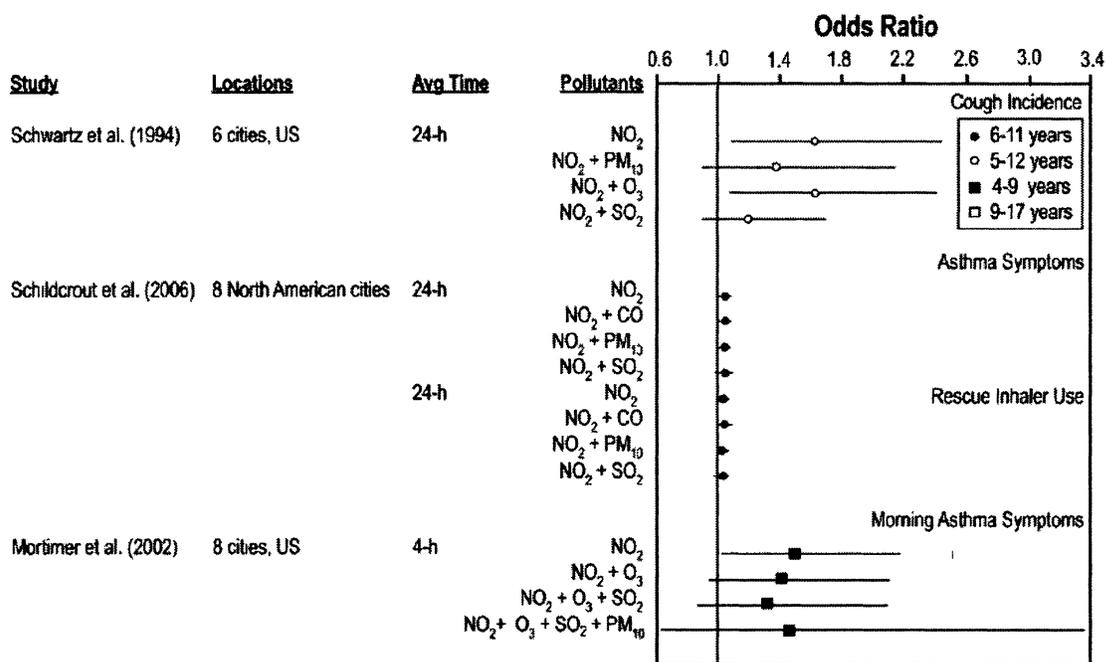


Figure 3. Odds ratios and 95% confidence intervals for associations between asthma symptoms and NO₂ concentrations from multi-pollutant models (ISA, Figure 3.1-7).

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The epidemiologic and experimental studies encompass a number of endpoints, including emergency department visits and hospitalizations, respiratory symptoms, airway hyperresponsiveness, airway inflammation, and lung function. Effect estimates from epidemiologic studies conducted in the United States and Canada generally indicate a 2–20%⁶ increase in risks for emergency department visits and hospital admissions and higher risks for respiratory symptoms (ISA, section 5.4). The findings relevant to these endpoints, which provide the rationale to support the judgment of a likely causal relationship, are described in more detail below.

a. Emergency Department Visits and Hospital Admissions

Epidemiologic evidence exists for positive associations of short-term ambient NO₂ concentrations below the current NAAQS with increased numbers of emergency department visits and hospital admissions for respiratory causes, especially asthma (ISA, section 5.3.2.1). Total respiratory causes for emergency department visits and hospitalizations typically include asthma, bronchitis and emphysema (collectively referred to as COPD),

⁶ Effect estimates in the ISA were standardized to a 30 ppb increase in NO₂ concentrations and to a 20 ppb increase for studies that evaluated 24-hour average concentrations.

pneumonia, upper and lower respiratory infections, and other minor categories. Temporal associations between respiratory emergency department visits or hospital admissions and ambient levels of NO₂ have been the subject of over 50 peer-reviewed research publications since the review of the NO₂ NAAQS that was completed in 1996. These studies have examined morbidity in different age groups and have often utilized multi-pollutant models to evaluate potential confounding effects of co-pollutants. Associations are particularly consistent among children (< 14 years) and older adults (> 65 years) when all respiratory outcomes are analyzed together (ISA, Figures 3.1–8 and 3.1–9) and among children and subjects of all ages for asthma admissions (ISA, Figures 3.1–12 and 3.1–13). When examined with co-pollutant models, associations of NO₂ with respiratory emergency department visits and hospital admissions were generally robust and independent of the effects of co-pollutants (*i.e.*, magnitude of effect estimates remained relatively unchanged) (ISA, Figures 3.1–10 and 3.1–11). The plausibility and coherence of these effects are supported by experimental (*i.e.*, toxicologic and controlled human exposure) studies that evaluate host defense and immune system changes, airway inflammation, and airway responsiveness (see subsequent sections of this document and ISA, section 5.3.2.1).

Of the respiratory emergency department visit and hospital admission studies reviewed in the ISA, 6 key studies were conducted in the United States (ISA, Table 5.4–1). Of these 6 studies, 4 evaluated associations with NO₂ using multi-pollutant models (Peel *et al.*, 2005 and updated in Tolbert *et al.*, 2007 in Atlanta; New York Department of Health (NYDOH), 2006 and Ito *et al.*, 2007 in New York City), while 2 studies evaluated only single pollutant models (Linn *et al.*, 2000 in Los Angeles; Jaffe *et al.*, 2003 in Cleveland/Cincinnati, OH). In the study by Peel and colleagues, investigators evaluated respiratory emergency department visits among all ages in Atlanta, GA during the period from 1993 to 2000. Using single pollutant models, a 2.4% (95% CI: 0.9%, 4.1%) increase in respiratory emergency department visits was associated with a 30-ppb increase in 1-hour maximum NO₂ concentrations. For asthma visits, a 4.1% (95% CI: 0.8%, 7.6%) increase was estimated in individuals 2 to 18 years of age. Tolbert and colleagues reanalyzed these data with 4 additional years of information and found essentially similar results in single pollutant models (2.0% increase, 95% CI: 0.5%, 3.3%). This same study found that the associations were positive, but not statistically significant, in multi-pollutant models that included PM₁₀ or O₃ (Figure 2 in published manuscript). In the study conducted by the NYDOH, investigators evaluated asthma

emergency department visits in Bronx and Manhattan, New York over the period of January 1999 to November 2000. In Bronx, a 6% (95% CI: 1%, 10%) increase in visits was estimated per 20 ppb increase in 24-hour average concentrations of NO₂ and a 7% (95% CI: 2%, 12%) increase in visits was estimated per 30 ppb increase in daily 1-hour maximum concentrations. These effects were not statistically significant in 2-pollutant models that included PM_{2.5} or SO₂ (Tables 4a and 9 in manuscript). In Manhattan, the authors found non-significant decreases (3% for 24-hour and a 2% for daily 1-hour maximum) in asthma-related emergency department visits associated with increasing NO₂. In the study by Ito and colleagues (2007), investigators evaluated respiratory emergency department visits for asthma in New York City during the years 1999 to 2002. A 12% (95% CI: 7%, 15%) increase in risk was estimated per 20 ppb increase in 24-hour ambient NO₂. Risk estimates were robust and remained statistically significant in multi-pollutant models that included PM_{2.5}, O₃, CO, and SO₂ (figure 8 in manuscript). With regard to the studies that evaluated only single pollutant models, Linn *et al.* (2000) detected a statistically significant increase in respiratory hospital admissions and Jaffe *et al.* (2003) detected a positive, but not statistically significant, increase in respiratory emergency department visits associated with 24-hour NO₂ concentrations.

b. Respiratory Symptoms

Evidence for associations between NO₂ and respiratory symptoms is derived primarily from the epidemiologic literature, although the experimental evidence for airway inflammation and immune system effects (described in the ISA, section 3.1) does provide support for the plausibility and coherence for the epidemiologic results (ISA, section 5.3.2.1). Consistent evidence has been observed for an association of respiratory effects with indoor and personal NO₂ exposures in children (ISA, sections 3.1.5.1 and 5.3.2.1) and with ambient levels of NO₂, as measured by area-wide monitors (ISA, sections 3.1.4.2 and 5.3.2.1, *see* Figure 3.1–6). In the results of multi-pollutant models, NO₂ associations in multicity studies are generally robust to adjustment for co-pollutants including O₃, CO, and PM₁₀ (ISA, sections 3.1.4.3, 5.3.2.1 and Figure 3.1–7). Specific studies of respiratory symptoms are discussed in more detail below.

Epidemiologic studies using community ambient monitors have

found associations between ambient NO₂ concentrations and respiratory symptoms (ISA, sections 3.1.4.2 and 5.3.2.1, Figure 3.1–6) in cities where the entire range of 24-hour average NO₂ concentrations were well below the level of the current NAAQS (0.053 ppm annual average). Several studies have been published since the last review including single-city studies (*e.g.*, Ostro *et al.*, 2001; Delfino *et al.*, 2002) and multicity studies in urban areas covering the continental United States and southern Ontario (Schwartz *et al.*, 1994; Mortimer *et al.*, 2002; Schildcrout *et al.*, 2006).

Schwartz *et al.* (1994) studied 1,844 schoolchildren, followed for 1 year, as part of the Six Cities Study that included the cities of Watertown, MA, St. Louis, MO, Kingston-Harriman, TN, Steubenville, OH, Topeka, KS, and Portage, WI. Respiratory symptoms were recorded daily. The authors reported a significant association between 4-day mean NO₂ levels and incidence of cough among all children in single-pollutant models, with an odds ratio (OR) of 1.61 (95% CI: 1.08, 2.43) standardized to a 20-ppb increase in NO₂. The incidence of cough increased up to approximately mean NO₂ levels (13 ppb) ($p = 0.01$), after which no further increase was observed. The significant association between cough and 4-day mean NO₂ level remained unchanged in models that included O₃ but lost statistical significance in two-pollutant models that included PM₁₀ (OR = 1.37 [95% CI: 0.88, 2.13]) or SO₂ (OR = 1.42 [95% CI: 0.90, 2.28]).

Mortimer *et al.* (2002) studied the risk of asthma symptoms among 864 asthmatic children in New York City, NY, Washington, DC, Cleveland, OH, Detroit, MI, St. Louis, MO, and Chicago, IL. Subjects were followed daily for four 2-week periods over the course of nine months with morning and evening asthma symptoms and peak flow recorded. The greatest effect was observed for morning symptoms using a 6-day moving average, with a reported OR of 1.48 (95% CI: 1.02, 2.16) per 20 ppb increase in NO₂. Although the magnitudes of effect estimates were generally robust in multi-pollutant models that included O₃ (OR for 20-ppb increase in NO₂ = 1.40 [95% CI: 0.93, 2.09]), O₃ and SO₂ (OR for NO₂ = 1.31 [95% CI: 0.87, 2.09]), or O₃, SO₂, and PM₁₀ (OR for NO₂ = 1.45 [95% CI: 0.63, 3.34]), they were not statistically significant.

Schildcrout *et al.* (2006) investigated the association between ambient NO₂ and respiratory symptoms and rescue inhaler use as part of the Childhood Asthma Management Program (CAMP)

study. The study reported on 990 asthmatic children living within 50 miles of an NO₂ monitor in Boston, MA, Baltimore, MD, Toronto, ON, St. Louis, MO, Denver, CO, Albuquerque, NM, or San Diego, CA. Symptoms and use of rescue medication were recorded daily, resulting in each subject having an average of approximately two months of data. The authors reported the strongest association between NO₂ and increased risk of cough for a 2-day lag, with an OR of 1.09 (95% CI: 1.03, 1.15) for each 20-ppb increase in NO₂ occurring 2 days before measurement. Multi-pollutant models that included CO, PM₁₀, or SO₂ produced similar results (ISA, Figure 3.1–5, panel A). Additionally, increased NO₂ exposure was associated with increased use of rescue medication, with the strongest association for a 2-day lag. In the single-pollutant model, the relative risk (RR) for increased inhaler usage was 1.05 (95% CI: 1.01, 1.09).

Evidence supporting increased respiratory symptoms following NO₂ exposures is found in studies focused on indoor sources of NO₂ (ISA, section 3.1.4.1). These studies are not confounded by the same mix of co-pollutants present in the ambient air or by the contribution of NO₂ to the formation of secondary particles or O₃ (ISA, section 3.1.4.1). Specifically, in a randomized intervention study in Australia (Pilotto *et al.*, 2004), asthmatic students attending schools that switched out unvented gas heaters, a major source of indoor NO₂, experienced a decrease in both levels of NO₂ and in respiratory symptoms (*e.g.*, difficulty breathing, chest tightness, and asthma attacks) compared to students in schools that did not switch out unvented gas heaters (ISA, section 3.1.4.1). An earlier indoor study by Pilotto and colleagues (1997) also found that students in classrooms with higher levels of NO₂ due primarily to indoor sources had higher rates of respiratory symptoms (*e.g.*, sore throat, cold) and absenteeism than students in classrooms with lower levels of NO₂. This study detected a significant concentration-response relationship, strengthening the argument that NO₂ is causally related to respiratory morbidity. A number of other indoor studies conducted in homes with gas appliances have also detected significant associations between indoor NO₂ and respiratory symptoms (ISA, section 3.1.4.1).

c. Impaired Host Defense

Impaired host-defense systems and increased risk of susceptibility to both viral and bacterial infections after NO₂ exposures have been observed in

epidemiologic, controlled human exposure, and animal toxicological studies (ISA, section 3.1.1 and 5.3.2.1). A recent epidemiologic study (Chauhan *et al.*, 2003) provides evidence that increased personal exposure to NO₂ worsened virus-associated symptoms and decreased lung function in children with asthma. The limited evidence from controlled human exposure studies indicates that NO₂ may increase susceptibility to lung injury by subsequent viral challenge at exposures of as low as 600 ppb for 3 hours in healthy adults (Frampton *et al.*, 2002). Toxicological studies have shown that lung host defenses, including mucociliary clearance and immune cell function, are sensitive to NO₂ exposure, with effects observed at concentrations of less than 1000 ppb (ISA, section 3.1.7). When taken together, epidemiologic and experimental studies linking NO₂ exposure with viral illnesses provide coherent and consistent evidence that NO₂ exposure can result in lung host defense or immune system effects (ISA, sections 3.1.7 and 5.3.2.1). This group of outcomes also provides some plausibility for other respiratory system effects. For example, effects on ciliary action (clearance) or immune cell function (*i.e.* macrophage phagocytosis) could be the basis for the effects observed in epidemiologic studies, including increased respiratory illness or respiratory symptoms (ISA, section 5.3.2.1). Proposed mechanisms by which NO₂, in conjunction with viral infections, may exacerbate airway symptoms are summarized in the ISA (Table 3.1–1).

d. Airway Response

In acute exacerbations of asthma, bronchial smooth muscle contraction occurs quickly to narrow the airway in response to exposure to various stimuli including allergens or irritants. Bronchoconstriction is the dominant physiological event leading to clinical symptoms and interference with airflow (National Heart, Lung, and Blood Institute, 2007). Inhaled pollutants such as NO₂ may enhance the inherent responsiveness of the airway to a challenge by allergens and nonspecific agents (ISA, section 3.1.3). In the laboratory, airway responses can be measured by assessing changes in pulmonary function (*e.g.*, decline in FEV₁) or changes in the inflammatory response (*e.g.*, using markers in bronchoalveolar lavage (BAL) fluid or induced sputum) (ISA, section 3.1.3).

The ISA (section 5.3.2.1) drew two broad conclusions regarding airway responsiveness in asthmatics following

NO₂ exposure. First, the ISA concluded that NO₂ exposure may enhance the sensitivity to allergen-induced decrements in lung function and increase the allergen-induced airway inflammatory response at exposures as low as 260 ppb NO₂ for 30 minutes (ISA, section 5.3.2.1 and Figure 3.1–2). Second, exposure to NO₂ has been found to enhance the inherent responsiveness of the airway to subsequent nonspecific challenges in controlled human exposure studies (section 3.1.3.2). In general, small but significant increases in nonspecific airway responsiveness were observed in the range of 200 to 300 ppb NO₂ for 30-minute exposures and at 100 ppb NO₂ for 60-minute exposures in asthmatics. These conclusions are consistent with results from animal toxicological studies which have detected 1) increased immune-mediated pulmonary inflammation in rats exposed to house dust mite allergen following exposure to 5000 ppb NO₂ for 3-h and 2) increased responsiveness to non-specific challenges following sub-chronic (6–12 weeks) exposure to 1000 to 4000 ppb NO₂ (ISA, section 5.3.2.1).

Enhanced airway responsiveness could have important clinical implications for asthmatics since transient increases in airway responsiveness following NO₂ exposure have the potential to increase symptoms and worsen asthma control (ISA, section 5.4). In addition, the ISA cited the controlled human exposure literature on the NO₂ airway response as being supportive of the epidemiologic evidence on respiratory morbidity (ISA, section 5.4). Because studies on airway responsiveness have been used to identify potential health effect benchmark values and to inform the identification of potential alternative standards for evaluation (*see* REA, sections 4.5 and 5), more detail is provided below on the specific studies that form the basis for the conclusions in the ISA regarding this endpoint.

Folinsbee (1992) conducted a meta-analysis using individual level data from 19 NO₂ controlled human exposure studies measuring airway responsiveness in asthmatics (ISA, section 3.1.3.2). These studies included NO₂ exposure levels between 100 and 1000 ppb and most of them used nonspecific bronchoconstricting agents such as methacholine, carbachol, histamine, or cold air. The largest effects were observed for asthmatics at rest. Among asthmatics exposed at rest, 76% experienced increased airway responsiveness following exposure to NO₂ levels between 200 and 300 ppb. Results from an update of this meta-

analysis, which focused only on data for nonspecific responsiveness, are presented in the ISA (Table 3.1–3).⁷ When exposed at rest, 66% of asthmatics experienced an increase in airway responsiveness following exposure to 100 ppb NO₂, 67% of asthmatics experienced an increase in airway responsiveness following exposure to NO₂ concentrations between 100 and 150 ppb (inclusively), 75% of subjects experienced an increase in airway responsiveness following exposure to NO₂ concentrations between 200 and 300 ppb (inclusively), and 73% of subjects experienced an increase in airway responsiveness following exposure to NO₂ concentrations above 300 ppb. Effects of NO₂ exposure on the direction of airway responsiveness were statistically significant at all of these levels. Because this meta-analysis evaluated only the direction of the change in airway responsiveness, it is not possible to discern the magnitude of the change from these data. However, the results do suggest that short-term (*i.e.*, 30-min to 3-h) exposures to NO₂ at near-ambient levels (<300 ppb) can alter airway responsiveness in people with mild asthma (ISA, section 3.1.3.2).

Several studies published since the 1996 review evaluate the potential for low-level exposures to NO₂ to enhance the response to specific allergen challenge in mild asthmatics (ISA, section 3.1.3.1). These studies suggest that NO₂ may enhance the sensitivity to allergen-induced decrements in lung function and increase the allergen-induced airway inflammatory response. Strand *et al.* (1997) demonstrated that single 30-minute exposures to 260 ppb NO₂ increased the late phase response to allergen challenge 4 hours after exposure, as measured by changes in lung function. In a separate study (Strand *et al.*, 1998), 4 daily repeated exposures to 260 ppb NO₂ for 30 minutes increased both the early and late-phase responses to allergen, as measured by changes in lung function. Barck *et al.* (2002) used the same exposure and challenge protocol in the earlier Strand study (260 ppb for 30 min, with allergen challenge 4 hours after exposure), and performed BAL 19 hours after the allergen challenge to determine NO₂ effects on the allergen-induced inflammatory response. Compared with air followed by allergen, NO₂ followed by allergen caused an

⁷ The updated meta-analysis added a study that evaluated non-specific airway responsiveness following exposure to 260 ppb NO₂ and removed a study that evaluated allergen-induced airway responsiveness following exposure to 100 ppb NO₂.

increase in the BAL recovery of polymorphonuclear (PMN) cells and eosinophil cationic protein (ECP) as well as a reduction in total BAL fluid volume and cell viability. ECP is released by degranulating eosinophils, is toxic to respiratory epithelial cells, and is thought to play a role in the pathogenesis of airway injury in asthma. Subsequently, Barck *et al.* (2005) exposed 18 mild asthmatics to air or 260 ppb NO₂ for 15 minutes on day 1, followed by two 15 minute exposures separated by 1 hour on day 2, with allergen challenge after exposures on both days 1 and 2. Sputum was induced before exposure on day 1 and after exposures (morning of day 3). Compared to air plus allergen, NO₂ plus allergen resulted in increased levels of ECP in both sputum and blood and increased myeloperoxidase levels in blood.

All exposures in these studies (Barck *et al.*, 2002, 2005; Strand *et al.*, 1997, 1998) used subjects at rest. They used an adequate number of subjects, included air control exposures, randomized exposure order, and separated exposures by at least 2 weeks. Together, they indicate the possibility for effects on allergen responsiveness in some asthmatics following brief exposures to 260 ppb NO₂. Other recent studies have failed to find effects using similar, but not identical, approaches (ISA, section 3.1.3.1). The differing findings may relate in part to differences in timing of the allergen challenge, the use of multiple versus single-dose allergen challenge, the use of BAL versus sputum induction, exercise versus rest during exposure, and differences in subject susceptibility (ISA, section 3.1.3.1).

e. Airway Inflammation

Effects of NO₂ on airway inflammation have been observed in controlled human exposure and animal toxicological studies at higher than ambient levels (400–5000 ppb). Controlled human exposure studies provide evidence for increased airway inflammation at NO₂ concentrations of <2000 ppb. The onset of inflammatory responses in healthy subjects appears to be between 100 and 200 ppm-minutes, *i.e.*, 1000 ppb for 2 to 3 hours (ISA, Figure 3.1–1). Increases in biological markers of inflammation were not observed consistently in healthy animals at levels of less than 5000 ppb; however, increased susceptibility (as indicated by biochemical markers of inflammation) to NO₂ concentrations of as low as 400 ppb was observed when lung vitamin C was reduced (by diet) to levels that were <50% of normal. The few available epidemiologic studies

were suggestive of an association between ambient NO₂ concentrations and inflammatory response in the airway in children, though the associations were inconsistent in the adult populations examined (ISA, section 3.1.2 and 5.3.2.1). These data provide some evidence for biological plausibility and one potential mechanism for other respiratory effects, such as exacerbation of asthma symptoms and increased emergency department visits for asthma (ISA, section 5.3.2.1).

f. Lung Function

Recent epidemiologic studies that examined the association between ambient NO₂ concentrations and lung function in children and adults have produced inconsistent results (ISA, sections 3.1.5.1 and 5.3.2.1). Controlled human exposure studies generally did not find direct effects of NO₂ on lung function in healthy adults at levels as high as 4000 ppb (ISA, section 5.3.2.1). For asthmatics, the direct effects of NO₂ on lung function also have been inconsistent at exposure concentrations of less than 1000 ppb NO₂.

g. Conclusions From the ISA

As noted previously, the ISA concluded that the findings of epidemiologic, controlled human exposure, and animal toxicological studies provide evidence that is sufficient to infer a likely causal relationship for respiratory effects following short-term NO₂ exposure (ISA, sections 3.1.7 and 5.3.2.1). The ISA (section 5.4) concluded that the strongest evidence for an association between NO₂ exposure and adverse human health effects comes from epidemiologic studies of respiratory symptoms, emergency department visits, and hospital admissions. These studies include panel and field studies, studies that control for the effects of co-occurring pollutants, and studies conducted in areas where the whole distribution of ambient 24-hour average NO₂ concentrations was below the current NAAQS level of 53 ppb (annual average). With regard to this evidence, the ISA concluded that NO₂ epidemiologic studies provide “little evidence of any effect threshold” (ISA, section 5.3.2.9, p. 5–15). In studies that have evaluated concentration-response relationships, they appear linear within the observed range of data (ISA, section 5.3.2.9).

Overall, the epidemiologic evidence for respiratory effects has been characterized in the ISA as consistent, in that associations are reported in studies conducted in numerous

locations with a variety of methodological approaches. Considering this large body of epidemiologic studies alone, the findings have also been characterized as coherent in that the studies report associations with respiratory health outcomes that are logically linked together. In addition, a number of these associations are statistically significant, particularly the more precise effect estimates (ISA, section 5.3.2.1). These epidemiologic studies are supported by evidence from toxicological and controlled human exposure studies, particularly those that evaluated airway hyperresponsiveness in asthmatic individuals (ISA, section 5.4). The ISA concluded that together, the epidemiologic and experimental data sets form a plausible, consistent, and coherent description of a relationship between NO₂ exposures and an array of adverse respiratory health effects that range from the onset of respiratory symptoms to hospital admissions.

2. Other Effects With Short-Term Exposure to NO₂

a. Mortality

The ISA concluded that the epidemiologic evidence is suggestive, but not sufficient, to infer a causal relationship between short-term exposure to NO₂ and all-cause and cardiopulmonary-related mortality (ISA, section 5.3.2.3). Results from several large U.S. and European multicity studies and a meta-analysis study indicate positive associations between ambient NO₂ concentrations and the risk of all-cause (nonaccidental) mortality, with effect estimates ranging from 0.5 to 3.6% excess risk in mortality per standardized increment (20 ppb for 24-hour averaging time, 30 ppb for 1-hour averaging time) (ISA, section 3.3.1, Figure 3.3–2, section 5.3.2.3). In general, the NO₂ effect estimates were robust to adjustment for co-pollutants. Both cardiovascular and respiratory mortality have been associated with increased NO₂ concentrations in epidemiologic studies (ISA, Figure 3.3–3); however, similar associations were observed for other pollutants, including PM and SO₂. The range of risk estimates for excess mortality is generally smaller than that for other pollutants such as PM. In addition, while NO₂ exposure, alone or in conjunction with other pollutants, may contribute to increased mortality, evaluation of the specificity of this effect is difficult. Clinical studies showing hematologic effects and animal toxicological studies showing biochemical, lung host defense, permeability, and inflammation changes

with short-term exposures to NO₂ provide limited evidence of plausible pathways by which risks of mortality may be increased, but no coherent picture is evident at this time (ISA, section 5.3.2.3).

b. Cardiovascular Effects

The ISA concluded that the available evidence on cardiovascular health effects following short-term exposure to NO₂ is inadequate to infer the presence or absence of a causal relationship at this time (ISA, section 5.3.2.2). Evidence from epidemiologic studies of heart rate variability, repolarization changes, and cardiac rhythm disorders among heart patients with ischemic cardiac disease are inconsistent (ISA, section 5.3.2.2). In most studies, associations with PM were found to be similar or stronger than associations with NO₂. Generally positive associations between ambient NO₂ concentrations and hospital admissions or emergency department visits for cardiovascular disease have been reported in single-pollutant models (ISA, section 5.3.2.2); however, most of these effect estimate values were diminished in multi-pollutant models that also contained CO and PM indices (ISA, section 5.3.2.2). Mechanistic evidence of a role for NO₂ in the development of cardiovascular diseases from studies of biomarkers of inflammation, cell adhesion, coagulation, and thrombosis is lacking (ISA, section 5.3.2.2). Furthermore, the effects of NO₂ on various hematological parameters in animals are inconsistent and, thus, provide little biological plausibility for effects of NO₂ on the cardiovascular system (ISA, section 5.3.2.2).

3. Health Effects With Long-Term Exposure to NO₂

a. Respiratory Morbidity

The ISA concluded that overall, the epidemiologic and experimental evidence is suggestive, but not sufficient, to infer a causal relationship between long-term NO₂ exposure and respiratory morbidity (ISA, section 5.3.2.4). The available database evaluating the relationship between respiratory illness in children and long-term exposures to NO₂ has increased since the 1996 review of the NO₂ NAAQS. A number of epidemiologic studies have examined the effects of long-term exposure to NO₂ and reported positive associations with decrements in lung function and partially irreversible decrements in lung function growth (ISA, section 3.4.1, Figures 3.4-1 and 3.4-2). Specifically, results from the California-based Children's Health

Study, which evaluated NO₂ exposures in children over an 8-year period, demonstrated deficits in lung function growth (Gauderman *et al.*, 2004). This effect has also been observed in Mexico City, Mexico (Rojas-Martinez *et al.*, 2007a,b) and in Oslo, Norway (Oftedal *et al.*, 2008), with decrements ranging from 1 to 17.5 ml per 20-ppb increase in annual NO₂ concentration. Similar associations have been found for PM, O₃, and proximity to traffic (<500 m), though these studies did not report the results of co-pollutant models. The high correlation among traffic-related pollutants makes it difficult to accurately estimate independent effects in these long-term exposure studies (ISA, section 5.3.2.4). With regard to asthma incidence and long-term NO₂, two major cohort studies, the Children's Health Study (Gauderman *et al.*, 2005) and a birth cohort study in the Netherlands (Brauer *et al.*, 2007), observed significant associations. However, several other studies failed to find consistent associations between long-term NO₂ exposure and asthma outcomes (ISA, section 5.3.2.4). Similarly, epidemiologic studies conducted in the United States and Europe reported inconsistent results regarding an association between long-term exposure to NO₂ and respiratory symptoms (ISA, sections 3.4.3 and 5.3.2.4). While some positive associations were noted, a large number of symptom outcomes were examined and the results across specific outcomes were inconsistent (ISA, section 5.3.2.4).

Animal toxicological studies may provide biological plausibility for the chronic effects of NO₂ that have been observed in epidemiologic studies (ISA, sections 3.4.5 and 5.3.2.4). The main biochemical targets of NO₂ exposure appear to be antioxidants, membrane polyunsaturated fatty acids, and thiol groups. NO₂ effects include changes in oxidant/antioxidant homeostasis and chemical alterations of lipids and proteins. Lipid peroxidation has been observed at NO₂ exposures as low as 40 ppb for 9 months and at exposures of 1200 ppb for 1 week, suggesting lower effect thresholds with longer durations of exposure. Other studies showed decreases in formation of key arachidonic acid metabolites in alveolar macrophages following NO₂ exposures of 500 ppb. NO₂ has been shown to increase collagen synthesis rates at concentrations as low as 500 ppb. This could indicate increased total lung collagen, which is associated with pulmonary fibrosis, or increased collagen turnover, which is associated with remodeling of lung connective

tissue. Morphological effects following chronic NO₂ exposures have been identified in animal studies that link to these increases in collagen synthesis and may provide plausibility for the deficits in lung function growth described in epidemiologic studies of long-term exposure to NO₂ (ISA, section 3.4.5).

b. Mortality

The ISA concluded that the epidemiologic evidence is inadequate to infer the presence or absence of a causal relationship between long-term exposure to NO₂ and mortality (ISA, section 5.3.2.6). In the United States and European cohort studies examining the relationship between long-term exposure to NO₂ and mortality, results have been inconsistent (ISA, section 5.3.2.6). Further, when associations were suggested, they were not specific to NO₂ but also implicated PM and other traffic indicators. The relatively high correlations reported between NO₂ and PM indices make it difficult to interpret these observed associations at this time (ISA, section 5.3.2.6).

c. Carcinogenic, Cardiovascular, and Reproductive/Developmental Effects

The ISA concluded that the available epidemiologic and toxicological evidence is inadequate to infer the presence or absence of a causal relationship for carcinogenic, cardiovascular, and reproductive and developmental effects related to long-term NO₂ exposure (ISA, section 5.3.2.5). Epidemiologic studies conducted in Europe have shown an association between long-term NO₂ exposure and increased incidence of cancer (ISA, section 5.3.2.5). However, the animal toxicological studies have provided no clear evidence that NO₂ acts as a carcinogen (ISA, section 5.3.2.5). The very limited epidemiologic and toxicological evidence do not suggest that long-term exposure to NO₂ has cardiovascular effects (ISA, section 5.3.2.5). The epidemiologic evidence is not consistent for associations between NO₂ exposure and fetal growth retardation; however, some evidence is accumulating for effects on preterm delivery (ISA, section 5.3.2.5). Scant animal evidence supports a weak association between NO₂ exposure and adverse birth outcomes and provides little mechanistic information or biological plausibility for the epidemiologic findings.

4. NO₂-Related Impacts on Public Health

Specific groups within the general population are likely at increased risk

for suffering adverse effects from NO₂ exposure. This could occur because they are affected by lower levels of NO₂ than the general population (susceptibility), because they experience a larger health impact than the general population to a given level of exposure (susceptibility), and/or because they are exposed to higher levels of NO₂ than the general population (vulnerability). The term susceptibility generally encompasses innate (e.g., genetic or developmental) and/or acquired (e.g., age or disease) factors that make individuals more likely to experience effects with exposure to pollutants. The severity of health effects experienced by a susceptible subgroup may be much greater than that experienced by the population at large. Factors that may influence susceptibility to the effects of air pollution include age (e.g., infants, children, elderly); gender; race/ethnicity; genetic factors; and pre-existing disease/condition (e.g., obesity, diabetes, respiratory disease, asthma, chronic obstructive pulmonary disease (COPD), cardiovascular disease, airway hyperresponsiveness, respiratory infection, adverse birth outcome) (ISA, sections 4.3.1, 4.3.5, and 5.3.2.8). In addition, certain groups may experience relatively high exposure to NO₂, thus forming a potentially vulnerable population (ISA, section 4.3.6). Factors that may influence exposures and/or susceptibility to air pollution include socioeconomic status (SES), education level, air conditioning use, proximity to roadways, geographic location, level of physical activity, and work environment (e.g., indoor versus outdoor) (ISA, section 4.3.5). The ISA discussed factors that can confer susceptibility and/or vulnerability to air pollution with most of the discussion devoted to factors for which NO₂-specific evidence exists (ISA, section 4.3). These factors are discussed below.

a. Pre-Existing Disease

A number of health conditions have been found to put individuals at greater risk for adverse events following exposure to air pollution. In general, these include asthma, COPD, respiratory infection, cardiac conduction disorders, congestive heart failure (CHF), diabetes, past myocardial infarction (MI), obesity, coronary artery disease, low birth weight/prematurity, and hypertension (ISA, sections 4.3.1, 4.3.5, and 5.3.2.9). In addition to these conditions, epidemiologic evidence indicates that individuals with bronchial or airway hyperresponsiveness, as determined by methacholine provocation, may be at increased risk for experiencing respiratory symptoms (ISA, section

4.3.1). In considering NO₂ specifically, the ISA evaluated studies on asthmatics, individuals with cardiopulmonary disease, and diabetics (ISA, sections 4.3.1.1 and 4.3.1.2). These groups are discussed in more detail below.

Epidemiologic and controlled human exposure studies, supported by animal toxicology studies, have provided evidence for associations between NO₂ exposure and respiratory effects in asthmatics (ISA, section 4.3.1.1). The ISA found evidence from epidemiologic studies for an association between ambient NO₂ and children's hospital admissions, emergency department visits, and calls to doctors for asthma. Long-term NO₂ exposure was associated with aggravation of asthma effects that include symptoms, medication use, and lung function. Time-series studies demonstrated a relationship in children between hospital admissions or emergency department visits for asthma and ambient NO₂ levels, even after adjusting for co-pollutants such as PM and CO (ISA, section 4.3.1.1). Important evidence was available from epidemiologic studies of indoor NO₂ exposures. Recent studies have shown associations with asthma attacks and severity of virus-induced asthma (ISA, section 4.3.1.1). In addition, in controlled human exposure studies, airway hyperresponsiveness in asthmatics occurred following exposure to ambient or near-ambient NO₂ concentrations (ISA, sections 5.3.2.1–5.3.2.6). Compared to asthma, less evidence is available to support cardiovascular disease as a mediator of susceptibility to NO₂. However, recent epidemiologic studies report that individuals with preexisting conditions (e.g., including diabetes, CHF, prior MI) may be at increased risk for adverse cardiac health events associated with ambient NO₂ concentrations (ISA, section 4.3.1.2). The small number of controlled human exposure and animal toxicological studies that have evaluated cardiovascular endpoints provide only limited supporting evidence for susceptibility to NO₂ in persons with cardiovascular disease (ISA, section 4.3.1.2).

b. Age

The ISA identified infants, children (i.e., <18 years of age), and older adults (i.e., >65 years of age) as groups that are potentially more susceptible than the general population to the health effects associated with ambient NO₂ concentrations (ISA, section 4.3.2). The ISA found evidence that associations of NO₂ with respiratory emergency department visits and hospitalizations were stronger among children and older

adults, though not all studies had comparable findings on this issue (ISA, section 4.3.2). In addition, long-term exposure studies suggest effects in children that include impaired lung function growth, increased respiratory symptoms and infections, and onset of asthma (ISA, section 3.4 and 4.3.2). In some studies, associations between NO₂ and hospitalizations or emergency department visits for CVD have been observed in elderly populations. Among studies that observed positive associations between NO₂ and mortality, a comparison indicated that, in general, the elderly population was more susceptible than the non-elderly population to NO₂ effects (ISA, section 4.3.2).

c. Genetics

As noted in the ISA (section 4.3.4), genetic factors related to health outcomes and ambient pollutant exposures merit consideration. Several criteria should be satisfied in selecting and establishing useful links between polymorphisms in candidate genes and adverse respiratory effects. First, the candidate gene must be significantly involved in the pathogenesis of the adverse effect of interest. Second, polymorphisms in the gene must produce a functional change in either the protein product or in the level of expression of the protein. Third, in epidemiologic studies, the issue of confounding by other environmental exposures must be carefully considered (ISA, section 4.3.4). Investigation of genetic susceptibility to NO₂ effects has focused on the glutathione S-transferase (GST) gene. Several GST genes have common, functionally-important alleles that affect host defense in the lung (ISA, section 4.3.4). GST genes are inducible by electrophilic species (e.g., reactive oxygen species) and individuals with genotypes that result in enzymes with reduced or absent peroxidase activity are likely to have reduced defenses against oxidative insult. This could potentially result in increased susceptibility to inhaled oxidants and radicals. However, data on genetic susceptibility to NO₂ are only beginning to emerge and, while it remains plausible that there are genetic factors that can influence health responses to NO₂, the few available studies do not provide specific support for genetic susceptibility to NO₂ exposure (ISA, section 4.3.4).

d. Gender

As reported in the ISA, a limited number of NO₂ studies have stratified results by gender. The results of these studies were mixed, and the ISA did not

draw conclusions regarding the potential for gender to confer susceptibility to the effects of NO₂ (ISA, section 4.3.3).

e. Proximity to Roadways

Certain groups may experience relatively high exposure to NO₂, thus forming a potentially vulnerable population. The ISA included discussion of populations reported to experience increased NO₂ exposures on or near roadways (ISA, section 4.3.6). Large gradients in NO_x concentrations near roadways may lead to increased exposures for individuals residing, working, traveling, or attending school in the vicinity of roadways. Many studies find that indoor, personal, and outdoor NO₂ levels are strongly associated with proximity to traffic or to traffic density (ISA, section 4.3.6).

That adverse respiratory effects can be associated with proximity to roadways has been demonstrated in a number of studies. For example, Gauderman and colleagues (2007) reported reduced lung function growth in children who lived within 500 m of a freeway compared to children who lived at least 1500 m from a freeway. In a separate study, Gauderman and colleagues (2005) reported that the incidence of physician-diagnosed asthma increased with both increasing NO₂ concentrations outside the child's residence and decreasing distance between the child's residence and a major freeway.

In addition to those who live near major roadways, individuals who spend time commuting on major roadways can also be exposed to relatively higher concentrations of NO₂ than the ones reported at monitors away from the roads. Due to high air exchange rates, NO₂ concentrations inside a vehicle can rapidly approach ambient concentrations on the roadway during commuting (ISA, section 4.3.6). Mean in-vehicle NO₂ concentrations are often between 2 and 3 times higher than ambient levels measured at monitors located away from the road (ISA, section 4.3.6). Due to the potential for high peak exposures while driving, total personal exposure could be underestimated if exposures while commuting are not considered. Therefore, individuals with occupations that require them to be in traffic or close to traffic (e.g., bus and taxi drivers, highway patrol officers, toll collectors) and individuals with long commutes could be exposed to relatively high levels of NO₂ compared to the ambient levels measured at fixed-site monitors located away from the roadway.

f. Socioeconomic Status

The ISA discussed evidence that SES modifies the effects of air pollution (section 4.3.6). Many recent studies examined modification by SES indicators on the association between mortality and PM or other indices such as traffic density, distance to roadway, or a general air pollution index (ISA, section 4.3.6). SES modification of NO₂ associations has been examined in fewer studies. However, in a study conducted in Seoul, South Korea, community-level SES indicators modified the association of air pollution with emergency department visits for asthma. Of the five criteria air pollutants evaluated, NO₂ showed the strongest association in lower SES districts compared to high SES districts (Kim *et al.*, 2007). In addition, Clougherty *et al.* (2007) evaluated exposure to violence (a potential surrogate for SES) as a modifier of the effect of traffic-related air pollutants, including NO₂, on childhood asthma. The authors reported an elevated risk of asthma with an increase in NO₂ exposure solely among children with above-median exposure to violence in their neighborhoods (ISA, section 4.3.6). Although these recent studies have evaluated the impact of SES on vulnerability to NO₂, they are too few in number to draw definitive conclusions (ISA, section 5.3.2.8).

g. Size of the At-Risk Population

The population potentially affected by NO₂ is large. A considerable fraction of the population resides, works, or attends school near major roadways, and these individuals are likely to have increased exposure to NO₂ (ISA, section 4.4). Based on data from the 2003 American Housing Survey, approximately 36 million individuals live within 300 feet (~90 meters) of a four-lane highway, railroad, or airport (ISA, section 4.4).⁸ Furthermore, in California, 2.3% of schools with a total enrollment of more than 150,000 students were located within approximately 500 feet of high-traffic roads, with a higher proportion of non-white and economically disadvantaged

⁸ The most current American Housing Survey (<http://www.census.gov/hhes/www/housing/ahs/ahs.html>) is from 2007 and lists a higher fraction of housing units within the 300 foot boundary than do prior surveys. According to Table IA-6 from that report (<http://www.census.gov/hhes/www/housing/ahs/ahs07/tab1a-6.pdf>), out of 128,303,000 total housing units in the United States, 20,016,000 were reported by the surveyed occupant or landlord as being within 300 feet of a 4-or-more lane highway, railroad, or airport. That constitutes 15.613% of the total housing units in the U.S. Assuming equal distributions, with a current population of 306,330,199, that means that there would be 47.8 million people meeting the 300 foot criteria.

students attending those schools (ISA, section 4.4). Of this population, asthmatics and members of other susceptible groups discussed above will have even greater risks of experiencing health effects related to NO₂ exposure. In the United States, approximately 10% of adults and 13% of children have been diagnosed with asthma, and 6% of adults have been diagnosed with COPD (ISA, section 4.4). The prevalence and severity of asthma is higher among certain ethnic or racial groups such as Puerto Ricans, American Indians, Alaskan Natives, and African Americans (ISA, section 4.4). A higher prevalence of asthma among persons of lower SES and an excess burden of asthma hospitalizations and mortality in minority and inner-city communities have been observed (ISA, section 4.4). In addition, based on U.S. census data from 2000, about 72.3 million (26%) of the U.S. population are under 18 years of age, 18.3 million (7.4%) are under 5 years of age, and 35 million (12%) are 65 years of age or older. Therefore, large portions of the U.S. population are in age groups that are likely at-risk for health effects associated with exposure to ambient NO₂. The size of the potentially at-risk population suggests that exposure to ambient NO₂ could have a significant impact on public health in the United States.

C. Human Exposure and Health Risk Characterization

To put judgments about NO₂-associated health effects into a broader public health context, EPA has drawn upon the results of the quantitative exposure and risk assessments. Judgments reflecting the nature of the evidence and the overall weight of the evidence are taken into consideration in these quantitative exposure and risk assessments, discussed below. These assessments provide estimates of the likelihood that asthmatic individuals would experience exposures of potential concern and estimates of the incidence of NO₂-associated respiratory emergency department visits under varying air quality scenarios (e.g., just meeting the current or alternative standards), as well as characterizations of the kind and degree of uncertainties inherent in such estimates.

This section describes the approach taken in the REA to characterize NO₂-related exposures and health risks. Goals of the REA included estimating short-term exposures and potential human health risks associated with (1) recent levels of ambient NO₂; (2) NO₂ levels adjusted to simulate just meeting the current standard; and (3) NO₂ levels adjusted to simulate just meeting

potential alternative standards. This section discusses the scientific evidence from the ISA that was used as the basis for the risk characterization (II.C.1), the approaches used in characterizing exposures and risks (II.C.2), and important uncertainties associated with these analyses (II.C.3). The results of the exposure and risk analyses, as they relate to the current and potential alternative standards, are discussed in subsequent sections of this proposal (sections II.E and II.F, respectively).

1. Evidence Base for the Risk Characterization

For purposes of the quantitative characterization of NO₂ health risks, the REA determined that it was appropriate to focus on endpoints for which the ISA concluded that the available evidence is sufficient to infer either a causal or a likely causal relationship. This was generally consistent with judgments made in other recent NAAQS reviews (e.g., see EPA, 2005).

As noted above in section II.A, the only health effect category for which the evidence was judged in the ISA to be sufficient to infer either a causal or a likely causal relationship is respiratory morbidity following short-term NO₂ exposure. Therefore, for purposes of characterizing health risks associated with NO₂, the REA focused on respiratory morbidity endpoints that have been associated with short-term NO₂ exposures. Other health effects (e.g., those associated with long-term exposures) are considered as part of the evidence-based evaluation of potential alternative standards (see section II.F.2). In evaluating the appropriateness of specific endpoints for use in the NO₂ risk characterization, the REA considered both epidemiologic and controlled human exposure studies.

When evaluating epidemiologic studies as to their appropriateness for use as the basis for a quantitative risk assessment, the REA considered several factors. First, the REA concluded that studies conducted in the United States are preferable to those conducted outside the United States given the potential for effect estimates to be impacted by factors such as the ambient pollutant mix, the placement of monitors, activity patterns of the population, and characteristics of the healthcare system. Second, the REA concluded that studies of ambient NO₂ are preferable to those of indoor NO₂, which focus on individuals exposed to NO₂ from indoor sources. These indoor sources can result in exposure patterns, NO₂ levels, and co-pollutants that are different from those typically associated with ambient NO₂. Therefore, although

indoor studies made important contributions to the evidence base for causality judgments in the ISA, the preferred approach for conducting a quantitative risk assessment based on the epidemiologic literature to inform decisions regarding an ambient NO₂ standard is to consider studies of ambient NO₂. Third, the REA concluded that it was appropriate to focus on studies of emergency department visits and hospital admissions given the clear public health significance of these endpoints and the availability of baseline incidence data. Finally, the REA concluded that it was appropriate to focus on studies that evaluated NO₂ health effect associations using both single- and multi-pollutant models. Taking these factors into consideration, the epidemiology-based risk assessment in the REA focused on the study conducted in Atlanta, Georgia by Tolbert *et al.* (2007). This assessment is described in more detail in the REA (chapter 9).

In identifying health endpoints from controlled human exposure studies on which to focus the characterization of NO₂ health risks, the REA concluded that it was appropriate to focus on endpoints that occur at or near ambient levels of NO₂ and endpoints that may be important from a public health perspective. Controlled human exposure studies have addressed the consequences of short-term (e.g., 30-minutes to several hours) NO₂ exposures for a number of health endpoints including airway responsiveness, host defense and immunity, inflammation, and lung function (ISA, section 3.1). With regard to the NO₂ levels at which different effects have been documented, the ISA concluded: (1) In asthmatics NO₂ may increase the allergen-induced airway inflammatory response at exposures as low as 260 ppb for 30 min (ISA, Figure 3.1–2), and NO₂ exposures between 200 and 300 ppb for 30 minutes or 100 ppb for 60-minutes can result in small, but significant, increases in nonspecific airway responsiveness (ISA, section 5.3.2.1); (2) limited evidence indicates that NO₂ may increase susceptibility to injury by subsequent viral challenge following exposures of 600–1500 ppb for 3 hours; (3) evidence exists for increased airway inflammation at NO₂ concentrations less than 2000 ppb; and (4) the direct effects of NO₂ on lung function in asthmatics have been inconsistent at exposure concentrations below 1000 ppb (ISA, section 5.3.2.1). Therefore, of the health effects caused by NO₂ in controlled human exposure studies, the only effect identified by the

ISA to occur at or near ambient levels is increased airway responsiveness in asthmatics.

The REA concluded that airway responsiveness in the asthmatic population is an appropriate focus for the risk characterization for several reasons. First, the ISA concluded that “persons with preexisting pulmonary conditions are likely at greater risk from ambient NO₂ exposures than the general public, with the most extensive evidence available for asthmatics as a potentially susceptible group” (ISA, section 5.3.2.8). Second, when discussing the clinical significance of NO₂-related airway hyperresponsiveness in asthmatics, the ISA concluded that “transient increases in airway responsiveness following NO₂ exposure have the potential to increase symptoms and worsen asthma control” (ISA, sections 3.1.3 and 5.4). That this effect could have public health implications is suggested by the large size of the asthmatic population in the United States (ISA, Table 4.4–1). Third, NO₂ effects on airway responsiveness in asthmatics are part of the body of experimental evidence that provides plausibility and coherence for the effects observed on hospital admissions and emergency department visits in epidemiologic studies (ISA, section 5.3.2.1). As a result of these considerations, of the endpoints from controlled human exposure studies, the REA focused on airway responsiveness in asthmatics for purposes of quantifying risks associated with ambient NO₂ (see below).

Because many of the studies of airway responsiveness evaluated only a single level of NO₂ and because of methodological differences between the studies, the data are not sufficient to derive an exposure-response relationship in the range of interest. Therefore, the REA concluded that the most appropriate approach to characterizing risks based on the controlled human exposure evidence for airway responsiveness was to compare estimated NO₂ air quality and exposure levels with potential health effect benchmark levels. In this review, the term “exposures of potential concern” is defined as personal exposures to 1-hour ambient NO₂ concentrations at and above specific benchmark levels. Benchmark levels represent NO₂ exposure concentrations reported to increase airway responsiveness in most asthmatics, as discussed above in section II.B.1.d. Although the analysis of exposures of potential concern was conducted using discrete benchmark levels (i.e., 100, 150, 200, 250, 300 ppb), EPA recognizes that there is no sharp

breakpoint within the continuum ranging from at and above 300 ppb down to 100 ppb. In considering the concept of exposures of potential concern, it is important to balance concerns about the potential for health effects and their severity with the increasing uncertainty associated with our understanding of the likelihood of such effects at lower NO₂ levels. Within the context of this continuum, estimates of exposures of potential concern at discrete benchmark levels provide some perspective on the potential public health impacts of NO₂-related health effects that have been demonstrated in controlled human exposure studies but cannot be evaluated in quantitative risk assessments (*i.e.*, increased airway responsiveness). They also help in understanding the extent to which such impacts could change by just meeting the current and potential alternative standards.

The NO₂-related increase in airway responsiveness is plausibly linked to the NO₂-associated morbidity reported in epidemiologic studies (*e.g.*, increased respiratory symptoms, emergency department visits and hospital admissions). However, estimates of the number of asthmatics likely to experience exposures of potential concern cannot be translated directly into quantitative estimates of the number of people likely to experience specific health effects, since sufficient information to draw such comparisons is not available. Due to individual variability in responsiveness, only a subset of asthmatics exposed at and above a specific benchmark level can be expected to experience health effects. The amount of weight to place on the estimates of exposures of potential concern at any of these benchmark levels depends in part on the weight of the scientific evidence concerning health effects associated with NO₂ exposures at and above that benchmark level. It also depends on judgments about the importance from a public health perspective of the health effects that are known or can reasonably be inferred to occur as a result of exposures at and above the benchmark level. Such public health policy judgments are embodied in the NAAQS standard setting criteria (*i.e.*, standards that, in the judgment of the Administrator, are requisite to protect public health with an adequate margin of safety).

2. Overview of Approaches

As noted above, the purpose of the assessments described in the REA was to characterize air quality, exposures, and health risks associated with recent ambient levels of NO₂, with NO₂ levels

that could be associated with just meeting the current NO₂ NAAQS, and with NO₂ levels that could be associated with just meeting potential alternative standards. To characterize health risks, we employed three approaches in the REA. In the first approach, for each air quality scenario, NO₂ concentrations at fixed-site monitors and simulated concentrations on/near roadways were compared to potential health effect benchmark values derived from the controlled human exposure literature. In the second approach, modeled estimates of actual exposures in asthmatics were compared to potential health effect benchmarks. In the third approach, concentration-response relationships from an epidemiologic study were used in conjunction with baseline incidence data and recent or simulated ambient concentrations to estimate health impacts. An overview of the approaches to characterizing health risks is provided below and each approach has been described in more detail in the REA (chapters 6 through 9).

In the first approach, we compared ambient NO₂ concentrations with potential health effect benchmark levels for NO₂. The ambient NO₂ concentrations used in these analyses were based on those measured at monitors in the current NO₂ monitoring network. These monitored concentrations were compared to benchmark levels directly and were also used, in conjunction with literature-derived characterizations of the NO₂ concentration gradient around roadways, as the basis for estimating NO₂ concentrations on/near roadways. Scenario-driven air quality analyses were performed using ambient NO₂ concentrations for the years 1995 through 2006. With this approach, NO₂ air quality serves as a surrogate for exposure. All U.S. monitoring sites where NO₂ data have been collected, and that met completeness criteria (REA, chapter 7), were represented by this analysis. As such, the results generated were considered a broad characterization of national air quality and human exposures that might be associated with these concentrations. An advantage of this approach is its relative simplicity; however, there is uncertainty associated with the assumption that NO₂ air quality can serve as an adequate surrogate for total exposure to ambient NO₂. Actual exposures might be influenced by factors not considered by this approach, including small scale spatial variability in ambient NO₂ concentrations (which might not be captured by the network of fixed-site ambient monitors) and

spatial/temporal variability in human activity patterns.

In the second approach, we used an inhalation exposure model to generate more realistic estimates of personal exposures in asthmatics (REA, chapter 8 for more detail on this assessment). This analysis estimated temporally and spatially variable ambient NO₂ concentrations and simulated human contact with these pollutant concentrations. The approach was designed to incorporate exposures that are not necessarily captured by the existing ambient monitoring data, including those that occur on or near roadways. AERMOD, an EPA dispersion model, was used to estimate 1-hour ambient NO₂ concentrations using emissions estimates from stationary and on-road mobile sources.⁹ The Air Pollutants Exposure (APEX) model, an EPA human exposure model, was then used to estimate population exposures using the hourly census block level NO₂ concentrations estimated by AERMOD. A probabilistic approach was used to model individual exposures considering the time people spend in different microenvironments and the variable NO₂ concentrations that occur within these microenvironments across time, space, and microenvironment type. Estimates of personal exposure were compared to potential NO₂ health benchmark levels. This approach to assessing exposures was more resource intensive than using ambient levels as a surrogate for exposure; therefore, the final REA included the analysis of only one specific location in the U.S. (Atlanta MSA). Although the geographic scope of this analysis was restricted, the approach provided estimates of NO₂ exposures in asthmatics in Atlanta, particularly those exposures associated with important emission sources of NO_x, and the analysis served to complement the broad air quality characterization.

For the characterization of risks in both the air quality analysis and the exposure modeling analysis described above, the REA used a range of short-term potential health effect benchmarks. As noted above, the levels of potential benchmarks are based on NO₂ exposure levels that have been associated with increased airway responsiveness in asthmatics in controlled human exposure studies (ISA, section 5.3.2.1). Benchmark values of 100, 150, 200, 250, and 300 ppb were compared to both NO₂ air quality levels and to estimates of NO₂ exposure in asthmatics. When

⁹ Estimated emissions from Hartsfield International Airport in Atlanta, a non-road mobile source, were also included in this analysis.

NO₂ air quality was used as a surrogate for exposure, the output of the analysis was an estimate of the number of times per year specific locations experience 1-hour levels of NO₂ that exceed a particular benchmark. When personal exposures were simulated, the output of the analysis was an estimate of the number of asthmatics at risk for experiencing daily maximum 1-hour levels of NO₂ of ambient origin that exceed a particular benchmark. An advantage of using the benchmark approach to characterize health risks is that the effects observed in controlled human exposure studies clearly result from NO₂ exposure. A disadvantage of this approach is that the magnitude of the NO₂ effect on airway responsiveness can vary considerably from individual to individual and not all asthmatics would be expected to respond to the same levels of NO₂ exposure. Therefore, the public health impacts of NO₂-induced airway hyperresponsiveness are difficult to quantify.

In the third approach, we estimated respiratory emergency department visits as a function of ambient levels of NO₂ measured at a fixed-site monitor representing ambient air quality for an urban area. In this approach, concentration-response functions from an epidemiologic study (Tolbert *et al.*, 2007) were used, in combination with baseline incidence data for respiratory emergency department visits in the Atlanta area and ambient NO₂ monitoring data, to estimate the impact on emergency department visits of ambient levels of NO₂. Compared to the risk characterization based on the air quality and exposure analyses described above, this approach to characterizing health risks has several advantages. For example, the public health significance of respiratory emergency department visits is less ambiguous, in terms of its impact on individuals, than is an increase of unknown magnitude in the airway response. In addition, the concentration-response relationship reflects real-world levels of NO₂ and co-pollutants present in ambient air. However, as noted previously, a disadvantage of this approach is the ambiguity and complexity associated with quantifying the contribution of NO₂ to emergency department visits relative to the contributions of co-occurring pollutants.

3. Key Limitations and Uncertainties

A number of key uncertainties should be considered when interpreting the results of these analyses. While the air quality, exposure, and quantitative risk analyses are each associated with unique uncertainties, they also share

some uncertainties in common. Important uncertainties shared by these analyses, as well as uncertainties specifically associated with the air quality, exposure, and risk analyses, are discussed below.

In order to simulate just meeting the current annual standard and many of the alternative 1-hour standards analyzed, an adjustment (either upward or downward) of recent ambient NO₂ concentrations was required. As noted in the REA, an upward adjustment does not reflect a judgment that levels of NO₂ are likely to increase across the country or in any specific location under the current standard or any of the potential alternative standards. However, it does acknowledge that, under the current standard and some of the alternative standards evaluated, an increase in NO₂ concentrations would be permitted. The benefit of these air quality adjustments is that they can inform consideration of the current and alternative standards by providing estimates of health risks that could be associated with ambient air quality levels that just meet these standards. In adjusting air quality to simulate just meeting these standards, the analyses in the REA assumed that the overall shape of the distribution of NO₂ concentrations in an area would not change. While the REA concluded that this is a reasonable assumption in the absence of evidence supporting a different distribution, and while available analyses support this approach (Rizzo, 2008), the REA recognized this as an important uncertainty. It may be an especially important uncertainty for those scenarios where considerable adjustment is required to simulate just meeting one or more of the standards (REA, section 8.12).

In addition, simulation of just meeting different alternative standards was achieved by adjusting NO₂ concentrations at monitors in the current area-wide network. Therefore, resulting estimates of the potential public health implications of different decisions are most directly relevant to a standard focused specifically on the area-wide NO₂ concentrations that are the primary target of the current monitoring network. However, as discussed below (sections II.F.4.e and III), with this notice the Administrator is proposing to establish a standard focused specifically on the peak concentrations to which individuals can be exposed from on-road mobile source emissions on or near major roadways and to support such a standard with a monitoring network that includes monitors placed near major roadways. This proposed shift in the monitoring network introduces uncertainty in the

extent to which the exposure and risk analyses presented in the REA can directly inform decisions on the proposed standard.

In addition to the general uncertainties discussed above, some uncertainties are specific to the air quality analyses. In order to estimate ambient NO₂ concentrations on or near roadways in the air quality analyses, the REA used empirically-derived relationships between ambient concentrations measured at fixed-site monitors in the current NO₂ monitoring network and on/near-road concentrations. The data used to develop the relationships were likely collected under different conditions (*e.g.*, different meteorological conditions which can affect important parameters in this relationship, such as the production of NO₂ from NO). The REA noted that the extent to which these conditions are representative of the times and places included in our analyses is unknown. Therefore, there is uncertainty in the degree to which the relationships used to estimate on/near-road NO₂ concentrations reflect the actual relationship in the locations and over the time periods of interest.

Potential health benchmark levels used in the air quality analyses were based largely on a meta-analysis (ISA, Table 3.1–3) of controlled human exposure studies of airway hyperresponsiveness. One important source of uncertainty with regard to this approach is that controlled human exposure studies have typically involved volunteers with mild asthma. Data are lacking for more severely affected asthmatics, who may be more susceptible (ISA, section 3.1.3.2). As a result, the potential health effect benchmarks could underestimate risks in populations with greater susceptibility. While approaches to classifying asthma severity differ, some estimates indicate that over half of asthmatics could be classified as moderate or severe (Fuhlbrigge *et al.*, 2002; Stout *et al.*, 2006). A second important source of uncertainty with regard to this approach is that the meta-analysis showed increased airway responsiveness in asthmatics at the lowest NO₂ level for which data were available (*i.e.* 100 ppb). Controlled human exposure studies have not evaluated the possibility of NO₂ effects on airway responsiveness in asthmatics at exposure concentrations below 100 ppb. A third important source of uncertainty associated with this approach is that the meta-analysis provided information on the direction of the NO₂-induced airway response, but not on the magnitude of the response.

Therefore, although the ISA did conclude that increased airway responsiveness associated with NO₂ exposure could increase symptoms and worsen asthma control (ISA, section 5.4), the full public health implications of benchmark exceedances are uncertain.

The Atlanta exposure assessment was also associated with a number of key uncertainties that should be considered when interpreting the results with regard to decisions on the standard. Some of these uncertainties, including those associated with benchmark levels, were shared with the air quality analyses. Additional uncertainties associated specifically with the Atlanta exposure assessment are discussed briefly below.

When compared to ambient measurement data, predicted upper percentile NO₂ concentrations may be 10–50% higher. Because these predicted concentrations are used as inputs for the exposure modeling, this suggests the possibility that the exposure assessment is over-predicting upper percentile NO₂ exposures. Other approaches used to evaluate exposure results (*i.e.*, comparison to personal exposure monitoring results and comparison of exposure-to-ambient concentration ratios with those identified in the ISA) have suggested that exposure estimates are reasonable. However, the possibility cannot be ruled out that benchmark exceedances are over-predicted in the Atlanta exposure analysis.

The exposure assessment was limited to Atlanta and the extent to which these results are representative of other locations in the U.S. is uncertain. The REA (section 8.11) concluded that the Atlanta exposure estimates are likely representative of other moderate to large urban areas. However, the REA also recognized that, given the greater proximity of the population to mobile sources in large urban areas such as Los Angeles, New York, and Chicago (*see* REA, Tables 8–14 and 8–15), the estimates of benchmark exceedances in Atlanta may be smaller than in these larger cities.

A number of key uncertainties should also be considered when interpreting the results of the Atlanta risk assessment with regard to decisions on the standard. Some of these, including the appropriateness of generalizing results from Atlanta, are shared with the Atlanta exposure assessment. Additional uncertainties associated specifically with the Atlanta risk assessment are discussed briefly below.

There is uncertainty about whether the association between NO₂ and emergency department visits actually

reflects a causal relationship across the range of daily and hourly concentration levels in the epidemiologic studies. The ISA (section 5.4, p. 5–15) noted that when interpreting the NO₂ epidemiologic results, “It is difficult to determine * * * the extent to which NO₂ is independently associated with respiratory effects or if NO₂ is a marker for the effects of another traffic-related pollutant or mix of pollutants (*see* section 5.2.2 for more details on exposure issues). A factor contributing to uncertainty in estimating the NO₂-related effect from epidemiologic studies is that NO₂ is a component of a complex air pollution mixture from traffic related sources that include CO and various forms of PM.” This uncertainty should be considered when interpreting the quantitative NO₂ risk estimates based on the Atlanta epidemiologic study. However, in discussing these uncertainties, the ISA (section 5.4, p. 5–16) concluded that, “Although this complicates the efforts to disentangle specific NO₂-related health effects, the evidence summarized in this assessment indicates that NO₂ associations generally remain robust in multi-pollutant models and supports a direct effect of short-term NO₂ exposure on respiratory morbidity at ambient concentrations below the current NAAQS. The robustness of epidemiologic findings to adjustment for co-pollutants, coupled with data from animal and human experimental studies, support a determination that the relationship between NO₂ and respiratory morbidity is likely causal, while still recognizing the relationship between NO₂ and other traffic-related pollutants.”

A related uncertainty is that associated with the estimated NO₂ coefficient in the concentration-response function. This coefficient has been characterized by confidence intervals reflecting sample size. However, these confidence intervals do not reflect all of the uncertainties related to the concentration-response functions, such as whether or not the model used in the epidemiologic study is the correct model form. Concerning the possible role of co-pollutants in the Tolbert *et al.* (2007) study, single-pollutant models may produce overestimates of the NO₂ effects if some of those effects are really due in whole or part to one or more of the other pollutants. On the other hand, effect estimates based on multi-pollutant models can be uncertain, and can result in statistically non-significant estimates where a true relationship exists, if the co-pollutants included in the model are

highly correlated with NO₂. As a result of these considerations, we report risk estimates based on both the single- and multi-pollutant models from Tolbert *et al.* (2007).

D. Considerations in Review of the Standard

This section presents the integrative synthesis of the evidence and information contained in the ISA and the REA with regard to the current and potential alternative standards. EPA notes that the final decision on retaining or revising the current primary NO₂ standard is a public health policy judgment to be made by the Administrator. This judgment will be informed by a recognition that the available health effects evidence reflects a continuum consisting of ambient levels of NO₂ at which scientists generally agree that health effects are likely to occur, through lower levels at which the likelihood and magnitude of the response become increasingly uncertain. The Administrator’s final decision will draw upon scientific information and analyses related to health effects, population exposures, and risks; judgments about the appropriate response to the range of uncertainties that are inherent in the scientific evidence and analyses; and comments received in response to this proposal.

1. Background on the Current Standard

The current standard, which is an annual average of 0.053 ppm (53 ppb), was retained by the Administrator in the most recent review in 1996 (61 FR 52854 (October 8, 1996)). The decision in that review to retain the annual standard was based on consideration of available scientific evidence for health effects associated with NO₂ and on air quality information. With regard to these considerations, the Administrator noted that “a 0.053 ppm annual standard would keep annual NO₂ concentrations considerably below the long-term levels for which serious chronic effects have been observed in animals” and that “[r]etaining the existing standard would also provide protection against short-term peak NO₂ concentrations at the levels associated with mild changes in pulmonary function and airway responsiveness observed in controlled human studies” (60 FR 52874, 52880 (Oct. 11, 1995)). As a result, the Administrator concluded that “the existing annual primary standard appears to be both adequate and necessary to protect human health against both long- and short-term NO₂ exposures” and that “retaining the existing annual standard is consistent

with the scientific data assessed in the Criteria Document (EPA, 1993) and the Staff Paper (EPA, 1995) and with the advice and recommendations of CASAC" (61 FR 52852 at 52854).

As noted previously, the 1993 AQCD concluded that there were two key health effects of greatest concern at ambient or near-ambient levels of NO₂: increased airway responsiveness in asthmatic individuals after short-term exposures and increased occurrence of respiratory illness in children with longer-term exposures. Evidence also was found for increased risk of emphysema, but this was of major concern only with exposures to levels of NO₂ much higher than then-current ambient concentrations. The evidence regarding airway responsiveness was drawn largely from controlled human exposure studies. The evidence for respiratory illness was drawn from epidemiologic studies that reported associations between respiratory symptoms and indoor exposures to NO₂ in people living in homes with gas stoves. The biological plausibility of the epidemiologic results was supported by toxicological studies that detected changes in lung host defenses following NO₂ exposure. Subpopulations considered potentially more susceptible to the effects of NO₂ included individuals with preexisting respiratory disease, children, and the elderly.

In that review, health risks were characterized by comparing ambient monitoring data, which were used as a surrogate for exposure, with potential health benchmark levels identified from controlled human exposure studies. At the time of the review, a meta-analysis of controlled human exposure studies indicated the possibility for adverse health effects due to short-term (*e.g.*, 1-hour) exposures between 200 ppb and 300 ppb NO₂. Therefore, the focus of the assessment was on the potential for short-term (*i.e.*, 1-hour) exposures to NO₂ levels above potential health benchmarks in this range. The assessment used monitoring data from the years 1988–1992 and screened for sites with one or more hourly exceedances of potential short-term health effect benchmarks. Predictive models were then constructed to relate the frequency of hourly concentrations above short-term health effect benchmarks to a range of annual average concentrations, including the current standard. Based on the results of this analysis, both CASAC (Wolff, 1995) and the Administrator (60 FR 52874) concluded that the minimal occurrence of short-term peak concentrations at or above a potential health effect benchmark of 200 ppb (1-hour average)

indicated that the existing annual standard would provide adequate health protection against short-term exposures. This conclusion, combined with the conclusion that the current annual standard would maintain annual average levels well-below those associated with serious effects in animal toxicological studies, formed a large part of the basis for the decision in the 1996 review to retain the existing annual standard.

2. Approach for Reviewing the Need To Retain or Revise the Current Standard

The decision in the present review on whether the current annual standard is requisite to protect public health with an adequate margin of safety will be informed by a number of scientific studies and analyses that were not available in the 1996 review. Specifically, as discussed above (section II), a large number of epidemiologic studies have been published since the 1996 review. Many of these studies evaluate associations between NO₂ and adverse respiratory endpoints (*e.g.*, respiratory symptoms, emergency department visits, hospital admissions) in locations where annual average NO₂ concentrations are well-below the level allowed by the current standard (53 ppb). In addition, the meta-analysis of controlled human exposure studies has been updated for this review to include information on additional exposure concentrations. Finally, the REA described estimates of NO₂-associated health risks that could be present in locations that just meet the current annual standard. These types of risk estimates were not available in the last review. The approach for considering this scientific evidence and exposure/risk information is discussed below.

To evaluate whether the current primary NO₂ standard is adequate or whether consideration of revisions is appropriate, EPA is using an approach in this review that has been described in chapter 10 of the REA. The approach outlined in the REA builds upon the approaches used in reviews of other criteria pollutants, including the most recent reviews of the Pb, O₃, and PM NAAQS (EPA, 2007d; EPA, 2007e; EPA, 2005), and reflects the body of evidence and information that is currently available. As in other recent reviews, EPA's considerations will include the implications of placing more or less weight or emphasis on different aspects of the scientific evidence and the exposure/risk-based information, recognizing that the weight to be given to various elements of the evidence and exposure/risk information is part of the public health policy judgments that the

Administrator will make in reaching decisions on the standard.

A series of general questions frames this approach to considering the scientific evidence and exposure/risk-based information. First, EPA's consideration of the scientific evidence and exposure/risk information with regard to the adequacy of the current standard is framed by the following questions:

- To what extent does evidence that has become available since the last review reinforce or call into question evidence for NO₂-associated effects that were identified in the last review?
- To what extent has evidence for different health effects and/or sensitive populations become available since the last review?
- To what extent have uncertainties identified in the last review been reduced and/or have new uncertainties emerged?
- To what extent does evidence and exposure/risk-based information that has become available since the last review reinforce or call into question any of the basic elements of the current standard?

To the extent that the available evidence and exposure-/risk-based information suggests it may be appropriate to consider revision of the current standard, EPA considers that evidence and information with regard to its support for consideration of a standard that is either more or less protective than the current standard. This evaluation is framed by the following questions:

- Is there evidence that associations, especially causal or likely causal associations, extend to ambient NO₂ concentrations as low as, or lower than, the concentrations that have previously been associated with health effects? If so, what are the important uncertainties associated with that evidence?
- Are exposures above benchmark levels and/or health risks estimated to occur in areas that meet the current standard? If so, are the estimated exposures and health risks important from a public health perspective? What are the important uncertainties associated with the estimated risks?

To the extent that there is support for consideration of a revised standard, EPA then considers the specific elements of the standard (indicator, averaging time, form, and level) within the context of the currently available information. In so doing, the Agency addresses the following questions:

- Does the evidence provide support for considering a different indicator for gaseous NO_x?
- Does the evidence provide support for considering different averaging times?
- What ranges of levels and forms of alternative standards are supported by the evidence, and what are the associated uncertainties and limitations?

- To what extent do specific averaging times, levels, and forms of alternative standards reduce the estimated exposures above benchmark levels and risks attributable to NO₂, and what are the uncertainties associated with the estimated exposure and risk reductions?

The questions outlined above have been addressed in the REA. The following sections present considerations regarding the adequacy of the current standard and potential alternative standards, as discussed in chapter 10 of the REA, in terms of indicator, averaging time, form, and level.

E. Adequacy of the Current Standard

In considering the adequacy of the current standard, the policy assessment chapter of the REA considered the scientific evidence assessed in the ISA and the quantitative exposure- and risk-based information presented in the REA. A summary of this evidence and information as well as CASAC recommendations and the Administrator's conclusions regarding the adequacy of the current standard are presented below.

1. Evidence-Based Considerations

As discussed in chapter 10 of the REA, evidence published since the last review generally has confirmed and extended the conclusions articulated in the 1993 AQCD (ISA, section 5.3.2). The epidemiologic evidence has grown substantially with the addition of field and panel studies, intervention studies, time-series studies of effects such as emergency department visits and hospital admissions, and a substantial number of studies evaluating mortality risk associated with short-term NO₂ exposures. As noted above, no epidemiologic studies were available in 1993 that assessed relationships between NO₂ and outcomes such as hospital admissions, emergency department visits, or mortality. In contrast, dozens of epidemiologic studies on such outcomes, conducted at recent and current ambient NO₂ concentrations, are now included in this evaluation (ISA, chapter 3). While not as marked as the growth in the epidemiologic literature, a number of recent toxicological and human clinical studies also provide insights into relationships between NO₂ exposure and health effects.

As an initial consideration with regard to the adequacy of the current standard, the REA noted that the evidence relating long-term (weeks to years) NO₂ exposures at current ambient concentrations to adverse health effects was judged in the ISA to be either

“suggestive but not sufficient to infer a causal relationship” (respiratory morbidity) or “inadequate to infer the presence or absence of a causal relationship” (mortality, cancer, cardiovascular effects, reproductive/developmental effects) (ISA, sections 5.3.2.4–5.3.2.6). In contrast, the evidence relating short-term (minutes to hours) NO₂ exposures to respiratory morbidity was judged to be “sufficient to infer a likely causal relationship” (ISA, section 5.3.2.1). This judgment was supported primarily by a large body of recent epidemiologic evidence that evaluated associations of short-term NO₂ concentrations with respiratory symptoms, emergency department visits, and hospital admissions. These conclusions from the ISA suggest that, at a minimum, consideration of the adequacy of the current annual standard should take into account the extent to which that standard provides protection against respiratory effects associated with short-term NO₂ exposures. As noted in the REA, such an emphasis on health endpoints for which evidence has been judged to be sufficient to infer a likely causal relationship would be consistent with other recent NAAQS reviews (e.g., EPA, 2005; EPA, 2007d; EPA, 2007e).

In considering the NO₂ epidemiologic studies as they relate to the adequacy of the current standard, the REA noted that annual average NO₂ concentrations were below the level of the current annual NO₂ NAAQS in many of the locations where positive, and often statistically significant, associations with respiratory morbidity endpoints have been reported (ISA, section 5.4). As discussed previously, the ISA characterized that evidence for respiratory effects as consistent and coherent. The evidence is consistent in that associations are reported in studies conducted in numerous locations and with a variety of methodological approaches (ISA, section 5.3.2.1). It is coherent in the sense that the studies report associations with respiratory health outcomes that are logically linked together (ISA, section 5.3.2.1). The ISA noted that when the epidemiologic literature is considered as a whole, there are generally positive associations between NO₂ and respiratory symptoms, hospital admissions, and emergency department visits. A number of these associations are statistically significant, particularly the more precise effect estimates (ISA, section 5.3.2.1).

As discussed previously, the interpretation of these NO₂ epidemiologic studies is complicated by the fact that on-road vehicle exhaust emissions are a nearly ubiquitous source

of combustion pollutant mixtures that include NO₂. In order to provide some perspective on the uncertainty related to the presence of co-pollutants, the ISA evaluated epidemiologic studies that employed multi-pollutant models, epidemiologic studies of indoor and personal NO₂ exposure, and experimental studies. Specifically, the ISA noted that a number of NO₂ epidemiologic studies have attempted to disentangle the effects of NO₂ from those of co-occurring pollutants by employing multi-pollutant models. When evaluated as a whole, NO₂ effect estimates in these models generally remained robust when co-pollutants were included. Therefore, despite uncertainties associated with separating the effects of NO₂ from those of co-occurring pollutants, the ISA (section 5.4, p. 5–16) concluded that “the evidence summarized in this assessment indicates that NO₂ associations generally remain robust in multi-pollutant models and supports a direct effect of short-term NO₂ exposure on respiratory morbidity at ambient concentrations below the current NAAQS.” With regard to indoor studies, the ISA noted that these studies can test hypotheses related to NO₂ specifically (ISA, section 3.1.4.1). Although confounding by indoor combustion sources is a concern, indoor studies are not confounded by the same mix of co-pollutants present in the ambient air or by the contribution of NO₂ to the formation of secondary particles or O₃ (ISA, section 3.1.4.1). The ISA noted that the findings of indoor NO₂ studies are consistent with those of studies using ambient concentrations from central site monitors and concluded that indoor studies provide evidence of coherence for respiratory effects (ISA, section 3.1.4.1). With regard to experimental studies, the REA noted that they have the advantage of providing information on health effects that are specifically associated with exposure to NO₂ in the absence of co-pollutants. The ISA concluded that the NO₂ epidemiologic literature is supported by (1) evidence from controlled human exposure studies of airway hyperresponsiveness in asthmatics, (2) controlled human exposure and animal toxicological studies of impaired host-defense systems and increased risk of susceptibility to viral and bacterial infection, and (3) controlled human exposure and animal toxicological studies of airway inflammation (ISA, section 5.3.2.1 and 5.4).

In drawing broad conclusions regarding the evidence, the ISA

considered the epidemiologic and experimental evidence as well as the uncertainties associated with that evidence. When this evidence and its associated uncertainties are taken together, the ISA concluded that the results of epidemiologic and experimental studies form a plausible and coherent data set that supports a relationship between NO₂ exposures and respiratory endpoints, including respiratory symptoms and emergency department visits, at ambient concentrations that are present in areas that meet the current NO₂ NAAQS. Thus, taking into consideration the evidence discussed above, particularly the epidemiologic studies reporting NO₂-associated health effects in locations that meet the current standard, the REA concluded that the scientific evidence calls into question the adequacy of the current standard to protect public health.

2. Exposure- and Risk-Based Considerations

In addition to the evidence-based considerations described above, the REA considered the extent to which exposure- and risk-based information can inform decisions regarding the adequacy of the current annual NO₂ standard, taking into account key uncertainties associated with the estimated exposures and risks. As noted above, NO₂-associated health risks were characterized with three approaches. In the first, NO₂ air quality from locations across the country was used as a surrogate for exposure. In the second, exposures were estimated for all asthmatics and for asthmatic children considering time spent in different microenvironments in one urban area, Atlanta, GA. For both of these analyses, health risks were characterized by comparing estimates of air quality or exposure to potential health benchmark levels. Benchmark levels spanned the range of NO₂ concentrations that have been reported to increase airway responsiveness in asthmatics (*i.e.*, 100–300 ppb). In the third approach to characterizing NO₂-related health risks, occurrences of NO₂-related respiratory emergency department visits were estimated for Atlanta. This quantitative risk assessment was based on NO₂ concentration-response relationships identified in an epidemiologic study of air pollution-related emergency department visits in Atlanta. The results of each of these analyses are discussed in this section, specifically as they relate to the current standard.

When considering the Atlanta risk assessment results as they relate to the adequacy of the current standard, the

REA noted that central estimates of incidence of NO₂-related respiratory emergency department visits in Atlanta ranged from approximately 8 to 9% of total respiratory-related emergency department visits per year (or 9,800–10,900 NO₂-related incidences) based on single pollutant models when air quality is adjusted upward to simulate a situation where Atlanta just meets the current standard. Central estimates of incidence of NO₂-related respiratory emergency department visits ranged from 2.9–7.7% of total respiratory-related emergency department visits per year (or 3,600–9,400 NO₂-related incidences) based on two-pollutant models. Inclusion of O₃ and/or PM₁₀ in multi-pollutant models resulted in the inclusion of an estimate of zero NO₂-related respiratory emergency department visits within the 95% confidence intervals.

When considering the Atlanta exposure results as they relate to the adequacy of the current standard, the REA noted the number of days per year asthmatics could experience exposure to NO₂ concentrations greater than or equal to potential health benchmark levels, given air quality that is adjusted upward to simulate just meeting the current standard. If NO₂ concentrations were such that the Atlanta area just meets the current standard, nearly all asthmatics in Atlanta (>97%) would be estimated to experience six or more days per year with 1-hour NO₂ exposure concentrations greater than or equal to our highest benchmark level (300 ppb) (REA, Figure 8–22). Six days per year was the largest number of days specifically considered in the REA, but these results suggest that some asthmatics could experience 1-hour NO₂ exposure concentrations greater than or equal to 300 ppb on more than six days per year. In addition, more frequent exceedances would be expected for the lower benchmark levels.

When considering the air quality-based results as they relate to the adequacy of the current standard, the REA noted the number of benchmark exceedances estimated to occur in different locations given air quality that just meets that standard. In situations where annual NO₂ concentrations were adjusted upward to simulate just meeting the current standard, 1-hour NO₂ concentrations measured at fixed-site monitors in locations across the U.S. could exceed benchmark levels. Most locations were estimated to experience at least 50 days per year with 1-hour ambient NO₂ concentrations at fixed-site monitors in the current network greater than or equal to 100 ppb (Figures 7–2 and 7–3 in the REA) under

this hypothetical scenario. Far fewer ambient exceedances were predicted for the higher benchmark levels. For example, only 5 areas were estimated to experience any days with 1-hour ambient NO₂ concentrations at fixed-site monitors greater than or equal to 300 ppb, and none of those locations were estimated to experience more than 2 such days per year, on average (REA, Appendix A).

However, on-road NO₂ concentrations were estimated in this analysis to be an average of 80% higher than concentrations at fixed-site monitors (though this relationship will vary across locations and with time). In the majority of locations evaluated, roadway exceedances of the 100 ppb benchmark level could occur on most days of the year when air quality is adjusted upward to simulate just meeting the current standard (Figure 7–6 in the REA). Even for higher benchmark levels, most locations were estimated to have exceedances on roadways. All locations evaluated except one (Boston) were estimated to experience on-road NO₂ concentrations greater than or equal to 300 ppb (REA, Appendix A). Four of these locations were estimated to experience an average of greater than 20 days per year with on-road NO₂ concentrations greater than or equal to 300 ppb (REA, Appendix A).

3. Summary of Considerations From the REA

As noted above, the policy assessment chapter of the REA considered the scientific evidence with regard to the current standard. This included consideration of causality judgments made in the ISA regarding the level of support for effects associated with short-term and long-term exposures, the epidemiologic evidence described in the ISA including associated uncertainties, the conclusions in the ISA regarding the robustness of this evidence, and the support provided for epidemiologic findings by experimental studies. The REA concluded that, given these considerations, particularly the evidence for NO₂-associated effects in locations that meet the current standard, the adequacy of the current standard to protect the public health is clearly called into question. This evidence provides support for consideration of an NO₂ standard that would provide increased health protection for at-risk groups, including asthmatics and individuals who spend time on or near major roadways, against health effects associated with short-term exposures ranging from increased asthma symptoms to respiratory-related emergency department visits and

hospital admissions, in addition to potential effects associated with long-term exposures.

In examining the exposure- and risk-based information with regard to the adequacy of the current annual NO₂ standard to protect the public health, the REA noted that estimated risks associated with air quality adjusted upward to simulate just meeting the current standard can reasonably be concluded to be important from a public health perspective. In particular, a large percentage (8–9%) of respiratory-related ED visits in Atlanta could be associated with short-term NO₂ exposures, most asthmatics in Atlanta could be exposed on multiple days per year to NO₂ concentrations at or above the highest benchmark evaluated, and most locations evaluated could experience on-/near-road NO₂ concentrations above benchmark levels on more than half of the days in a given year. Therefore, the REA noted that exposure- and risk-based results reinforce the scientific evidence in supporting the conclusion that consideration should be given to revising the current standard so as to provide increased public health protection, especially for at-risk groups, from NO₂-related adverse health effects associated with short-term, and potential long-term, exposures.

4. CASAC Views

With regard to the adequacy of the current standard, CASAC conclusions were consistent with the views expressed in the policy assessment chapter of the REA. CASAC agreed that the primary concern in this review is to protect against health effects that have been associated with short-term NO₂ exposures. CASAC also agreed that the current annual standard is not sufficient to protect public health against the types of exposures that could lead to these health effects. Given these considerations, and as noted in their letter to the EPA Administrator, “CASAC concurs with EPA’s judgment that the current NAAQS does not protect the public’s health and that it should be revised” (Samet, 2008b). CASAC’s views on how the standard should be revised are provided below within the context of discussions on the elements (*i.e.*, indicator, averaging time, form, level) of a new short-term standard.

5. Administrator’s Conclusions Regarding Adequacy of the Current Standard

In considering the adequacy of the current NO₂ NAAQS, the Administrator has considered the conclusions of the ISA, the conclusions of the policy

assessment chapter of the REA, and the views expressed by CASAC. In particular, the ISA concluded that the results of epidemiologic and experimental studies form a plausible and coherent data set that supports a likely causal relationship between short-term NO₂ exposures and adverse respiratory effects at ambient NO₂ concentrations that are present in locations meeting the current NO₂ NAAQS. With regard to the exposure and risk results, the REA concludes that central risk estimates suggest that the current standard could allow important adverse public health impacts.

Based on her consideration of these conclusions, as well as consideration of CASAC’s conclusion that the current NO₂ NAAQS does not protect the public’s health, the Administrator concludes that the current NO₂ standard does not provide the requisite degree of protection for public health against adverse effects associated with short-term exposures. In considering approaches to revising the current standard, the Administrator concludes that it is appropriate to consider setting a new short-term standard to supplement the current annual standard. The Administrator notes that such a short-term standard could provide increased public health protection, especially for members of at-risk groups, from effects described in both epidemiologic and controlled human exposure studies to be associated with short-term exposures to NO₂.

F. Conclusions on the Elements of a New Short-Term Standard and an Annual Standard

In considering alternative NO₂ primary NAAQS, the Administrator notes the need to protect at-risk individuals from short-term exposures to NO₂ air quality that could cause the types of respiratory morbidity effects reported in epidemiologic studies and the need to protect at-risk individuals from short-term exposure to NO₂ concentrations reported in controlled human exposure studies to increase airway responsiveness in asthmatics. Considerations with regard to potential alternative standards and the specific options being proposed are discussed in the following sections in terms of indicator, averaging time, form, and level (sections II.F.1–II.F.4).

1. Indicator

In past reviews, EPA has focused on NO₂ as the most appropriate indicator for ambient NO_x. In making a decision in the current review on the most appropriate indicator, the Administrator

has considered the conclusions of the ISA and REA as well as the view expressed by CASAC. The REA noted that, while the presence of NO_x species other than NO₂ has been recognized, no alternative to NO₂ has been advanced as being a more appropriate surrogate. Controlled human exposure studies and animal toxicology studies provide specific evidence for health effects following exposure to NO₂. Epidemiologic studies also typically report levels of NO₂ though the degree to which monitored NO₂ reflects actual NO₂ levels, as opposed to NO₂ plus other gaseous NO_x, can vary (REA, section 2.2.3). In addition, because emissions that lead to the formation of NO₂ generally also lead to the formation of other NO_x oxidation products, measures leading to reductions in population exposures to NO₂ can generally be expected to lead to reductions in population exposures to other gaseous NO_x. Therefore, an NO₂ standard can also be expected to provide some degree of protection against potential health effects that may be independently associated with other gaseous NO_x even though such effects are not discernable from currently available studies indexed by NO₂ alone. Given these key points, the REA concluded that the evidence supports retaining NO₂ as the indicator. Consistent with this conclusion, the CASAC Panel recommended in its letter to the EPA Administrator that it “concurs with retention of NO₂ as the indicator” (Samet, 2008b). In light of the above considerations, the Administrator proposes to retain NO₂ as the indicator in the current review.

2. Averaging Time

The current annual averaging time for the NO₂ NAAQS was originally set in 1971, based on epidemiologic studies that supported a link between adverse respiratory effects and long-term exposure to low levels of NO₂. As noted above, that annual standard was retained in subsequent reviews in part because an air quality assessment conducted by EPA concluded that areas that meet the annual standard would be unlikely to experience short-term ambient peaks above concentrations that had been reported in a meta-analysis of controlled human exposure studies to increase airway responsiveness in asthmatics. In the current review, additional scientific evidence is available to inform a decision on averaging time. This includes the availability of a number of epidemiologic studies that have evaluated endpoints including respiratory symptoms, emergency

department visits, and hospital admissions as well as an updated meta-analysis of controlled human exposure studies of airway responsiveness in asthmatics.

In order to inform conclusions with regard to averaging time in this review, the REA considered judgments on the evidence from the ISA, results from experimental and epidemiologic studies, and an analysis of correlations between short- and long-term ambient NO₂ concentrations. These considerations are described in more detail below.

a. Short-Term Averaging Time

As described previously, the evidence relating short-term (minutes to hours) NO₂ exposures to respiratory morbidity was judged in the ISA to be “sufficient to infer a likely causal relationship” (ISA, section 5.3.2.1) while the evidence relating long-term (weeks to years) NO₂ exposures to adverse health effects was judged to be either “suggestive but not sufficient to infer a causal relationship” (respiratory morbidity) or “inadequate to infer the presence or absence of a causal relationship” (mortality, cancer, cardiovascular effects, reproductive/developmental effects) (ISA, sections 5.3.2.4–5.3.2.6). Thus, the REA concluded that these judgments most directly support an averaging time that focuses protection on short-term exposures to NO₂.

As in past reviews of the NO₂ NAAQS, it is instructive to evaluate the potential for a standard based on annual average NO₂ concentrations, as is the current standard, to provide protection against short-term NO₂ exposures. To this end, Table 10–1 in the REA reported the ratios of short-term to annual average NO₂ concentrations. Ratios of 1-hour daily maximum concentrations (98th and 99th percentile)¹⁰ to annual average concentrations across 14 locations ranged from 2.5 to 8.7 while ratios of 24-hour average concentrations to annual average concentrations ranged from 1.6 to 3.8 (see Thompson, 2008 for more details). The REA concluded that the variability in these ratios across locations, particularly those for 1-hour concentrations, suggested that a standard based on annual average NO₂ concentrations would not likely be an

effective or efficient approach to focus protection on short-term NO₂ exposures. For example, in an area with a relatively high ratio (e.g., 8), the current annual standard (53 ppb) would be expected to allow 1-hour daily maximum NO₂ concentrations of about 400 ppb. In contrast, in an area with a relatively low ratio (e.g., 3), the current standard would be expected to allow 1-hour daily maximum NO₂ concentrations of about 150 ppb. Thus, for purposes of protecting against the range of 1-hour NO₂ exposures, the REA noted that a standard based on annual average concentrations would likely require more control than necessary in some areas and less control than necessary in others, depending on the standard level selected.

In considering the level of support available for specific short-term averaging times, the policy assessment chapter of the REA noted evidence from both experimental and epidemiologic studies. Controlled human exposure studies and animal toxicological studies provide evidence that NO₂ exposures from less than 1-hour up to 3-hours can result in respiratory effects such as increased airway responsiveness and inflammation (ISA, section 5.3.2.7). Specifically, the ISA concluded that NO₂ exposures of 100 ppb for 1-hour (or 200 ppb to 300 ppb for 30-min) can result in small but significant increases in nonspecific airway responsiveness (ISA, section 5.3.2.1). In contrast, the epidemiologic literature provides support for short-term averaging times ranging from approximately 1-hour up to 24-hours (ISA, section 5.3.2.7). A number of epidemiologic studies have detected positive associations between respiratory morbidity and 1-hour (daily maximum) and/or 24-hour NO₂ concentrations. A few epidemiologic studies have considered both 1-hour and 24-hour averaging times, allowing comparisons to be made. The ISA reported that such comparisons in studies that evaluate asthma emergency department visits failed to reveal differences between effect estimates based on a 1-hour averaging time and those based on a 24-hour averaging time (ISA, section 5.3.2.7). Therefore, the ISA concluded that it is not possible, from the available epidemiologic evidence, to discern whether effects observed are attributable to average daily (or multi-day) concentrations (24-hour average) or high, peak exposures (1-hour maximum) (ISA, section 5.3.2.7).

As noted in the policy assessment chapter of the REA, given the above conclusions, the experimental evidence provides support for an averaging time of shorter duration than 24 hours (e.g.,

1-h) while the epidemiologic evidence provides support for both 1-hour and 24-hour averaging times. At a minimum, this suggests that a primary concern with regard to averaging time is the level of protection provided against 1-hour daily maximum NO₂ concentrations. However, it is also important to consider the ability of a 1-hour (daily maximum) averaging time to protect against 24-hour average NO₂ concentrations. To this end, Table 10–2 in the REA presented correlations between 1-hour daily maximum NO₂ concentrations and 24-hour average NO₂ concentrations (98th and 99th percentile) across 14 locations (see Thompson, 2008 for more detail). Typical ratios ranged from 1.5 to 2.0, though one ratio (Las Vegas) was 3.1. These ratios were far less variable than those discussed above for annual average concentrations, suggesting that a standard based on 1-hour daily maximum NO₂ concentrations could also be effective at protecting against 24-hour NO₂ concentrations. The REA concluded that the scientific evidence, combined with the air quality correlations described above, support the appropriateness of a standard based on 1-hour daily maximum NO₂ concentrations to protect against health effects associated with short-term exposures.

b. Long-Term Averaging Time

While the REA concluded that the combination of the scientific evidence from the ISA and air quality analyses most directly support an averaging time that focuses protection on short-term exposures to NO₂, some evidence does support the need to also consider health effects potentially associated with long-term exposures. As noted above, the ISA judged the evidence relating long-term (weeks to years) NO₂ exposures to respiratory morbidity to be “suggestive but not sufficient to infer a causal relationship.” The available database supporting the relationship between respiratory illness in children and long-term exposures to NO₂ has increased since the 1996 review of the NO₂ NAAQS. Results from several studies, including the California-based Children’s Health Study, have reported deficits in lung function growth (Gauderman *et al.*, 2004) in association with long-term exposure to NO₂. In addition, some studies have reported associations between asthma incidence and long-term NO₂. The plausibility of these associations is supported by some animal toxicological studies. Specifically, morphological effects following chronic NO₂ exposures have been identified in animal studies that

¹⁰ As discussed below, 98th and 99th percentile forms were evaluated in the REA. A 99th percentile form corresponds approximately to the 4th highest 1-hour concentration in a year while a 98th percentile form corresponds approximately to the 7th or 8th highest 1-hour concentration in a year. A 4th highest concentration form has been used previously in the O₃ NAAQS while a 98th percentile form has been used previously in the PM_{2.5} NAAQS.

link to these increases in collagen synthesis and may provide plausibility for the deficits in lung function growth described in epidemiologic studies of long-term exposure to NO₂ (ISA, section 3.4.5).

Therefore, though the evidence provides strong support for the need to protect against health effects associated with short-term NO₂ exposures, it may also be appropriate to consider the extent to which the NO₂ standard could protect against potential effects associated with long-term exposures. To address this issue, the REA estimated annual average NO₂ concentrations assuming different 1-hour standards were just met. For the locations evaluated, a 1-hour area-wide standard with a level at or below 100 ppb was estimated to be associated with annual average NO₂ concentrations below the level of the current annual standard (53 ppb) (REA, section 10.4.2). Therefore, it is possible that a 1-hour standard could also provide protection against potential effect associated with long-term exposures, depending on the level of the standard.

c. CASAC Views

CASAC agreed with the conclusions of the policy assessment chapter of the REA that a primary consideration of the NO₂ NAAQS should be the protection provided against health effects associated with short-term exposures. In their letter to the EPA Administrator, CASAC stated that they concur “with having a short-term NAAQS primary standard for oxides of nitrogen and using the one-hour maximum NO₂ value.” In addition, the letter noted that “CASAC also recommends retaining the current standard based on the annual average.” CASAC based this recommendation on the “limited evidence related to potential long-term effects of NO₂ exposure and the lack of strong evidence of no effect.” In addition, CASAC concluded that “the findings of the REA do not provide assurance that a short-term standard based on the one-hour maximum will necessarily protect the population from long-term exposures at levels potentially leading to adverse health effects” (Samet, 2008b).

d. Administrator’s Conclusions on Averaging Time

In considering the most appropriate averaging time(s) for the NO₂ primary NAAQS, the Administrator notes the conclusions and judgments made in the ISA about available scientific evidence, conclusions from the REA, and CASAC recommendations discussed above. Based on these considerations, the

Administrator proposes to set a new standard based on 1-hour daily maximum NO₂ concentrations. In addition, the Administrator notes that CASAC recommended retaining the current annual standard to account for the fact that some evidence suggests that long-term NO₂ exposures could cause adverse effects on respiratory health. Taking into account these considerations, in addition to proposing a new 1-hour NO₂ primary NAAQS to provide increased protection against effects associated with short-term exposures, the Administrator also proposes to retain an annual standard.

3. Form

When evaluating alternative forms in conjunction with specific levels, the REA considered the adequacy of the public health protection provided by the combination of level and form to be the foremost consideration. In addition, the REA recognized that it is desirable to have a form that is reasonably stable and insulated from the impacts of extreme meteorological events. As noted in the review of the O₃ NAAQS (EPA, 2007e), forms that call for averaging of concentrations over three years better reflect pollutant-associated health risks than forms based on expected exceedances. This is because such “concentration-based” forms give proportionally greater weight to periods of time when pollutant concentrations are well above the level of the standard than to times when the concentrations are just above the standard, while an expected exceedance form would give the same weight to periods of time with concentrations that just exceed the standard as to times when concentrations greatly exceed the standard. Averaging concentrations over three years also provides greater regulatory stability than a form based on allowing only a single expected exceedance in a year. Therefore, consistent with recent reviews of the O₃ and PM NAAQS, the REA focused on concentration-based forms averaged over 3 years.

In considering specific concentration-based forms, the REA focused on 98th and 99th percentile concentrations averaged over 3 years. With regard to these alternative forms, the REA noted that a 99th percentile form for a 1-hour daily maximum standard would correspond approximately to the 4th highest daily maximum concentration in a year (which is the form of the current O₃ NAAQS) while a 98th percentile form (which is the form of the current short-term PM_{2.5} NAAQS) would correspond approximately to the 7th or 8th highest daily maximum

concentration in a year (Table 10–4 in the REA; see Thompson, 2008 for methods). The REA concluded that either of these forms could provide an appropriate balance between limiting peak NO₂ concentrations and providing sufficient regulatory stability. This is consistent with judgments made in the 2006 review of the PM NAAQS (EPA, 2005).

When considering the extent to which exposure and risk analyses inform judgments on the form of the standard, the REA noted that a 99th percentile form could be appreciably more protective than a 98th percentile form (for the same standard level) in some locations, as shown by the results of air quality analyses. For example, a 99th percentile standard of 200 ppb was estimated to decrease the number of benchmark exceedances, relative to a 98th percentile form, by approximately 50–70% in Boston, Philadelphia, and Washington, DC (Table 10–5 in the REA). However, a 99th percentile form was estimated to decrease the number of benchmark exceedances by only approximately 10% in St. Louis, Detroit, and Las Vegas (Table 10–5 in the REA). For most locations analyzed, the difference was estimated to be between approximately 10 and 50% (Table 10–5 in the REA). With regard to the Atlanta exposure assessment, a 99th percentile form was estimated to decrease the number of days with 6 or more benchmark exceedances (for 300 ppb), relative to a 98th percentile form, by 5–35% depending on the standard level selected (REA Appendix B, table B–48). With regard to the Atlanta risk assessment, a 99th percentile form was estimated to be associated with approximately 6% to 8% fewer NO₂-related emergency department visits than a 98th percentile form, across the levels of the potential 1-hour standards examined.

When considering these results as they relate to the form of the standard, the REA noted that a decision on form must be made in conjunction with selection of a particular standard level. The primary emphasis in such a decision will be on the degree of public health protection provided by the combination of form and level.

CASAC agreed with the importance of considering the public health protection provided by the combination of form and level. In its letter to the EPA Administrator with regard to the final REA, the CASAC panel stated that it “advises that EPA choose a health protective percentile appropriate for the level chosen for the one-hour standard.” CASAC went on to recommend that a 98th percentile form would be

appropriate for a standard level at the lower boundary of the range evaluated (50 ppb, *see below*) but that a higher percentile should be considered for higher levels (Samet, 2008b).

When considering alternative forms, the Administrator notes the views expressed in the REA and the recommendations from CASAC, as described above. In particular, she notes that a 99th percentile (or 4th highest) form could be appreciably more protective in some locations than a 98th (or 7th or 8th highest) form. Given these considerations, and in light of the specific range proposed for level below, the Administrator proposes to adopt either a 99th percentile or a 4th highest form, averaged over 3 years. In addition, the Administrator notes that a 98th percentile form could be appropriate, particularly for standard levels at the low end of the range considered in the REA. Therefore, she also solicits comment on both 98th percentile and 7th or 8th highest forms.

4. Level

In assessing the level of the standard to propose, the Administrator has considered the broad range of scientific evidence assessed in the ISA, including the epidemiologic studies and controlled human exposure studies, as well as the results of exposure/risk analyses presented in the REA. In light of this body of evidence and analyses, she has determined that it is necessary to provide increased public health protection for at-risk individuals against an array of adverse respiratory health effects related to short-term (*i.e.*, 30 minutes to 24 hours) exposures to ambient NO₂. Such health effects have been associated with exposure to the distribution of short-term ambient NO₂ concentrations across an area. This distribution includes both the higher short-term (*i.e.*, peak) exposure concentrations that can occur on or near major roadways and the lower short-term exposure concentrations that can occur in areas not near major roadways. In considering the most appropriate approach to providing this protection, the Administrator is mindful of the extent to which the available evidence and analyses can inform a decision on standard level. Specifically, the range of proposed standard levels discussed below (section II.F.4.e) is informed by controlled human exposure and epidemiologic studies.

As discussed above (section II.B.1.d), controlled human exposure studies have reported associations between various levels of NO₂ exposures and increased airway responsiveness in asthmatics. These studies can inform an evaluation

of the risks associated with exposure to specific NO₂ concentrations, regardless of where those exposures occur in an area. Controlled human exposure studies most directly inform consideration of the risks associated with peak short-term NO₂ exposure concentrations, such as those that can occur on or near major roadways. This is the case because NO₂ concentrations around major roadways could include concentrations within the range evaluated in the studies. Controlled human exposure studies have not been conducted at the lower concentrations of NO₂ typically expected in areas not near major roadways.

In addition, epidemiologic studies (section II.B.1.a and b) have reported associations between ambient NO₂ concentrations, measured at area-wide monitors in the current network, and increased respiratory symptoms, emergency department visits, and hospital admissions. Area-wide monitors in the urban areas in which these epidemiologic studies were conducted do not measure the full range of ambient NO₂ concentrations that can occur anywhere in the area, because they are not sited in locations with more localized peak concentrations. Thus, they do not measure the full range of ambient NO₂ concentrations that are likely responsible for the exposures linked to the NO₂-associated health effects reported in the studies. Rather, the area-wide NO₂ concentrations measured by these monitors are used as surrogates for the entire distribution of ambient NO₂ concentrations across the area, a distribution that includes NO₂ concentrations that are both higher and lower than the area-wide concentrations reported for the study locations. Specifically, this distribution of concentrations includes the higher short-term peak NO₂ concentrations that occur on or near major roadways and the lower short-term concentrations that occur away from roadways. Thus, the epidemiologic studies can inform an evaluation of the risks associated with the full range of exposures likely to occur across an area.

The available evidence and analyses support the importance of roadway-associated NO₂ exposures for public health. Specifically, the exposure assessment presented in the REA estimated that roadway-associated exposures account for the great majority of exposures to peak NO₂ concentrations (REA, Figures 8–17 and 8–18). In addition, the ISA (section 2.5.4) noted that in-vehicle NO₂ exposures could be 2–3 times higher than indicated by ambient monitors in the current area wide-oriented network. Millions of

people in the U.S. live, work, and/or attend school near important sources of NO₂ such as major roadways (ISA, section 4.4) and ambient NO₂ concentrations in these locations are strongly associated with distance from major roads (*i.e.*, the closer to a major road, the higher the NO₂ concentration) (ISA, section 2.5.4). Therefore, these populations, which likely include a disproportionate number of individuals in groups with higher prevalence of asthma and higher hospitalization rates for asthma (*e.g.* ethnic or racial minorities and individuals of low socioeconomic status) (ISA, section 4.4), are likely exposed to NO₂ concentrations higher than those that occur away from major roadways.

Given the above considerations, the Administrator proposes to set a level for the 1-hour NO₂ primary NAAQS that reflects the maximum allowable NO₂ concentration anywhere in an area. This concentration is likely to occur on or near a major roadway. As discussed above (section II.A.2), monitoring studies suggest that NO₂ concentrations near roadways can be approximately 30 to 100% higher than concentrations in the same area but not near the road. This NO₂ concentration gradient around roadways is one factor considered by the Administrator in determining the appropriate standard level to propose. EPA proposes to set the level of the standard such that, when available information regarding the concentration gradient around roadways is considered, appropriate public health protection would be provided by limiting the higher short-term peak exposure concentrations expected to occur on and near major roadways, as well as the lower short-term exposure concentrations expected to occur away from those roadways.

The Administrator notes that this approach to setting the standard would provide a relatively high degree of confidence regarding the level of protection provided by the standard against peak exposures, such as those that can occur on or near major roadways. This is a particularly important consideration given the available information and the air quality and exposure analyses, discussed above in section II.F.4.b, which indicated that roadway-associated exposures account for the majority of exposures to peak NO₂ concentrations. The Administrator concludes that the proposed approach would directly address the great majority of peak exposures and associated health effects. In addition, the range of standard levels proposed below (section II.F.4.e) would provide a reasonable degree of confidence that the

accompanying area-wide NO₂ concentrations would be maintained well below concentrations that have occurred in locations where epidemiologic studies have reported associations between ambient NO₂ concentrations and health endpoints such as increased respiratory symptoms, emergency department visits, and hospital admissions. Therefore, the Administrator proposes to set a standard level reflecting the maximum allowable NO₂ concentration anywhere in an area that, in combination with the proposed decisions on indicator, averaging time, and form, will protect public health with an adequate margin of safety against the array of NO₂-associated health effects.

The remainder of this section describes the considerations relevant to the Administrator's proposed decisions on standard levels for a new 1-hour standard and the annual standard. Specifically, with regard to a 1-hour standard evidence-based considerations drawn from the ISA and discussed in the policy-assessment chapter of the REA are discussed in section II.F.4.a. Exposure- and risk-based considerations for a 1-hour standard drawn from the analyses in the REA and discussed in the policy assessment chapter are discussed in section II.F.4.b. A summary of the considerations relating to a 1-hour standard from the policy assessment chapter of the REA is presented in section II.F.4.c and CASAC views expressed in the context of their comments on the final REA are presented in section II.F.4.d. The Administrator's proposed approach to setting a 1-hour standard and her conclusions regarding the level of such a standard are presented in section II.F.4.e. An alternative approach to setting a 1-hour standard is discussed in section II.E.4.f. Comment is solicited on both approaches. Finally, the Administrator's proposed conclusions on the level of the annual standard are presented in section II.E.4.g.

a. Evidence-Based Considerations

Evidence-based considerations take into account the full body of scientific evidence assessed in the ISA. When considering the extent to which this scientific evidence can inform a decision on the level of a 1-hour standard, the policy assessment chapter of the REA notes that NO₂ concentrations represent different measures of exposure when drawn from experimental versus epidemiologic studies. Concentrations of NO₂ tested in experimental studies, such as controlled human exposure studies, represent exposure concentrations in the

breathing zone of the individual test subjects. In cases where controlled human exposure studies report effects, those effects are caused directly by exposure to a specified concentration of NO₂. In contrast, concentrations of NO₂ drawn from epidemiologic studies are often based on ambient monitoring data. In the case of key U.S. studies that have been specifically considered within the context of assessing the appropriate level for the standard, these monitors measure area-wide NO₂ concentrations that occur away from major roadways. NO₂ concentrations recorded at these ambient monitors are used as surrogates for the distribution of NO₂ exposures across the study area and over the time period of the study. As noted above, these monitors do not measure the full range of ambient NO₂ concentrations that can occur in an area and, thus, they do not measure the full range of ambient NO₂ concentrations that are likely responsible for the NO₂-associated health effects reported in the studies. Instead they capture one part of the distribution (the area-wide concentration) and this is used as a surrogate for the entire distribution, which includes peak roadway-associated concentrations. As noted in the REA, the interpretation of NO₂ concentrations from different types of studies is an important consideration for decisions on standard level. These implications are discussed in more detail below in section II.F.4.e.

In considering the epidemiologic evidence, the REA noted the ISA conclusion that epidemiologic studies provide the strongest support for the link between short-term NO₂ exposure and respiratory morbidity. In addition, epidemiologic studies provide evidence for the most serious NO₂-associated respiratory effects, including respiratory-related hospital admissions and emergency department visits. As noted above, these effects have been reported to be associated with area-wide NO₂ concentrations in key U.S. epidemiologic studies. Because area-wide NO₂ concentrations are used as surrogates for the distribution of NO₂ exposures across the study area and over the time period of the study (see above), the health effects reported in these epidemiologic studies are reasonably inferred to be associated with exposure to ambient NO₂ concentrations that are both higher and lower than the area-wide concentrations reported for the study locations. As noted above, this distribution of exposure concentrations includes both the higher short-term peak NO₂ concentrations that occur on or near

major roadways and the lower short-term concentrations that occur away from roadways.

When evaluating the epidemiologic literature for its potential to inform the selection of an appropriate range of standard levels, the REA noted the ISA conclusion that NO₂ epidemiologic studies provide "little evidence of any effect threshold" (ISA, section 5.3.2.9, p. 5–15). In studies that have evaluated concentration-response relationships, those relationships appear linear within the observed range of data (ISA, section 5.3.2.9). Given this lack of an apparent threshold below which effects do not occur, an important consideration with regard to providing an adequate margin of safety is the extent to which it is appropriate for the range of proposed standard levels to extend below NO₂ concentrations that have been associated with health effects in these studies. For purposes of using the epidemiologic evidence to identify a range of standard levels for evaluation in the absence of an apparent threshold, the REA considered the range of NO₂ concentrations that have been monitored in locations, and during time periods, of key U.S. epidemiologic studies (ISA, Table 5.4–1).

Figures 4 and 5 below (REA, Figures 5–1 and 5–2) show standardized effect estimates from single pollutant models and the 99th and 98th percentiles of the 1-hour daily maximum NO₂ concentrations recorded at area-wide monitors in the locations, and during the time periods, of key U.S. studies. The peak NO₂ concentrations to which individuals were exposed on and/or near major roadways in these locations during the study periods would be expected to be substantially higher than the concentrations recorded at these area-wide monitors. The lowest area-wide 1-hour daily maximum concentrations, 53 (99th percentile) and 50 (98th percentile) ppb, were monitored in the location of the study by Delfino *et al.* (2002). This single study reported mixed results for respiratory symptoms with most reported NO₂ effect estimates being positive, and with some but not all positive effect estimates being statistically significant. A cluster of 5 studies (Ito *et al.*, 2007; Jaffe *et al.*, 2003; NYDOH, 2006; Peel *et al.*, 2005; Tolbert *et al.*, 2007) were conducted in locations with area-wide 1-hour daily maximum NO₂ concentrations ranging from 93 to 112 ppb (99th percentile) and from 85 to 94 ppb (98th percentile). In these studies, single pollutant models yielded generally positive and often statistically significant NO₂ effect estimates for respiratory-related emergency

department visits and hospital admissions in a variety of locations across the U.S. Of these 5 studies, 4 studies (Ito, 2007; NYDOH, 2006; Peel *et al.*, 2005; Tolbert *et al.*, 2007) also reported NO₂ effect estimates using multi-pollutant models, as discussed above (section II.B.1.a). In the study by Ito (2007), risk estimates were robust and remained statistically significant in multi-pollutant models that included PM_{2.5}, O₃, CO, and SO₂.¹¹ In the study by Peel *et al.* (2005), the authors

reported that “The estimates for NO₂ were generally not attenuated in multipollutant models, while the estimates for the other pollutants [PM₁₀, ozone, NO₂, and CO] suggested weaker or no associations in the multipollutant models.” The quantitative results for these multi-pollutant models were not presented in this study. In the remaining 2 studies (NYDOH, 2006; Tolbert *et al.*, 2007), NO₂ effect estimates that were positive in single pollutant models remained positive but

not statistically significant in multi-pollutant models.¹² Two additional studies which evaluated only single pollutant models (Linn *et al.*, 2000; Ostro *et al.*, 2001) reported positive and statistically significant NO₂ effect estimates in locations with appreciably higher area-wide 1-hour daily maximum NO₂ concentrations (*i.e.*, around 200 ppb).

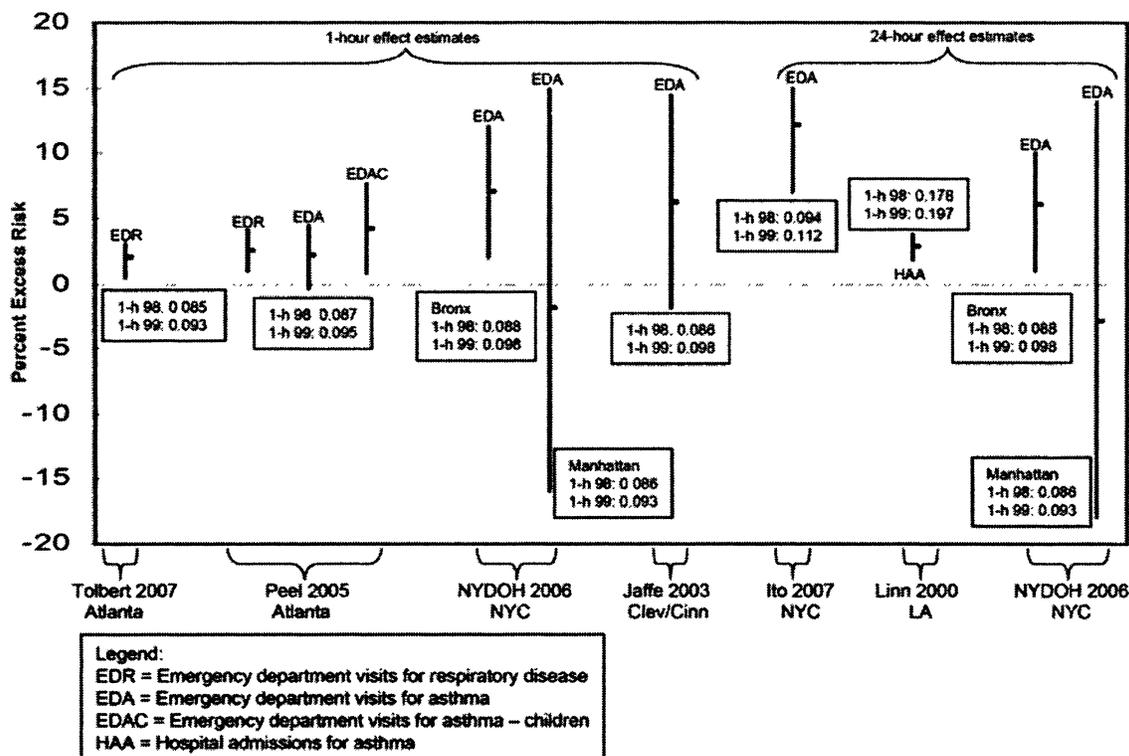


Figure 4. NO₂ effect estimates¹³ (95% CI) for emergency department visits/hospital admissions and 1-hour daily maximum NO₂ concentrations (98th and 99th percentile values in boxes¹⁴)

¹¹ In this study, multi-pollutant models were evaluated only for the warm months. Single pollutant effect estimates for NO₂ were statistically significant for the warm months, but not for the cold months.

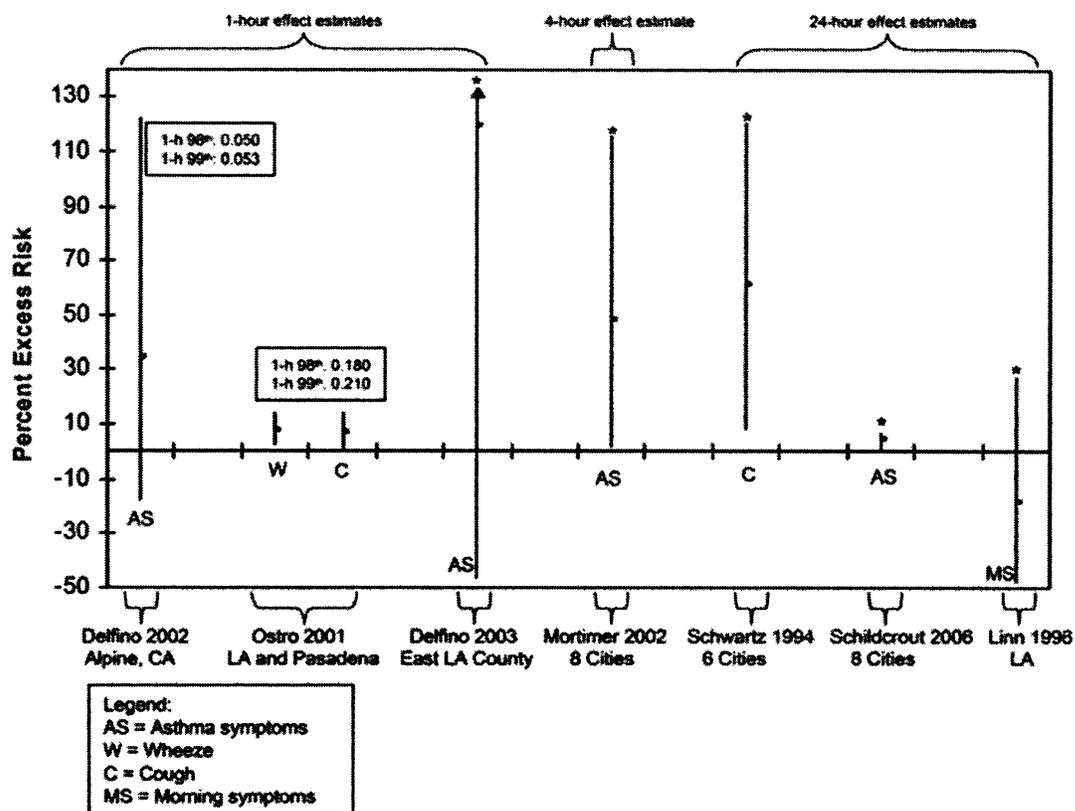
¹² As discussed above in section II.B.1, the conclusion from the ISA that NO₂ effect estimates generally remain robust in multi-pollutant models is based on evaluation of the broader body of epidemiologic evidence which includes, but is not limited to, these U.S. studies (*e.g.*, see Figures 1–3 above and ISA, Figures 3.1–7, 3.1–10, and 3.1–11). Effect estimates from these U.S. studies were not included in the multi-pollutant figures in the ISA because the studies generally reported multi-pollutant model results only qualitatively. They generally did not report the quantitative

information that would have been necessary to include the results in the ISA figures.

¹³ Effect estimates presented in Figures 4 and 5 are from single pollutant models.

¹⁴ Authors of relevant U.S. and Canadian studies were contacted and, for each study, air quality statistics were requested from the monitor that recorded the highest NO₂ concentrations. In cases where authors provided 1-hour daily maximum air quality statistics, this information is presented in Figures 4 and 5 (studies by Tolbert, Peel, NYDOH, Delfino). In four cases (studies by Ito, Jaffe, Linn, Ostro), we were not able to identify 1-hour NO₂ statistics from the information provided by the authors. In these cases, we evaluated monitored NO₂ concentrations reported to EPA's Air Quality System (AQS) for the location and time of the

study. Figures 4 and 5 present the highest 98th/99th percentile 1-hour daily maximum NO₂ concentrations that correspond to each study location and time period. Prior to identifying potential alternative standards, we did not receive air quality information from any of the Canadian authors contacted and we were unable to reconstruct the air quality data sets for the Canadian studies. Therefore, for purposes of identifying levels of potential alternative standards, our analysis was based on these key U.S. studies. Note that the NO₂ concentrations reported in the study by Jaffe are labeled as 24-hour concentrations, but the author indicated in a personal communication (Jaffe, 2008) that they actually represent 1-hour daily maximum concentrations.



*We were not able to identify 1-hour 98th and 99th percentile NO₂ concentrations for several of the U.S. respiratory symptom studies identified in table 5.4-1 of the ISA.

Figure 5. NO₂ effect estimates for respiratory symptoms and associated 1-hour daily maximum NO₂ levels (98th and 99th percentile values in boxes)

When evaluating the controlled human exposure literature for its potential to inform the selection of a range of appropriate standard levels for evaluation, the REA noted that available studies have addressed the consequences of short-term (*e.g.*, 30-minutes to several hours) NO₂ exposures for a number of health endpoints including increased airway responsiveness, reduced host defense and immunity, inflammation, and decreased lung function (ISA, section 3.1). In identifying health endpoints on which to focus for purposes of informing decisions about potential alternative standard levels, the REA concluded that it was appropriate to focus on those endpoints that occur at or near ambient levels of NO₂ and endpoints that are of potential public health significance. As described above in more detail (section II.C.1), the only endpoint to meet both of these criteria is increased airway responsiveness in asthmatics. The ISA concluded that NO₂ exposures between 200 and 300 ppb for 30 minutes and 100 ppb for 60-minutes can result in small but significant increases in nonspecific airway responsiveness (ISA, section 5.3.2.1)

and that “transient increases in airway responsiveness following NO₂ exposure have the potential to increase symptoms and worsen asthma control” (ISA, sections 3.1.3 and 5.4). This effect could have important public health implications due to the large size of the asthmatic population in the United States (ISA, Table 4.4-1). In addition, NO₂ effects on airway responsiveness in asthmatics are part of the body of experimental evidence that provides plausibility and coherence for the observed NO₂-related increase in hospital admissions and emergency department visits in epidemiologic studies (ISA, section 5.3.2.1). For all of these reasons, the REA considered the extent to which results reported for the NO₂-associated increase in airway responsiveness in asthmatics could inform decisions on alternative standard levels.

With regard to controlled human exposure studies of airway responsiveness, the ISA and the REA discussed an update to a meta-analysis that was originally published by Folinsbee in 1992 and considered in the 1993 NO_x AQCD. The original analysis by Folinsbee (1992) included individual

level data from 19 studies involving asthmatic volunteers. Folinsbee reported that 65% of resting asthmatics (57 of 88) exposed to NO₂ concentrations between 100 and 140 ppb experienced an increase in airway responsiveness. In addition, 76% (25 of 33) of resting asthmatics experienced increased airway responsiveness following exposure to NO₂ concentrations between 200 and 300 ppb. These results in resting asthmatics were statistically significant. Smaller, and statistically non-significant, percentages of exercising asthmatics experienced increased airway responsiveness following exposure to NO₂ concentrations (ISA, section 3.1.3.2). The reason for this difference is not known as the factors that predispose some asthmatics to NO₂ responsiveness are not understood (ISA, section 3.1.3.2).¹⁵

¹⁵ When the asthmatic results were grouped together for all exposures, both at rest and during exercise, the percent of asthmatics with increased airway responsiveness decreased at the higher exposure concentrations. This result could be attributed to the lack of an effect in the asthmatics exposed during exercise.

The update of this meta-analysis presented in the ISA (Table 3.1-3) included one additional study of non-specific responsiveness and removed an allergen responsiveness study that was included in the original ¹⁶ (see ISA, section 3.1.3.2 for more discussion). While the updated analysis does not include new results at lower concentrations (100–250 ppb), we interpreted the results with a greater focus on 100 ppb due, in part, to the greater body of evidence available, including new epidemiologic evidence. Therefore, the updated analysis also reported results specifically for an NO₂ exposure concentration of 100 ppb. As with the original analysis by Folinsbee (1992), the updated meta-analysis reported that a larger percentage of resting asthmatics, as opposed to exercising asthmatics, experienced an NO₂-related increase in airway responsiveness. The updated analysis reported that, when exposed at rest, 66% (33 of 50) of asthmatics experienced an increase in airway responsiveness following exposure to 100 ppb NO₂, 67% (47 of 70) of asthmatics experienced an increase in airway responsiveness following exposure to NO₂ concentrations from 100 to 150 ppb, 75% (38 of 51) of asthmatics experienced an increase in airway responsiveness following

exposure to NO₂ concentrations from 200 to 300 ppb, and 73% (24 of 33) of asthmatics experienced an increase in airway responsiveness following exposure to NO₂ concentrations above 300 ppb. The fraction of resting asthmatics experiencing an increase in airway responsiveness was statistically significant at each of these NO₂ concentrations.

Based on this evidence, we have identified exposure to NO₂ at a level of 100 ppb to be the lowest level at which effects have been observed in controlled human exposure studies, noting that it is also the lowest level tested in the studies used in the meta-analysis. There is no evidence from this meta-analysis, however, of a threshold below which NO₂-related effects do not occur.

b. Exposure- and Risk-Based Considerations

Chapters 7–9 of the REA estimated exposures and health risks associated with recent air quality and with air quality, as measured at monitors in the current area-wide network, which had been adjusted to simulate just meeting the current and potential alternative standards. The specific standard levels evaluated, for an area-wide standard based on the 3-year average of the 98th and 99th percentile 1-hour daily maximum NO₂ concentrations, were 50, 100, 150, and 200 ppb.

The results of the air quality, exposure, and risk analyses are presented below in Table 1. With regard to the air quality results, Table 1 presents the number of days per year that NO₂ concentrations on/near roads were estimated to equal or exceed the lowest and the highest health benchmarks evaluated (100 and 300 ppb). Compared to just meeting the current annual standard, exceedances estimated to be associated with just meeting 99th percentile 1-hour daily maximum area-wide standard levels of either 50 or 100 ppb were substantially lower. In contrast, exceedances estimated to be associated with 1-hour area-wide standards of 150 or 200 ppb were either similar to, or slightly higher than, those estimated for just meeting the current standard. Table 1 also presents the results of the Atlanta exposure and risk assessments. As is the case for the air quality analyses, NO₂ exposures and risks estimated to be associated with just meeting 1-hour area-wide standard levels of either 50 or 100 ppb were substantially lower than those associated with just meeting the current annual standard. Exposures and risks estimated to be associated with 1-hour area-wide standard levels of 150 or 200 ppb were somewhat lower than, or similar to, those estimated for just meeting the current annual standard.

TABLE 1—SUMMARY OF RESULTS OF THE EXPOSURE AND RISK ANALYSES PRESENTED IN THE REA

Air quality	Mean estimated number of days per year with 1-hour NO ₂ concentrations on/near roads greater than or equal to benchmark levels (in location with largest number of estimate exceedances)		Mean percent of Atlanta asthmatics estimated to experience 6 or more days per year with 1-hour NO ₂ exposure concentrations greater than or equal to benchmark levels (based on the year 2002)		Mean percent of total respiratory ED visits in Atlanta estimated to be related to NO ₂ (based on the year 2007)	
	100 ppb benchmark	300 ppb benchmark	100 ppb benchmark (percent)	300 ppb benchmark (percent)	Single pollutant estimate	Multi-pollutant estimates*
Current annual standard	338	38	100	97	8.1	1.7–6.9
Potential Alternative Standards Evaluated in the REA						
99th 1-hour: 200 ppb	350	56	100	89	7.1	1.5–6.1
99th 1-hour: 150 ppb	337	13	100	57	5.4	1.1–4.6
99th 1-hour: 100 ppb	229	4	100	11	3.6	0.7–3.1
99th 1-hour: 50 ppb	13	1	57	0	1.8	0.4–1.6

* Ranges represent the range of risk estimates that result from including different co-pollutants in the model.

c. Summary of Considerations From the REA

The policy assessment chapter of the REA considered the scientific evidence and the exposure/risk information as they relate to considering alternative 1-

hour NO₂ standards that could be judged to be requisite to protect public health with an adequate margin of safety. The conclusions of the REA were based, in large part, on scientific evidence (*i.e.*, key U.S. epidemiologic studies) and exposure/risk analyses that

were based on the use of the available NO₂ air quality data from area-wide monitors, as discussed above in sections II.B and II.C. The implications of these conclusions for a standard level that reflects the maximum allowable concentration anywhere in an area (a

¹⁶ The updated meta-analysis added a study that evaluated non-specific airway responsiveness

following exposure to 260 ppb NO₂ and removed

a study that evaluated allergen-induced airway responsiveness following exposure to 100 ppb NO₂.

concentration likely to occur near major roads) are discussed below in section II.F.4.e.

When considering an appropriate upper end of the range of 1-hour daily maximum standard levels supported by the scientific evidence, the REA noted the following:

- Positive and statistically significant associations were observed in several key U.S. epidemiologic studies in locations with area-wide 98th and 99th percentile 1-hour daily maximum NO₂ concentrations ranging from 85 to 112 ppb¹⁷ (Peel *et al.*, 2005; NYDOH, 2006; Ito *et al.*, 2007; Tolbert *et al.*, 2007) (see Figure 4 above).

- The meta-analysis of airway responsiveness presented in the ISA reported increased airway responsiveness in most asthmatics (66% or 33 out of 50) following short-term exposures to 100 ppb NO₂, which was the lowest concentration for which such data were available. Although some uncertainties associated with this evidence, as described above, provide support for considering standard levels below 100 ppb (*i.e.*, studies have typically involved volunteers with mild asthma and data are lacking from more severely affected asthmatics, who may be more susceptible (ISA, p. 3–16)), other uncertainties (*i.e.*, the undetermined magnitude and clinical significance of the NO₂-associated increase in airway responsiveness) provide support for considering higher standard levels.

Given these considerations, the REA concluded that the scientific evidence provides support for a standard level up to 100 ppb. The REA also noted that, to the extent more emphasis is placed on the uncertainties associated with ascribing effects to NO₂ in the cluster of epidemiologic studies and on the magnitude and clinical significance of the NO₂-associated increase in airway responsiveness following exposure to NO₂, standard levels higher than 100 ppb could be considered. However, the strongest support was concluded to be for standard levels at or below 100 ppb.

When considering an appropriate lower end of a range of levels supported by the scientific evidence, the REA noted the following:

- The epidemiologic study by Delfino *et al.*, (2002) evaluated associations between short-term ambient NO₂ concentrations and respiratory symptoms in a location (Alpine, CA)

where area-wide NO₂ concentrations were well below levels in other key U.S. epidemiologic studies. As noted above, this single study provides mixed evidence for NO₂-associated effects in a location with 99th and 98th percentile 1-hour daily maximum area-wide NO₂ concentrations of 53 and 50 ppb, respectively.

- The meta-analysis of controlled human exposure studies reported increased airway responsiveness in asthmatics at the lowest NO₂ concentration for which data were available (*i.e.*, 100 ppb). In identifying the specific lower level for the standard that could be reasonably supported by this controlled human exposure evidence, there are several reasons why it is appropriate to consider levels below 100 ppb. First, the meta-analysis did not provide information on the potential for an NO₂-induced increase in airway responsiveness at concentrations below 100 ppb, leaving open the possibility for effects following exposures to lower concentrations. Second, the studies included in the meta-analysis did not evaluate severe asthmatics and most of the subjects included in these studies were mild asthmatics. Asthmatics characterized as having more severe asthma may be more susceptible than mild asthmatics to the effects of NO₂ exposure (ISA, section 3.1.3.2).

Thus, the REA concluded that it was appropriate to base the lower end of the range of standard levels on NO₂ concentrations in the location of the epidemiologic study by Delfino and on providing increased protection relative to the lowest level at which increased airway responsiveness in asthmatics was reported in controlled human exposure studies. Given the mixed results reported in the Delfino study, the REA concluded that it was appropriate to consider standard levels approximately equal to, rather than below, those measured in the location of the study. Given these considerations, the REA concluded that the lower end of the range of levels that is reasonably supported by the scientific evidence is 50 ppb for a 1-hour standard that would protect public health with an adequate margin of safety.

In addition to these evidence-based considerations, the REA compared the health risks estimated to be associated with just meeting the current standard to those estimated to be associated with different 1-hour standards. As noted above (section II.C), the REA characterized NO₂-associated health risks by estimating the potential occurrence of ambient NO₂ concentrations greater than or equal to

concentrations reported to increase airway responsiveness, exposures of asthmatics to NO₂ concentrations reported to increase airway responsiveness, and the incidence of NO₂-associated emergency department visits. Given the REA conclusion that the available evidence and information clearly call into question the adequacy of the current standard, the adequacy of alternative 1-hour standards would also be called into question if those standards were estimated to be associated with similar or higher risks. In considering the three analyses that characterized NO₂-associated health risks, the REA noted that just meeting 1-hour area-wide standard levels of 150 and 200 ppb was estimated to be associated with risks ranging from somewhat lower to slightly higher than those estimated for the just meeting the current standard. In contrast, just meeting 1-hour standard levels of 50 or 100 ppb, in conjunction with the current area-wide monitoring network, was estimated to result in appreciably lower health risks than the current standard. Given this, the REA concluded that the exposure/risk information reinforces the scientific evidence in supporting a standard level from 50 to 100 ppb.

d. CASAC Views

CASAC expressed their views in a letter to the EPA Administrator (Samet, 2008b) within the context of their review of the final REA, a review which focused primarily on the policy assessment chapter.¹⁸ In drawing conclusions regarding the level of a short-term standard, CASAC considered the scientific evidence evaluated in the ISA, the exposure and risk results presented in the REA, and the evidence- and risk-based considerations presented in the policy assessment chapter of the REA. CASAC concurred with the conclusion from the policy assessment chapter that the strongest support is for standard levels between 50 and 100 ppb. Their letter noted that, "CASAC firmly recommends that the upper end of the range not exceed 100 ppb." In considering the impact of margin of safety on standard level, CASAC noted that "the intent of the Clean Air Act is to protect public health with an adequate margin of safety and consequently uncertainty should be considered as a reason to move towards the lower end of the range of levels and not to the upper." In addition, with regard to the NO₂ concentration gradient

¹⁷ As noted above, the health effects reported in epidemiologic studies are reasonably inferred to be associated with exposure to ambient NO₂ concentrations that are both higher than and lower than the area-wide concentrations reported for the study location.

¹⁸ Earlier CASAC letters focused on their review of the air quality, exposure, and risk analyses as presented in other chapters of the draft REA.

around roadways, CASAC noted that “the highest exposures likely occur when individuals are near roadways.” As a result they recommended that the Agency consider the implications of this exposure issue when interpreting the evidence and when considering the siting of regulatory monitors.

CASAC comments were offered within the context of their review of the final REA. As noted above, the conclusions from the policy assessment chapter of the final REA were based, in large part, on scientific evidence and exposure/risk information based on NO₂ air quality data from the current area-wide NO₂ monitoring network. Therefore, it is not clear the degree to which CASAC recommendations might differ for a standard level that reflects the maximum allowable NO₂ concentration anywhere in an area, including near major roads. As noted in section I.C above, we are specifically soliciting CASAC comment on the use of this approach and on the proposed range of levels for a standard set using this approach.

In drawing conclusions regarding the level of an annual standard, CASAC noted the scientific evidence assessed in the ISA. Specifically, CASAC concluded that while there is evidence supporting the link between long-term NO₂ exposure and adverse health effects, this evidence does not provide a strong quantitative basis for changing the level of the current annual standard. Therefore, with regard to the annual standard, CASAC recommended “retaining the current level, as evidence has not been cited that would lead to either an increase or decrease” (Samet, 2008b).

e. Administrator’s Conclusions on Level for a 1-Hour Standard

In considering the appropriate level for an NO₂ standard based on the 3-year average of the 99th percentile (or 4th highest) 1-hour daily maximum NO₂ concentration, the Administrator has considered the broad body of scientific evidence and exposure/risk information. She draws from that evidence and information the need to protect at-risk individuals against the distribution of short-term ambient NO₂ exposure concentrations across an area and the array of health effects that have been linked to such NO₂ exposures.

Specifically, the Administrator has considered the extent to which a variety of levels, which would reflect the maximum allowable 1-hour NO₂ concentration anywhere in an area, would be expected to protect at-risk individuals against increased airway responsiveness, respiratory symptoms,

and respiratory-related emergency department visits and hospital admissions. The Administrator notes that these health endpoints are logically linked together in that the evidence for increased airway responsiveness in asthmatics is part of the body of experimental evidence that the ISA recognized as supporting the plausibility of associations between ambient NO₂ and the respiratory morbidity endpoints (*i.e.*, respiratory symptoms, emergency department visits, and hospital admissions) reported in epidemiologic studies.

As noted above, NO₂ exposure patterns associated with respiratory morbidity in epidemiologic studies are reasonably expected to include short-term peak exposures on and/or near major roadways of a magnitude that has been reported to increase airway responsiveness in asthmatics. Therefore, to inform the identification of an appropriate range of standard levels to propose, the Administrator has considered the scientific evidence, the exposure/risk results, and information on the NO₂ concentration gradient around roadways.

In making judgments regarding the weight to place on the scientific evidence and exposure/risk information, the Administrator has considered the results of epidemiologic studies, controlled human exposure studies, and exposure/risk analyses as well as the uncertainties associated with this evidence and these analyses. Specifically, she notes the following:

- The ISA concluded that epidemiologic studies provide the strongest support for the relationship between short-term exposure to NO₂ and respiratory morbidity. Despite the possibility that associations between health effects and NO₂ in epidemiologic studies may be confounded by the presence of co-occurring pollutants, particularly other traffic-related pollutants, the ISA concluded that NO₂ effect estimates remain robust in multi-pollutant models and that the evidence supports a direct effect of NO₂ exposures on respiratory morbidity, independent of associations with other traffic-related pollutants. Given this conclusion, along with conclusions from the ISA regarding the consistency and the coherence of results across the relatively large number of NO₂ epidemiologic studies (both indoor and outdoor) and the supporting evidence from experimental studies, the Administrator has judged it appropriate to place substantial weight on epidemiologic studies in identifying an appropriate range of levels to propose.

- Controlled human exposure studies report that short-term exposures to NO₂ can increase airway responsiveness in asthmatics. With regard to this evidence, the Administrator also has considered the uncertainties associated with the magnitude and the clinical relevance of the NO₂-associated increase in airway responsiveness, noting that this effect may or may not be clinically significant for any given asthmatic. However, given the potential public health importance of this effect, due to the large size of the asthmatic population in the U.S. and the possibility that the NO₂-associated increase in airway responsiveness could worsen asthma symptoms and decrease control of asthma, the Administrator judges that it is also appropriate to place weight on this evidence when identifying an appropriate range of levels to propose.

- The results of the risk and exposure analyses presented in the REA provide information on the potential public health implications of setting the standard at different levels. The Administrator acknowledges the uncertainties associated with these analyses which, as discussed in the REA, could result in either over- or underestimates of NO₂-associated health risks. However, she also notes that those uncertainties should be similar across different air quality simulations within the air quality, exposure, and risk analyses. Therefore, the Administrator judges that these analyses are potentially useful for considering the relative levels of public health protection that could be provided by specific standard levels.

After considering the scientific evidence and the exposure/risk information (*see* sections II.B, II.C, and II.F.4.a through II.F.4.c), as well as the available information on the NO₂ concentration gradient around roadways (section II.A.2), as they relate to a standard level reflecting the maximum allowable NO₂ concentration in an area, the Administrator concludes that the strongest support is for a standard level at or somewhat below 100 ppb. The Administrator’s rationale in reaching this conclusion is provided below.

First, the Administrator notes that a standard level of 100 ppb or lower under the proposed approach would be expected to limit short-term peak NO₂ exposures to concentrations that have been reported to increase airway responsiveness in asthmatics. With regard to this, the Administrator specifically notes the following:

- The meta-analysis of controlled human exposure data in the ISA reported increased airway

responsiveness in asthmatics at rest following exposure at and above 100 ppb NO₂, the lowest NO₂ concentration for which airway responsiveness data are available in humans.

- This meta-analysis does not provide any evidence of a threshold below which effects do not occur. The studies included in the meta-analysis evaluated primarily mild asthmatics while more severely affected individuals could respond to lower concentrations. Given this, it is possible that exposure to NO₂ concentrations below 100 ppb could increase airway responsiveness in some asthmatics.

- However, the magnitude of the NO₂-induced increase in airway responsiveness, and its clinical implications, cannot be quantified from the meta-analysis. As noted previously, the NO₂-induced increase in airway responsiveness may or may not be clinically significant. Further, there was a lack of an effect in asthmatics exposed during exercise.

Given the above considerations, the Administrator concludes that the controlled human exposure studies of airway responsiveness provide support for limiting exposure to NO₂ concentrations at or somewhat below 100 ppb. While she acknowledges that exposure to lower concentrations could increase airway responsiveness in some asthmatics, the Administrator concludes that, given the uncertainties regarding the magnitude and the clinical significance of the NO₂-induced increase in airway responsiveness, the greatest support is for limiting exposures to 100 ppb.

Second, the Administrator notes that a standard level at or somewhat below 100 ppb under the proposed approach would be expected to maintain peak area-wide NO₂ concentrations considerably below peak area-wide concentrations measured in locations where multiple key U.S. epidemiologic studies have reported associations with emergency department visits and hospital admissions. With regard to this, the Administrator specifically notes that 5 key U.S. studies provide evidence for effects in locations where 99th percentile 1-hour daily maximum NO₂ concentrations measured at area-wide monitors ranged from 93 to 112 ppb. The Administrator notes that the study by Delfino provides mixed evidence for effects in a location with a 99th percentile 1-hour daily maximum NO₂ concentration, as measured by an area-wide monitor, of 53 ppb. In that study, most of the reported NO₂ effect estimates were positive, but not statistically significant. Focusing on these studies, the Administrator

concludes that they provide support for limiting area-wide NO₂ concentrations to below 90 ppb (99th percentile) in order to provide protection against the reported effects. She also concludes that limiting area-wide concentrations to considerably below 90 ppb would be appropriate in order to provide an adequate margin of safety. Given the mixed results of the Delfino study, the Administrator concludes that it may not be necessary to maintain area-wide NO₂ concentrations at or below 50 ppb to provide protection against the effects reported in epidemiologic studies.

Given that NO₂ concentrations near roads may be 30 to 100% higher than concentrations away from roads (see section II.A.2), the Administrator notes that a standard level at or somewhat below 100 ppb under the proposed approach could limit area-wide NO₂ concentrations to well below 90 ppb (99th percentile). With regard to this, she specifically notes the following:

- If NO₂ concentrations near roads are 30% higher than concentrations away from roads, a standard level of 100 ppb could limit area-wide concentrations to approximately 75 ppb.

- If NO₂ concentrations near roads are 65% higher than concentrations away from roads (the mid-range of the 30% to 100% gradients), a standard level of 100 ppb could limit area-wide NO₂ concentrations to approximately 60 ppb.

- If NO₂ concentrations near roads are 100% higher than concentrations away from roads, a standard level of 100 ppb could limit area-wide concentrations to approximately 50 ppb.

Therefore, a standard level at or somewhat below 100 ppb under the proposed approach would be expected to maintain area-wide NO₂ concentrations well below 90 ppb across locations despite the expected variation in the NO₂ concentration gradient that can exist around roadways in different locations and over time. Such a standard level recognizes the substantial weight that the Administrator judges is appropriate to place on the cluster of key U.S. epidemiologic studies that reported positive, and often statistically significant, associations between NO₂ and emergency department visits and hospital admissions. This judgment takes into account the determinations in the ISA, based on a much broader body of evidence, that there is a likely causal association between exposure to NO₂ and these kinds of morbidity effects, and that there is no evidence of a threshold below which such effects would not occur.

As noted above, based on the Administrator's consideration of the controlled human exposure and

epidemiologic evidence, she concludes that the strongest support is for a standard level reflecting the maximum allowable NO₂ concentration in an area at or somewhat below 100 ppb. In addition to these evidence-based considerations, the Administrator notes that a standard level of 100 ppb under the proposed approach would be consistent with the results of the exposure and risk analyses presented in the REA. As described in sections II.F.4.b and II.F.4.c above, the results of these analyses supported limiting area-wide NO₂ concentrations to between 50 and 100 ppb, which would be expected with a standard level at or below 100 ppb under the proposed approach. Given all of these considerations, the Administrator concludes that a standard level at or somewhat below 100 ppb under the proposed approach would be requisite to protect public health with an adequate margin of safety against the array of NO₂-associated health effects.

To the extent it is determined appropriate to emphasize the possibility that NO₂-induced airway responsiveness in asthmatics could occur following exposures below 100 ppb and/or the clinical significance of such increase in airway responsiveness, the Administrator notes that the evidence would support setting the standard level below 100 ppb. The Administrator also notes that a standard level below 100 ppb would be consistent with placing greater emphasis on the mixed results reported in the epidemiologic study by Delfino *et al.* (2002). Specifically, she notes that a standard level of 80 ppb would be expected to limit area-wide NO₂ concentrations to approximately 50 ppb (80 is 65% higher than 50) and that a standard level of 80 ppb would be expected to provide protection against exposure concentrations below those that have been reported to increase airway responsiveness in asthmatics.

For the reasons stated above, the Administrator proposes to set the level of a new 1-hour standard between 80 ppb and 100 ppb. In so doing, the Administrator proposes to place emphasis on reported findings from both epidemiologic studies and from controlled human exposure studies. In order to protect against NO₂-associated emergency department visits and hospital admissions reported in multiple key U.S. epidemiologic studies, and against reported NO₂-induced increases in airway responsiveness, the Administrator proposes to set the standard level no higher than 100 ppb. In addition, in light of the fact that the Administrator is considering, and soliciting comment

on, the appropriate weight to place on the potential risk of NO₂-associated effects in locations with relatively low area-wide NO₂ concentrations and on the significance of potential NO₂-induced increases in airway responsiveness in some asthmatics following exposures to concentrations below 100 ppb, the Administrator is proposing to set a standard level within a range that includes 100 ppb but is no lower than 80 ppb.

The Administrator solicits comment on the appropriateness of this proposed range of standard levels as well as on the approach she has used to identify the range. Specifically, the Administrator solicits comment on the following:

- The weight she has placed on the epidemiologic evidence, the controlled human exposure evidence, the exposure/risk information, and the uncertainties associated with each of these.
- Her use of available information on the NO₂ concentration gradient around roadways (*i.e.*, that concentrations near roadways can be 30 to 100% higher than concentrations in the same area but not near the road) to inform an appropriate range of standard levels.
- The most appropriate part of the proposed range in which to set the standard level given the available scientific evidence, exposure/risk information, NO₂ air quality information, and the uncertainties associated with each.

With regard to the proposed range of standard levels, the Administrator notes that the proposed range is consistent with the recommendation by CASAC to set a standard level no higher than 100 ppb. However, much of the evidence and exposure/risk information that informed CASAC's advice was based on NO₂ concentrations measured at area-wide monitors in the current monitoring network. CASAC did not explicitly address whether or how the standard level should differ if it reflects the maximum allowable NO₂ concentration in a location (including near major roads) rather than the maximum allowable area-wide concentration.

The Administrator also solicits comment on setting a standard level above 100 ppb and up to 150 ppb. In so doing, the Administrator recognizes that there are uncertainties with the scientific evidence, such as that associated with the magnitude and clinical significance of the NO₂-induced increase in airway responsiveness in asthmatics and with attributing effects reported in epidemiologic studies specifically to NO₂ given the presence of co-occurring pollutants. The

Administrator invites comment on the extent to which it is appropriate to emphasize these uncertainties in considering the standard level and on whether it would be appropriate to set a standard level as high as 150 ppb.

The Administrator notes that, in order to consider the potential implications of a standard level as high as 150 ppb, it is important to put such a standard in the context of potential ambient concentrations. A standard level of 150 ppb under the proposed approach could be associated with 1-hour area-wide NO₂ concentrations of approximately 90 ppb (150 is approximately 65% higher than 90), and potentially with concentrations ranging from 75 to 115 ppb (150 is approximately 100% higher than 75 and 30% higher than 115) depending on location.

The Administrator notes that a standard level as high as 150 ppb would place more emphasis on uncertainties associated with the scientific evidence. Specifically, a standard level of 150 ppb would emphasize the uncertainty associated with the magnitude and the clinical significance of the NO₂-induced increase in airway responsiveness in asthmatics and would be based on an assumption that NO₂-associated health effects reported in epidemiologic studies are due in large part to exposure to co-occurring pollutants, rather than exposure to NO₂. As noted above, the Administrator seeks comment on the extent to which it would be appropriate to emphasize these uncertainties in considering the standard level and the extent to which the scientific evidence would support levels up to 150 ppb.

In addition, the Administrator notes that a standard level lower than 80 ppb could be appropriate to the extent that near-road concentrations are determined to be closer to 30% higher than area-wide concentrations or to the extent that additional emphasis is placed on the possibility that exposure to NO₂ concentrations below 100 ppb could increase airway responsiveness in some asthmatics. Accordingly, the Administrator also solicits comment on standard levels as low as 65 ppb (30% higher than an area-wide concentration of 50 ppb).

f. Alternative Approach to Setting the 1-Hour Standard Level

As discussed above, the Administrator is proposing a standard level reflecting the maximum allowable NO₂ concentration anywhere in an area. However, for the reasons discussed below, EPA also solicits comment on an alternative approach to setting a 1-hour NO₂ standard. Under this alternative approach, the standard level would

reflect the maximum allowable NO₂ concentration measured at an area-wide monitoring site. Such a site would not be located in close proximity to major roads and, for a given area, would not be the location of the maximum NO₂ concentration anywhere in that area. In conjunction with soliciting comment on this alternative approach, EPA solicits comment on setting the level of such a standard within the range of 50 to 75 ppb. In addition, as with the proposed standard, EPA solicits comment on NO₂ as the indicator, a 1-hour (daily maximum) averaging time, and the 3-year average of the 99th percentile (or 4th highest) or 98th percentile (or the 7th or 8th highest) as the form.

With regard to the range of levels from 50 to 75 ppb, which would reflect maximum allowable area-wide NO₂ concentrations under this approach, the Administrator notes the following. First, a standard level within in this range would be expected to maintain area-wide NO₂ concentrations below peak 1-hour area-wide concentrations measured in locations where key U.S. epidemiologic studies have reported associations with respiratory-related emergency department visits and hospital admissions. Second, she notes that standard levels from the lower end of this range would be expected to limit roadway-associated exposures to NO₂ concentrations that have been reported in controlled human exposure studies to increase airway responsiveness in asthmatics. A standard level of 50 ppb under this approach could limit near-road concentrations to between 65 and 100 ppb, given that near-road NO₂ concentrations can range from 30% to 100% higher than area-wide concentrations. Assuming the mid-point of the range of gradients (*i.e.*, that near-road concentrations are 65% higher than area-wide concentrations), a standard level of 50 ppb under this approach could limit near-road concentrations to approximately 80 ppb and a standard level of 60 ppb could limit near-road concentrations to approximately 100 ppb. Third, to the extent that relatively more emphasis is placed on the uncertainties regarding the magnitude and clinical significance of the NO₂-induced increase in airway responsiveness, the Administrator notes that a standard level from the upper end of the range could be determined to be appropriate. Finally, this approach would provide more confidence than the proposed approach regarding the degree to which a specific standard level would limit area-wide NO₂ concentrations but less confidence regarding the degree to which a specific

standard level would limit the peak NO₂ concentrations likely to occur near major roadways.

The Administrator recognizes that her proposed approach results from a comprehensive evaluation of alternative approaches to determining the level of the NO₂ primary NAAQS, but that these approaches have not previously been presented to CASAC, or other stakeholders, for their evaluation and public discussion. More specifically, the Administrator notes that much of the information included in the policy assessment chapter of the REA, which formed the foundation for CASAC's recommendations regarding standard level, was based on evaluation of data drawn from the current area wide-oriented monitoring network. Further, the Administrator notes that CASAC did not explicitly discuss in their recommendations whether and how the standard level should differ if that level reflects the maximum allowable NO₂ concentration anywhere in an area rather than the maximum allowable NO₂ concentration measured at an area-wide monitoring site. Given this, the Administrator recognizes the possibility that comments received on this proposal, particularly those received from CASAC, could provide important new information for consideration.

g. Level of the Annual Standard

With regard to the annual standard, the Administrator notes that the ISA concluded that the scientific evidence is suggestive but not sufficient to infer a causal relationship between long-term NO₂ exposure and respiratory morbidity. While some studies have reported associations between long-term NO₂ exposure and respiratory endpoints such as decrements in lung function growth (Gauderman *et al.*, 2004; Rojas-Martinez *et al.*, 2007a and b; Oftedal *et al.*, 2008), the ISA notes that the high correlation among traffic-related pollutants makes it difficult to accurately estimate independent effects in these long-term studies. CASAC recommended retaining an annual standard in order to provide protection against potential health effects associated with long-term exposures. They based this recommendation on "the limited evidence related to potential long-term effects of NO₂ exposure and the lack of strong evidence of no effect" (Samet, 2008b). With regard to the level of an annual standard, CASAC recommended retaining the current level as the evidence considered did not provide a basis for either increasing or decreasing it. Given these considerations, and recognizing that a new 1-hour standard

level as proposed would also provide some degree of protection from long-term exposures, the Administrator proposes to take a cautious approach and retain the current annual standard. The Administrator solicits comment on this approach.

G. Summary of Proposed Decisions on the Primary Standard

For the reasons discussed above, and taking into account information and assessments presented in the ISA and REA as well as the advice and recommendations of CASAC, the Administrator proposes that the current annual standard is not requisite to protect public health with an adequate margin of safety. The Administrator proposes to establish a new short-term standard that will afford increased protection for asthmatics and other at-risk populations against an array of adverse respiratory health effects related to short-term NO₂ exposure. These effects include increased asthma symptoms, worsened control of asthma, an increase in respiratory illnesses and symptoms, and related serious indicators of respiratory morbidity including emergency department visits and hospital admissions for respiratory causes.

Specifically, the Administrator proposes to set a new short-term primary NO₂ standard, with a 1-hour (daily maximum) averaging time, a form defined as the 3-year average of the 99th percentile or the 4th highest daily maximum concentration. The level for the new standard is proposed to be within the range of 80 to 100 ppb, reflecting maximum allowable concentrations anywhere in an area. In conjunction with this proposed standard, the Administrator also solicits comment on levels as low as 65 ppb and as high as 150 ppb, and on alternative forms including the 3-year average of the 98th percentile or the 7th or 8th highest daily maximum concentration.

In addition, the Administrator also solicits comment on an alternative approach to setting a new 1-hour standard. Under this alternative, the NO₂ NAAQS would reflect the maximum allowable area-wide NO₂ concentration, which would be measured away from major roads. With regard to this approach, the Administrator solicits comment on a level within the range from 50 to 75 ppb and on the same alternative forms as noted above.

In addition to setting a new 1-hour standard, the Administrator proposes to retain the current annual standard. The current annual standard together with a new 1-hour standard would provide

protection against health effects potentially associated with long-term exposures to NO₂. The Administrator solicits comment on this approach.

III. Proposed Amendments to Ambient Monitoring and Reporting Requirements

The EPA is proposing changes to the ambient air monitoring, reporting, and network design requirements for the NO₂ NAAQS. This section discusses the changes we are proposing which are intended to support the proposed 1-hour NAAQS and proposed retention of the current annual NAAQS in Section II. Ambient NO₂ monitoring data are used to determine whether an area is in violation of the NO₂ NAAQS. Ambient NO₂ monitoring data are collected by state, local, and Tribal monitoring agencies ("monitoring agencies") in accordance with the monitoring requirements contained in 40 CFR parts 50, 53, and 58.

A. Monitoring Methods

To be used in a determination of compliance with the NO₂ NAAQS, NO₂ data must be collected using a Federal Reference Method (FRM) or a Federal Equivalent Method (FEM) analyzer. The current monitoring method in use by most State and local monitoring agencies is the gas-phase chemiluminescence FRM (40 CFR Part 50, Appendix F), which was implemented into the NO₂ monitoring network in the early 1980s. The current list of all approved FRMs and FEMs capable of providing ambient NO₂ data for use in attainment designations may be found on the EPA Web site (<http://www.epa.gov/ttn/amtic/files/ambient/criteria/reference-equivalent-methods-list.pdf>). It must be noted, however, that due to the proposal of a new 1-hour NAAQS, wet chemical based FEMs would not be appropriate for use in determining compliance of the proposed 1-hour NAAQS, since such methods are incapable of providing hourly averaged data. Therefore, we propose that any NO₂ FRM or FEM used for making primary NAAQS decisions must be capable of providing hourly averaged concentration data. We propose to only allow FRM or FEMs capable of providing hourly averaged concentration data to be used to produce data for comparison to the NAAQS, and solicit comment on this proposed requirement.

The sum of nitric oxide (NO) and NO₂ is commonly called NO_x. Nitrogen oxides, technically the total reactive nitrogen oxide family, known as NO_y, is defined as the sum of NO, NO₂, and the higher nitrogen oxides collectively

termed NO_z. Important components of ambient NO_z include nitrous acid (HNO₂), nitric acid (HNO₃), and the peroxyacetyl nitrates (PANs). However, NO₂ is the indicator for the nitrogen oxides NAAQS. In the ambient monitoring network, very nearly all measurements of NO₂ are collected by the chemiluminescence FRM. However, this technique directly measures only NO by the principle of gas-phase chemiluminescence induced by the reaction of NO with O₃ at low pressure. NO₂ concentrations are determined indirectly by the analyzer in two steps: (1) By first measuring the ambient NO concentration, and (2) determining total NO_x, including NO₂, by measuring a second NO concentration after reducing the NO₂ in the sample air stream to NO (most often through the use of a molybdenum oxide (MoO_x) substrate heated to between 300 °C and 400 °C in the sample flow path). The difference between the second concentration (NO plus the NO₂ reduced to NO) and the first concentration (ambient NO only) is reported as the NO₂ concentration.

One issue of note with the chemiluminescence FRM is that the reduction of NO₂ to NO on the MoO_x converter substrate is not specific to NO₂; hence, chemiluminescence method analyzers are subject to varying interferences produced by the presence in the air sample of the NO_z species listed above and others occurring in trace amounts in ambient air. This interference is often termed a “positive artifact” in the reported NO₂ concentration since the presence of NO_z results in an over-estimate in the reported measurement of the actual ambient NO₂ concentration. This interference by NO_z compounds has long been known and evaluated (Fehsenfeld *et al.*, 1987; Nunnermacker *et al.*, 1998; Parrish and Fehsenfeld, 2000; McClenny *et al.*, 2002; U.S. Environmental Protection Agency, 1993, 2006a). The sensitivity of the chemiluminescence FRM to potential interference by individual NO_z compounds is variable and depends in part on characteristics of individual monitors, such as the design of the instrument inlet, the temperature and composition of the reducing substrate, and the interactions of atmospheric species with the reducing substrate. Furthermore, the concentrations of NO_z compounds in ambient air are variable with time and distance from the sources of NO and NO₂, chiefly the point source and both on-road and non-road mobile source combustion of fossil fuels. Nearer to these sources, the potential interference is lower than it is farther

away because more of the measured nitrogen oxides are present as the emitted NO and quickly formed NO₂, rather than NO_z. This is because oxidation to the NO_z compounds from NO and NO₂ requires time and the presence of other atmospheric compounds like the hydroxyl radical.

Overall, as noted in the ISA, it appears that interference by NO_z on chemiluminescence FRMs is not more than 10 percent of the reported NO₂ concentration during most or all of the day during winter (cold temperatures), but larger interference ranging up to 70 percent can be found during summer (warm temperatures) in the afternoon at sites away and downwind from strong emission sources. In general, the NO_z interference in the reported NO₂ concentrations collected downwind of source areas and NO₂ concentrations collected in relatively remote areas away from concentrated point, area, or mobile sources is larger than the NO_z interference in NO₂ measurements taken in urban cores or other areas with fresh NO_x emissions.

The chemiluminescence FRM is well established, comprising a large majority of the current operating network, and has served as the principal monitoring method in the NO₂ network for more than thirty years. Many of the epidemiologic studies referenced in the REA as the health basis for the proposed primary NO₂ NAAQS utilized ambient NO₂ data obtained from chemiluminescence FRMs, and subsequently, the uncertainties that may occur from the potential positive influence of NO_z species on NO₂ values provided by the ambient FRM monitoring network are already reflected in those studies. Therefore, for purposes of comparing NO₂ monitoring data to the NO₂ NAAQS, the EPA believes that the chemiluminescence FRMs are appropriate for continued use under the current standard and under any of the options being considered for a new 1-hour averaged primary NO₂ NAAQS.

EPA is aware of the more recent development of an alternative method in determining NO₂ concentrations by chemiluminescence, specifically through the use of a photolytic converter, which uses specific wavelengths of ultraviolet light to reduce NO₂ to NO in lieu of the FRM’s MoO_x substrate converter. The advantage of the photolytic-chemiluminescence method is that the photolytic converter is more specific to NO₂, as compared to a MoO_x substrate converter, and does not reduce many NO_z species to NO (Ryerson *et al.*, 2000), reducing the potential influence

of NO_z concentrations on the reported NO₂ concentration. The photolytic-chemiluminescence method is currently deployed within certain research networks, but the EPA has not approved this method as an FRM or an FEM. If this technique is to be advanced to an FRM or FEM, the method may require additional research and development to ensure the stability of the photolytic converter rates in a variety of ambient conditions and monitor set-ups that might be experienced in the field and a consistent method of mathematically correcting for the known converter efficiencies.

EPA also recognizes that, although not widely used by state and local monitoring agencies, the existing FRM and FEM path-integrated optical remote sensing techniques, also known as open-path and remote sensing methods, which use spectrometers to detect pollutant concentrations by light absorption over an optical path length, are suitable for continued use in the ambient monitoring network as they can provide NO₂ measurements with reduced influences of NO_z species on the reported NO₂ concentrations, relative to the chemiluminescence FRM. However, these methods do not provide point specific concentrations like those provided by chemiluminescence FRMs that are typically expected and seen in the monitoring network, and may be one of the reasons these methods are not more widely used.

In recognition of the existence of alternative methods that may be useful in the measurement of NO₂ for NAAQS compliance purposes, as well as other objectives, EPA solicits comment on the advantages and disadvantages of advancing technology, such as the photolytic-chemiluminescence method, or the use of existing open-path or remote sensing FRM and FEM technology, as alternative methods to supplement the approved chemiluminescence FRMs already deployed across the U.S. at NO₂ monitoring sites.

B. Network Design

1. Background

The basic objectives of an ambient monitoring network, as noted in 40 CFR Part 58 Appendix D, include (1) providing air pollution data to the general public in a timely manner, (2) supporting compliance with ambient air quality standards and emissions strategy development, and (3) providing support for air pollution research. Section II.A.1 notes that there are currently no minimum monitoring requirements for NO₂ in 40 CFR part 58 Appendix D,

other than the requirement for EPA Regional Administrator approval before removing any existing monitors, and that any ongoing NO₂ monitoring must have at least one monitor sited to measure the maximum concentration of NO₂ in that area. As discussed in Section II.A.2, an analysis of the approximately 400¹⁹ monitors comprising the current NO₂ monitoring network (Watkins and Thompson, 2008) indicates that the most frequently stated monitor objectives for sites in the current NO₂ network are for the assessment of concentrations for general population exposure and maximum (highest) concentrations typically at the neighborhood and urban scales. Spatial scales are defined in 40 CFR Part 58 Appendix D, Section 1.2, where the scales of representativeness of most interest for the monitoring site types include:

1. *Microscale*—Defines the concentration in air volumes associated with area dimensions ranging from several meters up to about 100 meters.

2. *Middle scale*—Defines the concentration typical of areas up to several city blocks in size, with dimensions ranging from about 100 meters to 0.5 kilometers.

3. *Neighborhood scale*—Defines concentrations within some extended area of the city that has relatively uniform land use with dimensions in the 0.5 to 4.0 kilometers range.

4. *Urban scale*—Defines concentrations within an area of city-like dimensions, on the order of 4 to 50 kilometers. Within a city, the geographic placement of sources may result in there being no single site that can be said to represent air quality on an urban scale. The neighborhood and urban scales have the potential to overlap in applications that concern secondarily formed or homogeneously distributed air pollutants.

5. *Regional scale*—Defines usually a rural area of reasonably homogeneous geography without large sources, and extends from tens to hundreds of kilometers.

The ISA and REA indicate that one of the largest factors affecting ambient exposures to NO₂ above health benchmark concentrations are mobile source emissions, particularly at locations near major roads. Information

in the ISA and the REA shows that concentrations of mobile source pollutants, including NO₂, typically display peak concentrations on or immediately adjacent to roads, producing a gradient in pollutant concentrations where concentrations decrease with increasing distance from roads (Section II.A.2 above, ISA sections 2.5.4 and 4.3.6 and Table 2.2–1; REA section 7.3.2 and Figures 8–17 and 8–18). In the ambient environment, NO₂ is largely a secondary pollutant resulting from the reaction of NO with available ozone (O₃), the concentrations of which depend on photochemical reactions of ambient hydrocarbons and prior (precursor) NO_x emissions. The ISA notes that the direct emission of NO₂ from mobile sources is estimated to be only a few percent of the total NO_x emissions for light-duty gasoline vehicles, and anywhere from less than 10 percent up to 70 percent of the total NO_x emission from heavy-duty diesel vehicles, depending on the engine, the use of emission control technologies such as catalyzed diesel particulate filters (CDPFs), and mode of vehicle operation.²⁰ However, since the rate of conversion of mobile source NO to NO₂ as described above is a generally rapid process, (*i.e.*, on the order of a minute (ISA Section 2.2.2)), NO₂ behaves like a primary pollutant in the near-road environment, exhibiting peak concentrations on or closely adjacent to roads. However, due to the secondary formation characteristic of NO₂, its rate of decay with increasing distance from a road can be slower than that of the other pollutants directly emitted from mobile sources including carbon monoxide (CO), ultrafine particulates, air toxics, and black carbon. Literature values indicate that the distance required for NO₂ concentrations to return to near area-wide or background concentrations away from major roadways can range up to 500 meters. The actual distance is variable, and highly dependent on topography, roadside features, meteorology, and the related photochemical reactivity conditions (Baldauf *et al.*, 2008; Beckerman *et al.*, 2007; Clements *et al.*, 2008; Gilbert *et al.* 2003; Hagler *et al.*,

2009; Rodes and Holland, 1980; Singer *et al.*, 2003; Zhou and Levy, 2007). Nonetheless, any efforts to measure peak ambient NO₂ concentrations from on-road mobile sources, or other mobile source pollutant of interest noted above, would be best served by monitoring as near as practicable to roadways of interest.

2. Proposed Changes

In conjunction with the proposed 1-hour NAAQS and the proposed retention of the current annual NAAQS, we propose a number of changes to the NO₂ monitoring network. As described above in Section II.F.4, we are proposing a 1-hour NO₂ NAAQS that reflects the maximum allowable NO₂ concentration in an area. However, the current network is not oriented to address peak concentrations, such as the on-road and near-road environment, but many sites may be situated to assess high concentrations at the neighborhood or larger spatial scales. The EPA is proposing a two-tier network design to monitor ambient concentrations of NO₂ and assess compliance with the NO₂ NAAQS. The two tiers would provide data for comparison with both the 1-hour and annual standards, and would be comprised of (1) monitoring in areas of expected maximum 1-hour concentrations and (2) monitoring to characterize areas with the highest expected NO₂ concentrations at the neighborhood and larger spatial scales, or “area-wide” scales. Because the maximum hourly NO₂ concentrations in many areas are expected to be due to on-road mobile emissions, the EPA believes that the first tier of the monitoring network should include a component requiring monitoring near major roads, where higher NO₂ concentrations have been identified and there are no significant monitoring efforts to address roadway exposures. The EPA recognizes that requiring a component of the ambient NO₂ monitoring network to characterize the peak NO₂ concentrations derived from on-road mobile sources, using monitors placed near major roadways (“near-road monitors”), will introduce new requirements for monitoring sites that, for a majority of the state and local monitoring networks, currently do not exist.²¹ However, the monitoring of maximum hourly concentrations of NO₂, particularly in the near-road environment, is an essential component

¹⁹It should be noted that the ISA Section 2.4.1 references a different number of active monitors in the NO₂ network. The difference stems from how ‘currently operating monitors’ were defined when extracting data from AQS. The ISA only references SLAMS, NAMS, and PAMS sites with defined monitoring objectives, while the Watkins and Thompson, 2008 value represents all NO₂ sites reporting data at any point during the year.

²⁰The ISA references studies of heavy-duty diesel vehicles retrofitted with a CDPF in describing the range of NO₂ to NO_x ratios from diesel vehicles. These studies are based on vehicles equipped with CDPFs prior to 2009. However, as of January 1, 2009, EPA’s National Clean Diesel Campaign requires that emission control devices included on its Verified Technologies List raise the fraction of NO₂ in exhaust NO_x from an engine no more than 20% above the baseline engine NO₂ to NO_x ratio. Retrofit technologies sold after January 1, 2009 that do not meet the NO₂ emission limit may not be installed or sold as EPA verified technologies.

²¹For purposes of the discussion, near-road NO₂ monitors are defined to be no greater than 50 meters from the nearest traffic lane of target road segments. The details of appropriately placing NO₂ monitors near roads are explained in Section III.2.a of this document.

of an ambient monitoring network designed to determine compliance with the proposed 1-hour NAAQS. In addition, the EPA recognizes that the establishment of near-road monitoring sites will produce certain other advantages, by providing a new data source for public health studies that will support future NAAQS reviews, allowing for the tracking of mobile source emission reductions progress, providing monitoring infrastructure that may be of use for mixtures of pollutants in a multi-pollutant paradigm, and supporting scientific studies of other mobile source pollutants like CO, ultrafine particulate matter, black carbon, and air toxics.

The second tier of the proposed network design, the area-wide monitoring component, is intended to characterize the highest concentrations of NO₂ typical or representative of neighborhood and larger spatial scales, to address the wider area impact of NO₂ sources on urban populations. Further, a requirement for the continuation of area-wide monitoring of NO₂ serves to maintain continuity in collecting area-wide data that have served to inform long-term pollutant concentration trends analysis and health and scientific research for more than thirty years.

We propose that state and, when appropriate, local air monitoring agencies provide a plan for deploying monitors in accordance with the following proposed network design by July 1, 2011. We also propose that the NO₂ network being proposed be physically established no later than January 1, 2013. Considering the proposed timeline and criteria presented in the network design, we solicit comment on whether state and local monitoring agencies should be required to deploy monitors sooner than January 1, 2013.

a. Monitoring in Areas of Expected Maximum Concentrations Near Major Roads

We are proposing to require monitoring in locations of expected maximum concentrations near major roads in larger urban areas, with minimum monitoring requirements triggered for metropolitan areas based on Core Based Statistical Area (CBSA) population thresholds and the traffic related metric annual average daily traffic (AADT). The U.S. Department of Transportation (U.S. DOT) Federal Highway Administration's Status of the Nation's Highways, Bridges, and Transit: 2006 Conditions and Performance document (<http://www.fhwa.dot.gov/policy/2006cpr/es02h.htm>) states that "while urban

mileage constitutes only 24.9 percent of total (US) mileage, these roads carried 64.1 percent of the 3 trillion vehicles miles (VMT) travelled in the United States in 2004." The document also states that "urban interstate highways made up only 0.4 percent of total (US) mileage but carried 15.5 percent of total VMT." These statements indicate how much more traffic volume exists on roads in urban areas versus the more rural areas that have significant amounts mileage of the total public road inventory. Because the combination of increased mobile source emissions and increased urban population densities can lead to increased exposures and associated risks, urban areas are the appropriate areas to concentrate required near-road monitoring efforts. Therefore, we propose that one near-road NO₂ monitor be required in CBSAs with a population greater than or equal to 350,000 persons. This population threshold is proposed to provide the near-road monitoring component of the network an appropriate spatial extent across the country, given the limited availability of routine measurements in these environments. Based on 2007 Census Bureau statistics, this will result in approximately 142 sites in as many CBSAs.²²

We also propose that a second near-road monitor be required in CBSAs with a population greater than or equal to 2,500,000 persons, or in any CBSAs with one or more road segments with an AADT count greater than or equal to 250,000. Based on 2007 Census Bureau statistics and data from the 2007 Highway Performance Monitoring System (HPMS) maintained by the U.S. DOT Federal Highway Administration (FHWA), this particular element of the minimum monitoring requirements will add approximately 23 sites to the approximate 142 near-road sites in CBSAs that already will have one near-road monitor required due to the 350,000 population threshold. Of the 23 additional sites, two sites are due to the 250,000 AADT threshold and are attributed to the Las Vegas, Nevada and Sacramento, California CBSAs. The 2,500,000 population threshold is proposed as a second threshold to allow for further characterization of larger urban areas that are more likely to have a greater number of major roads across a potentially larger geographic area, and a corresponding increase in potential for exposure. Of the approximate 1.66

²² We also note that this population threshold corresponds to the minimum population level in which Air Quality Index (AQI) levels are required to be reported, as noted in 40 CFR Part 58 Subpart F.

million public road segments tracked in the HPMS, road segments of 250,000 AADT or greater make up the top 0.03 percent of the most traveled public road segments. The FHWA has also used this threshold on its Web site to give an indication of the most travelled urban highways in the country (<http://www.fhwa.dot.gov/policyinformation/tables/02.cfm>). We proposed to use HPMS-reported AADT as the traffic volume metric because AADT appears to be the most widely used traffic volume metric in the scientific literature, is widely available, and offers the most objective and consistent metric available to indicate traffic volumes across the country. These AADT data are typically available from local Metropolitan Planning Organizations (MPOs), state departments of transportation, and from the FHWA's HPMS. The FHWA also provides national guidance on the appropriate measurement and estimation of AADT for different road types in their HPMS Field Manual (<http://www.fhwa.dot.gov/ohim/hpmsman/hpms.cfm>). We are therefore proposing the 250,000 AADT threshold for requiring a near-road monitor because that threshold represents the highest traffic volume road segments in the country, which may correspond to the greatest potential for high exposures directly connected to motor vehicle emissions.

In summary, the combination of the above proposed minimum monitoring requirement thresholds for the near-road monitors as part of the ambient NO₂ monitoring network are anticipated to require approximately 165 near-road sites in 142 CBSAs. We solicit comment on the proposed CBSA population threshold values (*i.e.*, 350,000 and 2,500,000) and on the use of population thresholds both lower and higher than those proposed, the use of the traffic volume metric AADT, and the 250,000 AADT threshold in establishing the minimum number of required near-road sites for urban areas.

In choosing these population and traffic related thresholds for the minimum monitoring requirements, it should be noted that, based on 2007 Census Bureau statistics, the U.S. Virgin Islands and seven states (Delaware, Montana, North Dakota, South Dakota, Vermont, West Virginia, and Wyoming) currently would not have required near-road monitoring sites under this current proposal. Considering the relative lack of near-road monitoring data nationwide, the new level and averaging time of the NAAQS being proposed, and the desire to establish a spatially representative and protective network, we solicit comment on the inclusion or

exclusion of an additional or alternative monitoring requirement such that each state and territory would have at least one near-road monitoring site.

The EPA recognizes that in certain cases, there can be an area or areas of expected maximum hourly concentration in a CBSA due to a major stationary source or to the combination of multiple sources that could include point, area, and non-road source emissions in addition to on-road mobile source emissions. Such locations might be identified through data analysis, such as the evaluation of existing ambient data and/or emissions data, or through air quality modeling. An example of such a location might be away from roads and downwind of a stationary source or sources in situations where the required near-road monitors do not represent a location or locations of expected maximum hourly NO₂ concentrations in a CBSA. In these situations, where such locations are known, we propose that the Regional Administrator will have discretion to require monitoring above the minimum requirements as necessary to address situations where the required near-road monitors do not represent a location or locations where the expected maximum hourly NO₂ concentrations exist in a CBSA. The EPA also proposes to allow Regional Administrators the ability to require additional near-road monitoring sites to address situations where minimum monitoring requirements are not sufficient to meet monitoring objectives, such as a situation where there is a variety of exposure potential in an area due to variety in the amount or types of fleet mix, congestion patterns, terrain, or geographic areas within a CBSA. An example of requiring an additional near-road monitor might be a case where a particular community or neighborhood is significantly or uniquely affected by road emissions, but the site or area is not monitored even though the responsible State or local monitoring agency is fulfilling the minimum monitoring requirements.

In all cases, the Regional Administrator and the responsible State or local air monitoring agency should work together to design and/or maintain the most appropriate NO₂ network to service the variety of data needs for an area. We solicit comment on the proposal to allow Regional Administrators the discretion to require monitoring above the minimum requirements for any CBSA where required near-road monitors do not represent a location or locations where the expected maximum hourly NO₂ concentrations exist in a CBSA. We also solicit comment on the proposal to

allow Regional Administrators to require additional near-road NO₂ monitoring stations above the minimum required in situations where the minimum monitoring requirements are not sufficient to meet monitoring objectives as noted above.

The new near-road monitoring sites that are to be part of the NO₂ ambient monitoring network will require specific site selection criteria to focus monitoring efforts on one or a few major roads in a given CBSA. The EPA anticipates that these near-road monitoring sites will likely be best characterized as microscale, mobile source oriented sites. We propose that monitoring agencies be required to select their near-road monitoring site location(s) to characterize the largest traffic volume segment(s) in the CBSA, determined by ranking all road segments by AADT, and identifying a location or locations adjacent to those top ranked AADT segments where motor vehicle emission-derived NO₂ concentrations are expected to be at a maximum. Where a state or local air monitoring agency identifies multiple acceptable candidate sites where maximum hourly NO₂ concentrations are expected to occur, the monitoring agency should consider taking into account the potential for population exposure in the criteria utilized to select the final site location.

We propose that near-road NO₂ monitoring stations must be sited so that the NO₂ monitor probe is no greater than 50 meters away, horizontally, from the outside nearest edge of the traffic lanes of the target road segment, and shall have no obstructions in the fetch between the monitor probe and roadway traffic such as noise barriers or vegetation higher than the monitor probe height. Baldauf *et al.* (2009) indicate that the NO₂ probe would ideally be situated between 10 and 20 meters from the nearest traffic lane. We are not proposing that the near-road NO₂ monitor be on the predominantly downwind side of the target roadway, however, we solicit comment on whether this requirement is necessary to ensure near-road NO₂ sites capture maximum expected hourly concentrations.

We propose that the monitor probe be located within 2 to 7 meters above the ground, as is required for microscale PM_{2.5} sites. EPA recognizes that these near-road monitoring sites will be adjacent to a variety of road types, where some target roads will be on an even plane with the monitoring station, while others may be cut roads, (*i.e.*, below the plane of the monitoring station), or fill and open elevated roads,

(*i.e.*, where the road plane is above the monitoring station). In any given case, it is most appropriate to place the NO₂ monitor probe as close to the plane of the target road segment as possible, while staying between 2 to 7 meters above the ground. In addition, we propose that monitor probe placement on noise barriers or buildings, where the inlet probe height is no less than 2 meters and no more than 7 meters above the target road, will be acceptable, so long as the inlet probe is at least 1 meter vertically or horizontally away (in the direction of the target road) from any supporting wall or structure, and the subsequent residence time of the pollutant in the sample line between the inlet probe and the analyzer does not exceed 20 seconds. Although a wall-mounted or noise barrier-mounted near-road monitor set-up is not ideal, it may allow for existing sites to be utilized as near-road monitoring stations if they also meet the site selection criterion described below.

As noted above, we are proposing a siting criterion for NO₂ monitor probe placement to be no greater than 50 meters away from the outside nearest edge of the traffic lanes of the target road segment. Based on a review of the scientific literature, as discussed in Section II.A and the background portion of this section, locations on or immediately adjacent to roads typically exhibit the peak concentrations for mobile source pollutants, therefore monitor probe placement at increasing distances from a road will correspondingly decrease the potential for sampling maximum concentrations of NO₂. In addition, monitor probe placement within 50 meters of a target road allows for increased probability of reading elevated concentrations from the mobile source emissions even when wind conditions cause the near-road monitoring site to be upwind of the target road. Research literature indicates that in certain cases, mobile source derived pollutant concentrations, including NO₂, can be detected upwind of roads, above background levels, due to a phenomenon called upwind meandering. Kalthoff *et al.* (2007) indicates that mobile source derived pollutants can meander upwind on the order of tens of meters, mainly due to vehicle induced turbulence, while Beckerman *et al.* (2008) note that near-road pollutant concentrations on the predominantly upwind side of their study sites dropped off to near background levels within the first 50 meters, but were above background in this short and variable upwind range, which could be due to, at least in part,

vehicle induced turbulence. This upwind meandering characteristic of pollutants in the near-road environment provides an additional basis for locating near-road sites within 50 meters of target road segments because of the increased opportunity to monitor mobile source derived NO₂ concentrations that, although not peak concentrations, are still elevated above background levels, in meteorological conditions where the site is upwind of the target road.

We solicit comment on the proposed near-road NO₂ monitor siting criteria presented here, particularly: (1) The requirement for monitoring agencies to select near-road NO₂ monitor sites by ranking all road segments in a given CBSA by AADT, (2) selecting a site adjacent to a top ranked AADT road segment where motor vehicle emission-derived NO₂ concentrations are expected to be at a maximum, (3) the consideration of population exposure as a selection criterion in situations where a state or local air monitoring agency identifies multiple acceptable candidate sites where maximum hourly NO₂ concentrations are expected to occur, (4) the requirement for near-road NO₂ monitor probes to be no greater than 50 meters in the horizontal from the outside nearest edge of the traffic lanes of the target road segment, and (5) the requirement for monitor probes to be between 2 to 7 meters above the ground, and when located on a wall or supporting structure, that the inlet probe be at least 1 meter vertically or horizontally away from any supporting wall or structure.

We also solicit comment on an alternative approach that would allow state and local agencies greater discretion in selecting monitoring locations to fulfill minimum monitoring requirements for measurements of expected maximum NO₂ concentrations in each CBSA. In this alternative approach, an NO₂ monitor would still be required in locations of expected maximum NO₂ concentrations in CBSAs with a population greater than or equal to 350,000 persons. An additional monitor would be required in CBSAs with a population greater than or equal to 2,500,000, or in any CBSAs with one or more road segments with an AADT count greater than or equal to 250,000. Under this approach, states would not be specifically required to place monitors near roads, but would have flexibility to place monitors at locations of expected maximum concentrations. However, if a location or locations of expected maximum concentration were near roads in a CBSA, we would expect the NO₂ monitor to be placed near those

roads. Further, we solicit comment on alternative ways of considering population exposure, in concert with the identification of locations of maximum expected NO₂ concentrations, in determining where to place near-road NO₂ monitors. In suggesting an appropriate role for population exposure, we invite comment on how the suggested role would take into account the fact that NAAQS are designed to protect all of the public, including at-risk or sensitive sub-populations, which can include smaller sub-populations that may be exposed to higher concentrations. We also invite comment on how any suggested role would compare with EPA's historic practice of placing monitors at locations of maximum concentration at the appropriate spatial scale, reflecting consideration of the averaging time of the NAAQS.

In situations where open-path monitors are used at near-road NO₂ sites, we have not identified an appropriate path length for this microscale monitoring site. For the purpose of this proposal, we propose a path length range of 50 to 300 meters as an appropriate path length range for open-path near-road NO₂ monitors. The high end of this proposed range coincides with path lengths identified for other pollutants at the micro and middle-scales. We solicit comment on the appropriate path length for a near-road NO₂ open-path monitor.

During the near-road monitor site selection process, monitoring agencies may utilize forms of quantitative analysis, such as emissions and/or air quality modeling, data analysis, or saturation studies, to better evaluate which of their top ranked AADT road segments may exhibit the potential for creating the highest NO₂ concentrations that might be monitored in the CBSA. As an example, such an analysis might indicate that of the top ranked AADT road segments in a given area, those segments that are part of or adjacent to interchanges and toll plazas, that have higher ratios of heavy duty diesel traffic to light duty traffic, have a high fraction of rapidly accelerating or grade-climbing vehicles, or that are located in or near particular terrain or land features, may exhibit higher potential maximum NO₂ concentrations. In addition, top ranked AADT road segment analysis may allow the monitoring agencies to select a near-road monitoring site located in a more densely populated area or a location representing more vulnerable populations from a pool of otherwise similarly categorized site candidates. In CBSAs required to have two near-road monitoring sites, we propose that the

second site be selected based on AADT ranking and expected maximum concentration, but differentiated from the first site by factors such as: Fleet mix, congestion patterns, terrain, or geographic area within the CBSA, or at minimum, selecting a site along a different road with a different route, interstate, or freeway designation. This differentiation is to avoid having the two sites characterize the same traffic when there are potentially other road segments with different traffic characteristics available that meet siting criteria for the second near-road monitor. We solicit comment on the factors and methods to be used to differentiate a second required near-road NO₂ monitoring site from the first such site in a given CBSA.

In further support of characterizing the peak NO₂ concentrations occurring in the near-road environment, the EPA proposes to require three-dimensional anemometry, providing wind vector data in the horizontal and vertical planes, along with temperature and relative humidity measurements, at all required near-road monitoring sites. Due to the near-road NO₂ site being a somewhat specialized microscale site, we propose that the meteorological measurement hardware would be required to be situated at the same height as the NO₂ monitor probe, as opposed to a standardized height, to aid in characterizing what NO₂ analyzers are measuring from the target road segments. The requirement of three-dimensional anemometry is to allow for the determination of the standard deviation of vertical wind velocities (σ_w). Venkatram *et al.* (2007) notes that σ_w is a key meteorological factor in governing the dispersion of on road pollutant emissions. Therefore, the measurement of three dimensional wind would serve to inform when the near-road site is relatively upwind or downwind of the target road, provide a method to potentially identify the magnitude of vehicle induced turbulence, permit calculation of σ_w in the near-road environment to provide a better understanding of the mixing of mobile source pollutants at the monitoring site and how site characteristics influence mixing, and, with the inclusion of temperature and relative humidity, provide basic meteorological data. We solicit comment on the proposed requirement for three-dimensional anemometry, the placement of the meteorological equipment at the same height of the NO₂ monitor probe height, and the requirement for meteorological

measurements in general at all required near-road monitoring sites.

b. Area-Wide Monitoring at Neighborhood and Larger Spatial Scales

As the second tier of the NO₂ ambient monitoring network, we are proposing a minimum number of monitors to characterize that area with highest expected NO₂ concentrations at the neighborhood and larger (area-wide) spatial scales. We are proposing to require one area-wide monitoring site in each CBSA with a population greater than or equal to 1,000,000, to be sited to represent an area of maximum concentration at the neighborhood or larger spatial scales. This minimum monitoring requirement is expected to trigger 52 monitoring sites in as many CBSAs. Many of these monitors are likely already in place as part of the approximately 400 NO₂ monitoring sites that are currently operating across the country. Further, the EPA proposes to allow any current photochemical assessment monitoring station (PAMS) sites that are situated to address the highest NO₂ concentrations in an urban area and sited at neighborhood or urban scales to satisfy this proposed area-wide monitoring requirement. While in many cases it may be found that these area-wide monitors may show lower concentrations than the maximum concentration near-road NO₂ monitors, data from these larger spatially representative sites would provide information on area-wide exposures from an individual or a group of point, area, on-road and/or non-road mobile sources. These area-wide monitoring data may also, when coupled with the near-road monitoring data, assist in the determination of spatial variation of NO₂ concentrations across a given area, and assist in providing insight to the gradients that exist between local near-road or stationary source derived concentration maxima and the area-wide concentration levels.

The EPA recognizes that the minimum number of area-wide monitors required in this proposal may be less than the total number of NO₂ monitoring sites needed to satisfy the multiple monitoring objectives that neighborhood and larger scale sites can serve. These additional monitoring objectives include ambient photochemical pollutant assessment, aiding in ozone forecasting, aiding in PM precursor analysis and PM forecasting, and characterization of point and area sources that may be impacting certain communities. We propose that EPA Regional Administrators have the discretion to require additional area-wide NO₂

monitoring sites above the minimum monitoring requirements where the minimum monitoring requirements for area-wide monitors are not sufficient to meet monitoring objectives. For example, the Regional Administrator may require additional NO₂ monitors in certain communities, both inside and outside of CBSAs, which are affected by an individual or group of sources but are not required to have an NO₂ monitor as part of the minimum monitoring requirements. The Regional Administrator and the responsible State or local air monitoring agency should work together to design and/or maintain the most appropriate NO₂ network to service the variety of data needs for an area.

We solicit comment on the proposed minimum monitoring requirement of approximately 52 monitors to characterize areas with highest expected NO₂ concentrations at the area-wide (neighborhood and larger) spatial scales in CBSAs with populations of 1,000,000 or more persons. We also solicit comment on the proposal that the Regional Administrator can require additional monitoring sites on a case-by-case basis, to address situations where the minimum monitoring requirements for area-wide monitoring sites are not sufficient for an area.

3. Solicitation for Comment on an Alternative Network Design

In conjunction with the solicitation of comment on an alternative NAAQS that is discussed in Section II.F.4, the complementary network design would not reflect peak NO₂ concentrations anywhere in an area. Instead, the alternative network design would rely on monitors sited at the neighborhood and larger spatially representative scales, which is identical to the second component of the two-tiered network design being proposed except for having different population thresholds for minimum required monitoring. The currently operating NO₂ network would likely satisfy a portion of this alternative network design, however the entire network would need to be assessed before state or local agencies could make such determinations. State and local agencies would have to determine what each currently operating site is actually assessing to identify if any given site represents the highest concentrations for a given CBSA at the neighborhood and larger spatial scales. We solicit comment on an alternative network design where near-road monitors are not specifically included in the minimum monitoring requirements, and only monitors sited at the neighborhood and larger spatial

scales are required. In this alternative network design, minimum monitoring requirements would apply to CBSAs based on population thresholds, where one monitor would be required in CBSAs with populations of 350,000 or more persons and a second monitor would be required for CBSAs with populations of 1,000,000 or more persons. Based on 2007 U.S. Census Bureau statistics, we estimate that these population thresholds would require approximately 194 monitoring sites in 142 CBSAs. The first monitor required in any CBSA would be expected to be sited at the neighborhood or larger scale to characterize that area with highest expected NO₂ concentrations. Any second monitor required in a CBSA would be expected to characterize a separate area within the same CBSA, also with expected high NO₂ concentrations. All such monitor site locations are anticipated to be in areas of higher population densities of CBSAs and in, or adjacent to, urban cores. The alternative network design would allow the Regional Administrators to use their discretion to require monitoring above the minimum requirements to address community impacts from the variety of NO₂ emission sources. EPA expects that this network design will result in little or no progress being made in the development of long-term near-road monitoring capabilities due to the lack of specific network design requirements. EPA seeks comment on this alternative network design.

In addition to soliciting comment generally on this alternative area-wide monitoring approach, the Administrator specifically requests comment on the appropriate definition of area-wide NO₂ concentrations and how best to use data representing these concentrations to determine compliance with a 1-hour standard reflecting the alternative approach of selecting a level for maximum area-wide concentrations on which EPA is soliciting comment. Comparing NO₂ concentrations measured near major roadways to a level meant to reflect the maximum allowable NO₂ concentrations at neighborhood and larger spatially representative scales would have the effect of increasing the stringency of the standard beyond that intended. With regard to this specific request for comment, the Administrator notes that the definition of area-wide concentrations could include a provision requiring that they be monitored at a distance greater than or equal to some prescribed distance from the nearest roadway. The Administrator notes that, while it is clear that peak

roadway-associated NO₂ concentrations occur on or very near major roads, the point at which these concentrations return to area-wide concentrations comparable to the area-wide standard is less certain and may vary considerable by location. As discussed above (section II.A.2), the scientific literature suggests that concentrations can return to typical urban background concentrations within distances of up to 500 meters from roads, though the actual distance will vary with topography, roadside features, meteorology, and photochemical reactivity conditions. The REA notes that studies suggest the return to background concentrations can occur from within distances of up to 200 to 500 m from the roads. Therefore, the Administrator requests comment on the degree to which these distances (up to 200 m, and up to 500m) serve to further define the distance from major roads that would represent concentrations comparable to the alternative standard. Further, since roadways of various sizes and traffic volumes can affect nearby NO₂ concentrations and roadways are ubiquitous in urban areas, the Administrator notes that defining representative area-wide concentrations could require more than a uniform assumption of a single specific distance from a class of roadway. The Administrator notes that the approach to defining representative area-wide distances could include consideration of location-specific roadway traffic volume and location-specific roadway characteristics such as topography, presence of sound walls, vehicle mix, and traffic patterns, to adequately address the variability. Given these considerations, the Administrator solicits comment on how to define the minimum distance to the nearest major roadway such that measured concentrations at this distance (or farther) would represent area-wide NO₂ concentrations for comparison to the alternative standard.

C. Data Reporting

NO₂ chemiluminescence FRMs are continuous gas analyzers, producing updated data values on the order of every 20 seconds. Data values are typically aggregated into minute averages and then compiled into hourly averages for reporting purposes. State and local monitoring agencies are required to report hourly NO, NO₂, and NO_x data to AQS within 90 days of the end of each calendar quarter. Some agencies also voluntarily report their pre-validated data on an hourly basis to EPA's real time AIRNow data system, where the data may be used by air quality forecasters to assist in ozone

forecasting. The EPA believes these data reporting procedures are appropriate to support the current NO₂ NAAQS and any options being considered for a revised primary NO₂ NAAQS.

As a part of the larger data quality performance requirements of the ambient monitoring program, we are proposing to develop data quality objectives (DQOs) for the proposed NO₂ network. The DQOs are meant to identify measurement uncertainty for a given pollutant method. We propose a goal for acceptable measurement uncertainty for NO₂ methods to be defined for precision as an upper 90 percent confidence limit for the coefficient of variation (CV) of 15 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 15 percent. We solicit comment on the proposed goals for acceptable measurement uncertainty.

IV. Proposed Appendix S— Interpretation of the Primary NAAQS for Oxides of Nitrogen and Proposed Revisions to the Exceptional Events Rule

The EPA is proposing to add Appendix S, Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen, to 40 CFR part 50 in order to provide data handling procedures for the proposed NO₂ 1-hour primary standard and for the existing NO₂ annual primary standard. The proposed Appendix S would detail the computations necessary for determining when the proposed 1-hour and existing annual primary NO₂ NAAQS are met. The proposed Appendix S also would address data reporting, data completeness considerations, and rounding conventions.

Two versions of the proposed Appendix S are printed at the end of this notice. The first applies to an annual primary standard and a 1-hour primary standard based on the annual 4th high value form, while the second applies to an annual primary standard and a 1-hour primary standard based on the 99th percentile daily value form. The discussion here addresses the first of these versions, followed by a brief description of the differences found in the second version.

Both versions of the proposed Appendix S are based on a near-roadway approach to the setting the level of the 1-hour standard and to siting monitors. As such, these versions place no geographical restrictions on which monitoring sites' concentration data can and will be compared to the standard when making nonattainment determinations and other findings

related to attainment or violation of the standard. If the final rule adopts the area-wide approach on which section II.F.4.e of this notice invites comment, provisions would be added to section 2 of Appendix S to specify geographical criteria for determining which monitoring sites' data can and will be compared to the standard consistent with the area-wide approach as described in that section.

The EPA is proposing to amend and move the provisions of 40 CFR 50.11 related to data completeness for the existing annual primary standard to the new Appendix S, and to add provisions for the proposed 1-hour primary standard. Substantively, the proposed data handling procedures for the annual primary standard in Appendix S are the same as the existing provisions in 40 CFR 50.11 for that standard, except for a proposed addition of a cross-reference to the Exceptional Events Rule, a proposed addition of Administrator discretion to consider otherwise incomplete data complete, and a proposed provision addressing the possibility of there being multiple NO₂ monitors at one site. The proposed procedures for the 1-hour primary standard are entirely new.

The EPA is also proposing NO₂-specific changes to the deadlines, in 40 CFR 50.14, by which States must flag ambient air data that they believe have been affected by exceptional events and submit initial descriptions of those events, and the deadlines by which States must submit detailed justifications to support the exclusion of that data from EPA determinations of attainment or nonattainment with the NAAQS. The deadlines now contained in 40 CFR 50.14 are generic, and are not always appropriate for NO₂ given the anticipated schedule for the designations of areas under the proposed NO₂ NAAQS.

A. Background

The purpose of a data interpretation appendix in general is to provide the practical details on how to make a comparison between multi-day and possibly multi-monitor ambient air concentration data and the level of the NAAQS, so that determinations of compliance and violation are as objective as possible. Data interpretation guidelines also provide criteria for determining whether there are sufficient data to make a NAAQS level comparison at all.

The regulatory language for the current NO₂ NAAQS, originally adopted in 1977, contains data interpretation instructions only for the issue of data completeness. This situation contrasts

with the situations for ozone, PM_{2.5}, PM₁₀, and most recently Pb for which there are detailed data interpretation appendices in 40 CFR part 50 addressing more issues that can arise in comparing monitoring data to the NAAQS. EPA has used its experience drafting and applying these other data interpretation appendices to develop the proposed text for Appendix S.

An exceptional event is defined in 40 CFR 50.1 as an event that affects air quality, is not reasonably controllable or preventable, is an event caused by human activity that is unlikely to recur at a particular location or a natural event, and is determined by the Administrator in accordance with 40 CFR 50.14 to be an exceptional event. Air quality data that is determined to have been affected by an exceptional event under the procedural steps and substantive criteria specified in section 50.14 may be excluded from consideration when EPA makes a determination that an area is meeting or violating the associated NAAQS. The key procedural deadlines in section 50.14 are that a State must notify EPA that data have been affected by an event, *i.e.*, “flag” the data in the Air Quality Systems (AQS) database, and provide an initial description of the event by July 1 of the year after the data are collected, and that the State must submit the full justification for exclusion within 3 years after the quarter in which the data were collected. However, if a regulatory decision based on the data, for example a designation action, is anticipated, the schedule is foreshortened and all information must be submitted to EPA no later than a year before the decision is to be made. This generic schedule presents problems when a NAAQS has been recently revised, as discussed below.

The REA did not address data interpretation details. However, the approach to data interpretation used in the REA, for example to report the number of cities which would violate possible 1-hour primary NAAQS, was generally consistent with the proposed data interpretation procedures.

B. Interpretation of the Primary NAAQS for Oxides of Nitrogen

The purpose of a data interpretation rule for the NO₂ NAAQS is to give effect to the form, level, averaging time, and indicator specified in the proposed regulatory text at 40 CFR 50.11, anticipating and resolving in advance various future situations that could occur. The proposed Appendix S provides common definitions and requirements that apply to both the annual and the 1-hour primary

standards for NO₂. The common requirements concern how ambient data are to be reported, what ambient data are to be considered (including the issue of which of multiple monitors' data sets will be used when more than one monitor has operated at a site), and the applicability of the Exceptional Events Rule to the primary NO₂ NAAQS.

The proposed Appendix S also addresses several issues in ways which are specific to the individual primary NO₂ standards, as described below.

1. Annual Primary Standard

The proposed data interpretation provisions for the annual standard are consistent with the current instructions included along with the statement of the level and form of the standard in 40 CFR 53.11. These are the following: (1) At least 75% of the hours in the year must have reported concentration data. (2) The available hourly data are arithmetically averaged, and then rounded (not truncated) to whole parts per billion. (3) The design value is this rounded annual average concentration. (4) The design value is compared with the level of the annual primary standard (expressed in parts per billion).

It would be possible to introduce additional steps for the annual primary standard which in principle could make the design value a more reliable indicator of actual annual average concentration in cases where some monitoring data have been lost. For example, averaging within a calendar quarter first and then averaging across quarters could help compensate for uneven data capture across the year. For some aspects of the data interpretation procedures for some other pollutants, the current data interpretation appendices do contain such additional steps. The proposed provisions for the proposed 1-hour NO₂ standard (described immediately below) also incorporate some such features. However, we believe that such complexity is not needed to appropriately implement the annual primary standard, especially since no area presently comes close to violating the standard. EPA invites comment on whether the annual primary standard design value should be a weighted annual mean (*e.g.* averaging within calendar quarters before averaging across quarters), rather than the mean of all available hourly values.

2. 1-Hour Primary Standard Based on the Annual 4th High Value Form

With regard to data completeness for the proposed 1-hour primary standard, the proposed Appendix follows past EPA practice for other NAAQS

pollutants by requiring that in general at least 75% of the monitoring data that should have resulted from following the planned monitoring schedule in a period must be available for the key air quality statistic from that period to be considered valid. For the proposed 1-hour primary NO₂ NAAQS, the key air quality statistics are the daily maximum 1-hour concentrations in three successive years. It is important that sampling within a day encompass the period when concentrations are likely to be highest and that all seasons of the year are well represented. Hence, the 75% requirement is proposed to be applied at the daily and quarterly levels. EPA invites comment on the proposed completeness requirements.

Recognizing that there may be years with incomplete data, the proposed text provides that a design value derived from incomplete data will nevertheless be considered valid in either of two situations.

First, if the design value calculated from at least four days of monitoring observations in each of these years exceeds the level of the 1-hour primary standard, it would be valid. This situation could arise if monitoring was intermittent but high NO₂ levels were measured on enough hours and days for the mean of the three annual 4th values to exceed the standard. In this situation, more complete monitoring could not possibly have indicated that the standard was actually met.

Second, we are proposing a diagnostic data substitution test which is intended to identify those cases with incomplete data in which it nevertheless is very likely, if not virtually certain, that the daily 1-hour design value would have been observed to be below the level of the NAAQS if monitoring data had been minimally complete.

The diagnostic test would be applied only if there is at least 50% data capture in each quarter of each year and if the 3-year mean of the observed annual 4th highest maximum hourly values in the incomplete data is below the NAAQS level. The test would substitute a high hypothetical concentration for as much of the missing data as needed to meet the 100% requirement in each quarter. The value that is substituted for the missing values is the highest daily maximum 1-hour observed in the same quarter, looking across all three years under evaluation. If the resulting 3-year design value is below the NAAQS, it is highly likely that the design value calculated from complete data would also have been below the NAAQS, so the original design value indicating compliance would be considered valid.

It should be noted that one outcome of applying the proposed substitution test is that a year with incomplete data may nevertheless be determined to not have a valid design value and thus to be unusable in making 1-hour primary NAAQS compliance determinations for that 3-year period. EPA invites comment on incorporating into the final rule the proposed substitution test.

Also, we are proposing that the Administrator have general discretion to use incomplete data based on case-specific factors, either at the request of a state or at her own initiative. Similar provisions exist already for some other NAAQS.

3. 1-Hour Primary Standard Based on the Annual 99th Percentile Daily Value Form

The second version of the proposed Appendix S appearing at the end of this notice contains proposed interpretation procedures for a 1-hour primary standard based on the 99th percentile daily value form. The 4th high daily value form and the 99th percentile daily value form would yield the same design value in a situation in which every hour and day of the year has reported monitoring data, since the 99th percentile of 365 daily values is the 4th highest value. However, the two forms diverge if data completeness is 82% or less, because in that case the 99th percentile value is the 3rd highest (or higher) value, to compensate for the lack of monitoring data on days when concentrations could also have been high.

Logically, provisions to address possible data incompleteness under the 99th percentile daily value form should be somewhat different from those for the 4th highest form. With a 4th highest form, incompleteness should not invalidate a design value that exceeds the standard, for reasons explained above. With the 99th percentile form, however, a design value exceeding the standard stemming from incomplete data should not automatically be considered valid, because concentrations on the unmonitored days could have been relatively low, such that the actual 99th percentile value for the year could have been lower, and the design value could have been below the standard. The second proposed version of Appendix S accordingly has somewhat different provisions for dealing with data incompleteness. One difference is the addition of another diagnostic test based on data substitution, which in some cases can validate a design value based on incomplete data that exceeds the standard.

The second version of the proposed Appendix S provides a table for determining which day's maximum 1-hour concentration will be used as the 99th percentile concentration for the year. The proposed table is similar to one used now for the 24-hour PM_{2.5} NAAQS, which is based on a 98th percentile form, but adjusted to reflect a 99th percentile form for the 1-hour primary NO₂ standard. The proposed Appendix S also provides instructions for rounding (not truncating) the average of three annual 99th percentile hourly concentrations before comparison to the level of the primary NAAQS.

C. Exceptional Events Information Submission Schedule

The Exceptional Events Rule at 40 CFR 50.14 contains generic deadlines for a state to submit to EPA specified information about exceptional events and associated air pollutant concentration data. A state must initially notify EPA that data has been affected by an event by July 1 of the year after the data are collected; this is done by flagging the data in AQS and providing an initial event description. The state must also, after notice and opportunity for public comment, submit a demonstration to justify any claim within 3 years after the quarter in which the data were collected. However, if a regulatory decision based on the data (for example, a designation action) is anticipated, the schedule to flag data in AQS and submit complete documentation to EPA for review is foreshortened, and all information must be submitted to EPA no later than one year before the decision is to be made.

These generic deadlines are suitable for the period after initial designations have been made under a NAAQS, when the decision that may depend on data exclusion is a redesignation from attainment to nonattainment or from nonattainment to attainment. However, these deadlines present problems with respect to initial designations under a newly revised NAAQS. One problem is that some of the deadlines, especially the deadlines for flagging some relevant data, may have already passed by the time the revised NAAQS is promulgated. Until the level and form of the NAAQS have been promulgated a state does not know whether the criteria for excluding data (which are tied to the level and form of the NAAQS) were met on a given day. The only way a state could guard against this possibility is to flag all data that could possibly be eligible for exclusion under a future NAAQS. This could result in flagging far more data than will eventually be eligible for exclusion. EPA believes this

is an inefficient use of state and EPA resources, and is potentially confusing and misleading to the public and regulated entities. Another problem is that it may not be feasible for information on some exceptional events that may affect final designations to be collected and submitted to EPA at least one year in advance of the final designation decision. This could have the unintended consequence of EPA designating an area nonattainment as a result of uncontrollable natural or other qualified exceptional events.

When Section 50.14 was revised in March 2007, EPA was mindful that designations were needed under the recently revised PM_{2.5} NAAQS, so exceptions to the generic deadline were included for PM_{2.5}. The EPA was also mindful that similar issues would arise for subsequent new or revised NAAQS. The Exceptional Events Rule at section 50.14(c)(2)(v) indicates "when EPA sets a NAAQS for a new pollutant, or revises the NAAQS for an existing pollutant, it may revise or set a new schedule for flagging data for initial designation of areas for those NAAQS."

For the specific case of NO₂, EPA anticipates that initial designations under the revised NAAQS may be made by January 22, 2012 based on air quality data from the years 2008–2010. (See Section VI below for more detailed discussion of the designation schedule and what data EPA intends to use.) If final designations are made by January 22, 2012, all events to be considered during the designations process must be flagged and fully documented by states one year prior to designations, by January 22, 2011. This date also coincides with the Clean Air Act deadline for Governors to submit to EPA their recommendations for designating all areas of their states.

EPA is proposing revisions to 40 CFR 50.14 to change submission dates for information supporting claimed exceptional events affecting NO₂ data. The proposed rule text at the end of this notice shows the changes that would apply if a revised NO₂ NAAQS is promulgated by January 22, 2010, and designations are made two years after promulgation of a NO₂ NAAQS revision. For air quality data collected in 2008, we propose to extend the generic July 1, 2009 deadline for flagging data (and providing a brief initial description of the event) to July 1, 2010. EPA believes this extension provides adequate time for states to review the impact of exceptional events from 2008 on the revised standard and notify EPA by flagging the relevant data in AQS. EPA is not proposing to change the generic deadline of January 22, 2011 for

submitting documentation to justify an NO₂-related exceptional event from 2008. We believe the generic deadline provides adequate time for states to develop and submit proper documentation.

For data collected in 2009, EPA does not believe it is necessary to change the generic deadline of July 1, 2010 for flagging data and providing initial event descriptions. Similarly, EPA does not believe it is necessary to change the generic deadline of January 22, 2011 for states to submit documentation to justify an NO₂-related exceptional event from 2009.

For data collected in 2010, EPA believes the designations deadline of January 22, 2011 for flagging data and providing initial event descriptions does not provide states with adequate time to review and identify potential exceptional events that occur in calendar year 2010, especially events

that might occur late in the year. Therefore, EPA is proposing that states may flag and provide initial event descriptions for 2010 data no later than April 1, 2011. This affords states more than 2 additional months than would be provided under the generic schedule to review and identify exceptional events affecting 2010 NO₂ data. Similarly, EPA believes the designations schedule that would require states to submit detailed documentation to justify 2010 events claims by January 22, 2011 is not reasonable, because it would potentially preclude states from completing the required public review of the documentation prior to submitting to EPA. Therefore, EPA is proposing to extend this deadline to July 1, 2011. This would afford states more than 5 additional months than provided by the generic schedule to complete the required public review and submit full

supporting documentation, yet would still allow EPA adequate time to review the documentation and develop its final plans for designations by January 22, 2012.

Table 2 below summarizes the proposed two year designation deadlines discussed in this section. If the promulgation date for a revised NO₂ NAAQS will occur on a different date than January 22, 2010, EPA will revise the final NO₂ exceptional event flagging and documentation submission deadlines accordingly, consistent with this proposal, to provide states with reasonably adequate opportunity to review, identify, and document exceptional events that may affect an area designation under a revised NAAQS. EPA invites comment on these proposed changes in the exceptional event flagging and documentation submission deadlines.

TABLE 2—SCHEDULE FOR EXCEPTIONAL EVENT FLAGGING AND DOCUMENTATION SUBMISSION FOR DATA TO BE USED IN DESIGNATIONS DECISIONS FOR NEW OR REVISED NAAQS

NAAQS pollutant/standard/(level)/promulgation date	Air quality data collected for calendar year	Event flagging & initial description deadline	Detailed documentation submission deadline
PM _{2.5} /24-Hr Standard (35 µg/m ³) Promulgated October 17, 2006. Ozone/8-Hr Standard (0.075 ppm) Promulgated March 12, 2008.	2004–2006	October 1, 2007 ^a	April 15, 2008. ^a
	2005–2007	June 18, 2009 ^b	June 18, 2009. ^b
	2008	June 18, 2009 ^b	June 18, 2009. ^b
NO ₂ /1-Hour Standard (80–100 PPB, final level TBD).	2009	60 Days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first ^b .	60 Days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first. ^b
	2008	July 1, 2010 ^b	January 22, 2011.
	2009	July 1, 2010	January 22, 2011.
	2010	April 1, 2011 ^b	July 1, 2011. ^b

^a These dates are unchanged from those published in the original rulemaking, and are shown in this table for informational purposes.

^b Indicates change from general schedule in 40 CFR 50.14.

NOTE: EPA notes that the table of revised deadlines *only* applies to data EPA will use to establish the final initial designations for new or revised NAAQS. The general schedule applies for all other purposes, most notably, for data used by EPA for redesignations to attainment.

V. Clean Air Act Implementation Requirements

This section of the preamble discusses the Clean Air Act (CAA) requirements that states and emissions sources must address when implementing new or revised NO₂ NAAQS based on the structure outlined in the CAA and existing rules.²³ EPA may provide additional guidance in the future, as necessary, to assist states and emissions sources to comply with the CAA requirements for implementing new or revised NO₂ NAAQS.

The CAA assigns important roles to EPA, states, and, in specified circumstances, Tribal governments to achieve the NAAQS. States have the primary responsibility for developing and implementing State Implementation Plans (SIPs) that contain state measures necessary to achieve the air quality standards in each area. EPA provides assistance to states by providing technical tools, assistance, and guidance, including information on the potential control measures that may assist in helping areas attain the standards.

States are primarily responsible for ensuring attainment and maintenance of ambient air quality standards once they have been established by EPA. Under section 110 of the CAA, 42 U.S.C. 7410,

and related provisions, states are required to submit, for EPA approval, SIPs that provide for the attainment and maintenance of such standards through control programs directed at sources of NO₂ emissions. If a state fails to adopt and implement the required SIPs by the time periods provided in the CAA, the EPA has responsibility under the CAA to adopt a Federal Implementation Plan (FIP) to assure that areas attain the NAAQS in an expeditious manner.

The states, in conjunction with EPA, also administer the prevention of significant deterioration (PSD) program for NO₂. See sections 160–169 of the CAA. In addition, Federal programs provide for nationwide reductions in emissions of NO₂ and other air pollutants under Title II of the Act, 42

²³ Since EPA is proposing to retain the annual standard without revision, the discussion in this section relates to implementation of the proposed 1-hour standard, rather than the annual standard.

U.S.C. 7521–7574, which involves controls for automobiles, trucks, buses, motorcycles, nonroad engines, and aircraft emissions; the new source performance standards (NSPS) for stationary sources under section 111 of the CAA, 42 U.S.C. 7411; and the national emission standards for hazardous air pollutants for stationary sources under section 112 of the CAA, 42 U.S.C. 7412.

CAA Section 301(d) authorizes EPA to treat eligible Indian Tribes in the same manner as states (TAS) under the CAA and requires EPA to promulgate regulations specifying the provisions of the statute for which such treatment is appropriate. EPA has promulgated these regulations—known as the Tribal Authority Rule or TAR—at 40 CFR Part 49. See 63 FR 7254 (February 12, 1998). The TAR establishes the process for Indian Tribes to seek TAS eligibility and sets forth the CAA functions for which TAS will be available. Under the TAR, eligible Tribes may seek approval for all CAA and regulatory purposes other than a small number of functions enumerated at section 49.4. Implementation plans under section 110 are included within the scope of CAA functions for which eligible Tribes may obtain approval. Section 110(o) also specifically describes Tribal roles in submitting implementation plans. Eligible Indian Tribes may thus submit implementation plans covering their reservations and other areas under their jurisdiction.

Under the CAA and TAR, Tribes are not, however, required to apply for TAS or implement any CAA program. In promulgating the TAR EPA explicitly determined that it was not appropriate to treat Tribes similarly to states for purposes of, among other things, specific plan submittal and implementation deadlines for NAAQS-related requirements. 40 CFR 49.4(a). In addition, where Tribes do seek approval of CAA programs, including section 110 implementation plans, the TAR provides flexibility and allows them to submit partial program elements, so long as such elements are reasonably severable—*i.e.*, “not integrally related to program elements that are not included in the plan submittal, and are consistent with applicable statutory and regulatory requirements”. 40 CFR 49.7.

To date, very few Tribes have sought TAS for purposes of section 110 implementation plans. However, some Tribes may be interested in pursuing such plans to implement today’s proposed standard. As noted above, such Tribes may seek approval of partial, reasonably severable plan elements, or they may seek to implement all relevant components of

an air quality program for purposes of meeting the requirements of the Act. In several sections of this preamble, EPA describes the various roles and requirements states will address in implementing today’s proposed standard. Such references to states are generally intended to include eligible Indian Tribes to the extent consistent with the flexibility provided to Tribes under the TAR. Where Tribes do not seek TAS for section 110 implementation plans, EPA will promulgate Federal implementation plans as “necessary or appropriate to protect air quality.” 40 CFR 49.11(a)

EPA also notes that some Tribes operate air quality monitoring networks in their areas. For such monitors to be used to measure attainment with this primary NAAQS for NO₂, the criteria and procedures identified in this rule would apply.

A. Designations

After EPA establishes or revises a NAAQS, the CAA requires EPA and the states to begin taking steps to ensure that the new or revised NAAQS are met. The first step is to identify areas of the country that do not meet the new or revised NAAQS. The CAA defines EPA’s authority to designate areas that do not meet a new or revised NAAQS. Section 107(d)(1) provides that, “By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised NAAQS for any pollutant under section 109, the Governor of each state shall * * * submit to the Administrator a list of all areas (or portions thereof) in the state” that designates those areas as nonattainment, attainment, or unclassifiable. Section 107(d)(1)(B)(i) further provides, “Upon promulgation or revision of a NAAQS, the Administrator shall promulgate the designations of all areas (or portions thereof) * * * as expeditiously as practicable, but in no case later than 2 years from the date of promulgation. Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations. “The term “promulgation” has been interpreted by the courts to be signature and dissemination of a rule. By no later than 120 days prior to promulgating designations, EPA is required to notify states of any intended modifications to their boundaries as EPA may deem necessary. States then have an opportunity to comment on EPA’s tentative decision. Whether or not a state provides a recommendation, EPA must promulgate the designation that it deems appropriate.

Thus, following promulgation of the revised NO₂ NAAQS in January 2010, EPA must promulgate initial designations by January 2012 (2 years after promulgation of the revised NAAQS), or, by January 2013 in the event that the Administrator has insufficient information to promulgate initial designations within 2 years. In the case of the NO₂ NAAQS, in today’s action EPA is proposing new NO₂ monitor siting rules that focus on roadways. EPA anticipates that it will require up to 3 years to get a new monitoring network in place, plus an additional 3 years of monitoring thereafter in order to determine compliance with the revised standard. This means that a full set of air quality data from the new network will not be available until approximately 2016. Since data from the new network will not be available prior to the CAA designation deadlines even if EPA takes an additional year, EPA intends to complete initial designations in 2012 using air quality data from the current NO₂ monitoring network in place, using NO₂ monitoring data from the years 2008–2010.

Accordingly, Governors will be required to submit their initial designation recommendations to EPA no later than January 2011. If the Administrator intends to modify any state area recommendation, EPA will notify the Governor no later than 120 days prior to initial designations in January 2012. States that believe the Administrator’s modification is inappropriate will have an opportunity to demonstrate why they believe their recommendation is more appropriate before designations are promulgated in January 2012. As explained below in more detail, we intend to designate areas under the current NO₂ monitoring network as “unclassifiable” or “nonattainment” based on the data set for 2008–2010.

We intend to designate areas that do not show violations of the revised NO₂ NAAQS as “unclassifiable” since the existing area-wide monitoring network does not fully satisfy the near roadway-oriented NO₂ monitoring requirements proposed in this notice. Because there are no monitors in the current NO₂ network that meet the proposed definition of “near-roadway,” monitoring data that does not indicate a violation of the NAAQS would not provide a sufficient basis for concluding that an area is meeting the revised NO₂ NAAQS. Rather, an area-wide monitor may record concentrations that are below the revised NO₂ NAAQS because it is not sited where concentrations in the area are highest. Thus, we do not

believe the current monitoring network provides information that supports designating an area as “attainment” with today’s proposed standards.

The EPA anticipates that areas designated as “unclassifiable” in January 2012 will remain so until a new NO₂ monitoring network is deployed and 3 years of monitoring data have been collected. Once the NO₂ monitors are placed in locations meeting the proposed near-roadway siting requirements and monitoring data become available, the Agency could subsequently redesignate areas as “nonattainment” or “attainment” under section 107(d)(3).

In January 2012 we intend to designate as “nonattainment” areas that show violations of the revised standard under the current monitoring network. As discussed above, the current monitoring network may not record NO₂ concentrations near roadways where NO₂ concentrations are highest. We thus anticipate that any area showing violations of the revised NO₂ standard based on the current monitoring network will continue to show violations when monitors are placed in near-roadway locations.

In summary, as required by section 107(d)(1)(A)(i) of the CAA, in January 2012 the EPA must designate as “nonattainment” any areas with monitors within the existing network that report violations of the revised NO₂ NAAQS. All other areas not indicating a violation of the revised NO₂ NAAQS will be designated as “unclassifiable.” While the CAA provides the Agency an additional third year from promulgation of a NAAQS to complete designations in the event that there is insufficient information to make NAAQS compliance determinations, we anticipate that delaying designations for this additional year would not result in significant additional data that would allow EPA to designate areas that would otherwise be designated “unclassifiable.” Once a near-roadway network has been deployed and 3 years of air quality data has been collected, we anticipate redesignating unclassifiable areas as “attainment” or “nonattainment” where additional data from the new network provides a basis for such a designation.

EPA is also taking comment on the area-wide approach discussed in section II.F.4.e above. If this approach is finalized, we anticipate designating areas as either “attainment,” “nonattainment” or “unclassifiable” in 2012, based on air quality data for years 2008–2010. Unlike the near-roadway approach, we would expect to have sufficient data to designate some areas

showing no violations of the revised NAAQS as “attainment” rather than “unclassifiable.” As required by CAA section 107(d), we would expect to designate areas with violating monitors and nearby areas, including those with major roadways that contribute to such violations, as “nonattainment.” Any areas which EPA cannot classify on the basis of available information as meeting or not meeting the revised NAAQS would be designated as “unclassifiable.”

B. Classifications

Section 172(a)(1)(A) of the CAA authorizes EPA to classify areas designated as nonattainment for the purpose of applying an attainment date pursuant to section 172(a)(2), or for other reasons. In determining the appropriate classification, EPA may consider such factors as the severity of the nonattainment problem and the availability and feasibility of pollution control measures (see section 172(a)(1)(A) of the CAA). The EPA may classify NO₂ nonattainment areas, but is not required to do so. The primary reason to establish classifications is to set different deadlines for each class of nonattainment area to complete the planning process and to provide for different attainment dates based upon the severity of the nonattainment problem for the affected area. However, the CAA separately establishes specific planning and attainment deadlines in sections 191 and 192: 18 months for the submittal of an attainment plan and as expeditiously as possible but no later than 5 years for areas to attain standard. EPA believes that classifications are unnecessary in light of these relatively short deadlines. Therefore, EPA is not proposing to establish classifications for a revised NO₂ NAAQS.

C. Attainment Dates

The maximum deadline date by which an area is required to attain the NO₂ NAAQS is determined from the effective date of the nonattainment designation for the affected area. For areas designated nonattainment for the revised NO₂ NAAQS, SIPs must provide for attainment of the NAAQS as expeditiously as practicable, but no later than 5 years from the date of the nonattainment designation for the area (see section 192(a) of the CAA). The EPA will determine whether an area has demonstrated attainment of the NO₂ NAAQS by evaluating air quality monitoring data consistent with the form of the NO₂ NAAQS if revised, which will be codified at 40 CFR part 50, Appendix F.

1. Attaining the NAAQS

In order for an area to be redesignated as attainment, the state must comply with the five requirements as provided under section 107(d)(3)(E) of the CAA. This section requires that:

- EPA must have determined that the area has met the NO₂ NAAQS;
- EPA has fully approved the state’s implementation plan;
- the improvement in air quality in the affected area is due to permanent and enforceable reductions in emissions;
- EPA has fully approved a maintenance plan for the area; and
- The state(s) containing the area have met all applicable requirements under section 110 and part D.

2. Consequences of Failing To Attain by the Statutory Attainment Date

Any NO₂ nonattainment area that fails to attain by its statutory attainment date would be subject to the requirements of sections 179(c) and (d) of the CAA. EPA is required to make a finding of failure to attain no later than 6 months after the specified attainment date and publish a notice in the **Federal Register**. The state would be required to submit an implementation plan revision, no later than one year following the effective date of the **Federal Register** notice making the determination of the area’s failure to attain, which demonstrates that the standard will be attained as expeditiously as practicable, but no later than 5 years from the effective date of EPA’s finding that the area failed to attain. In addition, section 179(d)(2) provides that the SIP revision must include any specific additional measures as may be reasonably prescribed by EPA, including “all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any nonair quality and other air quality-related health and environmental impacts.”

D. Section 110(a)(2) NAAQS Infrastructure Requirements

Section 110(a)(2) of the CAA requires all states to develop and maintain a solid air quality management infrastructure, including enforceable emission limitations, an ambient monitoring program, an enforcement program, air quality modeling, and adequate personnel, resources, and legal authority. Section 110(a)(2)(D) also requires state plans to prohibit emissions from within the state which contribute significantly to nonattainment or maintenance areas in any other State, or which interfere with programs under part C to prevent

significant deterioration of air quality or to achieve reasonable progress toward the national visibility goal for Federal class I areas (national parks and wilderness areas).

Under section 110(a)(1) and (2) of the CAA, all states are required to submit SIPs to EPA which demonstrate that basic program elements have been addressed within 3 years of the promulgation of any new or revised NAAQS. Subsections (A) through (M) of section 110(a)(2) listed below, set forth the elements that a State's program must contain in the SIP.²⁴ The list of section 110(a)(2) NAAQS implementation requirements are the following:

- *Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to provide for setting up and operating ambient air quality monitors, collecting and analyzing data and making these data available to EPA upon request.
- *Program for enforcement of control measures:* Section 110(a)(2)(C) requires SIPs to include a program providing for enforcement of measures and regulation and permitting of new/modified sources.
- *Interstate transport:* Section 110(a)(2)(D) requires SIPs to include provisions prohibiting any source or other type of emissions activity in the state from contributing significantly to nonattainment in another state or from interfering with measures required to prevent significant deterioration of air quality or to protect visibility.
- *Adequate resources:* Section 110(a)(2)(E) requires states to provide assurances of adequate funding, personnel and legal authority for implementation of their SIPs.
- *Stationary source monitoring system:* Section 110(a)(2)(F) requires states to establish a system to monitor emissions from stationary sources and to submit periodic emissions reports to EPA.
- *Emergency power:* Section 110(a)(2)(G) requires states to include contingency plans, and adequate authority to implement them, for emergency episodes in their SIPs.
- *Provisions for SIP revision due to NAAQS changes or findings of inadequacies:* Section 110(a)(2)(H)

²⁴ Two elements identified in section 110(a)(2) are not listed below because, as EPA interprets the CAA, SIPs incorporating any necessary local nonattainment area controls would not be due within 3 years, but rather are due at the time the nonattainment area planning requirements are due. These elements are: (1) Emission limits and other control measures, section 110(a)(2)(A), and (2) Provisions for meeting part D, section 110(a)(2)(I), which requires areas designated as nonattainment to meet the applicable nonattainment planning requirements of part D, title I of the CAA.

requires states to provide for revisions of their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is inadequate.

- *Consultation with local and Federal government officials:* Section 110(a)(2)(J) requires states to meet applicable local and Federal government consultation requirements when developing SIP and reviewing preconstruction permits.
- *Public notification of NAAQS exceedances:* Section 110(a)(2)(J) requires states to adopt measures to notify the public of instances or areas in which a NAAQS is exceeded.
- *PSD and visibility protection:* Section 110(a)(2)(J) also requires states to adopt emissions limitations, and such other measures, as may be necessary to prevent significant deterioration of air quality in attainment areas and protect visibility in Federal Class I areas in accordance with the requirements of CAA Title I, part C.
- *Air quality modeling/data:* Section 110(a)(2)(K) requires that SIPs provide for performing air quality modeling for predicting effects on air quality of emissions of any NAAQS pollutant and submission of data to EPA upon request.
- *Permitting fees:* Section 110(a)(2)(L) requires the SIP to include requirements for each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.
- *Consultation/participation by affected local government:* Section 110(a)(2)(M) requires states to provide for consultation and participation by local political subdivisions affected by the SIP.

E. Attainment Planning Requirements

1. Nonattainment Area SIPs

Any state containing an area designated as nonattainment with respect to the NO₂ NAAQS must develop for submission a SIP meeting the requirements of part D, Title I, of the CAA, providing for attainment by the applicable statutory attainment date (*see* sections 191(a) and 192(a) of the CAA). As indicated in section 191(a) all components of the NO₂ part D SIP must be submitted within 18 months of the effective date of an area's designation as nonattainment.

Section 172 of the CAA includes general requirements for all designated nonattainment areas. Section 172(c)(1) requires that each nonattainment area plan "provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable (including such reductions

in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of Reasonably Available Control Technology (RACT)), and shall provide for attainment of the national primary ambient air quality standards." States are required to implement RACM and RACT in order to attain "as expeditiously as practicable".

Section 172(c) requires states with nonattainment areas to submit a SIP for these areas which contain an attainment demonstration which shows that the affected area will attain the standard by the applicable statutory attainment date. The State must also show that the area will attain the standards as expeditiously as practicable, and it must include an analysis of whether implementation of reasonably available measures will advance the attainment date for the area.

Part D SIPs must also provide for reasonable further progress (RFP) (*see* section 172(c)(2) of the CAA). The CAA defines RFP as "such annual incremental reductions in emissions of the relevant air pollution as are required by part D, or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date." (*See* section 171 of the CAA) Historically, for some pollutants, RFP has been met by showing annual incremental emission reductions sufficient to maintain generally linear progress toward attainment by the applicable attainment date.

All NO₂ nonattainment area SIPs must include contingency measures which must be implemented in the event that an area fails to meet RFP or fails to attain the standards by its attainment date. (*See* section 172(c)(9)) These contingency measures must be fully adopted rules or control measures that take effect without further action by the state or the Administrator. The EPA interprets this requirement to mean that the contingency measures must be implemented with only minimal further action by the state or the affected sources with no additional rulemaking actions such as public hearings or legislative review.

Emission inventories are also critical for the efforts of State, local, and Federal agencies to attain and maintain the NAAQS that EPA has established for criteria pollutants including NO₂. Section 191(a) in conjunction with section 172(c) requires that areas designated as nonattainment for NO₂ submit an emission inventory to EPA no later than 18 months after designation as nonattainment. In the case of NO₂, sections 191(a) and 172(c) also require that states submit periodic emission

inventories for nonattainment areas. The periodic inventory must include emissions of NO₂ for point, nonpoint, mobile (on-road and non-road), and area sources.

2. New Source Review and Prevention of Significant Deterioration Requirements

The Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) programs contained in parts C and D of Title I of the CAA govern preconstruction review of any new or modified major stationary sources of air pollutants regulated under the CAA as well as any precursors to the formation of that pollutant when identified for regulation by the Administrator.²⁵ The EPA rules addressing these programs can be found at 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, appendix S. States which have areas designated as nonattainment for the NO₂ NAAQS must submit, as a part of the SIP due 18 months after an area is designated as nonattainment, provisions requiring permits for the construction and operation of new or modified stationary sources anywhere in the nonattainment area. SIPs that address the PSD requirements related to attainment areas are due no later than 3 years after the promulgation of a revised NAAQS for NO₂.

The NSR program is composed of three different permit programs:

- Prevention of Significant Deterioration (PSD).
- Nonattainment NSR (NA NSR).
- Minor NSR.

The PSD program applies when a major source, that is located in an area that is designated as attainment or unclassifiable for any criteria pollutant, is constructed, or undergoes a major modification.²⁶ The nonattainment NSR program applies on a pollutant-specific basis when a major source constructs or modifies in an area that is designated as nonattainment for that pollutant. The minor NSR program addresses both major and minor sources that undergo construction or modification activities that do not qualify as major, and it applies, as necessary to ensure

²⁵ The terms "major" and "minor" define the size of a stationary source, for applicability purposes, in terms of an annual emissions rate (tons per year, tpy) for a pollutant. Generally, a minor source is any source that is not "major." "Major" is defined by the applicable regulations—PSD or nonattainment NSR.

²⁶ In addition, the PSD program applies to non-criteria pollutants subject to regulation under the Act, except those pollutants regulated under section 112 and pollutants subject to regulation only under section 211(o).

attainment, regardless of the designation of the area in which a source is located.

The PSD requirements include but are not limited to the following:

- Installation of Best Available Control Technology (BACT);
- Air quality monitoring and modeling analyses to ensure that a project's emissions will not cause or contribute to a violation of any NAAQS or maximum allowable pollutant increase (PSD increment);
- Notification of Federal Land Manager of nearby Class I areas; and
- Public comment on permit.

Nonattainment NSR requirements include but are not limited to:

- Installation of Lowest Achievable Emissions Rate (LAER) control technology;
- Offsetting new emissions with creditable emissions reductions;
- A certification that all major sources owned and operated in the state by the same owner are in compliance with all applicable requirements under the CAA;
- An alternative siting analysis demonstrating that the benefits of a proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification; and
- Public comment on the permit.

Minor NSR programs must meet the statutory requirements in section 110(a)(2)(C) of the CAA which requires " * * * regulation of the modification and construction of any stationary source * * * as necessary to ensure that the [NAAQS] are achieved." Areas which are newly designated as nonattainment for the NO₂ NAAQS as a result of any changes made to the NAAQS will be required to adopt a nonattainment NSR program to address major sources of NO₂ where the program does not currently exist for the NO₂ NAAQS and may need to amend their minor source program as well. Prior to adoption of the SIP revision addressing major source nonattainment NSR for NO₂ nonattainment areas, the requirements of 40 CFR part 51, appendix S will apply.

3. General Conformity

Section 176(c) of the CAA, as amended (42 U.S.C. 7401 *et seq.*), requires that all Federal actions conform to an applicable implementation plan developed pursuant to section 110 and part D of the CAA. The EPA rules, developed under the authority of section 176(c) of the CAA, prescribe the criteria and procedures for demonstrating and assuring conformity of Federal actions to a SIP. Each Federal agency must determine that any actions

covered by the general conformity rule conform to the applicable SIP before the action is taken. The criteria and procedures for conformity apply only in nonattainment areas and those areas redesignated attainment since 1990 ("maintenance areas") with respect to the criteria pollutants under the CAA:²⁷ Carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), particulate matter (PM_{2.5} and PM₁₀), and sulfur dioxide (SO₂). The general conformity rules apply one year following the effective date of designations for any new or revised NAAQS.

The general conformity determination examines the impacts of direct and indirect emissions related to Federal actions. The general conformity rule provides several options to satisfy air quality criteria, such as modeling or offsets, and requires the Federal action to also meet any applicable SIP requirements and emissions milestones. The general conformity rule also requires that notices of draft and final general conformity determinations be provided directly to air quality regulatory agencies and to the public by publication in a local newspaper.

4. Transportation Conformity

Transportation conformity is required under CAA section 176(c) (42 U.S.C. 7506(c)) to ensure that transportation plans, transportation improvement programs (TIPs) and Federally supported highway and transit projects will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS or interim reductions and milestones. Transportation conformity applies to areas that are designated nonattainment and maintenance for transportation-related criteria pollutants: carbon monoxide (CO), ozone (O₃), nitrogen dioxide (NO₂), and particulate matter (PM_{2.5} and PM₁₀). Transportation conformity for a revised NO₂ NAAQS does not apply until one year after the effective date of a nonattainment designation. (*See* CAA section 176(c)(6) and 40 CFR 93.102(d)).

EPA's Transportation Conformity Rule (40 CFR Part 51, Subpart T, and Part 93, Subpart A) establishes the criteria and procedures for determining whether transportation activities conform to the SIP. The EPA is not proposing changes to the Transportation Conformity rule in this proposed rulemaking. However, in the future, EPA will review the need to conduct a

²⁷ Criteria pollutants are those pollutants for which EPA has established a NAAQS under section 109 of the CAA.

rulemaking to establish any new or revised transportation conformity tests that would apply under a revision to the NO₂ NAAQS for transportation plans, TIPS, and applicable highway and transit projects.

VI. Communication of Public Health Information

Information on the public health implications of ambient concentrations of criteria pollutants is currently made available primarily through EPA's Air Quality Index (AQI) program. The current Air Quality Index has been in use since its inception in 1999 (64 FR 42530). It provides accurate, timely, and easily understandable information about daily levels of pollution (40 CFR 58.50). The AQI establishes a nationally uniform system of indexing pollution levels for NO₂, carbon monoxide, ozone, particulate matter and sulfur dioxide. The AQI converts pollutant concentrations in a community's air to a number on a scale from 0 to 500. Reported AQI values enable the public to know whether air pollution levels in a particular location are characterized as good (0–50), moderate (51–100), unhealthy for sensitive groups (101–150), unhealthy (151–200), very unhealthy (201–300), or hazardous (300–500). The AQI index value of 100 typically corresponds to the level of the short-term NAAQS for each pollutant. An AQI value greater than 100 means that a pollutant is in one of the unhealthy categories (*i.e.*, unhealthy for sensitive groups, unhealthy, very unhealthy, or hazardous) on a given day; an AQI value at or below 100 means that a pollutant concentration is in one of the satisfactory categories (*i.e.*, moderate or good). Decisions about the pollutant concentrations at which to set the various AQI breakpoints, that delineate the various AQI categories, draw directly from the underlying health information that supports the NAAQS review.

The Agency recognizes the importance of revising the AQI in a timely manner to be consistent with any revisions to the NAAQS. Therefore EPA proposes to finalize conforming changes to the AQI, in connection with the Agency's final decision on the NO₂ NAAQS if revisions to the primary standard are promulgated. Currently, no AQI breakpoints are identified below an AQI value of 200 since there is no short-term NO₂ NAAQS. Therefore, if a short-term NO₂ NAAQS is promulgated, conforming changes would include setting the 100 level of the AQI at the same level as the revised primary NO₂ NAAQS and also setting the other AQI breakpoints at the lower end of the AQI

scale (*i.e.*, AQI values of 50 and 150). EPA does not propose to change breakpoints at the higher end of the AQI scale (from 200 to 500), which would apply to state contingency plans or the Significant Harm Level (40 CFR 51.16), because the information from this review does not inform decisions about breakpoints at those higher levels.

With regard to an AQI value of 50, the breakpoint between the good and moderate categories, historically this value is set at the level of the annual NAAQS, if there is one, or one-half the level of the short-term NAAQS in the absence of an annual NAAQS (63 FR 67823, Dec. 12, 1998). Taking into consideration this practice, EPA is proposing to set the AQI value of 50 to be between 0.040 and 0.053 ppm NO₂, 1-hour average. EPA anticipates that figures towards the lower end of this range would be appropriate if the standard is set towards the lower end of the proposed range for the standard (*e.g.* 80 ppb), while figures towards the higher end of the range would be more appropriate for standards set at the higher end of the range for the standard (*e.g.*, 100 ppb). EPA solicits comments on this range for an AQI of 50, and the appropriate basis for selecting an AQI of 50 both within this range and, in light of EPA's solicitation of comment on standard levels below 80 ppb and above 100 ppb, above or below this range.

With regard to an AQI value of 150, the breakpoint between the unhealthy for sensitive groups and unhealthy categories, historically values between the short-term standard and an AQI value of 500 are set at levels that are approximately equidistant between the AQI values of 100 and 500 unless there is health evidence that suggests a specific level would be appropriate (63 FR 67829, Dec. 12, 1998). For an AQI value of 150, the range of 0.360 to 0.370 ppm NO₂, 1-hour average, represents the midpoint between the proposed range for the short-term standard and the level of an AQI value of 200 (0.64 ppm NO₂, 1-hour average). Therefore, EPA is proposing to set the AQI value of 150 to be between 0.360 and 0.370 ppm NO₂, 1-hour average.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is an "economically significant regulatory action" because it is likely to have an annual effect on the economy of \$100 million or more. Accordingly, EPA submitted this action

to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. In addition, EPA prepared a Regulatory Impact Analysis (RIA) of the potential costs and benefits associated with this action. However, the CAA and judicial decisions make clear that the economic and technical feasibility of attaining ambient standards are not to be considered in setting or revising NAAQS, although such factors may be considered in the development of State plans to implement the standards. Accordingly, although an RIA has been prepared, the results of the RIA have not been considered in developing this proposed rule.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA for these proposed revisions to part 58 has been assigned EPA ICR number 2358.01.

The information collected under 40 CFR part 53 (*e.g.*, test results, monitoring records, instruction manual, and other associated information) is needed to determine whether a candidate method intended for use in determining attainment of the National Ambient Air Quality Standards (NAAQS) in 40 CFR part 50 will meet the design, performance, and/or comparability requirements for designation as a Federal reference method (FRM) or Federal equivalent method (FEM). We do not expect the number of FRM or FEM determinations to increase over the number that is currently used to estimate burden associated with NO₂ FRM/FEM determinations provided in the current ICR for 40 CFR part 53 (EPA ICR numbers 2358.01). As such, no change in the burden estimate for 40 CFR part 53 has been made as part of this rulemaking.

The information collected and reported under 40 CFR part 58 is needed to determine compliance with the NAAQS, to characterize air quality and associated health impacts, to develop emissions control strategies, and to measure progress for the air pollution program. The proposed amendments would revise the technical requirements for NO₂ monitoring sites, require the siting and operation of additional NO₂ ambient air monitors, and the reporting of the collected ambient NO₂ monitoring

data to EPA's Air Quality System (AQS). The annual average reporting burden for the collection under 40 CFR part 58 (averaged over the first 3 years of this ICR) is \$3,616,487. Burden is defined at 5 CFR 1320.3(b). State, local, and Tribal entities are eligible for State assistance grants provided by the Federal government under the CAA which can be used for monitors and related activities.

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

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA-HQ-OAR-2006-0922. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 15, 2009, a comment to OMB is best assured of having its full effect if OMB receives it by August 14, 2009. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less

than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Rather, this rule establishes national standards for allowable concentrations of NO₂ in ambient air as required by section 109 of the CAA. *American Trucking Assn's v. EPA*, 175 F. 3d 1027, 1044-45 (D.C. cir. 1999) (NAAQS do not have significant impacts upon small entities because NAAQS themselves impose no regulations upon small entities). Similarly, the proposed amendments to 40 CFR part 58 address the requirements for States to collect information and report compliance with the NAAQS and will not impose any requirements on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Unless otherwise prohibited by law, under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is required under section 202, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small

governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This action is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The revisions to the NO₂ NAAQS impose no enforceable duty on any State, local or Tribal governments or the private sector. The expected costs associated with the monitoring requirements are described in EPA's ICR document, but those costs are not expected to exceed \$100 million in the aggregate for any year. Furthermore, as indicated previously, in setting a NAAQS, EPA cannot consider the economic or technological feasibility of attaining ambient air quality standards. Because the Clean Air Act prohibits EPA from considering the types of estimates and assessments described in section 202 when setting the NAAQS, the UMRA does not require EPA to prepare a written statement under section 202 for the revisions to the NO₂ NAAQS.

With regard to implementation guidance, the CAA imposes the obligation for States to submit SIPs to implement the NO₂ NAAQS. In this proposed rule, EPA is merely providing an interpretation of those requirements. However, even if this rule did establish an independent obligation for States to submit SIPs, it is questionable whether an obligation to submit a SIP revision would constitute a Federal mandate in any case. The obligation for a State to submit a SIP that arises out of section 110 and section 191 of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of 2 U.S.C. 658 for purposes of the UMRA. Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under 2 U.S.C. 658.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it imposes no enforceable duty on any small governments. Therefore, this rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule does not alter the relationship between the Federal government and the States regarding the establishment and implementation of air quality improvement programs as codified in the CAA. Under section 109 of the CAA, EPA is mandated to establish NAAQS; however, CAA section 116 preserves the rights of States to establish more stringent requirements if deemed necessary by a State. Furthermore, this rule does not impact CAA section 107 which establishes that the States have primary responsibility for implementation of the NAAQS. Finally, as noted in section E (above) on UMRA, this rule does not impose significant costs on State, local, or Tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this rule.

However, EPA recognizes that States will have a substantial interest in this rule and any corresponding revisions to associated air quality surveillance requirements, 40 CFR part 58. Therefore, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." This proposed rule does not have Tribal implications, as specified in Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Tribes. The rule does not alter the relationship between the Federal government and Tribes as established in the CAA and the TAR. Under section 109 of the CAA, EPA is mandated to establish NAAQS; however, this rule does not infringe existing Tribal authorities to regulate air quality under their own programs or under programs submitted to EPA for approval. Furthermore, this rule does not affect the flexibility afforded to Tribes in seeking to implement CAA programs consistent with the TAR, nor does it impose any new obligation on Tribes to adopt or implement any NAAQS. Finally, as noted in section E (above) on UMRA, this rule does not impose significant costs on Tribal governments. Thus, Executive Order 13175 does not apply to this rule. However, EPA recognizes that Tribes may be interested in this rule and any corresponding revisions to associated air quality surveillance requirements. Therefore, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribes, EPA specifically solicits additional comment on this proposed rule from Tribal officials.

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

This action is subject to Executive Order (62 FR 19885, April 23, 1997) because it is an economically significant regulatory action as defined by Executive Order 12866, and we believe that the environmental health risk addressed by this action has a disproportionate effect on children. The proposed rule will establish uniform national ambient air quality standards for NO₂; these standards are designed to protect public health with an adequate

margin of safety, as required by CAA section 109. The protection offered by these standards may be especially important for asthmatics, including asthmatic children, because respiratory effects in asthmatics are among the most sensitive health endpoints for NO₂ exposure. Because asthmatic children are considered a sensitive population, we have evaluated the potential health effects of exposure to NO₂ pollution among asthmatic children. These effects and the size of the population affected are discussed in chapters 3 and 4 of the ISA; chapters 3, 4, and 8 of the REA, and sections II.A through II.E of this preamble.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The purpose of this rule is to establish revised NAAQS for NO₂. The rule does not prescribe specific control strategies by which these ambient standards will be met. Such strategies will be developed by States on a case-by-case basis, and EPA cannot predict whether the control options selected by States will include regulations on energy suppliers, distributors, or users. Thus, EPA concludes that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards with regard to ambient monitoring of NO₂. The use of this voluntary consensus standard would be impractical because the

analysis method does not provide for the method detection limits necessary to adequately characterize ambient NO₂ concentrations for the purpose of determining compliance with the proposed revisions to the NO₂ NAAQS.

EPA welcomes comments on this aspect of the proposed rule, and specifically invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in the regulation.

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

Executive Order 12898 (59 FR 7629; Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health effects on any population, including any minority or low-income population. The proposed rule will establish uniform national standards for NO₂ in ambient air. EPA solicits comment on environmental justice issues related to the proposed revision of the NO₂ NAAQS.

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List of Subjects

40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

40 CFR Part 58

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 26, 2009.

Lisa P. Jackson,
Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 50—NATIONAL PRIMARY AMBIENT AIR QUALITY STANDARDS

1. The authority citation for part 50 continues to read as follows:

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

Subpart A—General Provisions

2. Section 50.11 is revised to read as follows:

§ 50.11 National primary and secondary ambient air quality standards for oxides of nitrogen (nitrogen dioxide).

(a) The level of the national primary annual ambient air quality standard for oxides of nitrogen is 53 parts per billion (ppb, which is 1 part in 1,000,000,000), annual average concentration, measured in the ambient air as nitrogen dioxide.

(b) The level of the national primary 1-hour ambient air quality standard for oxides of nitrogen is (80–100) ppb, 1-hour average concentration, measured in the ambient air as nitrogen dioxide.

(c) The level of the national secondary ambient air quality standard for nitrogen dioxide is 0.053 parts per million (100 micrograms per cubic meter), annual arithmetic mean concentration.

(d) The levels of the standards shall be measured by:

(1) A reference method based on appendix F to this part; or

(2) By a Federal equivalent method (FEM) designated in accordance with part 53 of this chapter.

(e) The annual primary standard is met when the annual average concentration in a calendar year is less than or equal to 53 ppb, as determined in accordance with Appendix S of this part for the annual standard.

(f) The 1-hour primary standard is met when the three-year average of the annual (99th percentile)(fourth highest) of the daily maximum 1-hour average concentration is less than or equal to (80–100) ppb, as determined in

accordance with Appendix S of this part for the 1-hour standard.

(g) The secondary standard is attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm must be rounded up). To demonstrate attainment, an annual mean must be based upon hourly data that are at least 75 percent complete or upon data derived from manual methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter.

3. Section 50.14 is amended by revising paragraph (c)(2)(vi) to read as follows:

§ 50.14 Treatment of air quality monitoring data influenced by exceptional events.

* * * * *

(c) * * *

(2) * * *

(vi) When EPA sets a NAAQS for a new pollutant or revises the NAAQS for an existing pollutant, it may revise or set a new schedule for flagging exceptional event data, providing initial data descriptions and providing detailed data documentation in AQS for the initial designations of areas for those NAAQS: Table 1 provides the schedule for submission of flags with initial descriptions in AQS and detailed documentation and the schedule shall apply for those data which will or may influence the initial designation of areas for those NAAQS. EPA anticipates revising Table 1 as necessary to accommodate revised data submission schedules for new or revised NAAQS.

TABLE 1—TO PARAGRAPH (C)(2)(VI): SCHEDULE FOR EXCEPTIONAL EVENT FLAGGING AND DOCUMENTATION SUBMISSION FOR DATA TO BE USED IN DESIGNATIONS DECISIONS FOR NEW OR REVISED NAAQS

NAAQS pollutant/standard/(level)/ promulgation date	Air quality data collected for calendar year	Event flagging & initial description deadline	Detailed documentation submission deadline
PM _{2.5} /24-Hr Standard (35µg/m ³) Promulgated October 17, 2006.	2004–2006	October 1, 2007 ^a	April 15, 2008. ^a
Ozone/8-Hr Standard (0.075 ppm) Promulgated March 12, 2008.	2005–2007	June 18, 2009 ^b	June 18, 2009. ^b
	2008 2009	June 18, 2009 ^b	June 18, 2009. ^b
NO ₂ /1-Hour Standard (80–100 ppb, final level TBD).	2008	60 Days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first. ^b	60 Days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first. ^b
	2009	July 1, 2010 ^b	January 22, 2011.
	2010	July 1, 2010	January 22, 2011.
		April 1, 2011 ^b	July 1, 2011. ^b

^a These dates are unchanged from those published in the original rulemaking, and are shown in this table for informational purposes.

^b Indicates change from general schedule in 40 CFR 50.14.

Note: EPA notes that the table of revised deadlines *only* applies to data EPA will use to establish the final initial designations for new or revised NAAQS. The general schedule applies for all other purposes, most notably, for data used by EPA for redesignations to attainment.

* * * * *

4. Appendix S is added to read as follows:

Option 1 for Appendix S to Part 50:

Appendix S to Part 50—Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide) (1-Hour Primary Standard Based on the 4th Highest Daily Maximum Value Form)

1. General

(a) This appendix explains the data handling conventions and computations necessary for determining when the primary national ambient air quality standards for oxides of nitrogen as measured by nitrogen dioxide (“NO₂ NAAQS”) specified in § 50.11 are met. Nitrogen dioxide (NO₂) is measured in the ambient air by a Federal reference method (FRM) based on appendix F to this part or by a Federal equivalent method (FEM) designated in accordance with part 53 of this chapter. Data handling and computation procedures to be used in making comparisons between reported NO₂ concentrations and the levels of the NO₂ NAAQS are specified in the following sections.

(b) Whether to exclude, retain, or make adjustments to the data affected by exceptional events, including natural events, is determined by the requirements and process deadlines specified in §§ 50.1, 50.14 and 51.930 of this chapter.

(c) The terms used in this appendix are defined as follows:

Annual mean refers to the annual average of all of the 1-hour concentration values as defined in section 5.1 of this appendix.

Daily maximum 1-hour values for NO₂ refers to the maximum 1-hour NO₂ concentration values measured from midnight to midnight (local standard time) that are used in NAAQS computations.

Design values are the metrics (*i.e.*, statistics) that are compared to the NAAQS levels to determine compliance, calculated as specified in section 5 of this appendix. The design values for the primary NAAQS are:

(1) The annual mean value for a monitoring site for one year (referred to as the “annual primary standard design value”).

(2) The 3-year average of annual 4th highest daily maximum 1-hour values for a monitoring site (referred to as the “1-hour primary standard design value”).

Annual 4th highest daily maximum 1-hour value refers to the 4th highest daily 1-hour maximum value at a site in a particular year.

Quarter refers to a calendar quarter.

Year refers to a calendar year.

2. Requirements for Data Used for Comparisons With the NO₂ NAAQS and Data Reporting Considerations

(a) All valid FRM/FEM NO₂ hourly data required to be submitted to EPA’s Air Quality System (AQS), or otherwise available to EPA, meeting the requirements of part 58 of this chapter including appendices A, C, and E shall be used in design value calculations. Multi-hour average concentration values

collected by wet chemistry methods shall not be used.

(b) When two or more NO₂ monitors are operated at a site, the state may in advance designate one of them as the primary monitor. If the state has not made this designation in advance, the Administrator will make the designation, either in advance or retrospectively. Design values will be developed using only the data from the primary monitor, if this results in a valid design value. If data from the primary monitor do not allow the development of a valid design value, data solely from the other monitor(s) will be used in turn to develop a valid design value, if this results in a valid design value. If there are three or more monitors, the order for such comparison of the other monitors will be determined by the Administrator. The Administrator may combine data from different monitors in different years for the purpose of developing a valid 1-hour primary standard design value, if a valid design value cannot be developed solely with the data from a single monitor. However, data from two or more monitors in the same year at the same site will not be combined in an attempt to meet data completeness requirements, except if one monitor has physically replaced another instrument permanently, in which case the two instruments will be considered to be the same monitor, or if the state has switched the designation of the primary monitor from one instrument to another during the year.

(c) Hourly NO₂ measurement data shall be reported to AQS in units of parts per billion (ppb), to at most one place after the decimal, with additional digits to the right being truncated with no further rounding.

3. Comparisons With the NO₂ NAAQS

3.1 The Annual Primary NO₂ NAAQS

(a) The annual primary NO₂ NAAQS is met at a site when the valid annual primary standard design value is less than or equal to 53 parts per billion (ppb).

(b) An annual primary standard design value is valid when at least 75 percent of the hours in the year are reported.

(c) An annual primary standard design value based on data that do not meet the completeness criteria stated in 3.1(b) may also be considered valid with the approval of, or at the initiative of, the Administrator, who may consider factors such as monitoring site closures/moves, monitoring diligence, the consistency and levels of the valid concentration measurements that are available, and nearby concentrations in determining whether to use such data.

(d) The procedures for calculating the annual primary standard design values are given in section 5.1 of this appendix.

3.2 The 1-Hour Primary NO₂ NAAQS

(a) The 1-hour primary NO₂ NAAQS is met at a site when the valid 1-hour primary standard design value is less than or equal to [80–100] parts per billion (ppb).

(b) An NO₂ 1-hour primary standard design value is valid if it encompasses three consecutive calendar years of complete data. A year meets data completeness requirements when all 4 quarters are complete. A quarter is complete when at least 75 percent of the

sampling days for each quarter have complete data. A sampling day has complete data if 75 percent of the hourly concentration values are reported.

(c) In the case of one, two, or three years that do not meet the completeness requirements of section 3.2(b) of this appendix and thus would normally not be useable for the calculation of a valid 3-year 1-hour primary standard design value, the 3-year 1-hour primary standard design value shall nevertheless be considered valid if either of the following conditions is true.

(i) If there are at least four days in each of the 3 years that have at least one reported hourly value, and the resulting 3-year 1-hour primary standard design value exceeds the 1-hour primary NAAQS. In this situation, more complete data capture could not possibly have resulted in a design value below the 1-hour primary NAAQS.

(ii)(A) A 1-hour primary standard design value that is below the level of the NAAQS can be validated if the substitution test in section 3.2(c)(ii)(B) results in a “test design value” that is below the level of the NAAQS. The test substitutes actual “high” reported daily maximum 1-hour values from the same site at about the same time of the year (specifically, in the calendar quarter) for unknown values that were not successfully measured. Note that the test is merely diagnostic in nature, intended to confirm that there is a very high likelihood that the original design value (the one with less than 75 percent data capture of hours by day and of days by quarter) reflects the true under-NAAQS-level status for that 3-year period; the result of this data substitution test (the “test design value,” as defined in section 3.2(c)(ii)(B)), is not considered the actual design value. For this test, substitution is permitted only if there are at least 200 days across the three matching quarters of the three years under consideration (which is about 75 percent of all possible daily values in those three quarters) for which 75 percent of the hours in the day have reported concentrations. However, maximum 1-hour values from days with less than 75 percent of the hours reported shall also be considered in identifying the high value to be used for substitution.

(B) *The substitution test is as follows:* Data substitution will be performed in all quarter periods that have less than 75 percent data capture but at least 50 percent data capture; if any quarter has less than 50 percent data capture then this substitution test cannot be used. Identify for each quarter (*e.g.*, January–March) the highest reported daily maximum 1-hour value for that quarter, looking across those three months of all three years under consideration. All daily maximum 1-hour values from all days in the quarter period shall be considered when identifying this highest value, including days with less than 75 percent data capture. If after substituting the highest reported daily maximum 1-hour value for a quarter for as much of the missing daily data in the matching deficient quarter(s) as is needed to make them 100 percent complete, the procedure in section 5.2 yields a recalculated 3-year 1-hour standard “test design value” below the level of the standard, then the 1-hour primary

standard design value is deemed to have passed the diagnostic test and is valid, and the level of the standard is deemed to have been met in that 3-year period. As noted in section 3.2(c)(i), in such a case, the 3-year design value based on the data actually reported, not the “test design value”, shall be used as the valid design value.

(d) A 1-hour primary standard design value based on data that do not meet the completeness criteria stated in section 3.2(b) and also do not satisfy section 3.2(c), may also be considered valid with the approval of, or at the initiative of, the Administrator, who may consider factors such as monitoring site closures/moves, monitoring diligence, the consistency and levels of the valid concentration measurements that are available, and nearby concentrations in determining whether to use such data.

(e) The procedures for calculating the 1-hour primary standard design values are given in section 5.2 of this appendix.

4. Rounding Conventions

4.1 Rounding Conventions for the Annual Primary NO₂ NAAQS

(a) Hourly NO₂ measurement data shall be reported to AQS in units of parts per billion (ppb), to at most one place after the decimal, with additional digits to the right being truncated with no further rounding.

(b) The annual primary standard design value is calculated pursuant to section 5.1 and then rounded to the nearest whole number or 1 ppb (decimals 0.5 and greater are rounded up to the nearest whole number, and any decimal lower than 0.5 is rounded down to the nearest whole number).

4.2 Rounding Conventions for the 1-Hour Primary NO₂ NAAQS

(a) Hourly NO₂ measurement data shall be reported to AQS in units of parts per billion (ppb), to at most one place after the decimal, with additional digits to the right being truncated with no further rounding.

(b) Daily maximum 1-hour values, including the annual 4th highest of those daily values, are not rounded.

(c) The 1-hour primary standard design value is calculated pursuant to section 5.2 and then rounded to the nearest whole number or 1 ppb (decimals 0.5 and greater are rounded up to the nearest whole number, and any decimal lower than 0.5 is rounded down to the nearest whole number).

5. Calculation Procedures for the Primary NO₂ NAAQS

5.1 Calculation Procedures for the Annual Primary NO₂ NAAQS

(a) When the data for a site and year meet the data completeness requirements in section 3.1(b) of this appendix, or if the Administrator exercises the discretionary authority in section 3.1(c), the annual mean is simply the arithmetic average of all of the reported 1-hour values.

(b) The annual primary standard design value for a site is the valid annual mean rounded according to the conventions in section 4.1.

5.2 Calculation Procedures for the 1-Hour Primary NO₂ NAAQS

(a) When the data for a particular site and year meet the data completeness requirements in section 3.2(b), or if one of the conditions of section 3.2(c) is met, or if the Administrator exercises the discretionary authority in section 3.2(d), calculation of the 4th highest daily 1-hour maximum is accomplished as follows.

(i) For each year, select from each day the highest hourly value. All daily maximum 1-hour values from all days in the quarter period shall be considered at this step, including days with less than 75 percent data capture.

(ii) For each year, order these daily values and take the 4th highest.

(iii) The 1-hour primary standard design value for a site is mean of the three annual 4th highest values, rounded according to the conventions in section 4.2.

Option 2 for Appendix S to Part 50:

Appendix S to Part 50—Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide) (1-Hour Primary Standard Based on the 99th Percentile Form)

1. General

(a) This appendix explains the data handling conventions and computations necessary for determining when the primary national ambient air quality standards for oxides of nitrogen as measured by nitrogen dioxide (“NO₂ NAAQS”) specified in § 50.11 are met. Nitrogen dioxide (NO₂) is measured in the ambient air by a Federal reference method (FRM) based on appendix F to this part or by a Federal equivalent method (FEM) designated in accordance with part 53 of this chapter. Data handling and computation procedures to be used in making comparisons between reported NO₂ concentrations and the levels of the NO₂ NAAQS are specified in the following sections.

(b) Whether to exclude, retain, or make adjustments to the data affected by exceptional events, including natural events, is determined by the requirements and process deadlines specified in §§ 50.1, 50.14 and 51.930 of this chapter.

(c) The terms used in this appendix are defined as follows:

Annual mean refers to the annual average of all of the 1-hour concentration values as defined in section 5.1 of this appendix.

Daily maximum 1-hour values for NO₂ refers to the maximum 1-hour NO₂ concentration values measured from midnight to midnight (local standard time) that are used in NAAQS computations.

Design values are the metrics (*i.e.*, statistics) that are compared to the NAAQS levels to determine compliance, calculated as specified in section 5 of this appendix. The design values for the primary NAAQS are:

(1) The annual mean value for a monitoring site for one year (referred to as the “annual primary standard design value”).

(2) The 3-year average of annual 99th percentile daily maximum 1-hour values for

a monitoring site (referred to as the “1-hour primary standard design value”).

99th percentile daily maximum 1-hour value is the value below which nominally 99 percent of all daily maximum 1-hour concentration values fall, using the ranking and selection method specified in section 5.2 of this appendix.

Quarter refers to a calendar quarter.

Year refers to a calendar year.

2. Requirements for Data Used for Comparisons With the NO₂ NAAQS and Data Reporting Considerations

(a) All valid FRM/FEM NO₂ hourly data required to be submitted to EPA’s Air Quality System (AQS), or otherwise available to EPA, meeting the requirements of part 58 of this chapter including appendices A, C, and E shall be used in design value calculations. Multi-hour average concentration values collected by wet chemistry methods shall not be used.

(b) When two or more NO₂ monitors are operated at a site, the state may in advance designate one of them as the primary monitor. If the state has not made this designation, the Administrator will make the designation, either in advance or retrospectively. Design values will be developed using only the data from the primary monitor, if this results in a valid design value. If data from the primary monitor do not allow the development of a valid design value, data solely from the other monitor(s) will be used in turn to develop a valid design value, if this results in a valid design value. If there are three or more monitors, the order for such comparison of the other monitors will be determined by the Administrator. The Administrator may combine data from different monitors in different years for the purpose of developing a valid 1-hour primary standard design value, if a valid design value cannot be developed solely with the data from a single monitor. However, data from two or more monitors in the same year at the same site will not be combined in an attempt to meet data completeness requirements, except if one monitor has physically replaced another instrument permanently, in which case the two instruments will be considered to be the same monitor, or if the state has switched the designation of the primary monitor from one instrument to another during the year.

(c) Hourly NO₂ measurement data shall be reported to AQS in units of parts per billion (ppb), to at most one place after the decimal, with additional digits to the right being truncated with no further rounding.

3. Comparisons With the NO₂ NAAQS

3.1 The Annual Primary NO₂ NAAQS

(a) The annual primary NO₂ NAAQS is met at a site when the valid annual primary standard design value is less than or equal to 53 parts per billion (ppb).

(b) An annual primary standard design value is valid when at least 75 percent of the hours in the year are reported.

(c) An annual primary standard design value based on data that do not meet the completeness criteria stated in section 3.1(b) may also be considered valid with the approval of, or at the initiative of, the

Administrator, who may consider factors such as monitoring site closures/moves, monitoring diligence, the consistency and levels of the valid concentration measurements that are available, and nearby concentrations in determining whether to use such data.

(d) The procedures for calculating the annual primary standard design values are given in section 5.1 of this appendix.

3.2 The 1-Hour Primary NO₂ NAAQS

(a) The 1-hour primary NO₂ NAAQS is met at a site when the valid 1-hour primary standard design value is less than or equal to [80–100] parts per billion (ppb).

(b) An NO₂ 1-hour primary standard design value is valid if it encompasses three consecutive calendar years of complete data. A year meets data completeness requirements when all 4 quarters are complete. A quarter is complete when at least 75 percent of the sampling days for each quarter have complete data. A sampling day has complete data if 75 percent of the hourly concentration values are reported.

(c) In the case of one, two, or three years that do not meet the completeness requirements of section 3.2(b) of this appendix and thus would normally not be useable for the calculation of a valid 3-year 1-hour primary standard design value, the 3-year 1-hour primary standard design value shall nevertheless be considered valid if one of the following conditions is true.

(i) At least 75 percent of the days in each quarter of each of three consecutive years have at least one reported hourly value, and the design value calculated according to the procedures specified in section 5.2 is above the level of the primary 1-hour standard.

(ii)(A) A 1-hour primary standard design value that is below the level of the NAAQS can be validated if the substitution test in section 3.2(c)(ii)(B) results in a “test design value” that is below the level of the NAAQS. The test substitutes actual “high” reported daily maximum 1-hour values from the same site at about the same time of the year (specifically, in the same calendar quarter) for unknown values that were not successfully measured. Note that the test is merely diagnostic in nature, intended to confirm that there is a very high likelihood that the original design value (the one with less than 75 percent data capture of hours by day and of days by quarter) reflects the true under-NAAQS-level status for that 3-year period; the result of this data substitution test (the “test design value”, as defined in section 3.2(c)(ii)(B)) is not considered the actual design value. For this test, substitution is permitted only if there are at least 200 days across the three matching quarters of the three years under consideration (which is about 75 percent of all possible daily values in those three quarters) for which 75 percent of the hours in the day have reported concentrations. However, maximum 1-hour values from days with less than 75 percent of the hours reported shall also be considered in identifying the high value to be used for substitution.

(B) *The substitution test is as follows:* Data substitution will be performed in all quarter periods that have less than 75 percent data

capture but at least 50 percent data capture; if any quarter has less than 50 percent data capture then this substitution test cannot be used. Identify for each quarter (e.g., January–March) the highest reported daily maximum 1-hour value for that quarter, looking across those three months of all three years under consideration. All daily maximum 1-hour values from all days in the quarter period shall be considered when identifying this highest value, including days with less than 75 percent data capture. If after substituting the highest reported daily maximum 1-hour value for a quarter for as much of the missing daily data in the matching deficient quarter(s) as is needed to make them 100 percent complete, the procedure in section 5.2 yields a recalculated 3-year 1-hour standard “test design value” below the level of the standard, then the 1-hour primary standard design value is deemed to have passed the diagnostic test and is valid, and the level of the standard is deemed to have been met in that 3-year period. As noted in section 3.2(c)(i), in such a case, the 3-year design value based on the data actually reported, not the “test design value”, shall be used as the valid design value.

(iii)(A) A 1-hour primary standard design value that is above the level of the NAAQS can be validated if the substitution test in section 3.2(c)(iii)(B) results in a “test design value” that is above the level of the NAAQS. The test substitutes actual “low” reported daily maximum 1-hour values from the same site at about the same time of the year (specifically, in the same three months of the calendar) for unknown values that were not successfully measured. Note that the test is merely diagnostic in nature, intended to confirm that there is a very high likelihood that the original design value (the one with less than 75 percent data capture of hours by day and of days by quarter) reflects the true above-NAAQS-level status for that 3-year period; the result of this data substitution test (the “test design value,” as defined in section 3.2(c)(iii)(B)) is not considered the actual design value. For this test, substitution is permitted only if there are a minimum number of available daily data points from which to identify the low quarter-specific daily maximum 1-hour values, specifically if there are at least 200 days across the three matching quarters of the three years under consideration (which is about 75 percent of all possible daily values in those three quarters) for which 75 percent of the hours in the day have reported concentrations. Only days with at least 75 percent of the hours reported shall be considered in identifying the low value to be used for substitution.

(B) *The substitution test is as follows:* Data substitution will be performed in all quarter periods that have less than 75 percent data capture. Identify for each quarter (e.g., January–March) the lowest reported daily maximum 1-hour value for that quarter, looking across those three months of all three years under consideration. All daily maximum 1-hour values from all days with at least 75 percent capture in the quarter period shall be considered when identifying this lowest value. If after substituting the lowest reported daily maximum 1-hour value

for a quarter for as much of the missing daily data in the matching deficient quarter(s) as is needed to make them 75 percent complete, the procedure in section 5.2 yields a recalculated 3-year 1-hour standard “test design value” above the level of the standard, then the 1-hour primary standard design value is deemed to have passed the diagnostic test and is valid, and the level of the standard is deemed to have been exceeded in that 3-year period. As noted in section 3.2(c)(i), in such a case, the 3-year design value based on the data actually reported, not the “test design value”, shall be used as the valid design value.

(d) A 1-hour primary standard design value based on data that do not meet the completeness criteria stated in 3.2(b) and also do not satisfy section 3.2(c), may also be considered valid with the approval of, or at the initiative of, the Administrator, who may consider factors such as monitoring site closures/moves, monitoring diligence, the consistency and levels of the valid concentration measurements that are available, and nearby concentrations in determining whether to use such data.

(e) The procedures for calculating the 1-hour primary standard design values are given in section 5.2 of this appendix.

4. Rounding Conventions

4.1 Rounding Conventions for the Annual Primary NO₂ NAAQS

(a) Hourly NO₂ measurement data shall be reported to AQS in units of parts per billion (ppb), to at most one place after the decimal, with additional digits to the right being truncated with no further rounding.

(b) The annual primary standard design value is calculated pursuant to section 5.1 and then rounded to the nearest whole number or 1 ppb (decimals 0.5 and greater are rounded up to the nearest whole number, and any decimal lower than 0.5 is rounded down to the nearest whole number).

4.2 Rounding Conventions for the 1-Hour Primary NO₂ NAAQS

(a) Hourly NO₂ measurement data shall be reported to AQS in units of parts per billion (ppb), to at most one place after the decimal, with additional digits to the right being truncated with no further rounding.

(b) Daily maximum 1-hour values and therefore the annual 4th highest of those daily values are not rounded.

(c) The 1-hour primary standard design value is calculated pursuant to section 5.2 and then rounded to the nearest whole number or 1 ppb (decimals 0.5 and greater are rounded up to the nearest whole number, and any decimal lower than 0.5 is rounded down to the nearest whole number).

5. Calculation Procedures for the Primary NO₂ NAAQS

5.1 Procedures for the Annual Primary NO₂ NAAQS

(a) When the data for a site and year meet the data completeness requirements in section 3.1(b) of this appendix, or if the Administrator exercises the discretionary authority in section 3.1(c), the annual mean is simply the arithmetic average of all of the reported 1-hour values.

(b) The annual primary standard design value for a site is the valid annual mean rounded according to the conventions in section 4.1.

5.2 Calculation Procedures for the 1-Hour Primary NO₂ NAAQS

(a) *Procedure for identifying annual 99th percentile values.* When the data for a particular site and year meet the data completeness requirements in section 3.2(b), or if one of the conditions of section 3.2(c) is met, or if the Administrator exercises the discretionary authority in section 3.2(d), identification of annual 99th percentile values will be based on the number of days with at least 75 percent of the hourly values reported.

(i) For the year, from only the days with at least 75 percent of the hourly values reported, select from each day the highest hourly value.

(ii) Sort all the valid daily values from a particular site and year by descending value. (For example: {x[1], x[2], x[3], * * *, x[n]}). In this case, x[1] is the largest number and x[n] is the smallest value.) The 99th percentile is determined from this sorted series of daily values which is ordered from the highest to the lowest number. Using the left column of Table 1, determine the appropriate range (i.e., row) for the annual number of days with valid data for year y (cn_y). The corresponding “n” value in the right column identifies the rank of the annual 99th percentile value in the descending sorted list of daily site values for year y. Thus, P_{0.99, y} = the nth largest value.

TABLE 1—TO SECTION 5.2(A)(II)

Annual number of days with valid data for year “y” (cn _y)	P _{0.99, y} is the nth maximum value of the year, where n is the listed number
1–100	1
101–200	2
201–300	3
301–366	4

(b) The 1-hour primary standard design value for a site is mean of the three annual 4th highest values, rounded according to the conventions in section 4.2.

PART 58—AMBIENT AIR QUALITY SURVEILLANCE

5. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7403, 7410, 7601(a), 7611, and 7619.

Subpart A [AMENDED]

6. Section 58.1 is amended by adding definitions for “AADP” and “Near-road NO₂ Monitor” in alphabetical order to read as follows:

§ 58.1 Definitions.

* * * * *

AADT means the annual average daily traffic.

* * * * *

Near-road NO₂ Monitor means any NO₂ monitor meeting the specifications in 4.3.2 of Appendix D and paragraphs 2, 4(b), 6.1, and 6.4 of Appendix E of this part.

* * * * *

Subpart B [AMENDED]

7. Section 58.10, is amended by adding paragraphs (a)(5) and (b)(12) to read as follows:

§ 58.10 Annual monitoring network plan and periodic network assessment.

(a) * * *

(5) A plan for establishing NO₂ monitoring sites in accordance with the requirements of appendix D to this part shall be submitted to the Administrator by July 1, 2011. The plan shall provide for all required stations to be operational by January 1, 2013.

* * * * *

(b) * * *

(12) The identification of required NO₂ monitors as either near-road or area-wide sites in accordance with Appendix D, Section 4.3 of this part.

* * * * *

8. Section 58.13 is amended by adding paragraph (c) to read as follows:

§ 58.13 Monitoring network completion.

* * * * *

(c) The network of NO₂ monitors must be physically established no later than January 1, 2013, and at that time, must be operating under all of the requirements of this part, including the requirements of appendices A, C, D, E, and G to this part.

9. Section 58.16 is amended by revising paragraph (a) to read as follows:

§ 58.16 Data submittal and archiving requirements.

(a) The State, or where appropriate, local agency, shall report to the Administrator, via AQS all ambient air quality data and associated quality assurance data for SO₂; CO; O₃; NO₂; NO; NO_y; NO_x; Pb-TSP mass concentration; Pb-PM₁₀ mass concentration; PM₁₀ mass concentration; PM_{2.5} mass concentration; for filter-based PM_{2.5}FRM/FEM the field blank mass, sampler-generated average daily temperature, and sampler-generated average daily pressure; chemically speciated PM_{2.5} mass concentration data; PM_{10-2.5} mass concentration; chemically speciated PM_{10-2.5} mass concentration data; meteorological data from NCore, PAMS, and near-road NO₂ monitoring sites; average daily

temperature and average daily pressure for Pb sites if not already reported from sampler generated records; and metadata records and information specified by the AQS Data Coding Manual (<http://www.epa.gov/ttn/airs/airsaqs/manuals/manuals.htm>). The State, or where appropriate, local agency, may report site specific meteorological measurements generated by onsite equipment (meteorological instruments, or sampler generated) or measurements from the nearest airport reporting ambient pressure and temperature. Such air quality data and information must be submitted directly to the AQS via electronic transmission on the specified quarterly schedule described in paragraph (b) of this section.

* * * * *

10. Appendix A to Part 58 is amended as by adding section 2.3.1.5 to read as follows:

Appendix A to Part 58—Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring

* * * * *

2.3.1.5 Measurement Uncertainty for NO₂. The goal for acceptable measurement uncertainty is defined for precision as an upper 90 percent confidence limit for the coefficient of variation (CV) of 15 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 15 percent.

* * * * *

11. Appendix C to Part 58 is amended as by adding section 2.1.1 to read as follows:

Appendix C to Part 58—Ambient Air Quality Monitoring Methodology

* * * * *

2.1.1 Any NO₂ FRM or FEM used for making primary NAAQS decisions must be capable of providing hourly averaged concentration data.

* * * * *

12. Appendix D to Part 58 is amended by revising section 4.3 to read as follows:

Appendix D to Part 58—Network Design Criteria for Ambient Air Quality Monitoring

* * * * *

4.3 Nitrogen Dioxide (NO₂) Design Criteria

4.3.1 *General Requirements.* (a) State and, where appropriate, local agencies must operate a minimum number of required NO₂ monitoring sites as described below.

4.3.2 *Requirement for Near-road NO₂ Monitors.* (a) Within the NO₂ network, there must be one microscale near-road NO₂ monitoring station in each CBSA with a population of 350,000 or more persons to monitor a location of expected maximum hourly concentrations sited near a major road with high AADT counts as specified in

paragraph 4.3.2(a)(1) of this appendix. An additional near-road NO₂ monitoring station is required for any CBSA with a population of 2,500,000 persons or more, or in any CBSA with a population of 350,000 or more persons that has one or more roadway segments with 250,000 or greater AADT counts to monitor a second location of expected maximum hourly concentrations. CBSA populations shall be based on the latest available census figures.

(1) The near-road NO₂ monitoring stations shall be selected by ranking all road segments within a CBSA by AADT and then identifying a location or locations adjacent to those highest ranked road segments where maximum hourly NO₂ concentrations are expected to be highest and siting criteria can be met in accordance with appendix E of this part. Where a state or local air monitoring agency identifies multiple acceptable candidate sites where maximum hourly NO₂ concentrations are expected to occur, the monitoring agency should consider taking into account the potential for population exposure in the criteria utilized to select the final site location. Where one CBSA is required to have two near-road NO₂ monitoring stations, the sites shall be differentiated from each other by one or more of the following factors: fleet mix; congestion patterns; terrain; geographic area within the CBSA; or different route, interstate, or freeway designation.

(b) Measurements at required near-road NO₂ monitor sites must include at a minimum: NO, NO₂, NO_x, wind vector data in the horizontal and vertical planes, ambient temperature, and ambient relative humidity.

4.3.3 Requirement for Area-wide NO₂ Monitoring. (a) Within the NO₂ network, there must be one monitoring station in each CBSA with a population of 1,000,000 or more persons to monitor a location of expected highest NO₂ concentrations representing the neighborhood or larger spatial scales. PAMS sites collecting NO₂ data that are situated in an area of expected high NO₂ concentrations at the neighborhood or larger spatial scale may be used to satisfy this minimum monitoring requirement when the NO₂ monitor is operated year round. Emission inventories and meteorological analysis should be used to identify the appropriate locations within a CBSA for locating required area-wide NO₂ monitoring stations. CBSA populations shall be based on the latest available census figures.

4.3.4 Regional Administrator Required Monitoring. (a) The Regional Administrator may require additional NO₂ monitoring stations above the minimum requirements to monitor in locations away from roads, or sites that do not meet near-road NO₂ monitor siting criteria noted in appendix E of this part, where required near-road monitors do not represent a location or locations where the expected maximum hourly NO₂ concentrations exist in a CBSA. The Regional Administrator may also require additional near-road NO₂ monitoring stations above the minimum required in situations where the minimum monitoring requirements are not sufficient to meet monitoring objectives, and may consider additional locations of expected high NO₂ concentrations and the

variety of exposure potential due to increased variety in amount or types of fleet mix, congestion patterns, terrain, or geographic areas within a CBSA. The Regional Administrator and the responsible State or local air monitoring agency should work together to design and/or maintain the most appropriate NO₂ network to service the variety of data needs for an area.

(b) The Regional Administrator may require additional NO₂ monitoring stations for area-wide NO₂ monitors at the neighborhood and larger spatial scales above the minimum monitoring requirements where the minimum monitoring requirements are not sufficient to meet monitoring objectives for an area, such as supporting photochemical pollutant assessment, air quality forecasting, PM precursor analysis, and characterizing impacts of NO₂ sources on certain communities. The Regional Administrator and the responsible State or local air monitoring agency should work together to design and/or maintain the most appropriate NO₂ network to service the variety of data needs for an area.

4.3.5 NO₂ Monitoring Spatial Scales. (a) The most important spatial scale for near-road NO₂ monitoring stations to effectively characterize the maximum expected hourly NO₂ concentration due to mobile source emissions on major roadways is the microscale. The most important spatial scales for other monitoring stations characterizing maximum expected hourly NO₂ concentrations are the microscale and middle scale. The most important spatial scale for area-wide monitoring of high NO₂ concentrations is the neighborhood scale.

(1) *Microscale*—This scale would typify areas in close proximity to major roadways or point and area sources. Emissions from roadways result in high ground level NO₂ concentrations at the microscale, where concentration gradients generally exhibit a marked decrease with increasing downwind distance from major roads. As noted in appendix E of this part, near-road NO₂ monitoring stations are required to be within 50 meters of target road segments in order to measure expected peak concentrations. Emissions from stationary point and area sources, and non-road sources may, under certain plume conditions, result in high ground level concentrations at the microscale. The microscale typically represents an area impacted by the plume with dimensions extending up to approximately 100 meters.

(2) *Middle scale*—This scale generally represents air quality levels in areas up to several city blocks in size with dimensions on the order of approximately 100 meters to 500 meters. The middle scale may include locations of expected maximum hourly concentrations due to proximity to major NO₂ point, area, and/or non-road sources.

(3) *Neighborhood scale*—The neighborhood scale would characterize air quality conditions throughout some relatively uniform land use areas with dimensions in the 0.5 to 4.0 kilometer range. Emissions from stationary point and area sources may, under certain plume conditions, result in high NO₂ concentrations

at the neighborhood scale. Where a neighborhood site is located away from immediate NO₂ sources, the site may be useful in representing typical air quality values for a larger residential area, and therefore suitable for population exposure and trends analyses.

(4) *Urban scale*—Measurements in this scale would be used to estimate concentrations over large portions of an urban area with dimensions from 4 to 50 kilometers. Such measurements would be useful for assessing trends in area-wide air quality, and hence, the effectiveness of large-scale air pollution control strategies. Urban scale sites may also support other monitoring objectives of the NO₂ monitoring network identified in paragraph 4.3.4 above.

4.3.6 NO_y Monitoring. (a) NO/NO_y measurements are included within the NCore multipollutant site requirements and the PAMS program. These NO/NO_y measurements will produce conservative estimates for NO₂ that can be used to ensure tracking continued compliance with the NO₂ NAAQS. NO/NO_y monitors are used at these sites because it is important to collect data on total reactive nitrogen species for understanding O₃ photochemistry.

* * * * *

13. Section Appendix E to part 58 is amended as follows:

- a. By revising section 2.
- b. By adding paragraph (d) to section 4.
- c. By revising section 6.1.
- d. By adding section 6.4.
- e. By revising section 11 including Table E-4.

Appendix E to Part 58—Probe and Monitoring Path Siting Criteria for Ambient Air Quality Monitoring

* * * * *

2. Horizontal and Vertical Placement

The probe or at least 80 percent of the monitoring path must be located between 2 and 15 meters above ground level for all ozone and sulfur dioxide monitoring sites, and for neighborhood or larger spatial scale Pb, PM₁₀, PM_{10-2.5}, PM_{2.5}, NO₂ and carbon monoxide sites. Middle scale PM_{10-2.5} sites are required to have sampler inlets between 2 and 7 meters above ground level. Microscale Pb, PM₁₀, PM_{10-2.5} and PM_{2.5} sites are required to have sampler inlets between 2 and 7 meters above ground level. Microscale near-road NO₂ monitoring sites are required to have sampler inlets between 2 and 7 meters above ground level. The inlet probes for microscale carbon monoxide monitors that are being used to measure concentrations near roadways must be 3±½ meters above ground level. The probe or at least 90 percent of the monitoring path must be at least 1 meter vertically or horizontally away from any supporting structure, walls, parapets, penthouses, etc., and away from dusty or dirty areas. If the probe or a significant portion of the monitoring path is located near the side of a building or wall, then it should be located on the windward side of the building relative to the prevailing wind direction during the season of highest

concentration potential for the pollutant being measured.

* * * * *

4. Spacing From Obstructions

* * * * *

(d) For near-road NO₂ monitoring stations, the monitor probe shall have an unobstructed air flow, where no obstacles exist at or above the height of the monitor probe, between the monitor probe and the outside nearest edge of the traffic lanes of the target road segment.

* * * * *

6. * * *

6.1 *Spacing for Ozone Probes and Monitoring Paths.* In siting an O₃ analyzer, it is important to minimize destructive interferences from sources of NO, since NO readily reacts with O₃. Table E-1 of this appendix provides the required minimum separation distances between a roadway and a probe or, where applicable, at least 90 percent of a monitoring path for various ranges of daily roadway traffic. A sampling site having a point analyzer probe located closer to a roadway than allowed by the Table E-1 requirements should be classified as microscale or middle scale, rather than neighborhood or urban scale, since the measurements from such a site would more closely represent the middle scale. If an open path analyzer is used at a site, the monitoring path(s) must not cross over a roadway with an average daily traffic count of 10,000 vehicles per day or more. For those situations where a monitoring path crosses a roadway with fewer than 10,000 vehicles per day, monitoring agencies must consider the entire segment of the monitoring path in the area

of potential atmospheric interference from automobile emissions. Therefore, this calculation must include the length of the monitoring path over the roadway plus any segments of the monitoring path that lie in the area between the roadway and minimum separation distance, as determined from Table E-1 of this appendix. The sum of these distances must not be greater than 10 percent of the total monitoring path length.

* * * * *

6.4 Spacing for Nitrogen Dioxide (NO₂) Probes and Monitoring Paths (a) In siting near-road NO₂ monitors as required in paragraph 4.3.2 of appendix D of this part, the monitor probe shall be as near as practicable to the outside nearest edge of the traffic lanes of the target road segment; but shall not be located at a distance greater than 50 meters, in the horizontal, from the outside nearest edge of the traffic lanes of the target road segment.

(b) In siting NO₂ monitors for neighborhood and larger scale monitoring, it is important to minimize near-road influences. Table E-1 of this appendix provides the required minimum separation distances between a roadway and a probe or, where applicable, at least 90 percent of a monitoring path for various ranges of daily roadway traffic. A sampling site having a point analyzer probe located closer to a roadway than allowed by the Table E-1 requirements should be classified as microscale or middle scale rather than neighborhood or urban scale. If an open path analyzer is used at a site, the monitoring path(s) must not cross over a roadway with an average daily traffic count of 10,000

vehicles per day or more. For those situations where a monitoring path crosses a roadway with fewer than 10,000 vehicles per day, monitoring agencies must consider the entire segment of the monitoring path in the area of potential atmospheric interference from automobile emissions. Therefore, this calculation must include the length of the monitoring path over the roadway plus any segments of the monitoring path that lie in the area between the roadway and minimum separation distance, as determined from Table E-1 of this appendix. The sum of these distances must not be greater than 10 percent of the total monitoring path length.

* * * * *

11. Summary

Table E-4 of this appendix presents a summary of the general requirements for probe and monitoring path siting criteria with respect to distances and heights. It is apparent from Table E-4 that different elevation distances above the ground are shown for the various pollutants. The discussion in this appendix for each of the pollutants describes reasons for elevating the monitor, probe, or monitoring path. The differences in the specified range of heights are based on the vertical concentration gradients. For CO and near-road NO₂ monitors, the gradients in the vertical direction are very large for the microscale, so a small range of heights are used. The upper limit of 15 meters is specified for the consistency between pollutants and to allow the use of a single manifold or monitoring path for monitoring more than one pollutant.

TABLE E-4 OF APPENDIX E TO PART 58—SUMMARY OF PROBE AND MONITORING PATH SITING CRITERIA

Pollutant	Scale (maximum monitoring path length, meters)	Height from ground to probe, inlet or 80% of monitoring path ¹	Horizontal and vertical distance from supporting structures ² to probe, inlet or 90% of monitoring path ¹ (meters)	Distance from trees to probe, inlet or 90% of monitoring path ¹ (meters)	Distance from roadways to probe, inlet or monitoring path ¹ (meters)
SO ₂ ^{3,4,5,6}	Middle (300 m) Neighborhood Urban, and Regional (1 km).	2-15	> 1	> 10	N/A.
CO ^{4,5,7}	Micro, middle (300 m) Neighborhood (1 km).	3½: 2-15	> 1	> 10	2-10; see Table E-2 of this appendix for middle and neighborhood scales.
O ₃ ^{3,4,5}	Middle (300 m) Neighborhood, Urban, and Regional (1 km).	2-15	> 1	> 10	See Table E-1 of this appendix for all scales.
NO ₂ ^{3,4,5}	Micro (Near-road [50-300])	2-7 (micro)	> 1	> 10	≤ 50 meters for near-road microscale.
	Middle (300m)	2-15 (all other scales).			
	Neighborhood, Urban, and Regional (1 km).				See Table E-1 of this appendix for all other scales.
Ozone precursors (for PAMS) ^{3,4,5}	Neighborhood and Urban (1 km)	2-15	> 1	> 10	See Table E-4 of this appendix for all scales.
PM,Pb ^{3,4,5,6,8}	Micro: Middle, Neighborhood, Urban and Regional.	2-7 (micro); 2-7 (middle PM _{10-2.5}); 2-15 (all other scales).	> 2 (all scales, horizontal distance only).	> 10 (all scales)	2-10 (micro); see Figure E-1 of this appendix for all other scales.

N/A—Not applicable.

¹ Monitoring path for open path analyzers is applicable only to middle or neighborhood scale CO monitoring, middle, neighborhood, urban, and regional scale NO₂ monitoring, and all applicable scales for monitoring SO₂, O₃, and O₃ precursors.

² When probe is located on a rooftop, this separation distance is in reference to walls, parapets, or penthouses located on roof.

³ Should be > 20 meters from the dripline of tree(s) and must be 10 meters from the dripline when the tree(s) act as an obstruction.

⁴Distance from sampler, probe, or 90% of monitoring path to obstacle, such as a building, must be at least twice the height the obstacle protrudes above the sampler, probe, or monitoring path. Sites not meeting this criterion may be classified as middle scale (see text).

⁵Must have unrestricted airflow 270 degrees around the probe or sampler; 180 degrees if the probe is on the side of a building or a wall.

⁶The probe, sampler, or monitoring path should be away from minor sources, such as furnace or incineration flues. The separation distance is dependent on the height of the minor source's emission point (such as a flue), the type of fuel or waste burned, and the quality of the fuel (sulfur, ash, or lead content). This criterion is designed to avoid undue influences from minor sources.

⁷For microscale CO monitoring sites, the probe must be >10 meters from a street intersection and preferably at a midblock location.

⁸Collocated monitors must be within 4 meters of each other and at least 2 meters apart for flow rates greater than 200 liters/min or at least 1 meter apart for samplers having flow rates less than 200 liters/min to preclude airflow interference.

* * * * *

14. Appendix G to Part 58 is amended by revising section 9 and table 2 to read as follows:

Appendix G to Part 58—Uniform Air Quality Index (AQI) and Daily Reporting

* * * * *

9. How Does the AQI Relate to Air Pollution Levels?

For each pollutant, the AQI transforms ambient concentrations to a scale from 0 to

500. The AQI is keyed as appropriate to the national ambient air quality standards (NAAQS) for each pollutant. In most cases, the index value of 100 is associated with the numerical level of the short-term (*i.e.*, averaging time of 24-hours or less) standard for each pollutant. The index value of 50 is associated with one of the following: The numerical level of the annual standard for a pollutant, if there is one; one-half the level of the short-term standard for the pollutant; or the level at which it is appropriate to begin to provide guidance on cautionary language. Higher categories of the index are based on increasingly serious health effects that affect

increasing proportions of the population. An index value is calculated each day for each pollutant (as described in section 12 of this appendix), unless that pollutant is specifically excluded (see section 8 of this appendix). The pollutant with the highest index value for the day is the "critical" pollutant, and must be included in the daily AQI report. As a result, the AQI for any given day is equal to the index value of the critical pollutant for that day. For the purposes of reporting the AQI, the indexes for PM₁₀ and PM_{2.5} are to be considered separately.

* * * * *

TABLE 2—BREAKPOINTS FOR THE AQI

These breakpoints							Equal these AQI's	
O ₃ (ppm) 8-hour	O ₃ (ppm) 1-hour ¹	PM _{2.5} (µg/m ³)	PM ₁₀ (µg/m ³)	CO (ppm)	SO ₂ (ppm)	NO ₂ (ppm) 1-hour	AQI	Category
0.000–0.059		0.0–15.4	0–54	0.0–4.4	0.000–0.034	0–(0.040–0.053)	0–50	Good.
0.060–0.075		15.5–40.4	55–154	4.5–9.4	0.035–0.144	(0.041–0.054)–(0.080–0.100)	51–100	Moderate.
0.076–0.095	0.125–0.164	40.5–65.4	155–254	9.5–12.4	0.145–0.224	(0.081–0.101)–(0.360–0.370)	101–150	Unhealthy for Sensitive Groups.
0.096–0.115	0.165–0.204	³ 65.5–150.4	255–354	12.5–15.4	0.225–0.304	(0.361–0.371)–0.64	151–200	Unhealthy.
0.116–0.374	0.205–0.404	³ 150.5–250.4	355–424	15.5–30.4	0.305–0.604	0.65–1.24	201–300	Very Unhealthy.
(²)	0.405–0.504	³ 250.5–350.4	425–504	30.5–40.4	0.605–0.804	1.25–1.64	301–400	Hazardous.
(²)	0.505–0.604	³ 350.5–500.4	505–604	40.5–50.4	0.805–1.004	1.65–2.04	401–500	Hazardous.

¹ Areas are generally required to report the AQI based on 8-hour ozone values. However, there are a small number of areas where an AQI based on 1-hour ozone values would be more precautionary. In these cases, in addition to calculating the 8-hour ozone index value, the 1-hour ozone index value may be calculated, and the maximum of the two values reported.

² 8-hour O₃ values do not define higher AQI values (≥301). AQI values of 301 or greater are calculated with 1-hour O₃ concentrations.

³ If a different SHL for PM_{2.5} is promulgated, these numbers will change accordingly.



Federal Register

Wednesday,
July 15, 2009

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 431, 447, and 457
Medicaid Program and Children's Health
Insurance Program (CHIP); Revisions to
the Medicaid Eligibility Quality Control
and Payment Error Rate Measurement
Programs; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431, 447, and 457

[CMS-6150-P]

RIN 0938-AP69

Medicaid Program and Children's Health Insurance Program (CHIP); Revisions to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement Programs

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement provisions from the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111-3) with regard to the Medicaid Eligibility Quality Control (MEQC) and Payment Error Rate Measurement (PERM) programs. This proposed rule would also codify several procedural aspects of the process for estimating improper payments in Medicaid and the Children's Health Insurance Program (CHIP).

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 14, 2009.

ADDRESSES: In commenting, please refer to file code CMS-6150-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" and enter the filecode to find the document accepting comments.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS-6150-P, P.O. Box 8020, Baltimore, MD 21244-8020.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and

Human Services, *Attention:* CMS-6150-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses:

a. Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey (HHH) Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, please call (410) 786-9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lindner, (410) 786-7481, or Jessica Woodard, (410) 786-9249.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning

approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

I. Background

A. Medicaid Eligibility Quality Control Program

The Medicaid Eligibility Quality Control (MEQC) program is set forth in section 1903(u) of the Social Security Act (the Act) and requires States to report to the Secretary the ratio of States' erroneous excess payments for medical assistance to total expenditures for medical assistance. Section 1903(u) of the Act also sets a 3-percent threshold for improper payments in any fiscal year and the Secretary may withhold payments to States based on the amount of improper payments that exceed the threshold.

B. The Improper Payments Information Act of 2002

The Improper Payments Information Act of 2002 (IPIA) (Pub. L. 107-300, enacted on November 26, 2002) requires the heads of Federal agencies to annually review programs they oversee to determine if they are susceptible to significant erroneous payments. If any programs are found to be susceptible to significant improper payments, then the agency must estimate the amount of improper payments, report those estimates to the Congress, and submit a report on actions the agency is taking to reduce erroneous expenditures. The IPIA directed the Office of Management and Budget (OMB) to provide guidance on implementation. OMB defines "significant erroneous payments" as annual erroneous payments in the program exceeding both 2.5 percent of program payments and \$10 million (OMB M-06-23, Appendix C to OMB Circular A-123, August 10, 2006). For those programs found to be susceptible to significant erroneous payments, Federal agencies must provide the estimated amount of improper payments and report on what actions the agency is taking to reduce them, including setting targets for future erroneous payment levels and a timeline by which the targets will be reached.

The Medicaid program and the Children's Health Insurance Program (CHIP) were identified as programs at risk for significant erroneous payments. The Department of Health and Human Services (DHHS) reports the estimated

error rates for the Medicaid and CHIP programs in its annual Performance and Accountability Report (PAR) to Congress.

C. Regulatory History

1. Medicaid Eligibility Quality Control Program

Sections 431.800 through 431.865 set forth the regulatory requirements for States to conduct the annual MEQC measurement. A Medicaid State Operations letter (#93–58) dated July 23, 1993 implemented MEQC pilots that allowed States to conduct special studies that would take the place of the “traditional” MEQC review. States conducting pilot reviews are not subject to the threshold and disallowance provisions under section 1903(u) of the Act as long as the special studies continue.

Currently, the MEQC program consists of the following:

- MEQC traditional—Operating MEQC under 42 CFR 431.800 through 431.865 and selecting a random sample of all Medicaid applicants and enrollees and reviewing them under guidance in the State Medicaid Manual.
- MEQC pilots—Operating MEQC under a special study, a target population and providing oversight to reduce and prevent errors and improve program administration.
- MEQC waivers—Operating MEQC as a part of a CMS approved section 1115 waiver and reviewing beneficiaries included in the research and demonstration project.

2. Payment Error Rate Measurement (PERM) Program

Section 1102(a) of the Act authorizes the Secretary to establish such rules and regulations as may be necessary for the efficient administration of the Medicaid and CHIP programs. The Medicaid statute at section 1902(a)(6) of the Act and the CHIP statute at section 2107(b)(1) of the Act require States to provide information that the Secretary finds necessary for the administration, evaluation, and verification of the States’ programs. Also, section 1902(a)(27) of the Act (and § 457.950 of the regulations) requires providers to submit information regarding payments and claims as requested by the Secretary, State agency, or both. Under the authority of these statutory provisions, we published in the August 27, 2004 **Federal Register** (69 FR 52620) a proposed rule to comply with the requirements of the IPIA and the OMB guidance. The proposed rule set forth provisions for all States to annually estimate improper payments in their

Medicaid and CHIP programs and to report the State-specific error rates for purposes of our computing the national improper payment estimates for these programs.

In the October 5, 2005 **Federal Register** (70 FR 58260), we published an interim final rule with comment period (IFC). The IFC responded to public comments on the proposed rule, and informed the public of our national contracting strategy and of our plan to measure improper payments in a subset of States. Our State selection process ensures that a State is measured once, and only once, every 3 years for each program.

In response to the public comments from the October 5, 2005 IFC, we published a second IFC in the August 28, 2006 **Federal Register** (71 FR 51050), which reiterated our national contracting strategy to estimate improper payments in both Medicaid and CHIP fee-for-service (FFS) and managed care, and set forth and invited further comments on State requirements for estimating improper payments due to errors in Medicaid and CHIP eligibility determinations. We also announced that a State’s Medicaid and CHIP programs would be reviewed in the same year.

In the August 31, 2007 **Federal Register** (72 FR 50490), we published a final rule for the PERM program, which implements the IPIA requirements. The August 31, 2007 final rule responded to the public comments on the August 28, 2006 IFC and finalized State requirements for submitting claims to the Federal contractors that conduct FFS and managed care reviews. The final rule also finalized State requirements for conducting eligibility reviews and estimating payment error rates due to errors in eligibility determinations.

D. Children’s Health Insurance Program Reauthorization Act of 2009

On February 4, 2009, the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111–3) was enacted. (*Please note*, as a result of this legislation, that the program formerly known as the “State Children’s Health Insurance Program (SCHIP)” is now referred to as the “Children’s Health Insurance Program (CHIP)”). Sections 203 and 601 of the CHIPRA relate to the PERM program.

Section 203 of the CHIPRA establishes an error rate measurement with respect to the enrollment of children under the express lane eligibility option. The law directs States not to include children enrolled using the express lane

eligibility option in data or samples used for purposes of complying with the MEQC and PERM requirements. Provisions for States’ express lane eligibility option will be set forth in a future rulemaking document.

Section 601 of the CHIPRA provides for a 90 percent Federal match for Children’s Health Insurance Program (CHIP) spending related to PERM administration and excludes such spending from the 10 percent administrative cap. (Section 2105(c)(2) of the CHIP statute gives States the ability to use an amount up to 10 percent of the CHIP benefit expenditures for outreach efforts, additional services other than the standard benefit package for low-income children, and administrative costs.)

The CHIPRA requires a new PERM rule and delays any calculation of a PERM error rate for CHIP until 6 months after the new PERM rule is effective. Additionally, the CHIPRA provides that States that were scheduled for PERM measurement in fiscal year (FY) 2007 may elect to accept a CHIP PERM error rate determined in whole or in part on the basis of data for FY 2007, or may elect instead to consider its PERM measurement conducted for FY 2010 as the first fiscal year for which PERM applies to the State for CHIP. Similarly, the CHIPRA provides that States that were scheduled for PERM measurement in FY 2008 may elect to accept a CHIP PERM error rate determined in whole or in part on the basis of data for FY 2008, or may elect instead to consider its PERM measurement conducted for FY 2011 as the first fiscal year for which PERM applies to the State for CHIP.

The CHIPRA requires that the new PERM rule include the following:

- Clearly defined criteria for errors for both States and providers.
- Clearly defined processes for appealing error determinations.
- Clearly defined responsibilities and deadlines for States in implementing any corrective action plans.
- Requirements for State verification of an applicant’s self-declaration or self-certification of eligibility for, and correct amount of, medical assistance under Medicaid or child health assistance under CHIP.
- State-specific sample sizes for application of the PERM requirements.

In addition, the CHIPRA aims to harmonize the PERM and MEQC programs and provides States with the option to apply PERM data resulting from its eligibility reviews for meeting MEQC requirements and vice versa, with certain conditions.

E. CMS Response to the CHIPRA

As required by the CHIPRA, we are proposing revised MEQC and PERM provisions in this proposed rule.

Section 601(b) of the CHIPRA states that “the Secretary shall not calculate or publish any national or State-specific error rate based on the application of the payment error rate measurement (in this section referred to as ‘PERM’) requirements to CHIP until after the date that is 6 months after the date on which a new final rule (in this section referred to as the ‘new final rule’) promulgated after the date of the enactment of this Act and implementing such requirements in accordance with the requirements of subsection (c) is in effect for all States.” The CHIP error rate for the FY 2008 cycle was scheduled to be published in the FY 2009 PAR (in November 2009), which is less than 6 months after the expected promulgation and effective date of this new final rule. Therefore, the publication of any CHIP error rates for FY 2008 is delayed until at least 6 months after the final rule implementing the CHIPRA requirements for PERM is effective.

As noted above, section 601(d) of the CHIPRA provides that States that were scheduled for PERM measurement in FY 2007 may elect to accept a CHIP PERM error rate determined in whole or in part on the basis of data for FY 2007, or may elect instead to consider its PERM measurement conducted for FY 2010 as the first fiscal year for which PERM applies to the State for CHIP. In addition, the CHIPRA provides that States that were scheduled for PERM measurement in FY 2008 may elect to accept a CHIP PERM error rate determined in whole or in part on the basis of data for FY 2008, or may elect instead to consider its PERM measurement conducted for FY 2011 as the first fiscal year for which PERM applies to the State for CHIP.

Accordingly, a State measured in the FY 2007 cycle that elects to accept the PERM error rate for its CHIP program determined in whole or in part on the basis of data for FY 2007 is required to notify CMS of its intentions through an acceptance form provided to all States in a State Health Official letter. Similarly, a State measured in the FY 2008 cycle that elects to accept the PERM error rate for its CHIP program determined in whole or in part on the basis of data for FY 2008 is required to notify CMS of its intentions through an acceptance form provided to all States in a State Health Official letter. If a State measured in the FY 2007 or FY 2008 cycles elects to reject the CHIP PERM rate determined during those cycles,

they do not need to notify CMS of this decision. However, information from those cycles will not be used to calculate the State-specific sample sizes and CMS will rely on the standard assumptions for determining sample size.

In order for section 601(d) of the CHIPRA to be read in harmony with the IPIA, which requires a CHIP PERM error rate to be calculated annually, we believe that the appropriate reading of section 601(d) of the CHIPRA, construing the law as a whole and giving effect to all language of the CHIPRA, is that a State may only elect to reject the PERM error rate for the State’s CHIP program for FY 2007 or FY 2008 and instead have its PERM error rate for its CHIP program measured in FY 2010 or FY 2011, respectively. A State scheduled for PERM measurement in FY 2008 will still have its PERM error rate for its Medicaid program measured.

Additionally, States scheduled for PERM measurement in FY 2009 will have the CHIP program reviewed and error rates calculated after the final rule is in effect. Furthermore, the FY 2009 Medicaid measurement is proceeding with no delays as a result of the CHIPRA, and FY 2009 Medicaid error rates will be calculated under the new final rule.

II. Provisions of the Proposed Regulations

As a result of the CHIPRA, we are proposing a nomenclature change to parts 431, 447, and 457. The program formerly known as the “State Children’s Health Insurance Program (SCHIP)” is now referred to as the “Children’s Health Insurance Program (CHIP).” We are also proposing the following revisions to the current PERM provisions:

A. Sample Sizes

Section 601(f) of the CHIPRA requires us to establish State-specific sample sizes for application of the PERM requirements with respect to CHIP for fiscal years beginning with the first fiscal year that begins on or after the date on which the new final rule is in effect for all States, on the basis of such information as the Secretary determines appropriate. In establishing such sample sizes, the Secretary shall, to the greatest extent practicable: (1) Minimize the administrative cost burden on States under Medicaid and CHIP; and (2) maintain State flexibility to manage such programs.

To comply with the IPIA, the PERM program must estimate a national Medicaid and a national CHIP error rate that covers the 50 States and District of

Columbia. Consistent with OMB’s precision requirements defined in its IPIA guidance, the estimated national error rate for each program must be bound by a 90 percent confidence interval of 2.5 percentage points in either direction of the estimate. Since States administer Medicaid and CHIP and make payments for services rendered under the programs, we collect State-level information at a high level of confidence (the estimated error rate for a State must be bound by a 95 percent confidence interval of 3 percentage points in either direction). To estimate the national error rate, as well as State-specific error rates, reviews are conducted in three areas for both the Medicaid and CHIP programs: (1) Fee-for-service (FFS), (2) managed care, and (3) program eligibility. The FFS and managed care reviews are referred to jointly as the “claims review,” while the program eligibility review is referred to as the “eligibility review.”

Samples of payments made on a FFS and managed care basis for the claims review and samples of beneficiaries for the eligibility review are drawn each year in order to calculate a national error rate that meets the precision requirements described in OMB Guidance (OMB M–06–23, Appendix C to OMB Circular A–123, August 10, 2006). The preferred method is to achieve the precision goal with the smallest sample size possible, so as to reduce the staff burden on States, the Federal government, beneficiaries, and providers. We determined that the most efficient method, statistically, is to draw a sample of States and then draw a sample of payments from the payments made by the sampled States. The process for drawing a sample of States is described in detail in the preamble to the August 31, 2007 final rule (72 FR 50490). We are not proposing modifications to the current approach, which samples 17 States per year for a PERM measurement cycle. This rulemaking addresses the State-specific sample sizes for samples of claims and beneficiaries within a State.

In light of the new CHIPRA requirements, we are proposing to add new § 431.972, to describe more fully the claims sampling procedures used for the claims review, as well as the process for establishing State-specific sample sizes for PERM, although we note that the execution of these responsibilities would remain with CMS and the Federal contractors, not with the States. Under the Secretary’s authority at section 1102(a) of the Act and in order to effectively implement the IPIA, we are also proposing that these sampling

procedures apply to both Medicaid and CHIP.

We are also proposing to revise § 431.978 to provide additional guidance on State Medicaid and CHIP eligibility sample sizes by clarifying the process for establishing State-specific sample sizes.

1. Fee-for-Service (FFS) and Managed Care

a. Universe Definition

In order to implement the IPJA and related requirements (OMB M-06-23, Appendix C to OMB Circular A-123, August 10, 2006) that require Federal agencies to estimate the amount of improper payments in programs with significant erroneous payments (which includes Medicaid and CHIP), in the current § 431.970(a)(1) we require States to submit “[a]ll adjudicated fee-for-service (FFS) and managed care claims information, on a quarterly basis, from the review year,” so that a sample of payments can be reviewed and from the review findings CMS can estimate the amount of improper payments in each program. We propose to remove the word “all” from § 431.970(a)(1) because certain types of payments are excluded from PERM sampling and review for technical reasons. This requirement has been further clarified through instructions issued by CMS to the States.

For the PERM claims review component, the “claims universe” is defined in the new § 431.972 as including payments that were originally paid (paid claims) and for which payment was requested but denied (denied claims) during the Federal fiscal year, and for which there was Federal financial participation (FFP) (or would have been if the claim had not been denied) through Title XIX of the Act (Medicaid) or Title XXI of the Act (CHIP). Depending on the context in which it is used, the claims universe may refer to either all of the adjudicated FFS claims during the fiscal year under review, or all of the managed care capitation payments made during the fiscal year under review, for Medicaid or CHIP.

Due to the significant variation in State systems for processing, paying, and claiming reimbursement for medical services under Medicaid and CHIP, we are not proposing to include a more specific claims universe description in regulation. Rather, States should refer to more detailed claims universe specifications that will be published by CMS in separate instructions at the beginning of each PERM measurement cycle. However, we

are proposing that States must establish controls to ensure that the FFS, managed care, and eligibility universes are complete and accurate. For example, this would include the comparisons between the PERM universes and the State’s CMS-64 and CMS-21 financial reports.

b. Stratification

In FY 2006, we measured only the error rate for the FFS component of Medicaid. To obtain the required precision levels while minimizing the sample size, and therefore reducing the burden on States, the claims universe for FFS payments for Medicaid was stratified by service category and a stratified random sample was drawn for each State. In FY 2007 and beyond, we measure the error rates for Medicaid FFS, Medicaid managed care, CHIP FFS, and CHIP managed care separately (to the extent that a State has each of these programs). We also stratify each universe by dollars rather than service category.

Under this stratification and sampling approach, all payments in each universe are sorted from largest to smallest payment amounts. The payments are then divided into strata such that the total payments in each stratum are the same. For example, if five strata are used, the total dollars in each stratum would equal 20 percent of the total dollars in the universe. The first stratum would contain the highest dollar-valued payments, and the last stratum would contain the smallest dollar-valued payments, including all zero-paid and denied claims (denials have a zero dollar amount, and therefore, would appear in the stratum with the smallest dollar values). An equal number of FFS claims or managed care payments are then drawn from each stratum, which means the sample would include proportionately more high-dollar payments and proportionately fewer low-dollar payments and denials, compared to their representation in the universe. This overweighting of higher-dollar payments (which is taken into account when calculating error rates) enables us to draw a smaller sample size that has a reasonable probability of meeting the precision requirements, compared to a perfectly random sample or a sample stratified by service type. In this manner, we reduce burden on States, the Federal government, beneficiaries, and providers.

c. Fee-for-Service and Managed Care Sample Size

In order to establish State-specific sample sizes, we are proposing that the annual sample size in a State’s first

PERM cycle (referred to as “initial sample” or “base sample”) would be 500 FFS claims and 250 managed care payments.

We determined this initial sample size based on the experience of the PERM pilot study and our requirement that the estimated error rate for a State must be bound by a 95 percent confidence interval of 3 percentage points in either direction. Specifically, the sample size is calculated assuming that the universe is “infinite” and the error rate for FFS is 5 percent and the error rate for managed care is 3 percent. (Once the universe contains more than approximately 10,000 sampling units, it can be treated as if it were infinite. Statistically speaking, beyond a universe of approximately 10,000 sampling units, universe size does not affect sample size.) Using these assumptions and historical information on payment variation in FFS and managed care from previous PERM cycles, we have determined that an annual sample of 500 FFS and 250 managed care payments per State per program should meet our State-level precision requirements with reasonable probability.

However, States with Medicaid or CHIP PERM universes under 10,000 line items or capitation payments can petition CMS for an annual sample size smaller than the base sample size in the initial PERM year or beyond. While the universe can be treated as if it were infinite if its size exceeds 10,000 sampling units, if the total universe from which the total (full year) sample is drawn is less than 10,000 sampling units, the sample size may be reduced by the finite population correction factor. A State that anticipates that the total number of payments in the FFS or managed care universe for either Medicaid or CHIP will be less than 10,000 payments over the Federal fiscal year may notify CMS before the fiscal year being measured and include information on the anticipated universe size for their State. Our contractor will develop a modified sampling plan for that program in that State.

The State-specific annual sample size in the base PERM year is based on an assumed error rate of 5 percent. If a State’s actual PERM error rates in a cycle reveals that precision goals can be achieved in future PERM cycles with either lower or higher sample sizes than indicated by the original assumptions, sample sizes after the first PERM cycle may vary among States according to each State’s demonstrated ability, based on PERM experience, to meet desired precision goals.

In subsequent years, we will provide our contractor with information on each State's error rate and payment variation in the previous cycle. Our contractor will review each State's prior PERM cycle claims error rate and payment variation to determine if a smaller or larger claims sample size will be required to meet the precision goal established for that PERM cycle. Our contractor will develop a State-specific sample size for each program in each State. If information from a previous cycle is not available for a particular State or program within the State, the contractor will use the "base sample" size of 500 FFS claims and 250 managed care payments. For States measured in the FY 2007 or FY 2008 cycle that elect to accept their State-specific CHIP PERM error rate determined during those cycles, FY 2007 or FY 2008 would be considered their first PERM cycle for purposes of sample size calculation for CHIP. Therefore, these States would be considered for an adjusted sample size in their next year of measurement after the publication of the new final rule. For States measured in the FY 2007 or FY 2008 cycle that elect to reject their State-specific CHIP PERM error rate determined during those cycles, information from those cycles would not be used to calculate the State-specific sample sizes and the "base sample" size of 500 FFS claims and 250 managed care payments would be used.

We are proposing to establish a maximum sample size for Medicaid or CHIP FFS or managed care of 1,000 claims. Additionally, as discussed above, a State with a claims universe of less than 10,000 sampling units in a program may notify CMS and the annual sample size will be reduced by the finite population correction factor for any PERM cycle. We believe that by taking into consideration prior cycle PERM error rates, as well as the finite population correction factor in establishing State-specific sample sizes, the States' administrative cost burden will be reduced and the program will be manageable at the State level.

2. Eligibility

The eligibility sampling requirements are described in § 431.978. The universe for the eligibility component is case-based, not claims-based. The case as a sampling unit only applies to the eligibility component. For PERM eligibility, the "universe" is the total number of Medicaid or CHIP cases, which, as discussed later in this proposed rule, is comprised of all beneficiaries, both individuals and families. The eligibility sampling plan and procedures state that the total

eligibility sample size must be estimated to achieve within a 3 percent precision level at 95 percent confidence interval for the eligibility component of the program.

For PERM eligibility, the initial sample size is calculated under the assumption that the error rate is 5 percent and the universe is greater than 10,000 total cases. This means that the desired precision requirements will be achieved with a high probability if the actual error rate is 5 percent or less. For this reason, an annual sample of 504 active cases and 204 negative cases should be selected in a State's base PERM year to meet State-level precision requirements with a high probability. Appendix D of the PERM Eligibility Review Instructions elaborates on the theory of sample size at the State-level for the dollar-weighted active case error rates, and is on the CMS Web site at http://www.cms.hhs.gov/perm/downloads/PERM_Eligibility_Review_Guidance.pdf.

Eligibility sampling is performed by the States, and States have the opportunity to adjust their eligibility sample size based on the eligibility error rate in the previous PERM cycle. After a State's base PERM year, we will determine, with input from the State, a sample size that will meet desired precision goals at lower or higher sample sizes based on the outcome of the State's previous PERM cycle. The sample size could either increase or decrease given the results of the previous year. We are proposing to establish a maximum sample size for eligibility at 1,000 cases. States must submit an eligibility sampling plan by August 1st before the fiscal year being measured and include a proposed sample size for their State. Our contractor will review and approve all eligibility sampling plans. The State must notify CMS that it will be using the same plan from the previous review year if the plan is unchanged. However, we will review State sampling plans from prior cycles in each PERM cycle to ensure that information is accurate and up-to-date. States will be asked for revisions when necessary.

As in the claims universe, States with PERM eligibility universes under 10,000 cases can notify CMS for a reduced eligibility sample size for either the base year or any subsequent PERM cycle.

Additionally, section 203 of the CHIPRA describes the State option to enroll children in CHIP based on findings of an express lane agency that has conducted simplified eligibility determinations. Under section 203(a)(13)(E) of the CHIPRA, an error rate measurement will be created with

respect to the enrollment of children under the express lane eligibility option. The law directs States not to include children enrolled using the express lane eligibility option starting April 1, 2009, in data or samples used for purposes of complying with MEQC and PERM requirements. Provisions for States' express lane option will be set forth in a future rulemaking document.

We are proposing to revise § 431.814 and § 431.978 to reflect the changes and clarifications specified above.

B. Error Criteria

Under the PERM program, we identify improper payments through claims reviews and eligibility reviews. For the claims review, we perform the following: (1) A data processing review of a sample of FFS and managed care payments to ensure the payments were processed and paid in accordance with State and Federal policy; and (2) a medical review of a sample of FFS payments to ensure that the services were medically necessary, coded correctly, and provided and documented in accordance with State and Federal policy. For the eligibility review, we rely on States to review a sample of beneficiary cases to ensure that they were eligible for the program and for any services received and paid for by Medicaid or CHIP (as applicable). The PERM eligibility review also considers negative cases (cases where eligibility was denied or terminated). A negative case is in error if the case was improperly denied or incorrectly terminated. However, because there are no payments associated with these cases, only a case error rate is calculated. These errors are not factored into the PERM error rate, which is a payment error rate.

Under the IPIA, to be considered an improper payment, the error made must affect payment under applicable Federal policy and State policy. Improper payments include both overpayments and underpayments. A payment is also considered improper where it cannot be discerned whether the payment was proper as a result of insufficient or lack of documentation.

Consistent with the IPIA, the PERM error rate itself does not distinguish between "State" and "provider" errors; all dollars in error identified through PERM reviews contribute to the State error rate. In practice, the data processing and eligibility reviews focus on determinations made by State systems and personnel, while the medical review focuses on documentation maintained and claims submitted by providers.

Section 601(c)(1)(A) of the CHIPRA requires CMS to promulgate a new final rule that includes clearly defined criteria for errors for both States and providers. Accordingly, we are proposing to add § 431.960, “Types of payment errors,” to clarify that State or provider errors for purposes of the PERM error rate must affect payment under applicable Federal policy and State policy, and to generally categorize data processing errors and eligibility determination errors as State errors and medical review errors as provider errors. The data processing errors, medical review errors, and eligibility determination errors may include, but are not limited to, the types of improper payments discussed below.

1. Claims Review Error Criteria

a. Data Processing Errors (Generally State Errors)

i. Duplicate Item

The sampled line item/claim is an exact duplicate of another line item/claim that was previously paid (for example, same patient, same provider, same date of service, same procedure code, and same modifier).

ii. Non-Covered Service

The State policy indicates that the service is not payable by Medicaid or CHIP under the State plan and/or the beneficiary is not in the coverage category for that service.

iii. Fee-for-Service Claim for a Managed Care Service

The beneficiary is enrolled in a managed care organization that should have covered the service, but the sampled service was inappropriately paid by the Medicaid or CHIP FFS component.

iv. Third-Party Liability

The service should have been paid by a third party and was inappropriately paid by Medicaid or CHIP.

v. Pricing Error

Payment for the service does not correspond with the pricing schedule on file for the date of service.

vi. Logic Edit

A system edit was not in place based on policy or a system edit was in place but was not working correctly and the claim line was paid (for example, incompatibility between gender and procedure).

vii. Data Entry Errors

A claim/line item is in error due to clerical errors in the data entry of the claim.

viii. Managed Care Rate Cell Error

The beneficiary was enrolled in managed care and payment was made, but for the wrong rate cell.

ix. Managed Care Payment Error

The beneficiary was enrolled in managed care and assigned to the correct rate cell, but the amount paid for that rate cell was incorrect.

x. Other Data Processing Error

Errors not included in any of the above categories.

b. Medical Review Errors (Generally Provider Errors)

i. No Documentation

The provider did not respond to the request for records within the required timeframe.

ii. Insufficient Documentation

There is not enough documentation to support the service.

iii. Procedure Coding Error

The procedure was performed but billed using an incorrect procedure code and the result affected the payment amount.

iv. Diagnosis Coding Error

According to the medical record, the diagnosis was incorrect and resulted in a payment error—as in a Diagnosis Related Group (DRG) error.

v. Unbundling

The provider separately billed and was paid for the separate components of a procedure code when only one inclusive procedure code should have been billed and paid.

vi. Number of Unit(s) Error

The incorrect number of units was billed for a particular procedure/service, National Drug Code (NDC) units, or revenue code.

vii. Medically Unnecessary Service

The service was medically unnecessary based upon the documentation of the patient’s condition in the medical record.

viii. Policy Violation

A policy is in place regarding the service or procedure performed and medical review indicates that the service or procedure is not in agreement with the documented policy.

ix. Administrative/Other Medical Review Error

A payment error was determined by the medical review but does not fit into one of the other medical review error

categories, including State-specific non-covered services.

c. Eligibility Errors (Generally State Errors)

i. Not Eligible

An individual beneficiary or family is receiving benefits under the program but does not meet the State’s categorical and financial criteria in the first 30 days of eligibility being verified.

ii. Eligible With Ineligible Services

An individual beneficiary or family meets the State’s categorical and financial criteria for receipt of benefits under the Medicaid or CHIP program but was not eligible to receive particular services. An example of “eligible with ineligible services” would be a person eligible under the medically needy group who received services not provided to the medically needy group.

iii. Undetermined

A beneficiary case subject to a Medicaid or CHIP eligibility determination review under PERM and which a definitive determination of eligibility could not be made.

iv. Liability Overstated

The beneficiary paid too much toward his liability amount or cost of institutional care and the State paid too little.

v. Liability Understated

Beneficiary paid too little toward his liability amount or cost of institutional care and the State paid too much.

vi. Managed Care Error 1

Ineligible for managed care—Upon verification of residency and program eligibility, the beneficiary is enrolled in managed care but is not eligible for managed care.

vii. Managed Care Error 2

Eligible for managed care but improperly enrolled—Beneficiary is eligible for both the program and for managed care but not enrolled in the correct managed care plan as of the month eligibility is being verified.

viii. Improper Denial

The application for program benefits was denied by the State for not meeting the categorical and/or financial eligibility requirements but upon review is found to be eligible.

ix. Improper Termination

Based on a completed redetermination, the State determines an existing beneficiary no longer meets the program’s categorical and/or

financial eligibility requirements and is terminated but upon review is found to still be eligible.

2. Definitions

Based on the criteria identified in section II.B.1 of this proposed rule, we are proposing to add the following definitions for “provider error” and “State error” to § 431.958.

Provider error includes, but is not limited to, an improper payment made due to lack of or insufficient documentation, incorrect coding, improper billing (for example, unbundling, incorrect number of units), a payment that is in error due to lack of medical necessity, or evidence that the service was not provided in compliance with documented State or Federal policy.

State error includes, but is not limited to the following:

- A payment that is in error due to incorrect processing (for example, duplicate of an earlier payment, payment for a non-covered service, payment for an ineligible beneficiary).
- Incorrect payment amount (for example, incorrect fee schedule or capitation rate applied, incorrect third-party liability applied).
- A payment error resulting from services being provided to an individual who—
 - ++ Was ineligible when authorized or when he or she received services;
 - ++ Was eligible for the program but was ineligible for certain services he or she received; or
 - ++ Had not met applicable beneficiary liability requirements when authorized eligible or paid too much toward actual liability.
 - ++ Had a lack of sufficient documentation to make a definitive determination of eligibility or ineligibility.

C. Self-Declaration of Eligibility

Section 601(c)(2) of the CHIPRA requires that the payment error rate determined for a State shall not take into account payment errors resulting from the State’s verification of an applicant’s self-declaration or self-certification of eligibility for, and the correct amount of, medical assistance or child health assistance, if the State process for verifying an applicant’s self-declaration or self-certification satisfies the requirements for such process applicable under regulations promulgated by the Secretary or otherwise approved by the Secretary.

Accordingly, we are proposing to specify in the new § 431.960 that the dollars paid in error due to the eligibility error is the measure of the

payment error. A State eligibility error does not result from the State’s verification of an applicant’s self-declaration or self-certification of eligibility for, and the correct amount of, medical assistance or child health assistance, if the State process for verifying an applicant’s self-declaration or self-certification satisfies the requirements for such process applicable under regulations at § 457.380 of this chapter, in CMS approved State Plans, or otherwise approved by the Secretary.

We also propose to modify § 431.980 to provide review requirements for acceptable self-declaration. We would also modify the PERM eligibility instructions, found at http://www.cms.hhs.gov/perm/downloads/PERM_Eligibility_Review_Guidance.pdf. These instructions, which clarify and provide additional guidance in implementing the regulations, reflect the new review procedures for self-declaration.

Currently, States are required to review the case record and independently verify elements of eligibility where evidence is missing, or outdated and likely to change, or otherwise as needed. The instructions and the regulation would provide that “a self-declaration statement for Medicaid or CHIP is acceptable verification for the PERM reviews for elements of eligibility in which State policy allows for self-declaration. A self-declaration statement must be—

- Present in the record;
- Not outdated (more than 12 months old);
- In a valid, State approved format; and
- Consistent with other facts in the case record.

A State may verify eligibility through a new self-declaration statement, depending on State policies on self-declaration. We propose that if a new self-declaration statement cannot be obtained for the PERM review, the State may verify eligibility using third party sources, for example, documentation listed in section 7269 of the State Medicaid Manual. Verifying a self-declaration statement with third party verification when a beneficiary does not provide a new self-declaration statement is the only new review procedure being added. After all minimum efforts listed in the eligibility instructions have been exhausted, a case should be cited as Undetermined if sufficient documentation cannot be obtained to complete the eligibility review. We are proposing that these Undetermined cases would not be included in the State-specific payment error rate.

However, we are proposing to specify in the new § 431.960 that these errors be tracked nationally by including these Undetermined cases in the national program payment error rates.

D. Difference Resolution and Appeals Process

Section 601(c)(1)(B) of the CHIPRA requires CMS to include in the new final rule for PERM a clearly defined process for appealing error determinations by review contractors or State agency and personnel responsible for the development, direction, implementation, and evaluation of eligibility reviews and associated activities.

1. Medical and Data Processing Review

The October 5, 2005 IFC established the difference resolution process, which is codified at § 431.998. Medical reviews and data processing reviews for FFS and managed care payments are conducted by an independent Federal contractor. States supply relevant policies but do not participate in the review; States are notified of all error findings. The difference resolution process is the mechanism by which a State may try to resolve with the Federal contractor differences in the Federal contractor’s error findings; the State may appeal to CMS if it cannot resolve the difference in findings with the Federal contractor.

In accordance with the CHIPRA, we are providing more detail in this proposed rule by proposing the timeline associated with the difference resolution and CMS appeals processes. We are also revising the heading of § 431.998 to read, “Difference resolution and appeal process,” which more accurately describes the regulation.

We are proposing to revise § 431.998 to explain that the State may file, in writing, a request with the Federal contractor to resolve differences in the Federal contractor’s findings based on medical or data processing reviews of FFS and managed care claims in Medicaid or CHIP within 10 business days after the disposition report of claims review findings is posted on the contractor’s Web site. Additionally, the State may appeal to CMS for a final resolution within 5 business days from the date the contractor’s finding as a result of the difference resolution is posted on its Web site.

In addition to establishing the timeline for the difference resolution and appeal processes, we are proposing to eliminate the dollar threshold for engaging in the CMS appeals process. Section 431.998 currently provides that States may apply to the Federal contractor to resolve differences in

findings and may appeal to CMS for final resolution for any claims in which the State and Federal contractor cannot resolve the difference in findings, as long as the difference in findings is in the amount of \$100 or more. We established the \$100 threshold in order to prevent *de minimis* disputes and to ensure that appeals to CMS were substantial enough to warrant reconsideration. We were also concerned that a large volume of small-dollar appeals would prevent the States from receiving timely decisions on their appeals.

Information from the FY 2006 and FY 2007 PERM cycles on the number of total claims (including those with errors less than \$100) submitted to the Federal contractor for difference resolution and on the number appealed to CMS for final resolution suggests that the volume of appeals will not substantially increase if CMS allows appeals of errors of less than \$100. Because all errors regardless of their dollar amount ultimately contribute to a State's error rate and hence the national error rate, we are proposing to remove the \$100 threshold set forth in § 431.998(b)(1).

2. Eligibility

As stated in the current PERM regulations at § 431.974(a)(2), personnel responsible for PERM eligibility sampling and review "must be functionally and physically separate from the State agencies and personnel that are responsible for Medicaid and CHIP policy and operations, including eligibility determinations." The intent of this provision was to ensure the independence of the review in order to achieve an unbiased error rate. We provided further clarification in the preamble of the August 2007 final rule, indicating that the agency responsible for PERM could be under the same umbrella agency that oversees policy, operations and determinations but the two agencies cannot report to the same supervisor.

We would further clarify that qualified staff with knowledge of State eligibility policies may be used to conduct the eligibility reviews, but the staff that is chosen must be independent from the staff that oversees policy and operations. Further, the PERM eligibility instructions ask States to provide assurance that the agency or contracting entity responsible for the eligibility reviews is independent of the State agency responsible for eligibility determination and enrollment. The State is responsible for ensuring the integrity of the eligibility reviews, but we do not preclude the independent State agency from sharing or reporting

the eligibility findings to other agencies or stakeholders.

Provided that agency independence could cause a difference in findings between the independent agency and other stakeholder agencies at the State level, we propose that appeals for eligibility review findings should be conducted in accordance with the State's appeal process, as eligibility reviews are conducted at the State level.

In consideration of States that may not have a State appeals process in place, we are also proposing to make State findings available to each respective State's stakeholders (that is, the State Medicaid or CHIP agency), with certain limitations, for the period between the final monthly payment findings submission and eligibility error rate calculation, for example, April 15th through June 15th after the fiscal year being measured or according to the eligibility timeline. We propose facilitating documentation exchange between the State Medicaid or CHIP agency and the independent State agency conducting the PERM eligibility reviews to resolve differences. If any eligibility appeals issues involve Federal policy, States can appeal to CMS for resolution. If our decision causes an erroneous payment finding to be made, any resulting recoveries will be governed by § 431.1002.

Other stakeholder agencies may document their differences in writing to the independent State agency for consideration. If resolutions of differences occur during the PERM cycle, eligibility findings can be updated to reflect the resolution. If differences are not resolved by the deadline for eligibility findings to be submitted to CMS (July 1), the documentation of the difference can be submitted to CMS for consideration no sooner than 60 days and no later than 90 days after the deadline for eligibility findings.

We are also seeking comment on other ways that we can implement an eligibility appeals process for which we can provide consistent oversight.

E. Harmonization of Medicaid Eligibility Quality Control (MEQC) and PERM Programs

1. Options for Applying PERM and MEQC Data

Section 601(e)(2) of the CHIPRA requires that, once this final rule is effective for all States, States will be given the option to elect, for purposes of determining the erroneous excess payments for medical assistance ratio applicable to the State for a fiscal year under section 1903(u) of the Act, to

substitute data resulting from the application of the PERM requirements to the State for data obtained from the application of the MEQC requirements to the State with respect to a fiscal year. Because under section 601(b) of the CHIPRA, there shall be no calculation or publication of any national or State-specific CHIP error rates until 6 months after the final rule becomes effective, States will not have the option to substitute PERM data for MEQC data until 6 months after this final rule is effective.

We considered several interpretations of the CHIPRA requirements that would allow States the option to substitute MEQC data for PERM data and vice versa for purposes of the PERM Medicaid eligibility reviews, but would also retain two separate, independent processes (MEQC and PERM), which are governed by separate statutes and regulations. As PERM is required to meet specific statistical precision requirements and the MEQC error rate is not, we do not believe it is feasible to incorporate the MEQC error rate into a State's overall PERM error rate. Therefore, we interpret "data" as the sample, eligibility review findings, and payment findings as measured under MEQC or PERM. We will calculate separate rates for each program. We are proposing to amend § 431.806 and § 431.812 of the MEQC regulations. These proposed amendments would provide for the State's option in its PERM year to use their samples, eligibility findings and payment findings as measured using PERM sampling and review requirements to meet their MEQC review requirement. States operating under MEQC waivers and pilot programs cannot use this option. Therefore, to provide requirements for implementing a pilot or waiver MEQC program, we are proposing revisions to the MEQC regulation at § 431.812. We are proposing that States that choose to substitute PERM data for MEQC data, would still have two eligibility error rates calculated — one for MEQC using MEQC measurement requirements and one for PERM using PERM requirements. We are proposing to revise § 431.806 of the MEQC regulations to require that a State plan provide a State plan amendment for States opting to use PERM for MEQC in a State's PERM cycle.

We are proposing to amend § 431.812 of the MEQC regulation to provide that States substituting PERM data for MEQC data must use a sampling plan that meets the requirements of § 431.978 of the PERM regulation and perform active

case reviews in accordance with § 431.980 of the PERM regulation.

We are proposing that States with CHIP stand alone programs will only have the option to substitute PERM Medicaid data to meet MEQC requirements under § 431.812(a) through (e) since CHIP stand alone programs are not reviewed under MEQC.

We are also proposing that States with Medicaid and Title XXI Medicaid expansion programs may use Medicaid and CHIP PERM reviews to meet the MEQC requirements described under § 431.812(a) through (e), as both Medicaid and Title XXI Medicaid expansion programs are reviewed under MEQC. States with Title XXI Medicaid expansion programs must combine their Medicaid and CHIP PERM findings to calculate one MEQC error rate. The data must be kept separate for purposes of calculating the PERM error rate.

In addition, we are proposing that States with combination CHIP programs, in which a portion of their CHIP cases are under a stand alone program and a portion of their CHIP cases are under a Title XXI Medicaid expansion program, may use the PERM Medicaid eligibility reviews and the portion of the PERM CHIP eligibility reviews under Title XXI Medicaid expansion programs to meet their MEQC requirement. The Federal contractor will combine the CHIP case findings under the Title XXI Medicaid expansion program and CHIP stand alone findings to calculate one PERM CHIP error rate. The Title XXI Medicaid expansion portion of the PERM data must be included with the Medicaid PERM data to calculate the MEQC error rate.

Section 601(e)(3) of the CHIPRA provides that for purposes of satisfying the requirements of the PERM regulation relating to Medicaid eligibility reviews, a State may elect to substitute data obtained through MEQC reviews conducted in accordance with section 1903(u) of the Act for data required for purposes of PERM requirements, but only if the State MEQC reviews are based on a broad, representative sample of Medicaid applicants or enrollees in the States. The CHIPRA's general effective date of April 1, 2009 applies to this provision. Therefore, as of April 1, 2009, States have the option to substitute MEQC data for PERM data so long as the MEQC reviews are based on a broad, representative sample of Medicaid applicants or enrollees in the States.

We interpret "broad, representative sample of Medicaid applicants or enrollees" to mean that States must develop the MEQC universe according

to requirements at § 431.814 in order to consider the option to use one program's findings to meet the requirements for the other. Under § 431.814, States must sample from a universe of all Medicaid and Title XXI Medicaid expansion beneficiaries (except for the exclusions provided in § 431.814(c)(4)). States operating MEQC pilots or waivers will need to continue operating PERM separately from MEQC.

We are proposing that States with CHIP stand alone programs only have the option to substitute Medicaid MEQC data to meet the PERM Medicaid eligibility review requirement, as CHIP stand alone is not reviewed under the MEQC review.

We are also proposing that States with Title XXI Medicaid expansion programs may use their MEQC reviews described in § 431.812(a) through (e) to meet both the PERM Medicaid and CHIP eligibility review requirements, as both Medicaid and Title XXI Medicaid expansion are reviewed under MEQC. Title XXI Medicaid expansion data must be separated from the MEQC Medicaid data to calculate a PERM CHIP error rate.

We are also proposing that States with combination programs in which a portion of their CHIP cases are under a stand alone program and a portion of their CHIP cases are under a Title XXI Medicaid expansion program may use the MEQC reviews described under § 431.812 (a) through (e) to meet the PERM Medicaid eligibility review requirement and the portion of the PERM CHIP eligibility review requirement under Title XXI Medicaid expansion. However, the stand alone portion of the CHIP universe must remain separate and stratified, as defined in § 431.978(d)(3), as CHIP stand alone is not a part of the harmonization of PERM and MEQC. The Federal contractor, who we are proposing will calculate State eligibility error rates, will combine the Title XXI Medicaid expansion and CHIP stand alone findings to calculate one PERM CHIP error rate.

In addition, we are proposing to amend § 431.980 to allow for States in their PERM year the option to use their MEQC samples, eligibility findings, and payment findings to meet their PERM eligibility review requirement. MEQC reporting requirements to the CMS Regional Offices remain the same, including reporting the error findings for the two 6-month review periods, but States will also be required to comply with the PERM eligibility reporting deadlines by posting error findings to the PERM Error Rate Tracking (PERT) Web site or other electronic eligibility findings repository specified by CMS.

We are proposing that States that choose to substitute MEQC data for PERM data, will still have two eligibility error rates calculated—one for MEQC using MEQC measurement requirements and one for PERM using PERM requirements.

States that choose to substitute MEQC data must ensure that the Medicaid and Title XXI Medicaid expansion sample sizes meet PERM precision requirements when they are separated. States must also note that if using MEQC data, any cases sampled under § 431.814(c)(4) must be excluded from the PERM sample. For example, State-only funded cases, should be reported separately.

States that choose to substitute MEQC or PERM data should note that although two error rates are calculated, only the MEQC error rate will be subject to disallowances under section 1903(u) of the Act. PERM does not have a threshold for eligibility errors and any improper payments identified during the eligibility measurement are subject to recovery according to § 431.1002 of the regulations.

If a State chooses to substitute PERM or MEQC data, the State may not dispute error findings or the eligibility error rate based on the possibility that findings would not have been in error had the other review methodology been used.

We are also seeking comments on the following alternative process for the substitution of MEQC and PERM data: States would select one annual sample that meets MEQC minimum sample requirements and PERM confidence and precision requirements. The State would conduct both an MEQC review and a PERM review on each applicable case. This would ensure a clear distinction between an MEQC error and a PERM eligibility error, and will be the basis for the MEQC error rate and the PERM eligibility error rate. We are also seeking comment on other possible methods for substitution of data.

States that choose to substitute MEQC data may only claim the regular administrative matching rate for performing the MEQC procedures for Medicaid and Title XXI Medicaid expansion cases. The 90 percent PERM enhanced administrative matching rate will only be applicable to States conducting PERM reviews for CHIP cases.

2. Definition of a Case

Section 431.958 currently defines a case as an "individual beneficiary." States are required to sample and conduct eligibility and payment reviews for an individual beneficiary even if the State grants eligibility at the family

level. However, sampling at the individual beneficiary level has proven to be difficult for States from a programming perspective.

Many States receive, review, and grant eligibility based on an application for an entire family, which could be for one person or multiple people. Dividing the family unit for PERM eligibility sampling has been difficult for States to achieve. In addition, the CHIPRA requires MEQC and PERM harmonization to reduce the burden on States.

The MEQC regulation, at § 431.804, defines an active case, in pertinent part, as an “individual [beneficiary] or family.” Changing the definition of a case for PERM eligibility to include both individual beneficiaries and families will support the harmonization process by making it easier for States to utilize their new option of substituting PERM data for MEQC data, and vice versa.

Therefore, we are proposing to revise the definition of a case in § 431.958 to mean an individual or family.

3. Error Rate Calculation: State Responsibility for Calculating Error Rates

Section 431.988 requires, as part of the PERM eligibility review process, for States to calculate and report case and payment error rates for active cases and case error rates for negative cases. As originally envisioned, States retained responsibility for sampling cases, conducting eligibility reviews, collecting payment information for errors, and calculating eligibility error rates. States were to report final eligibility error rates to CMS, which will forward the information to the Federal contractor for inclusion in the overall State and national error rates.

In practice, States have found it difficult to calculate the eligibility error rates. In most cases, States lack the necessary statistical or technical expertise to execute the error rate calculation formulas provided in the PERM eligibility instructions. During the FY 2007 cycle, the Federal contractor provided substantial technical assistance to the States to assist them in conducting these calculations including developing a spreadsheet that States could use to perform the required calculations. Several States requested that, rather than have the Federal contractor provide a spreadsheet that the States merely populate and return to CMS, the Federal contractor perform the required calculations.

Initially, we did not consider it feasible for the Federal contractor to conduct the PERM eligibility error rate

calculations because the States conduct the reviews and maintain the case and payment error data. However, during FY 2007, we developed a centralized reporting system for monthly case and payment error data. The Federal contractor can access the centralized system to conduct the eligibility error rate calculations.

Given the difficulties States have experienced in calculating the PERM eligibility error rates and that there are now mechanisms and processes for the Federal contractor to calculate these error rates, we are proposing to revise § 431.988(b)(1) and (b)(2) by replacing “rates” with “data” to read as follows: “The agency must report by July 1 following the review year, information as follows: (1) Case and payment error data for active cases; and (2) Case error data for negative cases.”

We maintain that this approach will reduce the burden on the States and more accurately reflect current practice, which is that the Federal contractor calculates the eligibility error rates used in the generation of the PERM error rate, as well as the State and national-level error rates. We will continue to require States to report data to the centralized reporting system and will provide States with a spreadsheet or similar calculator that can be used to estimate their own eligibility error rates, but will not require States to submit these estimates to CMS.

F. Corrective Action Plans

Section 601(c)(1)(C) of the CHIPRA requires CMS to provide defined responsibilities and deadlines for States in implementing corrective action plans.

1. Corrective Action Plan Due Dates

We are proposing to revise § 431.992 to provide that States would be required to submit to CMS and implement the corrective action plan for the fiscal year it was reviewed no later than 60 calendar days from the date the State’s error rate is posted to the CMS Contractor’s Web site. State error rates will be posted to the Web site no later than November 15 of each calendar year.

2. Types of Plans

In addition to measuring programs at risk for significant improper payments, the IPIA also requires a report on Federal agency actions taken to reduce improper payments. Since States administer Medicaid and CHIP and make payments for services rendered under these programs, it is necessary that States take corrective actions to reduce improper payments at the State level. We issued a State Health Official

letter in October 2007 to all States detailing the corrective action process under PERM, which can be found on the CMS PERM Web site at http://www.cms.hhs.gov/PERM/Downloads/Corrective_Action_Plan.pdf.

The corrective action process is the means by which States take administrative actions to reduce errors which cause misspent Medicaid and CHIP dollars. The corrective action process involves analyzing findings from the PERM measurement, identifying root causes of errors and developing corrective actions designed to reduce major error causes, and trends in errors or other factors for purposes of reducing improper payments.

Development, implementation, and monitoring of the corrective action plan are the responsibility of the States. In order to develop an effective corrective action plan, States must perform data and program analysis, as well as plan, implement, monitor, and evaluate corrective actions. We are proposing to revise § 431.992 to define States’ responsibilities for these activities as explained below.

(1) *Data Analysis*—States must conduct data analysis such as reviewing clusters of errors, general error causes, characteristics, and frequency of errors. States must also consider improper payments associated with errors. Data analysis may sort the predominant payment errors and number of errors as follows:

- Type—general classification (for example, FFS, managed care, eligibility).
- Element—specific type of classification (for example, no documentation errors, duplicate claims, ineligible cases due to excess income).
- Nature—cause of error (for example, providers not submitting medical records, lack of systems edits, unreported changes in income that caused ineligibility). For the eligibility component, States must analyze both active and negative case errors and also causes for undetermined case findings.

(2) *Program Analysis*—States must review the findings of the data analysis to determine the specific programmatic causes to which errors are attributed (for example, a provider’s lack of understanding of section 1902(a)(27) of the Act and § 457.950 of the regulations requiring providers to submit information regarding payments and claims as requested by the Secretary, State agency, or both) and to identify root error causes. The States may need to analyze the agency’s operational policies and procedures and identify those policies or procedures that contribute to errors, for example,

policies that are unclear, or there is a lack of operational oversight at the local level.

(3) *Corrective Action Planning*—States must determine the corrective actions to be implemented that address the root error causes.

(4) *Implementation and Monitoring*—States must implement the corrective actions in accordance with an implementation schedule. States must develop an implementation schedule for each corrective action initiative and implement those actions. The implementation schedule must identify major tasks, key personnel responsible for each activity, and must include a timeline for each action including target implementation dates, milestones, and monitoring.

(5) *Evaluation*—States must evaluate the effectiveness of the corrective action by assessing improvements in operations, efficiencies, and the incidence of payment errors or number of errors. Subsequent corrective action plans that are submitted as a result of the State's next measurement must include updates on the following previous actions: (1) Effectiveness of implemented corrective actions using concrete data; (2) discontinued or ineffective actions, and actions not implemented and what actions were used as replacements; (3) findings on short-term corrective actions; and (4) the status of the long-term corrective actions.

In addition, we are proposing that CMS would review and approve the corrective action plans submitted by States, and may request regular updates on the approved corrective actions. We are soliciting public comments on the timeline and process associated with this review and approval.

III. Additional Issues Soliciting Public Comments

We are exploring options for the future management of the CHIP and Medicaid PERM programs. We welcome input on components of the program. When submitting input, please address the following details:

- Data source;
- Sampling methodology;
- Medical and data processing reviews;
- Reporting;
- Appeals.

We are soliciting public comments and may consider them in a future rulemaking effort.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-

day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Regarding Review Procedure (§ 431.812)

Section 431.812(a)(1) states that except as provided in paragraph (a)(2) of this section, the agency must review all active cases selected from the State agency's lists of cases authorized eligible for the review month, to determine if the cases were eligible for services during all or part of the month under review, and, if appropriate, whether the proper amount of recipient liability was computed. In § 431.812, proposed paragraph (g) states that a State in its PERM year may elect to substitute the random sample of selected cases, eligibility review findings, and payment review findings obtained through PERM reviews conducted in accordance with § 431.980 of the regulations for data required in this section, where the only exclusions are those set forth in § 431.978(d)(1) of this regulation. The burden associated with this requirement is the time and effort necessary to complete the review of active cases. The burden associated with this requirement is currently approved under OMB control number 0938–0147 with an October 31, 2009, expiration date.

States in their PERM year that elect to substitute PERM data to meet the requirements of § 431.812 would significantly reduce the burden associated with reviewing active cases for MEQC. The burden associated with the information collection requirements contained in proposed § 431.812(g) is the time and effort necessary for a State to substitute the random sample of

selected cases, eligibility review findings, and payment review findings obtained through PERM reviews conducted in accordance with § 431.980. Currently, we believe 19 States (12 Medicaid States and 7 CHIP States) can elect the data substitution and comply with this requirement. We estimate that it would take each agency 10,055 hours to comply with the information collection requirements. In subsequent years, we expect that more States will elect to substitute data from section § 431.980 to meet this requirement so we are estimating the maximum burden for 34 States (17 Medicaid States and 17 CHIP States). The total burden associated with the requirements in proposed § 431.812(g) is 341,870 hours.

Although the review burden would be significantly reduced, States would still be required to report PERM and MEQC findings separately. The additional burden is explained in the section below for § 431.980. We will submit a revised information collection request for 0938–0147 to account for the increased burden as a result of the requirements proposed in § 431.812(g).

B. ICRs Regarding MEQC Sampling Plan and Procedures (§ 431.814)

Section 431.814 states that an agency must submit a basic MEQC sampling plan (or revisions to a current plan) that meets the requirements of this section to the appropriate CMS Regional Office for approval at least 60 days before the beginning of the review period in which it is to be implemented. The burden associated with this requirement is the time and effort necessary to draft and submit a new sampling plan or to draft and submit a revised sampling plan to the appropriate CMS Regional Office. While this requirement is subject to the PRA, it is currently approved under OMB control number 0938–0146 with an October 31, 2009, expiration date.

C. ICRs Regarding PERM Eligibility Sampling Plan and Procedures (§ 431.978)

In § 431.978, the proposed revisions to paragraph (a) discuss the requirements for sampling plan approval. Specifically, the proposed revision to § 431.978(a)(1) states that for each review year, the agency must submit a State-specific Medicaid or CHIP sampling plan (or revisions to a current plan) for both active and negative cases to CMS for approval by the August 1 before the review year and must receive approval of the plan before implementation. The proposed revision to § 431.978(a)(2) further explains that the agency must notify CMS that it

would be using the same plan from the previous review year if the plan is unchanged.

The burden associated with the information collection requirements contained in § 431.978(a) is the time and effort necessary for State agencies to draft and submit the aforementioned information to CMS. While this requirement is subject to the PRA, the associated burden is approved under OMB control number 0938–1012 with a January 31, 2010, expiration date.

D. ICRs Regarding Eligibility Review Procedures (§ 431.980)

Proposed § 431.980(d) states that unless the State has elected to substitute MEQC data for PERM data under paragraph (f) of this section, the agency must complete the following.

Specifically, proposed § 431.980(d)(iii) requires a State to examine the evidence in the case file that supports categorical and financial eligibility for the category of coverage in which the case is assigned, and independently verify information that is missing, older than 12 months and likely to change, or otherwise as needed, to verify eligibility. Section 431.980(d)(vi) states that the elements of eligibility in which State policy allows for self declaration can be verified with a new self-declaration statement. Proposed § 431.980(vii) contains the requirements for a self-declaration statement.

The burden associated with the requirements contained in proposed § 431.980 is the time and effort necessary for a State agency to complete the aforementioned requirements. While this requirement is subject to the PRA, the associated burden is currently approved under OMB control number 0938–1012.

Proposed § 431.980(f)(1) allows for a State in its PERM year to elect to substitute the random sample of

selected cases, eligibility review findings, and payment reviews findings obtained through MEQC reviews conducted in accordance with section 1903(u) of the Act to meet its PERM eligibility review requirement. The substitution of the MEQC data is allowed as long as the State MEQC reviews are based on a broad, representative sample of Medicaid applicants or enrollees in the State. In addition, as stated in proposed § 431.980(f)(2), the MEQC samples must also meet PERM confidence and precision requirements.

The burden associated with the information collection requirements contained in proposed § 431.980(f) is the time and effort necessary for a State to collect, review, and submit the MEQC data as part of meeting its PERM eligibility review requirement. States that elect to substitute MEQC data to complete the requirements of § 431.980 would significantly reduce the burden associated with reviewing active cases for PERM. Although the review burden would be eliminated, States would still be required to report PERM and MEQC findings separately. Currently we believe 19 States (12 Medicaid States and 7 CHIP States) can elect the data substitution and comply with this requirement. We estimate that it would take each agency 10,500 hours to comply with the information collection requirements. In subsequent years, we expect that more States will elect to substitute data from section § 431.812 to meet this requirement so we are estimating the maximum burden for 34 States (17 Medicaid States and 17 CHIP States). The total burden associated with the requirements in proposed § 431.980(f) is 357,000 hours.

We also propose adding additional burden as stated above. States must report PERM and MEQC findings separately and will use an estimated 2

hours per required form to reformat PERM or MEQC data into the appropriate forms. We are adding an additional 98 hours for each State to reformat MEQC data into the appropriate PERM eligibility forms and 98 hours for each State to compile PERM eligibility data to submit on the appropriate MEQC forms. We will submit a revised information collection request for 0938–1012 to account for the increased burden as a result of the requirements proposed in § 431.980(f).

E. ICRs Regarding Corrective Action Plan (§ 431.992)

The proposed revisions to § 431.992(a) specify that State agencies must submit to CMS a corrective action plan to reduce improper payments in its Medicaid and CHIP programs based on its analysis of the error causes in the FFS, managed care, and eligibility components. In § 431.992(b), we are proposing to revise this section to require States to submit a corrective action plan to CMS for the fiscal year it was reviewed no later than 60 days from the date the State’s error rate is posted to the CMS Contractor’s Web site. As proposed in § 431.992(c), States will be required to implement corrective actions in accordance with their corrective action plans as submitted to CMS. Proposed § 431.992(d) details the required components of a corrective action plan.

The burden associated with the information collection requirements in proposed revisions to § 431.992 is the time and effort necessary for States to develop corrective action plans, submit the plans to CMS, and implement corrective actions as dictated by their corrective plans. While these requirements are subject to the PRA, the burden is approved under the OMB control numbers shown in Table 1.

TABLE 1—OMB CONTROL NUMBERS

Program component	OMB control No.	Expiration date
Fee-for-Service	0938–0974 ..	02/29/2012
Managed Care	0938–0994 ..	09/30/2009
Eligibility	0938–1012 ..	01/31/2010

F. ICRs Regarding Difference Resolution and Appeal Process (§ 431.998)

As proposed in § 431.998(a), a State may file, in writing, a request with the Federal contractor to resolve differences in the Federal contractor’s findings based on medical or data processing reviews on FFS and managed care claims in Medicaid and CHIP within 10

business days after the disposition report of claims review findings is posted on the contractor’s Web site. The written request must include a factual basis for filing the difference and it must provide the Federal contractor with valid evidence directly related to the error finding to support the State’s

position that the claim was properly paid.

Proposed § 431.998(b) states that for a claim in which the State and the Federal contractor cannot resolve the difference in findings, the State may appeal to CMS for final resolution within 5 business days from the date the contractor’s finding as a result of the

difference resolution is posted on its Web site.

Proposed § 431.998(c) states that for eligibility error determinations made by agencies or personnel functionally and physically separate from the State agencies and personnel that are responsible for Medicaid and CHIP policy and operations, the State may appeal error determinations by filing a request with the appropriate State agencies. If no appeals process is in place at the State level, differences in findings must be documented in writing for the independent State agency to consider. Any unresolved differences

may be addressed by CMS between the final month of payment data submission and error rate calculation. CMS may facilitate documentation exchange to assist in resolving difference at the State level. Any changes in error findings must be reported to CMS by the deadline for submitting final eligibility review findings. Any appeals of determinations based on interpretations of Federal policy may be referred to CMS.

The burden associated with the information collection requirements contained in proposed § 431.998(a) through (c) is the time and effort

necessary to draft and submit requests for difference resolution proceedings and determination appeals. We believe the burden associated with these requirements are exempt from the PRA under 5 CFR 1320.4. Information collected subsequent to an administrative action is not subject to the PRA.

G. OMB Control Number(s) for Reporting and Recordkeeping Burden

The burden is approved under the OMB control numbers stated in Table 2.

TABLE 2—ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Regulation section(s)	OMB control No.	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)
§ 431.812	0938-0147	10	120	8	1 960
§ 431.814	0938-0146	10	20	24	480
§ 431.978	0938-1012	34	1,360	393.875	535,670
§ 431.980	0938-1012	34	1,360	393.875	¹ 535,670
§ 431.992	0938-0974	34	34	840	28,560
	0938-0994	36	² 18,000	1	23,400
	0938-1012	34	1,360	393.875	³ 535,670
Total					589,070

¹ We are submitting a revision of the currently approved ICR for the proposed information collection requirements in this section of the regulation.

² The currently approved number of responses is 23,400; however, the value is incorrect due to an arithmetic error. We have already submitted an 83-C Change Worksheet to OMB to correct the error.

³ For the purpose of totaling the burden associated with the ICRs in this regulation, the annual burden associated with OMB control number 0938-1012 is counted only once.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer, [CMS-6150-P].

Fax: (202) 395-6974; or

E-mail:

OIRA_submission@omb.eop.gov.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993, as further amended), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 (as amended by Executive Order 13258) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). For the reasons discussed below, we have determined that this proposed rule is not a major rule.

1. Federal Contracting Cost Estimate

We have estimated that it will cost \$14.7 million annually for engaging Federal contractors to review FFS and managed care claims and calculate error rates in 34 State programs (17 States for Medicaid and 17 States for CHIP). We estimated these costs as follows:

In the August 31, 2007 final rule, we estimated the Federal cost for use of Federal contractors conducting the FFS and managed care measurements to be \$19.8 million annually. Due to more recent data acquired through our experience with Federal contractors in the FY 2007, FY 2008, and FY 2009 PERM cycles, we were able to produce a more accurate estimate by taking the average of Federal contracting costs for the three cycles and including anticipated future PERM cycle costs. The error rate measurements for 34 State programs (17 States for Medicaid and 17 States for CHIP) would cost approximately \$14,682,777 in Federal funds for the Federal contracting cost.

2. State Cost Estimate for Fee-for-Service and Managed Care Reviews

We estimated that total State cost for FFS and managed care reviews for 34 State programs is \$6.2 million

(\$4,309,490 in Federal cost and \$1,846,924 in State cost). This cost estimate is based on the cost for States to prepare and submit claims universe information for both FFS and managed care payments, prepare and submit claims details and provider information for sampled records, submit State program policies and updates on a quarterly basis, cooperate with Federal contractors during data processing review, participate in the difference resolution and appeals process, and prepare and submit a corrective action plan for claims errors. These costs are estimated as follows:

We estimated that the annualized number of hours required to respond to requests for required claims information for FFS and managed care review for 34 State programs will be 112,200 hours (3,300 hours per State per program). At the 2009 general schedule GS-12-01 rate of pay that includes fringe and overhead costs (\$54.87/hour), we calculated a cost of \$6,156,414 (\$4,309,490 in Federal cost and \$1,846,924 in State cost). This cost estimate includes the following estimated annualized hours: (1) Up to 1,800 hours required for States to develop and submit required claims and capitation payments information; (2) up to 500 hours for the collection and submission of policies; and (3) up to 1,000 hours for States to cooperate with CMS and the Federal contractors on other aspects of the claims review and corrective action process.

Therefore, the total annual estimate of the State cost for 34 State programs to submit information for FFS and managed care reviews and participate with CMS and Federal contractors is \$6,156,414 (\$4,309,490 in Federal cost and \$1,846,924 in State cost).

3. Cost Estimate for Eligibility Reviews

Beginning in FY 2007, States review eligibility in the same year they are selected for FFS and managed care reviews in Medicaid and CHIP. We estimated that total cost for eligibility review for 34 State programs is \$24,588,344 (\$17,211,841 in Federal cost and \$7,376,503 in State cost). This cost estimate is based on the cost for States to submit information to CMS and the cost for States to conduct eligibility reviews and report rates to CMS. These costs are estimated as follows:

We estimated in the information collection section, that the annualized number of hours required to respond to requests for information for the eligibility review (for example, sampling plan, monthly sample lists, the eligibility corrective action report) for

34 State programs will be 108,800 hours (3,200 hours per State per program). At the 2009 general schedule GS-12-01 rate of pay that includes fringe and overhead costs (\$54.87/hour), we calculated a cost of \$5,969,856 (\$4,178,899 in Federal cost and \$1,790,957 in State cost). This cost estimate includes the following estimated annualized hours: (1) Up to 1,000 hours required for States to develop and submit a sampling plan; (2) up to 1,200 hours for States to submit 12 monthly sample lists detailing the cases selected for review; and (3) up to 1,000 hours for States to submit a corrective action plan for purposes of reducing the eligibility payment error rate. For the eligibility review and reporting of the findings, we estimated that each State would need to review an annual sample size of 504 active cases to achieve a 3 percent margin of error at a 95 percent confidence interval level in the State-specific error rates. We also estimated that States would need to review 204 negative cases to produce a case error rate that met similar standards for statistical significance. We estimated that for 34 State programs the annualized number of hours required to complete the eligibility case reviews and report the eligibility-based error data to CMS would be 339,320 hours (9,980 hours per State, per program). At the 2009 general schedule GS-12-01 rate of pay that includes fringe and overhead costs (\$54.87/hour), we calculated a cost of \$18,618,488 (\$13,032,942 in Federal cost and \$5,585,547 in State cost).

Therefore, the total annual estimate of the cost for 34 State programs to submit information and to conduct the eligibility reviews and report the error rate to CMS is \$24,588,344 (\$17,211,841 in Federal cost and \$7,376,503 in State cost).

The CHIPRA requires CMS to provide States in their PERM year the option to use PERM data to meet the MEQC requirements described in section 1903(u) of the Act, and the option to use MEQC data described in § 431.812 to meet the PERM eligibility review requirement. While the intent is to reduce redundancies and cost burden between the two programs and their review requirements, States that substitute findings may incur more costs to implement changes to their PERM or MEQC sampling and review procedures.

4. Cost Estimate for Total PERM Costs

Based on our estimates of the costs for the FFS, managed care and eligibility reviews for both the Medicaid and CHIP programs at approximately \$45.4 million (\$36,204,108 in Federal cost and

\$9,223,428 in State cost), this rule does not exceed the \$100 million or more in any 1 year criterion for a major rule, and a regulatory impact analysis is not required.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than \$7.0 million to \$34.5 million in any 1 year). Individuals and States are not included in the definition of a small entity.

Providers could be required to supply medical records or other similar documentation that verified the provision of Medicaid or CHIP services to beneficiaries as part of the PERM reviews, but we anticipate this action would not have a significant cost impact on providers. Providers would only need to provide medical records for the FFS component of this program. A request for medical documentation to substantiate a claim for payment would not be a burden to providers nor would it be outside the customary and usual business practices of Medicaid or CHIP providers. Not all States would be reviewed every year and medical records would only be requested for FFS claims, so it is unlikely for a provider to be selected more than once per program per measurement cycle to provide supporting documentation, particularly in States with a large Medicaid or CHIP managed care population. If a provider is, in fact, selected more than once per program to provide supporting documentation it would not be outside customary and usual business practices.

In addition, the information should be readily available and the response should take minimal time and cost since the response would merely require gathering the documents and either copying and mailing them or sending them by facsimile. The request for medical documentation from providers is within the customary and usual business practice of a provider who accepts payment from an insurance provider, whether it is a private organization, Medicare, Medicaid, or CHIP and should not have a significant impact on the provider's operations. Therefore, the Secretary has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory

impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds.

These entities may incur costs due to collecting and submitting medical records to the contractor to support medical reviews; but, like any other Medicaid or CHIP provider, we estimate these costs would not be outside the limit of usual and customary business practices. Also, since the sample is randomly selected and only FFS claims are subject to medical review, we do not anticipate that a great number of small rural hospitals would be asked for an unreasonable number of medical records. As stated before, a State will be reviewed only once, per program, every 3 years and it is unlikely for a provider to be selected more than once per program to provide supporting documentation. Therefore, the Secretary has determined that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2009, that threshold is approximately \$133 million. This proposed rule does not impose costs on States to produce the error rates for FFS and managed care payments, but requires States and providers to submit claims information and medical records and cooperate with Federal contractors during the review so that error rates can be calculated.

Based on our estimates of State participation burden for both Medicaid and CHIP, for 34 States (17 States per Medicaid and 17 States for CHIP), we calculated that the annual burden for these States for the PERM program is approximately \$9,223,428 in State costs for both Medicaid and CHIP. The combined costs of both programs total approximately \$542,555 for each of the 17 States. Thus, we do not anticipate State costs to exceed \$133 million. Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or

otherwise has Federalism implications. This proposed rule requires States to prepare and submit claims universe information for both FFS and managed care payments, prepare and submit claims details and provider information for sampled records, submit State program policies and updates on a quarterly basis, cooperate with Federal contractors during data processing reviews, participate in the difference resolution and appeals process, and prepare and submit a corrective action plan for claims errors. We estimated that the burden to respond to requests for claims information for the FFS and managed care measurement for Medicaid and CHIP for 34 State programs (17 States for Medicaid and 17 States for CHIP) will be \$6,156,414 (\$4,309,490 in Federal cost and \$1,846,924 in State cost).

This proposed rule also require States selected for review to submit an eligibility sampling plan, monthly sample selection information, summary review findings, State error rate data, and other information in order for CMS to calculate the eligibility State-specific and national error rates. We estimated that the burden to conduct the eligibility measurement for Medicaid and CHIP for 34 State programs (17 States for Medicaid and 17 States for CHIP) will be approximately \$24,588,344 (\$17,211,841 in Federal cost and \$7,376,503 in State cost). As a result, we assert that this regulation will not have a substantial impact on State or local governments.

B. Anticipated Effects

This proposed rule is intended to measure improper payments in Medicaid and CHIP. States would implement corrective actions to reduce the error rate, thereby producing savings over time. These savings cannot be estimated until after the corrective actions have been monitored and determined to be effective, which can take several years.

C. Alternatives Considered

This proposed rule reflects changes required by the CHIPRA. Therefore, we considered only applying additional changes to the CHIP component of PERM (except in instances where CHIPRA specifically requires the provision to apply to Medicaid and CHIP). However, in order to maintain a consistent measurement process for the Medicaid and CHIP programs, we did not choose this alternative. No other alternatives were considered since the modifications were required by Federal statute.

D. Conclusion

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 457

Administrative practice and procedure, Grant programs—health, Health insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

Subpart P—Quality Control

2. In 42 CFR part 431, revise all references to “SCHIP” to read “CHIP”.

3. Amend § 431.636 by revising all references to “State Children’s Health Insurance Program” to read “Children’s Health Insurance Program.”

4. Section 431.806 is amended by—

- A. Redesignating paragraph (b) as paragraph (c).
- B. Adding new paragraph (b).
- C. Revising redesignated paragraph (c).

The addition and revision read as follows:

§ 431.806 State plan requirements.

* * * * *

(b) *Use of PERM data.* A State plan must provide for operating a Medicaid eligibility quality control program that is in accordance with § 431.978 through § 431.980 of this part to meet the requirements of § 431.810 through § 431.822 of this subpart when a State is in their PERM year.

(c) *Claims processing assessment system.* Except in a State that has an approved Medicaid Management Information System (MMIS) under

subpart C of part 433 of this subchapter, a State Plan must provide for operating a Medicaid quality control claims processing assessment system that meets the requirements of § 431.836 of this subpart.

5. Section 431.812 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 431.812 Review procedures.

* * * * *

(f) *MEQC pilot reviews and waivers.*

(1) A State may elect to conduct MEQC pilot reviews using an alternative methodology or a focused Medicaid population with CMS approval.

(2) States must submit a pilot proposal at least 60 days before planned implementation of the pilot reviews.

(3) The State must receive CMS approval of its plan before it is implemented.

(g) *Substitution of PERM data.* A State in its Payment Error Rate Measurement (PERM) year may elect to substitute the random sample of selected cases, eligibility review findings, and payment review findings obtained through PERM reviews conducted in accordance with § 431.980 of this part for data required in this section, if the only exclusions are those set forth in § 431.978(d)(1) of this part.

6. Section 431.814 is amended by revising paragraph (c)(4) to read as follows:

§ 431.814 Sampling plan and procedures.

* * * * *

(c) * * *

(4) States must exclude from the MEQC universe all of the following:

(i) SSI beneficiaries whose eligibility determinations were made exclusively by the Social Security Administration under an agreement under section 1634 of the Act.

(ii) Individuals in foster care or receiving adoption assistance whose eligibility is determined under Title IV-E of the Act.

(iii) Individuals receiving Medicaid under programs that are 100 percent Federally-funded.

(iv) Individuals whose eligibility was determined under a State's option under section 1902(e)(13) of the Act.

* * * * *

Subpart Q—Requirements for Estimating Improper Payments in Medicaid and CHIP

7. Amend § 431.950 by revising the reference to “State Children’s Health Insurance Program” to read “Children’s Health Insurance Program.”

8. Section § 431.954 is amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 431.954 Basis and scope.

(a) * * * This subpart also implements the provisions of section 601 of the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111–3) which requires that the new PERM regulations include the following: Clearly defined criteria for errors for both States and providers; clearly defined processes for appealing error determinations; clearly defined responsibilities and deadlines for States in implementing any corrective action plans; requirements for State verification of an applicant’s self-declaration or self-certification of eligibility for, and correct amount of, medical assistance under Medicaid or child health assistance under CHIP; and State-specific sample sizes for application of the PERM requirements.

* * * * *

9. Section 431.958 is amended by—

A. Adding definitions for the terms “Annual sample size,” “Children’s Health Insurance Program,” “Provider error,” and “State error” in alphabetical order.

B. Removing the definition of “State Children’s Health Insurance Program.”

C. Revising the definition of “Case”.

The additions and revision read as follows:

§ 431.958 Definitions and use of terms.

* * * * *

Annual sample size means the number of fee-for-service claims, managed care payments or eligibility cases necessary to meet precision requirements in a given PERM cycle.

* * * * *

Case means an individual beneficiary or family enrolled in Medicaid or CHIP or who has been denied enrollment or has been terminated from Medicaid or CHIP.

* * * * *

Children’s Health Insurance Program (CHIP) means the program authorized and funded under Title XXI of the Act.

* * * * *

Provider error includes, but is not limited to one of the following:
(1) An improper payment made due to lack of or insufficient documentation.

(2) Incorrect coding.

(3) Improper billing (for example, unbundling, incorrect number of units).

(4) A payment that is in error due to lack of medical necessity.

(5) Evidence that the service was not provided in compliance with documented State or Federal policy.

* * * * *

State error includes, but is not limited to one of the following:

(1) A payment that is in error due to incorrect processing (for example, duplicate of an earlier payment, payment for a non-covered service, payment for an ineligible beneficiary).

(2) Incorrect payment amount (for example, incorrect fee schedule or capitation rate applied, incorrect third party liability applied).

(3) A payment error resulting from services being provided to an individual who—

(i) Was ineligible when authorized or when he or she received services;

(ii) Was eligible for the program but was ineligible for certain services he or she received; or

(iii) Had not met applicable beneficiary liability requirements when authorized eligible or paid too much toward actual liability.

* * * * *

10. Section 431.960 is added to read as follows:

§ 431.960 Types of payment errors.

(a) *General rule.* State or provider errors identified for the Medicaid and CHIP improper payments measurement under the Improper Payments Information Act of 2002 must affect payment under applicable Federal policy and State policy.

(b) *Data processing errors.* (1) A processing error is an error resulting in an overpayment or underpayment that is determined from a review of the claim and other information available in the State’s Medicaid Management Information System, related systems, or outside sources of provider verification.

(2) The difference in payment between what the State paid (as adjusted within improper payment measurement guidelines) and what the State should have paid is the dollar measure of the payment error.

(c) *Medical review errors.* (1) A medical review error is an error resulting in an overpayment or underpayment that is determined from a review of the provider’s documentation, the State’s written policies, and a comparison with the information presented on the claim.

(2) The difference in payment between what the State paid (as adjusted within improper payment measurement guidelines) and what the State should have paid is the dollar measure of the payment error.

(d) *Eligibility errors.* (1) An eligibility error is an error resulting from services being provided to an individual who—

(i) Was ineligible when authorized or when he or she received services;

(ii) Was eligible for the program but was ineligible for certain services he or she received;

(iii) Had not met applicable beneficiary liability requirements when authorized as eligible or paid too much toward actual liability; or

(iv) Had a lack of or insufficient documentation in the case record to make a definitive determination of eligibility or ineligibility.

(2) The dollars paid in error due to the eligibility error is the measure of the payment error.

(3) A State eligibility error does not result from the State's verification of an applicant's self-declaration or self-certification of eligibility for, and the correct amount of, medical assistance or child health assistance, if the State process for verifying an applicant's self-declaration or self-certification satisfies the requirements for such process applicable under regulations at § 457.380 of this chapter, in CMS approved State plans, or otherwise approved by the Secretary.

Requirements for acceptable self-declaration for eligibility reviews are described at § 431.980(d)(1) and (d)(2).

(4) Negative case errors are errors resulting from either of the following:

(i) Applications for Medicaid or CHIP that are improperly denied by the State.

(ii) Existing cases that are improperly terminated from Medicaid or CHIP by the State.

(5) No payment errors are associated with negative cases.

(e) *Errors for purposes of determining the national error rates.* The Medicaid and CHIP national error rates include but are not limited to the errors described in paragraphs (b) through (d)(1) of this section.

(f) *Errors for purposes of determining the State error rates.* (1) The Medicaid and CHIP State error rates include but are not limited to, the errors described in paragraphs (b) through (d)(1)(iii) of this section.

(2) Undetermined cases, as described in paragraph (d)(1)(iv) of this section, cited in the eligibility reviews are excluded from State-specific payment error rates if the errors satisfy the criteria in paragraph (d)(3) of this section.

(g) *Error codes.* CMS may define different types of errors within the above categories for analysis and reporting purposes. Only dollars in error will factor into a State's PERM error rate.

11. Section 431.970 is amended by revising paragraph (a)(1) to read as follows:

§ 431.970 Information submission requirements.

(a) * * *

(1) Adjudicated fee-for-service (FFS) or managed care claims information or both, on a quarterly basis, from the review year;

* * * * *

12. Section 431.972 is added to read as follows:

§ 431.972 Claims sampling procedures.

(a) *Claims universe.* The PERM claims universe includes payments that were originally paid (paid claims) and for which payment was requested but denied (denied claims) during the Federal fiscal year, and for which there is Federal financial participation (FFP) (or would have been if the claim had not been denied) through Title XIX (Medicaid) or Title XXI (CHIP).

(b) *Sample size.* CMS estimates a State's annual sample size for claims review at the beginning of the PERM cycle.

(1) *Precision and confidence levels.* The annual sample size must be estimated to achieve a State-level error rate within a 3 percent precision level at 95 percent confidence interval for the claims component of the PERM program, unless the precision requirement is waived by CMS on its own initiative.

(2) *Base year sample size.* The annual sample size in a State's first PERM cycle (the "base year") is—

(i) Five hundred fee-for-service claims and 250 managed care payments drawn from the claims universe; or

(ii) If the claims universe of fee-for-service claims or managed care capitation payments from which the annual sample is drawn is less than 10,000, the State may request to reduce its sample size by the finite population correction factor for the relevant PERM cycle.

(3) *Subsequent year sample size.* In PERM cycles following the base year:

(i) CMS considers the error rate from the State's previous PERM cycle to determine the State's annual sample size for the current PERM cycle.

(ii) The maximum sample size is 1,000 fee-for-service or managed care payments, respectively.

(iii) If a State measured in the FY 2007 or FY 2008 cycle elects to reject its State-specific CHIP PERM rate determined during those cycles, information from those cycles will not be used to calculate its annual sample size in subsequent PERM cycles and the State's annual sample size in FY 2010 or FY 2011 is 500 fee-for-service and 250 managed care payments.

13. Section 431.978 is amended by—

A. Revising paragraphs (a) through (c).
B. Revising paragraphs (d)(1)(i) and (ii).

The revisions read as follows:

§ 431.978 Eligibility sampling plan and procedures.

(a) *Plan approval.* For each review year, the State must—

(1) Submit its Medicaid or CHIP sampling plan (or revisions to a current plan) for both active and negative cases to CMS for approval by the August 1 before the review year; and

(2) Have its sampling plan approved by CMS before the plan is implemented.

(b) *Maintain current plan.* The State must do the both of the following:

(1) Keep its plan current, for example, by making adjustments to the plan when necessary due to fluctuations in the universe.

(2) Review its plan each review year. If it is determined that the approved plan is—

(i) Unchanged from the previous review year, the State must notify CMS that it is using the plan from the previous review year; or

(ii) Changed from the previous review year, the State must submit a revised plan for CMS approval.

(c) *Sample size.* (1) *Precision and confidence levels.* Annual sample size for eligibility reviews must be estimated to achieve within a 3 percent precision level at 95 percent confidence interval for the eligibility component of the program.

(2) *Base year sample size.* Annual sample size for each State's base year of PERM is—

(i) Five hundred and four active cases and 204 negative cases drawn from the active and negative universes; or

(ii) If the active case universe or negative case universe of Medicaid or CHIP beneficiaries from which the annual sample is drawn is less than 10,000, the sample size may be reduced by the finite population correction factor for the relevant PERM cycle.

(3) *Subsequent year sample size.* In PERM cycles following the base year the annual sample size may increase or decrease based on the State's prior results of the previous cycle PERM error rate information. The State may provide information to CMS in the eligibility sampling plan due to CMS by the August 1 prior to the start of the fiscal year to support the calculation of a reduced annual sample size for the next PERM cycle.

(i) CMS considers the error rate from the State's previous PERM cycle to determine the State's annual sample size for the current PERM cycle.

(ii) The maximum sample size is 1,000 for the active cases and negative cases, respectively.

(iii) If the active case universe or negative case universe of Medicaid or CHIP beneficiaries from which the annual sample is drawn is less than 10,000, the sample size may be reduced by the finite population correction factor for the relevant PERM cycle.

(iv) If a State measured in the FY 2007 or FY 2008 cycle elects to reject its PERM CHIP rate as determined during those cycles, information from those cycles is not used to calculate the State's sample size in subsequent PERM cycles and the State's sample size in FY 2010 or FY 2011 is 504 active cases and 204 negative cases.

(d) * * *

(1) * * *

(i) *Medicaid*. (A) The Medicaid active universe consists of all active Medicaid cases funded through Title XIX for the sample month.

(B) The following types of cases are excluded from the Medicaid active universe:

(1) Cases for which the Social Security Administration, under a section 1634 agreement with a State, determines Medicaid eligibility for Supplemental Security Income recipients.

(2) All foster care and adoption assistance cases under Title IV-E of the Act are excluded from the universe in all States.

(3) Cases under active fraud investigations.

(4) Cases in which eligibility was determined under section 1902(e)(13) of the Act for States' express lane option.

(C) If the State cannot identify cases under active fraud investigations for exclusion from the universe previous to the sample selection, the State shall drop these cases from review if they are selected in the sample and are later determined to be under active fraud investigation at the time of selection.

(ii) *CHIP*. (A) The CHIP active universe consists of all active case CHIP and Title XXI Medicaid expansion cases that are funded through Title XXI for the sample month.

(B) The following types of cases are excluded from the CHIP active universe:

(1) Cases under active fraud investigation.

(2) Cases in which eligibility was determined under section 1902(e)(13) of the Act for States' express lane option.

(C) If the State cannot identify cases that meet the exclusion criteria specified in paragraph (d)(1)(ii)(B) of this section before sample selection, the State must drop these cases from review if it is later determined that the cases meet

the exclusion criteria specified in paragraph (d)(1)(ii)(B) of this section.

* * * * *

14. Section 431.980 is amended by—
A. Revising the introductory text of paragraph (d)(1).

B. In paragraph (d)(1)(i) and (ii), removing the “;” at the end of the paragraph and adding in its place a “.”.

C. Revising paragraph (d)(1)(iii).

D. Redesignating paragraph (d)(1)(vi) as (d)(1)(x).

D. Adding new paragraphs (d)(1)(vi) through (d)(1)(ix).

E. Revising the introductory text of newly redesignated paragraph (d)(1)(x).

F. Revising the introductory text of paragraph (d)(2).

G. Adding paragraph (f).

The revisions and additions read as follows:

§ 431.980 Eligibility review procedures.

* * * * *

(d) * * *

(1) *Active cases—Medicaid*. Unless the State has selected to substitute MEQC data for PERM data under paragraph (f) of this section, the agency must complete all of the following:

* * * * *

(iii) Examine the evidence in the case file that supports categorical and financial eligibility for the category of coverage in which the case is assigned, and independently verify information that is missing, older than 12 months and likely to change, or otherwise as needed, to verify eligibility.

* * * * *

(vi) Elements of eligibility in which State policy allows for self-declaration can be verified with a new self-declaration statement.

(vii) The self-declaration must be—

(A) Present in the record;

(B) Not outdated (more than 12 months old);

(C) In a valid, State-approved format; and

(D) Consistent with other facts in the case record.

(viii) If a self-declaration statement in the case record is more than 12 months old, eligibility may be verified through a new self-declaration statement or other third party sources.

(ix) If eligibility or ineligibility cannot be verified, cite a case as undetermined as specified in paragraph (d)(1)(x)(B) or (d)(2)(ii) of this section.

(x) As a result of paragraphs (d)(1)(i) through (d)(1)(ix) of this section—

* * * * *

(2) *Active cases—CHIP*. In addition to the procedures for active cases as set forth in paragraphs (d)(1)(i) through (d)(1)(ix) of this section, once the agency

establishes CHIP eligibility, the agency must verify that the case is not eligible for Medicaid by determining that the child has income above the Medicaid levels in accordance with the requirements in § 457.350 of this chapter. Upon verification, the agency must—

* * * * *

(f) *Substitution of MEQC data*. (1) A State in their PERM year may elect to substitute the random sample of selected cases, eligibility review findings, and payment reviews findings obtained through MEQC reviews conducted in accordance with section 1903(u) of the Act for data required in this section, as long as the State MEQC reviews are based on a broad, representative sample of Medicaid applicants or enrollees in the State, if the only exclusions are those set forth in section 1902(e)(13) of the Act, § 431.814(c)(4), and § 431.978(d)(1) of this part.

(2) MEQC samples must also meet PERM confidence and precision requirements.

15. Section 431.988 is amended by revising paragraphs (b)(1) and (2) to read as follows:

§ 431.988 Eligibility case review completion deadlines and submittal of reports.

* * * * *

(b) * * *

(1) Case and payment error data for active cases.

(2) Case error data for negative cases.

* * * * *

16. Section 431.992 is revised to read as follows:

§ 431.992 Corrective action plan.

(a) The State agency must develop a corrective action plan designed to reduce improper payments in its Medicaid and CHIP programs based on its analysis of the error causes in the FFS, managed care, and eligibility components.

(b) In developing a corrective action plan, the State must take the following actions:

(1) *Data analysis*. (i) States must conduct data analysis such as reviewing clusters of errors, general error causes, characteristics, and frequency of errors that are associated with improper payments as well as error causes associated with number of errors.

(ii) Data analysis may sort the predominant payment errors and number of errors by the following:

(A) *Type*: General classification (for example, FFS, managed care, eligibility).

(B) *Element*: Specific type of classification (for example, no

documentation errors, duplicate claims, ineligible cases due to excess income).

(C) *Nature*: Cause of error (for example, providers not submitting medical records, lack of systems edits, unreported changes in income that caused ineligibility).

(iii) States must analyze active and negative case errors and causes for undetermined case findings under the eligibility component.

(2) *Program analysis*. (i) States must review the findings of the data analysis to determine the specific programmatic causes to which errors are attributed (for example, provider lack of understanding of the PERM requirement to provide documentation) and to identify root error causes.

(ii) The States may need to analyze the agency's operational policies and procedures and identify those policies or procedures, or both that are prone to contribute to errors, for example, unclear policies or lack of operational oversight at the local level.

(3) *Corrective action planning*. States must determine the corrective actions to be implemented that address the root error causes.

(4) *Implementation and monitoring*. (i) States must develop an implementation schedule for each corrective action initiative and implement those actions in accordance with the schedule.

(ii) The implementation schedule must identify the following:

- (A) Major tasks;
- (B) Key personnel responsible for each activity; and
- (C) A timeline for each action including target implementation dates, milestones, and monitoring.

(5) *Evaluation*. States must evaluate the effectiveness of the corrective action by assessing the following:

- (i) Improvements in operations;
- (ii) Efficiencies;
- (iii) Number of errors; and
- (iv) Improper payments.

(c) The State agency must submit to CMS and implement the corrective action plan for the fiscal year it was reviewed no later than 60 calendar days after the date on which the State's Medicaid or CHIP error rates are posted on the CMS contractor's Web site.

(d) The State must submit a new corrective action plan for each subsequent error rate measurement that contains an update on the status of a previous corrective action plan. Items to address in the new corrective action plan include, but are not limited to the following:

(1) Effectiveness of implemented corrective actions, as assessed using concrete data.

(2) Discontinued or ineffective actions, actions not implemented, and those actions, if any, that were substituted for such discontinued, ineffective, or abandoned actions.

(3) Findings on short-term corrective actions.

(4) The status of the long-term corrective actions.

17. Section 431.998 is amended by—

- A. Revising the section heading as set forth below.
- B. Revising paragraphs (a) and (b).
- C. Redesignating paragraph (c) as (d).
- D. Adding new paragraph (c).

The revisions and addition read as follows:

§ 431.998 Difference resolution and appeal process.

(a) The State may file, in writing, a request with the Federal contractor to resolve differences in the Federal contractor's findings based on medical or data processing reviews on FFS and managed care claims in Medicaid or CHIP within 10 business days after the disposition report of claims review findings is posted on the contractor's Web site. The State must complete all of the following:

(1) Have a factual basis for filing the difference.

(2) Provide the Federal contractor with valid evidence directly related to the error finding to support the State's position that the claim was properly paid.

(b) For a claim in which the State and the Federal contractor cannot resolve the difference in findings, the State may appeal to CMS for final resolution within 5 business days from the date of the contractor's finding as a result of the difference resolution is posted on the contractor's Web site. There is no minimum dollar threshold required to appeal a difference in findings.

(c) For eligibility error determinations made by agencies or personnel functionally and physically separate from the State agencies and personnel that are responsible for Medicaid and CHIP policy and operations, the State may appeal error determinations by filing an appeal request.

(1) *Filing an appeal request*. The State may—

- (i) File its appeal request with the appropriate State agency; or
- (ii) If no appeals process is in place at the State level, differences in findings—

(A) Must be documented in writing for the independent State agency to consider; or

(B) May be resolved at the State level through document exchange facilitated by CMS.

(2) *After the filing of an appeals request*. (i) Any changes in error findings must be reported to CMS by the deadline for submitting final eligibility review findings.

(ii) Any unresolved differences may be addressed by CMS not less than 60 days and no more than 90 days after the State submits its eligibility error data.

(iii) Any appeals of determinations based on interpretations of Federal policy may be referred to CMS.

(iv) If CMS's decision causes an erroneous payment finding to be made, any resulting recoveries are governed by § 431.1002 of this subchapter.

* * * * *

PART 447—PAYMENTS FOR SERVICES

18. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

19. In 42 CFR part 447, revise all references to "SCHIP" to read "CHIP".

20. In § 447.504 amend paragraph (g)(15) by revising the reference to "State Children's Health Insurance Program" to read "Children's Health Insurance Program."

PART 457—ALLOTMENTS AND GRANTS TO STATES

21. The authority citation for part 457 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

22. In 42 CFR part 457, revise all references to "SCHIP" to read "CHIP".

23. Section 457.10 is amended by—

- A. Adding the definition of "Children's Health Insurance Program" in alphabetical order.
- B. Removing the definition of "State Children's Health Insurance Program."

The addition reads as follows:

§ 457.10 Definitions and use of terms.

* * * * *

Children's Health Insurance Program (CHIP) means a program established and administered by a State, jointly funded with the Federal government, to provide child health assistance to uninsured, low-income children through a separate child health program, a Medicaid expansion program, or a combination program.

* * * * *

24. In 42 CFR part 457, revise all references to "State Children's Health Insurance Program" to read "Children's Health Insurance Program."

Authority: (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program).

Dated: April 14, 2009.

Charlene Frizzera,

*Acting Administrator, Centers for Medicare
& Medicaid Services.*

Approved: May 7, 2009.

Kathleen Sebelius,

Secretary.

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**Wednesday,
July 15, 2009**

Part IV

**Department of the
Interior**

**Office of Surface Mining Reclamation and
Enforcement**

**30 CFR Parts 723, 724, 845 et al.
Civil Monetary Penalties; Final Rule**

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Parts 723, 724, 845 and 846****[Docket ID: OSM-2009-0004]****RIN 1029-AC61****Civil Monetary Penalties****AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.**ACTION:** Final rule.

SUMMARY: This rule adjusts the penalty amount of certain civil monetary penalties authorized by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 which requires that civil monetary penalties be adjusted for inflation at least once every four years.

DATES: *Effective Date:* November 28, 2009.

FOR FURTHER INFORMATION CONTACT: Andy DeVito, Office of Surface Mining Reclamation and Enforcement, South Interior Building MS-252, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone (202) 208-2701. *E-mail:* adevito@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background

- A. The Federal Civil Penalties Inflation Adjustment Act
- B. Method of Calculation
- C. Example of a Calculation
- D. Civil Monetary Penalties Affected by This Adjustment
- E. Effect of the Rule in Federal Program States and on Indian Lands
- F. Effect of the Rule on Approved State Programs

II. Procedural Matters and Required Determinations

I. Background**A. The Federal Civil Penalties Inflation Adjustment Act**

In an effort to maintain the deterrent effect of civil monetary penalties (CMPs) and promote compliance with the law, the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996, requires Federal agencies to regularly adjust CMPs for inflation. 28 U.S.C. 2461, note. The Inflation Adjustment Act, as amended, requires each agency to make an initial inflationary adjustment for all applicable CMPs, and to make subsequent adjustments at least once every four years thereafter. We, the

Office of Surface Mining Reclamation and Enforcement (OSM), have adjusted the CMPs authorized by SMCRA on three previous occasions: November 28, 1997 (62 FR 63274), November 21, 2001 (66 FR 58644), and November 22, 2005 (70 FR 70698). As required by the Inflation Adjustment Act, we are again adjusting our CMPs according to the formula set forth in the law.

Under the Inflation Adjustment Act, the amount of the adjustment for a CMP is determined by increasing the CMP by the amount of the cost-of-living adjustment. The cost-of-living adjustment is defined as the percentage of each CMP by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of the CMP was last set or adjusted. The Inflation Adjustment Act defines the Consumer Price Index as the "Consumer Price Index for all urban-consumers [the CPI-U] published by the Department of Labor." See 28 U.S.C. 2461, note. The Inflation Adjustment Act specifies that any resulting increases in a CMP must be rounded according to a stated rounding formula. *Id.* The increased CMPs apply only to violations that occur after the date the increase takes effect. *Id.*

B. Method of Calculation

Because these adjustments will be effective before December 31, 2009, we are calculating the CMP increases based on the CPI-U inflation factor for the month of June 2008, which is 218.815. Because of the rounding formula contained in the Inflation Adjustment Act, we did not adjust all CMPs in 2001 or 2005. Thus, we are using three different multipliers for the current CMP adjustments.

First, for the CMPs that were last adjusted in 1997, we are using a multiplier of 1.3650 (a 36.5 percent increase). We arrived at this multiplier by dividing the CPI-U for June 2008 (218.815) by the CPI-U for June 1997 (160.3).

Second, for the CMPs that were last adjusted in 2001, we are using a multiplier of 1.2293 (a 22.93 percent increase). We arrived at this multiplier by dividing the CPI-U for June 2008 (218.815) by the CPI-U for June 2001 (178.0).

Last, for the CMPs that were last adjusted in 2005, we are using a multiplier of 1.1250 (a 12.50 percent increase). We arrived at this multiplier by dividing the CPI-U for June 2008 (218.815) by the CPI-U for June 2005 (194.5).

Any potential increase under these adjustments is subject to the rounding formula set forth in section 5(a) of the Inflation Adjustment Act. See 28 U.S.C. 2461, note. Under the formula, any increase must be rounded to the nearest:

- (1) Multiple of \$10 in the case of penalties less than or equal to \$100;
- (2) Multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;
- (3) Multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;
- (4) Multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;
- (5) Multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and
- (6) Multiple of \$25,000 in the case of penalties greater than \$200,000.

C. Example of a Calculation

The following example illustrates the inflation adjustment calculation based on a CMP that was last adjusted in 2005: Generally, OSM assigns points to a violation as described in 30 CFR 845.13. The CMP owed is based on the number of points received. So, under our existing regulations in 30 CFR 845.14, a violation totaling 70 points would amount to a \$6,500 CMP.

To adjust this amount, using the formula above, we multiply \$6,500 by the inflation factor of 1.1250, resulting in a raw inflation amount of \$7,312.50. Because the Inflation Adjustment Act requires us to round any increase in the CMP amount, we must then calculate the difference in the raw inflation amount and the existing penalty. So, we subtract the current penalty amount (\$6,500.00) from the raw inflation adjustment (\$7,312.50), which results in an increase of \$812.50.

The rounding formula in section 5(a) of the Inflation Adjustment Act specifies that if the penalty is greater than \$1,000 but less than \$10,000, the increase must be rounded to the nearest multiple of \$1,000. Therefore, we round \$812.50 up to \$1,000.00. Finally, we add the rounded increase (\$1,000.00) to the existing penalty (\$6,500.00), resulting in a new penalty amount of \$7,500.00.

For those CMPs that were last adjusted in 1997 or 2001, the calculation would be the same, but the multiplier would be either 1.3650 or 1.2293, instead of 1.1250. When the regulations in 30 CFR 845.14 were issued in 1982 (47 FR 35640), the amount of the civil penalty that was assessed increased by \$20.00 with each additional point that was assessed from 2 through 25, and the penalty increased by \$100.00 with each additional point

that was assessed from 25 through 70. For example, an assessment of 47 points resulted in a penalty of \$2,700.00, and an assessment of 48 points resulted in an assessment of \$2,800.00. Because of the rounding formula required by the law, the difference in the penalty amount for each additional point is no longer consistent in many instances.

D. Civil Monetary Penalties Affected by This Adjustment

Section 518 of SMCRA, 30 U.S.C. 1268, authorizes the Secretary of the Interior to assess CMPs for violations of SMCRA. OSM's regulations implementing the CMP provisions of section 518 are located in 30 CFR parts 723, 724, 845, and 846. Because of the rounding formula specified in the Inflation Adjustment Act, we are only adjusting CMPs in four sections—30 CFR 723.14, 724.14, 845.14, and 846.14. When we review and adjust our CMPs in 2013, we will compare the CPI-U for June 2012 with the CPI-U for the year in which each CMP was last adjusted. In some instances that will be 2001, 2005, or 2009.

E. Effect of the Rule in Federal Program States and on Indian Lands

The increase in civil monetary penalties contained in this rule will apply through cross-referencing to the following Federal program states: Arizona, California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for those States appear at 30 CFR parts 903, 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The increase in civil monetary penalties also applies through cross-referencing to Indian lands under the Federal program for Indian lands as provided for in 30 CFR 750.18.

F. Effect of the Rule on Approved State Programs

Section 518(i) of SMCRA requires that the civil penalty provisions of each State program contain penalties which are "no less stringent than" those set forth in SMCRA. Our regulations specify that each State program "shall contain penalties which are no less stringent than those set forth in section 518 of the Act and shall be consistent with 30 CFR part 845." 30 CFR 840.13(a). In order to implement the penalty provisions of section 518(a) of SMCRA, we developed a point system for determining the amount of the CMP to assess for a violation of our regulations. 44 FR 15461-63 (Mar. 13, 1979). However, in a 1980 decision on OSM's regulations

governing CMPs, the U.S. District Court for the District of Columbia held that because section 518 of SMCRA fails to enumerate a point system for assessing CMPs, we cannot require the States to adopt the point system and civil penalty amounts found in 30 CFR 845.14. *In re Permanent Surface Mining Regulation Litigation*, No. 79-1144, Mem. Op. (D.D.C. Feb. 26, 1980), 14 Env't Rep. Cas. (BNA) 1083. In response to the Secretary's request for clarification, the Court further stated that it could not uphold requiring the States to impose penalties as stringent as those appearing in 30 CFR 845.15. *In re Permanent Surface Mining Regulation Litigation*, No. 79-1144, Mem. Op. (D.D.C. May 16, 1980), 19 Env't Rep. Cas. (BNA) 1477. As a result of the litigation, 30 CFR 840.13(a) was suspended in part on August 4, 1980. 45 FR 51548. Consequently, State regulatory programs are not required to mirror all of the penalty provisions of our regulations.

II. Procedural Matters and Required Determinations

Administrative Procedure Act

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA) provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b). We have determined that under 5 U.S.C. 553(b), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. This rulemaking is consistent with the statutory authority and requirements set forth in the Inflation Adjustment Act as amended by the Debt Collection Improvement Act of 1996. The Inflation Adjustment Act requires that we adjust our CMPs once every four years and specifies the manner in which the adjustment is to be made. Accordingly, the adjustments made are ministerial, technical, and non-discretionary.

Executive Order 12866—Regulatory Planning and Review

This rule has been reviewed under the provisions of Executive Order 12866 and is not considered a significant regulatory action. This determination is based on the fact that the rule adjusts OSM's CMPs according to the formula contained in the Inflation Adjustment Act. OSM has no discretion in making the adjustments. Further, most coal mining operations subject to the rule do

not engage in prohibited activities and practices and, as a result, we believe that the aggregate economic impact of these revised regulations will be minimal, affecting only those who may engage in prohibited behavior in violation of SMCRA.

Our civil penalty data for Fiscal Years 2005-2008 indicates that over a four year period, we collected an average of approximately \$129,000 annually for all violations. If we assume that the average annual collection remains constant at \$129,000, and we adjusted that collection figure for inflation using the largest inflation factor contained in this rule (36.50 percent), the CMPs collected annually under the new penalty amounts would result in an annual increase of approximately \$47,000 for a total CMP collection of \$176,000 annually. Because the majority of the increases are based on lower inflation factors (22.93 percent or 12.50 percent) the actual annual increase will be even less. Consequently, the annual increase in CMPs that we might reasonably expect to collect under the revised dollar amounts contained in this rule is substantially less than the \$100 million annual threshold contained in Executive Order 12866 for an economically significant rule. Based on the above data, we have determined that:

a. The rule will not have an annual effect of \$100 million or more on the economy, nor will it adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

b. The rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. The rule will not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. The rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this revision 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.*). As discussed above, the aggregate economic impact of this rulemaking on small business entities should be minimal, and affects only those who violate the provisions of SMCRA.

Small Business Regulatory Enforcement Fairness Act

For the reasons previously stated, this rule is not considered a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

1. Will not have an annual effect on the economy of \$100 million.
2. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions because the rule does not impose new requirements on the coal mining industry or consumers.
3. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State local or tribal governments or the private sector. As previously discussed, the annual increase in CMPs that we might reasonably expect to collect under the revised dollar amounts contained in this rule is substantially less than the \$100 million annual threshold. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because the rule is covered by the categorical exclusion listed in the Department of the Interior regulations at 43 CFR 46.210(i). That categorical exclusion covers policies, directives, regulations and guidelines that are of an administrative, financial, legal, technical, or procedural nature. We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the National Environmental Policy Act.

Executive Order 12988—Civil Justice Reform

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is not considered significant under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the proposed revisions would not have substantial direct effects 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.

Executive Order 12630—Takings

Under the criteria in Executive Order 12630, this rule does not have significant takings implications; therefore, a takings implication assessment is not required. This determination is based on the fact that the rule will not have an impact on the use or value of private property.

Executive Order 13132—Federalism

This rule does not have Federalism implications. It will not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

List of Subjects

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 724

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Dated: June 9, 2009.

Ned Farquhar,

Acting Assistant Secretary, Land and Minerals Management.

■ For the reasons set out in the preamble, 30 CFR parts 723, 724, 845 and 846 are amended as follows:

PART 723—CIVIL PENALTIES

■ 1. The authority citation for Part 723 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

■ 2. Section 723.14 is amended by revising the table to read as follows:

§ 723.14 Determination of amount of penalty.

Points	Dollars
1	32
2	64
3	86
4	108
5	110
6	132
7	254
8	276
9	298
10	320
11	342
12	364
13	386
14	508
15	530
16	552
17	574
18	596
19	618
20	640

Points	Dollars
21	662
22	684
23	706
24	728
25	750
26	860
27	1,070
28	1,080
29	1,090
30	1,100
31	1,210
32	1,320
33	2,430
34	2,540
35	2,650
36	2,760
37	2,870
38	2,980
39	3,090
40	3,200
41	3,310
42	3,420
43	3,530
44	3,640
45	3,750
46	3,860
47	3,970
48	5,080
49	5,190
50	5,300
51	5,410
52	5,520
53	5,630
54	5,740
55	5,850
56	5,960
57	6,070
58	6,180
59	6,290
60	6,400
61	6,510
62	6,620
63	6,730
64	6,840
65	6,950
66	7,060
67	7,170
68	7,280
69	7,390
70	7,500

PART 724—INDIVIDUAL CIVIL PENALTIES

■ 3. The authority citation for Part 724 continues to read as follows:
Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

■ 4. Section 724.14 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 724.14 Amount of individual civil penalty.
 * * * * *
 (b) The penalty shall not exceed \$7,500 for each violation. * * *

PART 845—CIVIL PENALTIES

■ 5. The authority citation for Part 845 continues to read as follows:
Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, 31 U.S.C. 3701, Public Law 100–202, and Public Law 100–446.

■ 6. Section 845.14 is amended by revising the table to read as follows:
§ 845.14 Determination of amount of penalty.
 * * * * *

Points	Dollars
1	32
2	64
3	86
4	108
5	110
6	132
7	254
8	276
9	298
10	320
11	342
12	364
13	386
14	508
15	530
16	552
17	574
18	596
19	618
20	640
21	662
22	684
23	706
24	728
25	750
26	860
27	1,070
28	1,080
29	1,090
30	1,100
31	1,210
32	1,320
33	2,430
34	2,540

Points	Dollars
35	2,650
36	2,760
37	2,870
38	2,980
39	3,090
40	3,200
41	3,310
42	3,420
43	3,530
44	3,640
45	3,750
46	3,860
47	3,970
48	5,080
49	5,190
50	5,300
51	5,410
52	5,520
53	5,630
54	5,740
55	5,850
56	5,960
57	6,070
58	6,180
59	6,290
60	6,400
61	6,510
62	6,620
63	6,730
64	6,840
65	6,950
66	7,060
67	7,170
68	7,280
69	7,390
70	7,500

PART 846—CIVIL PENALTIES

■ 7. The authority citation for Part 846 continues to read as follows:
Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

■ 8. Section 846.14 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 846.14 Amount of individual civil penalty.
 * * * * *
 (b) The penalty shall not exceed \$7,500 for each violation. * * *

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H.R. 1777/P.L. 111-39

To make technical corrections to the Higher Education Act of 1965, and for other purposes. (July 1, 2009; 123 Stat. 1934)

S. 614/P.L. 111-40

To award a Congressional Gold Medal to the Women Airforce Service Pilots ("WASP"). (July 1, 2009; 123 Stat. 1958)

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